

## **General Issues**

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## **BIODIVERSITY LAW OF COSTA RICA**

Costa Rica, together with 157 other countries participating in the Earth Summit, signed the Convention on Biological Diversity (CBD) in 1992, and approved it, together with its Annexes I and II, by means of Law No. 7416 published in Official Gazette No. 143 of 28 June 1994. In signing this Convention, Costa Rica assumed international obligations in an effort to reduce the rate of depletion of the earth's biodiversity in recent decades.

Costa Rica shares the Convention's objectives, namely the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. It likewise considers that to achieve these goals it is necessary, among other things, to guarantee appropriate access to genetic resources, encourage appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and ensure appropriate funding.

The "Biodiversity Law of Costa Rica" was enacted pursuant to the commitments entered into by Costa Rica when it ratified the Convention. This is Law No. 7788 of 30 April 1998, published in the Official Gazette No. 101 of 27 May 1998 and in force from that date.

The Biodiversity Law defines biodiversity as the variability among living organisms from all sources, including those found in terrestrial, aerial, marine and aquatic ecosystems, or in other ecological complexes. The term covers diversity within species, as well as between species and the ecosystems of which they form part. For the purposes of this Law, the definition of biodiversity includes intangible elements, such as knowledge, innovation and traditional practice, both individual and collective, with current or potential value associated with biochemical and genetic resources, whether or not protected by intellectual property regimes of sui generis registration systems.

The purpose of the law is to conserve biodiversity and maintain the sustainable use of resources, as well as to distribute fairly the derived benefits and costs. To that end, the State has to exercise full and exclusive sovereignty over the elements of biodiversity. Among the specific objectives pursued by the law, Article 10 specifies the following:

- To integrate the conservation and sustainable use of the elements of biodiversity into the development of social, cultural, economic and environmental policies;
- To promote the active participation of all sectors of society in the conservation and ecologically sustainable use of biodiversity, in order to achieve social, economic and cultural sustainability;

- To regulate access and thereby facilitate the equitable distribution of the social, environmental and economic benefits to all sectors of society, with special attention to local communities and indigenous peoples;
- To improve the administrative framework for effective and efficient management of the elements of biodiversity;
- To recognize and compensate the knowledge, practices and innovations of indigenous peoples and local communities for the conservation and ecologically sustainable use of the elements of biodiversity;
- To recognize the rights arising from the contribution of scientific knowledge to the conservation and ecologically sustainable use of the elements of biodiversity;
- To promote access to the elements of biodiversity and associated technology transfer;
- To foster international and regional cooperation for the conservation, ecologically sustainable use and distribution of the benefits derived from biodiversity, especially in frontier areas or areas of shared resources;
- To promote the adoption of incentives to and compensation for environmental services for the conservation, and sustainable use of the elements of biodiversity;
- To establish a system of conservation of biodiversity which achieves coordination among the private sector, citizens and the State, in order to guarantee implementation of this law.

The Law on Biodiversity comprises the following chapters:

Chapter I	General provisions
Chapter II	Administrative arrangements
Chapter III	Environmental safety guarantees
Chapter IV	Conservation and sustainable use of ecosystems and species
Chapter V	Access to genetic and biochemical elements and protection of associated knowledge
Chapter VI	Education and public awareness, research and technology transfer
Chapter VII	Environmental impact assessment
Chapter VIII	Incentives
Chapter IX	Procedures, processes and miscellaneous sanctions
Chapter X	Final and transitional provisions

The following points should be made in connection with these chapters:

With regard to the efficient management of the elements of biodiversity, under the rules contained in Chapter II, the Ministry of the Environment and Energy shall coordinate the administrative functions involved in managing and conserving biodiversity through the National Biodiversity Management Commission (CONAGEBIO), with support from a technical office, and through the National Conservation Area Scheme (SINAC).

Among other tasks, CONAGEBIO is called upon to formulate national policies on the conservation, ecologically sustainable use and restoration of biodiversity, subject to the requirements of the Convention on Biodiversity and other relevant international conventions and treaties, as well as national interests. The Commission's membership comprises representatives of the public and private sectors, namely;

- (a) The Minister of the Environment and Energy, or his representative, who will also serve as Chairman of the Commission and be responsible for its proper functioning;
- (b) The Minister of Agriculture or his representative;
- (c) The Minister of Health or his representative;
- (d) the Executive Director of the National Conservation Area Scheme;
- (e) a representative of the Costa Rican Institute of Fisheries and Aquaculture;
- (f) a representative of the Foreign Trade Ministry;
- (g) a representative of the National Peasant Farmers' Association;
- (h) a representative of the National Indigenous People's Association;
- (i) a representative of the National Council of Rectors;
- (j) a representative of the Costa Rican Federation for Environmental Protection;
- (k) a representative of the Costa Rican Union of Private Enterprise Associations

The SINAC, a decentralized and participatory system of institutional management and coordination, has combined responsibilities in the fields of forestry, wildlife, protected areas, protection and conservation of catchment areas and water systems, and the Ministry of the Environment and Energy. It is responsible for laying down policies and planning and implementing processes geared to achieving the sustainable management of Costa Rican natural resources. The SINAC is made up of the following bodies:

- (a) National Conservation Areas Council;
- (b) Executive Secretariat;

- (c) Administrative structures of conservation areas;
- (d) regional councils of conservation areas;
- (e) local councils.

As far as rules on environmental safety are concerned, Chapter III of the Biodiversity Law provides that, in order to avoid and prevent present or future damage or injury to human, animal or plant health or to the integrity of ecosystems, the regulations to the law shall establish mechanisms and procedures for access to the elements of biodiversity, for purposes of research, development, production, application, release or introduction of genetically modified or exotic organisms. Nevertheless, these regulations are at the drafting stage.

Chapter IV lays down rules on the conservation and sustainable use of ecosystems and species to enable the competent authorities to adopt suitable technical standards and introduce conservation mechanisms such as environmental legislation and evaluations, impact assessment studies and environmental audits, close seasons, authorizations, environmental licenses and incentives

In the matter of rules on access to genetic and biochemical elements and protection of associated knowledge, Chapter V lays down the basic requirements for access, namely; prior informed consent by the representatives of the place to which access is granted; endorsement of such prior informed consent by the Technical Office of the Commission; terms for technology transfer and equitable distribution of any profits agreed in the authorizations, agreements and licenses, as well as the type of protection of associated knowledge required by the representatives of the place to which access is granted; definition of the ways in which such activities will contribute to the conservation of species and ecosystems, and appointment of a resident legal representative in Costa Rica in the case of natural or legal persons domiciled abroad. Thus, an access permit is required for any programme of research or bioprospecting on genetic or biochemical components of biodiversity, intended to be carried out on Costa Rican territory. As regards intellectual property rights, in accordance with the integration principle decisions on the subject which have a bearing on biodiversity must be consistent with the objectives of the law.

Chapter VII contains specific provisions on environmental impact assessments, *inter alia* regarding the submission of assessments, guidelines for their preparation and environmental auditing.

Under Chapter VIII concerning rules on incentives, it should be stressed that the Ministry of the Environment and Energy and the other public entities, in

cooperation with the private sector including civil society organizations, shall promote investments for the sustainable utilization and conservation of biodiversity.

Chapter IX governs administrative procedures, judicial proceedings in administrative matters or matters relating to agrarian jurisdiction (in disputes between individuals which involve no administrative measure or measure relating to public land) and administrative or criminal penalties for offences defined in the Criminal Code and special legislation. One noteworthy feature of these rules is the public right of action which entitles any individual to institute administrative or judicial proceedings for the defense and protection of biodiversity.

Finally, two further aspects of the Law on Biodiversity should be emphasized:

- (a) On 18 September 1998 the Office of the Attorney-General of the Republic of Costa Rica instituted proceedings to establish the unconstitutionality of certain articles of the Law on Biodiversity. Specifically, the Office of the Attorney-General considers that the Law grants greater powers to CONAGEBIO and SINAC – with regard to their establishment, nature and functions – than is permissible for a decentralized body, thereby infringing constitutional principles governing the powers of the Executive. It also questions the financial administration of the two bodies. As a result of the proceedings that have not yet been settled by the Constitutional Court, neither CONAGEBIO nor SINAC is able to issue final decisions or to receive funding, and this has hampered their proper functioning.
- (b) Secondly, the Law on Biodiversity will be subject to certain amendments aimed at improving the compatibility of obligations under the CBD and TRIPS. Although no draft text has been formally submitted as yet, some of the points that will be subject to review concern the protection of intellectual property rights, particularly in relation to the form and limits of protection and licenses. These possible amendments will be examined by the Executive, farmers, indigenous groups, business associations, environmental groups and the academic community, among others.