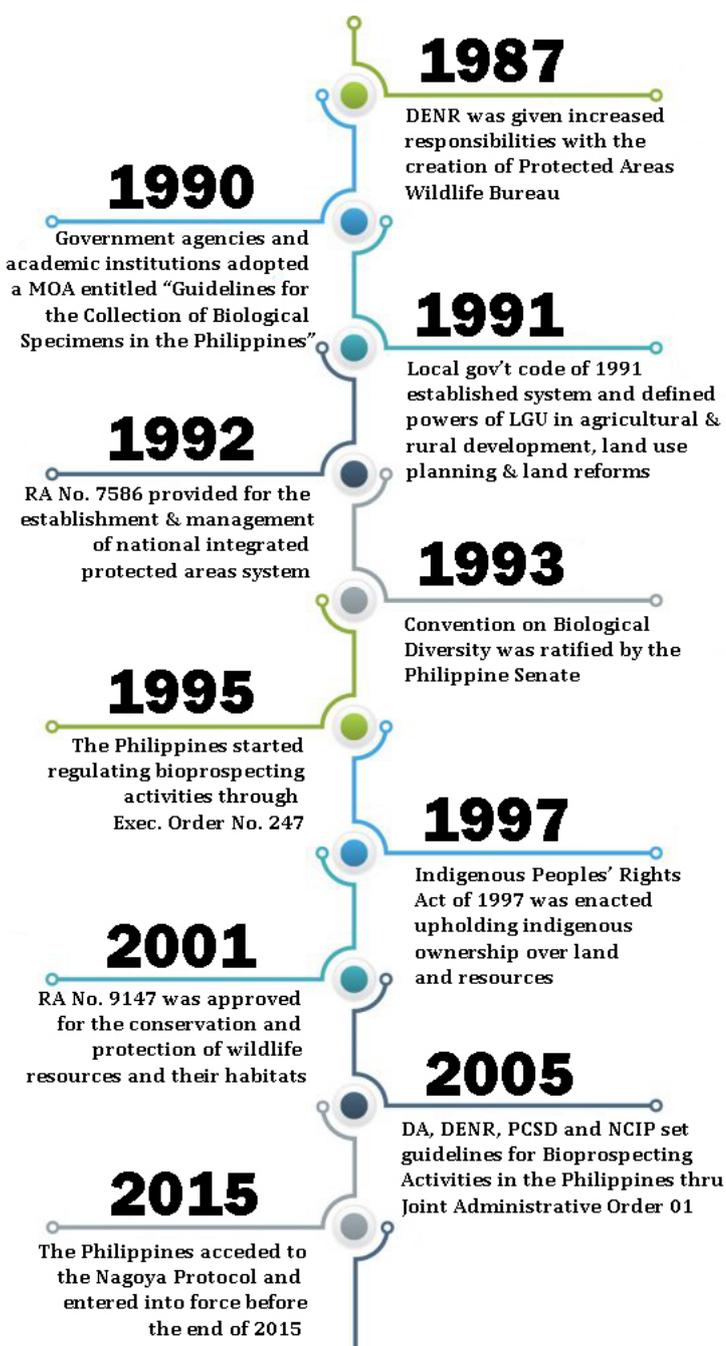




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Access and Benefit Sharing (ABS) for Genetic Resources in the Philippines



The Philippines has a relatively long history of regulating bioprospecting and ABS. In response to the Philippines' ratification of the CBD in 1993, the country began to draft Executive Order (EO) 247, establishing a framework for access to genetic resources that entered into force on May 18, 1995 and is considered to be the first ABS law globally.

Ratification of the Convention on Biological Diversity (CBD)

The Philippines was one of the earliest signatories of the CBD, as it acceded in 1992. The Philippine Congress ratified the CBD on May 31, 1993 becoming the 31st state to do so. The primary consideration by the Philippine Congress in acceding to the CBD was the complementarity of its goals and objectives with the goals of the Philippine Constitution.

Prior to the ratification, a multi-sectoral consultation took place in November 1992 involving scientists, academicians, policy makers, national government organizations and professionals from the private sector, to share information and to better understand the concept and value of biodiversity and the salient provisions of the CBD.

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) are owned by the State. It fully controls and supervises the disposition, development and utilization of the resources. It is also a state policy to manage, protect, sustainably develop or use biological and genetic resources to ensure their conservation.

Pursuant to the obligations of the Philippines under the CBD, an EO 247 was issued to implement the CBD's provision. Subsequently, Department Administrative Order (DAO) No. 96-20 was issued by the Department of Environment and Natural Resources (DENR) to implement EO 247 that details how the concerned government agencies and institutions will administer and operationalize regulation, research, collection and use of the country's bio-genetic resources. Since approving the EO 247, several difficulties have been encountered during the implementation which include EO's scope and coverage, the requirements in obtaining Prior Informed Consent (PIC), fair and equitable benefit sharing, and the processing period and requirements for the research agreement.

Thus, the DENR and the Department of Agriculture, Palawan Council for Sustainable Development and the National Commission on Indigenous Peoples set guidelines for the

bioprospecting activities in the country through the issuance of Joint DAO No. 01, Series of 2005. It applies to all bioprospecting of any biological resources found in the Philippines and species listed under CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) and the IUCN (International Union for Conservation of Nature) Red List.

INSTITUTIONAL ARRANGEMENTS

Bioprospecting shall be allowed only upon execution of bioprospecting undertaking (BU) between the resource user and the Secretary of DENR/DA or the Chairperson of PCSD when the bioprospecting activity is to be conducted in Palawan. The NCIP will be part of the technical committees in evaluating the requirements, especially with securing the PIC and the negotiations for benefit-sharing with concerned resource providers when the activity involves ancestral domains/lands and indigenous communities.

GENERAL GUIDELINES

The resource user-applicant shall file a standardized application and pay the application fee and seek PIC of resource providers. Then, the resource user shall negotiate with resource provider for benefit-sharing and come up with an agreement regarding payments of monetary and non-monetary benefits, arising from the use of biological resources in the amounts and periods agreed upon to the national government. The BU shall contain, in addition to the negotiated terms of benefit-sharing, standard terms and conditions relating to compliance with complementary regulations and other basic contractual terms.

Bioprospecting fee shall accrue to the implementing government agency/institution, up-front payments shall accrue to the resource providers and royalties shall be shared between the national government and the resource providers.

For the full content of the DAO, visit this link <https://www.wipo.int/edocs/lexdocs/laws/en/ph/ph191en.pdf>

Minimum Terms and Conditions for Research Agreements

***Collection, Transport, Export and Deposition.**

- Collecting is limited to the specimens allowed under the agreement.
- Collecting is limited to designed 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 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.

***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.

Indigenous/Traditional Knowledge and Benefit Sharing

Roughly 6 million people (10% of the total population) constitutes the so-called "tribal Filipinos". The PIC Certificate from indigenous peoples, required to process a research agreement application, indicates that traditional knowledge may be used.

Republic Act 8317, better known as the Indigenous Peoples' Rights Act of 1997 protect the rights of indigenous peoples over their traditional knowledge. PIC is one of the mechanisms to ensure that benefits are provided to indigenous and local communities when their traditional knowledge is being used. 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, practices and techniques.