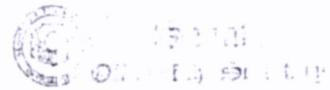


SEVENTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
Third Regular Session)



19 JAN 22 P1:20

REC'D:

SENATE
S. No. 2167

AS

Introduced by: Senator Paolo Benigno "Bam" A. Aquino IV

**AN ACT
STRENGTHENING THE NATIONAL POLICY ON WEALTH GENERATION
FROM ACCESS, BENEFIT-SHARING FROM THE UTILIZATION OF
PHILIPPINE GENETIC RESOURCES AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

On September 29, 2015, the Philippines acceded to 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.

The Nagoya Protocol is an international agreement that seeks to provide a transparent legal framework to implement the fair and equitable sharing of benefits arising out of the utilization of genetic resources, one of the objectives of the UN Convention on Biological Diversity.

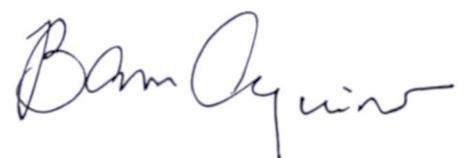
As one of the world's top 18 mega-diversity countries, with one of the highest rates of biological discovery in the world, it is incumbent upon the Philippine government to ensure that the country fulfills its commitments under the Nagoya Protocol, and reaps the benefits of this agreement as well.

The proposed measures thus allows the Philippines to fulfill its obligations under the Nagoya Protocol, to promote fair and equitable benefit-sharing of the country's plant and animal genetic resources, strengthen its existing policies against

biopiracy, and encourage research contributing to biodiversity conversation and sustainable use.

This measure also seeks to recognize and strengthen the ability of indigenous and local communities to benefit from the use of their knowledge systems, innovations and practices.

In view of the foregoing, approval of this bill is earnestly sought.

A handwritten signature in black ink, appearing to read "Bam Aquino".

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*Be it enacted by the Senate and House of Representatives of the Philippines in
Congress assembled:*

1 Sec. 1. *Short Title.* — This Act shall be known as the "Philippine Genetic
2 Resources Access and Benefit-Sharing Act (PGRABS) Act."

3 Sec. 2. *Declaration of Policy.* — It is the policy of the State to ensure the fair
4 and equitable sharing of benefits arising from the utilization of all genetic resources
5 in the country to generate wealth and alleviate poverty. Towards this end, the State
6 shall secure the necessary means to pursue the strategic programs and initiatives on
7 conservation and sustainable use of biological diversity through the conduct of
8 scientific research, enabling them to facilitate faster regulatory approvals from
9 concerned key agencies.

10 Sec. 3. *Scope.* — This Act shall apply to the Philippine genetic resources,
11 whether found in Philippine territory, and in areas where the country enjoys
12 sovereign rights and jurisdiction, originating from the same; or exported to other
13 countries; and genetic resources originating from other countries and imported into
14 the Philippines for development and utilization.

1 Sec. 4. *Definition of Terms.* — As used in this Act, the following terms shall

2 mean:

- 3 a) *Access* — refers to the collection, taking and gathering of genetic
4 resources from the field, in order that they may be utilized for further
5 academic or scientific research and bioprospecting; this also includes the
6 conduct of field research, interviews and surveys involving the indigenous
7 knowledge systems and practices including the associated traditional
8 knowledge of indigenous and local communities in the Philippines;
- 9 b) *Biotechnology* — refers to any technological application that uses
10 biological systems, living organisms, or derivatives thereof, to make or
11 modify products or processes for specific use;
- 12 c) *Biopiracy* — refers to the unethical or unlawful appropriation or
13 commercial exploitation of biological materials such as medicinal plant
14 extracts that are native to a particular country or territory without
15 providing fair financial compensation to the people of government of that
16 country or territory;
- 17 d) *Bioprospecting* — refers to the systematic search for biochemical and
18 genetic information in nature in order to develop commercially-valuable
19 products for pharmaceutical, agricultural, cosmetic and other applications;
- 20 e) *Derivatives* — refers to a naturally occurring biochemical compound
21 resulting from the genetic expression or metabolism of biological or
22 genetic resources, even if it does not contain functional units of heredity;
- 23 f) *Fair and equitable benefit-sharing* — refers to the benefits that may be
24 derived by the Philippines as a country or its researchers is appropriate
25 taking into account the level of effort applied to secure the resources and

1 would take into account the country's current socio-economic and cultural
2 standing;

3 g) *Genetic material* — refers to any material of plant, animal, microbial or
4 other origin containing functional units of heredity;

5 h) *Genetic resources* — refers to genetic material of actual or potential value;

6 i) *Nagoya Protocol* — refers to the Nagoya Protocol on Access to Genetic
7 Resources and the Fair and Equitable Sharing of Benefits Arising from their
8 Utilization to the Convention on Biological Diversity;

9 j) *Utilization of genetic resources* — refers to the conduct research and
10 development on the genetic and/or biochemical composition of genetic
11 resources, including through the application of biotechnology as defined in
12 Article 2 of the United Nations Convention on Biological Diversity (UN
13 CBD);

14 k) *Clearing house* — refers to the platform for exchanging information on
15 access and benefit-sharing established by the Nagoya Protocol as part of
16 the clearing-house mechanism of the convention.

17 Sec. 5. *Over-Arching Policy Framework on Access and Benefit-sharing from*

18 *the Utilization of Philippine Genetic Resources.* — The policy framework on access
19 and benefit-sharing from the utilization of genetic resources institutionalized in this
20 Act, implements the Philippine commitment to the Nagoya Protocol with some key
21 changes in specific policy areas relating to access to genetic resources, compliance
22 mechanisms to ensure that similar legislation or policy relating to access and benefit-
23 sharing arising from the utilization of genetic resources from another country used
24 in the Philippines are respected and implemented. The tracking and monitoring
25 mechanisms, traditional knowledge associated with genetic resources, capacity-
26 building and technology transfer as well as the special mandates of identified

1 government agencies are also amended, to fully implement the policy established in
2 this Act.

3 *Sec. 6. Creation and Composition of Inter-Agency Committee on Genetic*
4 *Resources and Associated Traditional Knowledge.* — There is hereby created an
5 Inter-Agency Committee on Genetic Resources and Associated Traditional
6 Knowledge (Inter-Agency Committee) to harmonize, integrate, enhance, implement
7 and monitor compliance with treaty, statutory and regulatory provisions on ABS and
8 utilization of Philippine genetic resources.

9 It shall be composed of a Chairperson and Co-Chairperson from the
10 Department of Environment and Natural Resources (DENR) and the Department of
11 Agriculture (DA), respectively.

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

- 13 A) Department of Environment and Natural Resources (DENR)
 - 14 1. Biodiversity Management Bureau (BMB)
 - 15 2. Ecosystems Research and Development Bureau (ERDB)
 - 16 3. Palawan Council for Sustainable Development (PCSD)
- 17 B) Department of Agriculture (DA)
 - 18 1. Bureau of Fisheries and Aquatic Resources (BFAR)
 - 19 2. Bureau of Animal Industry (BAI)
 - 20 3. Bureau of Plant Industry (BPI)
- 21 C) Department of Science and Technology (DOST)
 - 22 1. Philippine Council for Health Research and Development (PCHRD)
 - 23 2. Philippine Council for Agriculture, Aquatic and Natural Resources
24 Research and Development (PCAARRD)
 - 25 3. Philippine Council for Health Research and Development (PCHRD)
- 26 D) Department of Health (DOH)
 - 27 1. Philippine Institute of Traditional and Alternative Health Care (PITAHC)
- 28 E) Department of Foreign Affairs (DFA)
- 29 F) Department of Justice (DOJ)
- 30 G) Department of the Interior and Local Government (DILG)

- H) National Commission on Indigenous Peoples (NCIP)
- I) Intellectual Property Office of the Philippines (IPOPHIL)
- J) National Museum of the Philippines (NM)
- K) University of the Philippines (UP) System

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.

The Inter-Agency Committee shall be supported by a secretariat to be headed jointly by the 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) Designate the checkpoint of the national government agency at any stage of research, development, innovation, pre-commercialization and commercialization;
- b) Establish 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;
- c) Create sub-committees to handle specific concerns such as inventory of genetic resources, ABS compliance, monitoring, wealth creation, communication, capacity building and technology transfer;

- 1 d) Actively participate in civil society organizations, indigenous peoples'
2 organizations, private sector and members of the academe in its
3 deliberations;
- 4 e) Analyze and monitor the latest technological developments including
5 digital sequencing information during the Conference of Parties serving as
6 the Meeting of the Parties (COP-MOP) to the Nagoya Protocol;
- 7 f) Establish one national inventory of genetic resources within one year from
8 the adoption of the implementing guidelines of this order, prioritizing
9 those with potential commercial application;
- 10 g) Track and monitor the mechanism of biodiversity resources including
11 genetic/deoxyribonucleic acid (DNA) characterization of genetic resources
12 and other living organisms to enhance transparency of the same;
- 13 h) Apply strict application of guidelines, processes and protocols on the
14 utilization of traditional knowledge associated with genetic resources as
15 well as applicable customary laws and community protocols of indigenous
16 peoples and local communities, particularly in securing free prior and
17 informed consent; and
- 18 i) Implement capacity building of existing and future policies the
19 development of a sound and viable technological and scientific base during
20 access, benefit-sharing and utilization of genetic resources.

21 *Sec. 8. Designation of National Focal Point and Competent National*
22 *Authorities.* — The BMB of DENR shall continue to be the Philippine national focal
23 point on access and benefit sharing. The designated Philippine competent national
24 authorities for access and benefit-sharing and for ensuring Philippine compliance
25 with obligations under the CBD and Nagoya Protocol shall be DENR, DA, NCIP and
26 PCSD.

1 Sec. 9. *Coordination and Cooperation of Other National Government Agencies.*

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

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

16 Sec. 11. *Access to Genetic Resources.* — The existing policies on access to
17 genetic resources as currently implemented by the appropriate government agencies
18 under Republic Act 9147 shall continue to exist and be implemented for all purposes;
19 however, to facilitate harmonization of these policies with the Nagoya Protocol, the
20 following shall also be implemented:

- 21 a) Any existing Philippine government agency requiring prior informed
22 consent before access to genetic resources is granted shall provide for the
23 issuance at the time of access an evidence of the decision to grant prior
24 informed consent and the establishment of the mutually agreed terms or
25 the agreement relating to access and benefit-sharing involving the genetic
26 resource. These agencies shall also take administrative and policy
27 measures to notify the Access and Benefit-Sharing (ABS) Clearing-house
28 of the United Nations Convention on Biological Diversity of such issuances;
29 and

1 b) Any mutually agreed terms or agreement relating to access and benefit-
2 sharing involving the genetic resource established between the agency or
3 community concerned shall provide for clear provisions on third-party use
4 including the change of intent relating to the utilization of this genetic
5 resource from its non-commercial or scientific stage; any existing
6 implementing regulations of existing agencies for this purpose shall be
7 amended and updated accordingly.

8 Sec. 12. *Matters Relating to the Utilization of Associated Traditional*
9 *Knowledge Associated with Genetic Resources.* — Whenever the indigenous
10 knowledge systems and practices including the associated traditional knowledge
11 associated with genetic resources of indigenous and local communities are utilized,
12 the following shall be implemented by the appropriate agencies, particularly the
13 National Commission on Indigenous Peoples, the Palawan Council for Sustainable
14 Development as well as the Philippine Institute for Traditional and Alternative Health
15 Care:

- 16 a) The customary laws as well as the community protocols of indigenous and
17 local communities, where available, will apply at the first instance, in
18 matters relating to access and benefit-sharing from the utilization of
19 indigenous knowledge systems and practices including the traditional
20 knowledge associated with genetic resources;
- 21 b) Establishment of mechanisms with the effective participation of indigenous
22 and local communities to inform users of their obligations as relates to the
23 utilization of indigenous knowledge systems and practices including
24 traditional knowledge associated with genetic resources;
- 25 c) Establishment of mechanisms to indigenous and local communities to
26 develop their own community protocols, minimum requirements for
27 mutually agreed terms and model contractual clauses;

1 d) The customary use of indigenous knowledge systems and practices
2 including traditional knowledge associated with genetic resources by the
3 indigenous and local communities themselves shall continue to be
4 respected; this principle will not be recognized if asserted by non-
5 indigenous and local communities.

6 Sec. 13. *Voluntary Benefit-Sharing Mechanisms*. — There shall be established
7 a voluntary benefit-sharing mechanism in cases where it is not possible to secure
8 prior informed consent and the researcher and his/her partner or collaborating
9 institution will commit to provide a minimum level of benefits that may be derived
0 from the utilization of the genetic resources and/or the indigenous knowledge
1 systems or practices including the associated traditional knowledge therein and as
2 the utilization progresses from research, development, innovation, pre-
3 commercialization and commercialization. The implementing agencies of this Act will
4 conduct the necessary consultations to determine the levels of these benefits, which
5 will be adjusted from time to time depending on the level of advancement of
6 researches in these types of activities.

7 Sec. 14. *Penalties*. — Except in the relation to plant genetic resources for food
8 and agriculture covered under the provisions of the international treaty on plant
9 genetic resources for food and agriculture, including the Multilateral System of
0 Access and Benefit-sharing and its standard material transfer agreement (SMTA).
1 Specifically, on Articles 7 and 8 of the SMTA, the user of genetic resources who does
2 not comply with the provisions of this Act, including any relevant administrative
3 issuance that may be issued by the appropriate agencies as indicated by this Act,
4 shall be penalized with the crime of biopiracy subject to a penalty of six years and
5 one day up to eight years, with a fine of not less than Five Hundred Thousand
6 Pesos, as may be determined by the appropriate court.

7 Sec. 15. *Implementing Rules and Regulations*. — Within six (6) months from
8 the effectivity of this Act, the DENR and the DA as co-chairpersons of the Inter-
9 Agency Committee shall issue the Implementing Rules and Regulations with the

1 Department of Environment and Natural Resources as the lead implementers of this
2 Act.

3 *Sec. 16. Appropriations.* — All concerned government agencies included in the
4 Inter-Agency Committee shall allocate necessary funds for the implementation of
5 this Act in accordance with the regular government budget procedures, for the first
6 year of implementation of this Act. For the subsequent years, agencies in the Inter-
7 Agency Committee shall include in their respective programs funding for the
8 implementation of this Act which shall be included in the Annual General
9 Appropriations Act.

.0 *Sec. 17. Separability Clause.* — Should any provision herein be declared
.1 unconstitutional, the same shall not affect the validity of the other provisions of this
.2 Act.

.3 *Sec. 18. Repealing Clause.* — All laws, decrees, orders, rules, and regulations
.4 or other issuances or parts inconsistent with the provisions of this Act are hereby
.5 repealed or modified accordingly.

.6 *Sec. 19. Effectivity.* — This Act shall take effect fifteen (15) days after its
.7 publication in the Official Gazette or in any newspaper of general circulation in the
.8 Philippines.

Approved,