
Review of Taiwan's Existing Regulations on the Access to Biological Resources

The activities of accessing to Taiwan's biological resources can be governed within certain extent described as follows.

1 ˆ Certain Biological Resources Controlled by Regulations

Taiwan's existing regulation empowers the government to control the access to biological resources within certain areas or specific species. The National Park Law, the Forestry Act, and the Cultural Heritage Preservation Act indicate that the management authority can control the access of animals and plants inside the National Park, the National Park Control Area, the recreational area, the historical monuments, special scenic area, or ecological protection area; forbid the logging of plants and resources within the necessary control area for logging and preserved forestry, or control the biological resources inside the natural preserved area. In terms of the scope of controlled resources, according to the guidance of the Wildlife Conservation Act and the Cultural Heritage Preservation Act, governmental management authority is entitled to forbid the public to access the general and protected wild animals and the plant and biological resources that are classified as natural monuments.

To analyse the regulation from another viewpoint, any access to resources in areas and of species other than the listed, such as wild plants or microorganism, is not regulated. Therefore, in terms of scope, Taiwan's management of the access to biological resources has not covered the whole scope.

2 ˆ Access Permit and Entrance Permit

Taiwan's current management of biological resources adopts two kinds of schemes: access permit scheme and entrance permit in specific areas. The permit allows management authority to have the power to grant and reject the collection, hunting, or other activities to access resources by people. This scheme is similar to the international standard.

The current management system for the access to biological resources promoted by many countries and international organizations does not usually cover the guidance of entrance in specific areas. This is resulting from that the scope of the regulation about access applies for the whole nation. However, since Taiwan has not developed regulations specifically for the access of bio-research resources, the import/export regulations in the existing Wildlife Conservation Act, National Park Law, Forestry Act, and Cultural Heritage Preservation Act may provide certain help if these regulations be properly connected with the principle of access and benefit sharing model, so that they will help to urge people to share the research interests.

3 ˆ Special Treatments for Academic Research Purpose and Aborigines

Comparing to the access for the purpose of business operation, Taiwan's regulations favour the research and development that contains collection and hunting for the purpose of academic researches. The regulation gives permits to the access to biological resources for the activities with nature of academic researches. For instance, the Wildlife Conservation Act, National Park Law, and the Cultural Heritage Preservation Act allow the access of regulated biological resources, if the academic research unit obtains the permit, or simply inform the management authority.

In addition, the access by the aborigines is also protected by the Forestry Act, Cultural Heritage Preservation Act, and the Aboriginal Basic Act. The aborigines have the right to freely access to biological resources such as plants, animals and fungi.

4 ˆ The Application of Prior Informed Consent (PIC)

In topics of the access to and benefit sharing of biological resources, the PIC between parties of interests has been the focus of international regulation. Similarly, when Taiwan was establishing the Aboriginal Basic Act, this regulation was included to protect the aborigines' rights to be consulted, to agree, to participate and to share the interests. This conforms to the objective of access and benefit sharing system.

5 ‧ To Research and Propose the Draft of Genetic Resources Act

The existing Wildlife Conservation Act, National Park Law, Forestry Act, Cultural Heritage Preservation Act, Aboriginal Basic Act provide the regulation guidance to the management of the access to biological resources within certain scope. Comparing to the international system of access and benefit sharing, Taiwan's regulation covers only part of the international guidance. For instance, Taiwan has no regulation for the management of wild plants and micro-organism, so there is no regulation to confine the access to wild plants and microorganism. To enlarge the scope of management in terms of the access to Taiwan's biological resources, the government authority has authorize the related scholars to prepare the draft of Genetic Resources Act.

The aim of the Genetic Resources Act is to establish the guidance of the access of genetic resources and the sharing of interests in order to preserve the genetic resources. The draft regulates that the bio-prospecting activity should be classified into business and academic, with the premise of not interfering the traditional usages.

After classification, application of the permit should be conducted via either general or express process. During the permit application, the prospector, the management authority, and the owner of the prospected land should conclude an agreement jointly. In the event that the prospector wishes to apply for intellectual property rights, the prospector should disclose the origin of the genetic resources and provide the legally effective documents of obtaining these resources. In addition, a Biodiversity Fund should be established to manage the profits derived from genetic resources. The import/export of genetic resources should also be regulated. Violators should be fined.

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