



Philippines: Acts on Indigenous Peoples' Rights & Traditional Medicine

Indigenous Peoples Rights Act

The Act⁴⁷ summarizes the rights to which Indigenous Cultural Communities and/or Indigenous Peoples (ICCs/IPs) are entitled as follows: "the State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain". Customary laws are defined as "a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs". Important provisions of this Act include:

- *Community intellectual rights:* ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall protect and develop past, present and future manifestations of their cultures, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and prior informed consent or in violation of their laws and traditions.
- *Right to indigenous knowledge systems and practices:* ICCs/IPs are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources and seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of fauna and flora, oral traditions, literature, designs and visual performing arts.
- *Access to biological and genetic resources:* Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within the ancestral lands and domains of the ICCs/IPs only with free and prior informed consent of such communities, obtained in accordance with their customary laws.

⁴⁷ The full title of the Act, approved by the President in October 1997, is: An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes.

Executive Order 247 on bioprospecting

The purpose of the Order⁴⁸ is "to regulate the prospecting of biological and genetic resources so that these resources are protected and conserved, are developed and put to the sustainable use and benefit of the national interest."

⁴⁸ The Executive Order is entitled: 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. It was signed by the President in 1995.

The preamble asserts that "wildlife, flora and fauna, among others, are owned by the State and the disposition, development and utilization thereof are under its full control and supervision". However, the State's resource rights are not absolute, in that prospecting is only permitted within "the ancestral lands and domains of indigenous cultural communities... with the prior informed consent of such communities; obtained in accordance with the customary laws of the concerned community". In this way, State sovereignty rights are upheld, yet by recognizing the right of traditional communities to veto bioprospecting on their territory, the resource rights of communities have, at least to some degree, been recognized.

Permission for bioprospecting depends on a research agreement between the bioprospector and the Government. For an agreement to be granted, a research proposal must be submitted to the Government, with a copy to any community that may be affected. At a minimum, the agreement must inform the Government and the affected communities if a commercial product results from the research, with a provision for payment of royalties to the Government and community.

To ensure that its provisions are enforced and implemented, the Order establishes the Inter-Agency Committee on Biological and Genetic Resources. Members of this Committee are representatives of various Government Agencies and of the academic community, plus one representative from an NGO active in biodiversity conservation and selected by the NGO community, and one representative from an Indigenous People's Organization⁴⁹ to be selected by them.

⁴⁹ This representative may be either from local or indigenous communities.

Traditional and Alternative Medicine Act

This Act creates the Philippine Institute for Traditional and Alternative Health Care which shall be responsible for the development of a legally workable basis by which indigenous societies would own their knowledge of traditional medicine, as well as for the formulation of standards for the manufacture, marketing and quality control of different traditional and alternative health care materials and products for approval and adoption by the Philippine Bureau of Food and Drugs. It shall also formulate a code of ethics and standards for the practice of traditional and alternative health care modalities for approval and adoption by the appropriate professional and Government Agencies in the Philippines.

The implementing regulations of this law provide for the establishment of mechanisms for the identification and documentation of indigenous knowledge systems relevant to the utilization of biological and genetic resources applied in traditional and alternative health care practices of the community.

Two-tier approach

Together, the two Acts and the Executive Order seem to aim at a two-tier approach of (i) promoting the use and development of traditional medicine by improving their quality and status and (ii) preventing misappropriation of traditional biological resources and medicinal knowledge by regulating access, requiring benefit sharing and establishing communities rights over their resources and knowledge. There are no specific provisions to facilitate the granting of exclusive rights over traditional medicine(s).

Ref.: <http://apps.who.int/medicinedocs/en/d/Jh2996e/12.3.html#Jh2996e.12.3>