

## The Challenges in the Implementation of the Philippine ABS Regulations: Monitoring and Enforcement of Bioprospecting Activities in the Philippines

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### Access and Benefit-sharing (ABS) Regulations in the Philippines

In 1995, *Executive Order No. 247* was issued as the Philippine's response to the call of the Convention on Biological Diversity (CBD) for signatories to take appropriate measures to ensure that countries providing genetic resources are given access to and transfer of technology that uses those resources, on mutually agreed terms.

On 30 July 2001, the Philippine Legislature enacted the *Wildlife Resources Conservation and Protection Act* which has repealed by implication, or amended accordingly, EO 247.<sup>1</sup> Provisions in the EO, which are clearly contradictory to and irreconcilable with the Wildlife Act, are now deemed repealed.<sup>2</sup> A new set of implementing guidelines on bioprospecting, issued pursuant to the Wildlife Act and other relevant laws, is almost in its final stage of formulation.

### Challenges in Implementation of Philippine ABS Regulations

During the time that EO 247 was effective, there were several issues that in some way affected the full implementation of the law. These are as follows<sup>3</sup>:

- The scope of the EO is too broad. As defined "bioprospecting" appears to cover all kinds of collection, research, and utilization of biological and genetic resources, including conservation research which have nothing to do with prospecting. It is also ambiguous as far as ex situ collections are concerned;
- The process is cumbersome, costly, and considered a deterrent to research growth and development;
- The PIC requirement is administratively tedious and burdensome, especially the 60-day waiting period before PIC is issued. Most collectors also dread the PIC requirement due to economic costs. Identifying which community should give consent is often problematic, especially in the case of pelagic or migratory species;

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<sup>1</sup> The repealing clause provides "Act Nos. 2590 and 3983, Commonwealth Act No. 63, as amended, Presidential Decree No. 1219, as amended, Republic Act No. 6147, and other laws, orders and regulations inconsistent herewith are hereby repealed or amended accordingly."

<sup>2</sup> There are two categories of repeals by implication. The first is where provisions in the two acts on the same subject matter are in irreconcilable conflict, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly to a repeal of the earlier act (Agpalo 1990).

<sup>3</sup> In 1998, the Southeast Asia Regional Institute for Community Education sponsored a series of seminars/workshops to review/assess the EO. Various stakeholders participated in these workshops where issues and concerns affecting the implementation of the EO were identified and solutions/recommendations were formulated. The results were later transmitted to the IACBGR.

- An inter-agency approach has many inherent problems such as difficulty in getting a quorum of the members, irregular attendance of members, and the problem of coordination. In addition, responsibilities of the member agencies are not clearly delineated;
- There is no specific source of funds provided, except of those from the savings of the concerned government agencies and the fees collected by the Inter-Agency Committee on Biological and Genetic Resources (IACBGR);
- Local scientists view the benefit-sharing requirements under the EO as too demanding while others believe that the benefit-sharing provisions do not go far enough. Other questions posed which they feel should be answered include: How do we ensure equitable sharing, who should get what, how much, and for how long, what are the forms of benefit-sharing, and will the community benefit? etc. Some believe that the community should be given a bigger role in negotiating benefit-sharing (Peria 1998);
- Effective bargaining and negotiation have not been given serious consideration; and
- The EO does not provide for a mechanism to ensure that its goal to protect and conserve biological and genetic resources is being achieved. There is no financing mechanism or trust fund in place to support biodiversity conservation objectives (Ochave 1999).

The Wildlife Act and its proposed implementing rules and regulations attempt to address most of these issues and concerns by providing the following:

- Bioprospecting for purposes of scientific or academic research is no longer subject to the requirements of the law for commercial bioprospecting;<sup>4</sup>
- Its proposed implementing guidelines categorically states that it covers wildlife, microorganisms, domesticated or propagated species, exotic species and all ex-situ collections sourced from the Philippines except those currently accessed under international agreements where the Philippines is a party;<sup>5</sup>
- No inter-agency body to implement. The Secretary or its representative, in consultation with the concerned agencies, signs the Bioprospecting Undertaking (BU) which authorizes a bioprospector to undertake bioprospecting activities. However, consultations with concerned agencies are still necessary before any grant for bioprospecting is allowed;<sup>6</sup>
- Prior informed consent from concerned IPs, local communities, PAMB, or private individual entities is still required in accordance with existing laws, but the 60-day requirement, which has been widely criticized, has been removed;<sup>7</sup>
- In case the applicant is a foreign entity or individual, a local institution shall actively participate in the research, collection, and if applicable and appropriate, in the technological development of the products derived from the resources;<sup>8</sup>

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<sup>4</sup> Sec. 14 & 15 in relation to definition of “bioprospecting”, RA 9147.

<sup>5</sup> Sec. 2, 2.1, Proposed Guidelines on Bioprospecting Activities in the Philippines

<sup>6</sup> Sec. 14, RA 9147

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

- A wildlife management fund is created that shall finance the rehabilitation or restoration of habitats affected by acts committed in violation of the law, as well as support scientific research, enforcement and monitoring activities, and the enhancement of capabilities of relevant agencies;<sup>9</sup>
- Unauthorized collection, hunting and possession of wildlife is punishable with imprisonment of up to four (4) years and a fine of up to ₱300,000 depending on the species illegally collected, hunted, or being held.<sup>10</sup> The law, however, is silent on the liability of a person caught bioprospecting illegally;
- The minimum terms and conditions found in the EO were not legislated. Rather, the Secretary is given the option to impose reasonable terms and conditions which are necessary to protect biodiversity. This gives the Secretary of said agencies great flexibility in the conditions to be imposed;<sup>11</sup>
- Equitable sharing of benefits derived from the utilization of biological and genetic resources is not mentioned in the law but is incorporated in the proposed implementing guidelines;<sup>12</sup> and
- The proposed implementing guidelines also provide for a simplified process for securing Bioprospecting Undertaking.<sup>13</sup>

### **Monitoring and Enforcement of Bioprospecting Activities**

Implementing agencies monitor compliance with the processes involved and conditions attached to the BU. Also, monitoring includes not only activities of the authorized resource users but those illegally using the resources for bioprospecting purposes. Furthermore, monitoring involves activities both within and outside Philippine territory.

Under the EO, the respective member agencies of the IACBGR shall conduct monitoring of research agreements based on a standard monitoring scheme to be devised by the IACBGR for that purpose.<sup>14</sup> There shall be an IACBGR monitoring team responsible for establishing a mechanism to ensure the integration and dissemination of the information generated from research, collection, and utilization activities.<sup>15</sup> Another monitoring team, headed by representatives from the Department of Science and Technology (DOST) and the Department of Foreign Affairs (DFA), shall monitor the progress of research, utilization, and commercialization outside the country.<sup>16</sup> All these provisions were never enforced. The implementing agency relied heavily on reports submitted by the resource user and a representative accompanying the resource user during PIC and BS negotiation and collection of samples.

Nevertheless, pursuant to other rules and regulations, the Department of Environment and Natural Resources (DENR) requires a permit for the transport of wildlife from one place to another within the country as well as export permit for transport outside the Philippines.

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<sup>9</sup> Sec. 29, RA 9147

<sup>10</sup> Sec. 27 (f) and Sec. 28, RA 9147.

<sup>11</sup> Sec. 14, RA 9147

<sup>12</sup> Chapter VI, Proposed Guidelines on Bioprospecting Activities in the Philippines

<sup>13</sup> Chapter III, Proposed Guidelines on Bioprospecting Activities in the Philippines

<sup>14</sup> Sec. 12 (12.1), DAO 96-20

<sup>15</sup> Sec. 12 (12.2). DAO 96-20

<sup>16</sup> Sec. 12 (12.3), DAO 96-20

This permit system aims to prevent collection of resources without the required official authorization.

The Wildlife Act does not provide for a specific provision on monitoring bioprospecting activities but the transport and export permitting system continues and violators are penalized. However, one of the objectives of the proposed *Guidelines on Bioprospecting Activities in the Philippines*, the Act's implementing guidelines, is to establish a cost-effective, efficient, transparent and standardized system for monitoring compliance with the provisions on PIC; collection quota; fair and equitable BS; transfer of materials to third party and other provisions of the BU. It provides for the following:

- an annual progress report is submitted by the resource user containing the current status of the procurement of PIC, progress of collection of samples, benefit sharing negotiations and progress on payment of benefits or other provisions of the BU;
- certification is issued by the resource user and provider that there has been proper procurement of PIC, acceptance by resource providers of benefits, compliance to collection quota;
- a checklist of process and content indicators is provided; and
- a monitoring team is created.<sup>17</sup>

For overseas monitoring, the assistance of the DFA and DOST in monitoring inventions and commercialization in foreign countries shall be sought. In particular, the DFA is encouraged to work with concerned foreign authorities on the following aspects: a) prevention of biological resources from entering countries without a BU; b) requirement for disclosure of country of origin and presentation of BU in patent applications; and c) facilitation of enforcement of claims against collectors or commercializing entities. The DFA and DOST are encouraged to establish and maintain ties with firms that have BUs with the Philippines as well as with professional societies and universities that deal with the use of Philippine biological resources.<sup>18</sup> Furthermore, civil society participation is highly encouraged in monitoring compliance with the BU.

Since 1995, we have only one Commercial Research Agreement [CRA] and one Academic Research Agreement [ARA] that have been processed under EO 247. There is another CRA granted by the Department of Agriculture but it did not pass the process under EO 247. As mentioned there is no concrete and specific monitoring scheme designed under EO 247. Monitoring of these agreements has been based only on the annual progress reports submitted by resource users and the implementation of the transport and export permitting system. There is also no clear and effective mechanism that deals with monitoring and enforcement of Philippine biological resources brought out of the Philippines. How to enforce negotiated benefits outside the Philippines remain unanswered.

As presented above, the EO has been affected by such a number of issues that its full implementation suffered greatly. The implementing agency concerned itself more with determining what are activities should be covered, how to deal with local scientists and

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<sup>17</sup> Sec. 24 and 25, Proposed Guidelines on Bioprospecting Activities in the Philippines

<sup>18</sup> Sec. 26, Proposed Guidelines on Bioprospecting Activities in the Philippines

researchers, and how to streamline the process, etc. that monitoring and enforcement were relegated to the background. Also, there were no agreements reached on monitoring and the transport and export permitting system seemed adequate at that time. A lack of financial and human resources also contributed to weakened monitoring and enforcement activities.

The Wildlife Act, through the proposed guidelines, will attempt to establish a better monitoring and enforcement system. The questions, however, remain the same: Will the monitoring guidelines under the proposed regulations work this time? Are they sufficient to monitor and enforce the provisions of the law and the agreements outside Philippine territory? Can we really enforce our agreements outside our country? Where do we go if violations are committed by the foreign resource user? We are still grappling for answers.

## References

- Republic Act No. 9147. 2001. *Wildlife Resources Conservation and Protection Act*
- Executive Order No. 247. 1995. *Prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, their By-products and Derivatives, for Scientific and Commercial Purposes, and for other purposes*
- Department Administrative Order No. 96-20. 1996. *Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources*
- Joint DENR-DA-PCSD Administrative Order No. 1. 2004. *Guidelines for Bioprospecting Activities in the Philippines* (Proposed draft)
- Agpalo, R. 1990. *Statutory Construction*. Rex Bookstore, Manila, Philippines.
- EO 247 Workhop. 1998. Compilation of issues, comments, and suggestions reached during the 1998 seminars/ workshops sponsored by Southeast Asia Regional Institute for Community Education.
- Ochave, J. M. A. 1999. *The Anticommons in Bioprospecting: Regulation of Access to Genetic and Biological Materials in the Philippines*. World Bulletin 15: 150-160
- Peria, E.V. 1998. *Can't we stop and talk a while? A Philippine NGO Perspective on Executive Order No. 247*, Paper presented at the 10th Global Biodiversity Forum in Bratislava, Slovakia, 1.-3. May .1998. Southeast Asia Regional Institute for Community Education (SEARICE), Philippines