

[EXECUTIVE ORDER NO. 247, May 18, 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.

WHEREAS, Section 16, Article II of the Philippine Constitution, vests in the State the ultimate responsibility to preserve and protect the environment; and Section 2 Article XII, provides 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;

WHEREAS, it is in the interest of the State's conservation efforts to ensure that the research, collection, and use of species, genes and their products be regulated; and to identify and recognize the rights of indigenous cultural communities and other Philippine communities to their traditional knowledge and practices when this information is directly and indirectly put to commercial use;

WHEREAS, under Article 16 of the Convention on Biological Diversity of which the Philippines is a party, each contracting party is mandated to take legislative, administrative or policy measures, as appropriate, with the aim that contracting parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights;

WHEREAS, the Department on Environment and Natural Resources (DENR) is the primary government agency responsible for the conservation, management, development, and sustainable use of the country's environment and natural resources; the Department of Science and Technology (DOST), the primary agency mandated to promote local capability in science and technology to achieve technological self-reliance in selected areas vital to national development; the Department of Agriculture (DA), the agency responsible for the promotion of sustainable agriculture and aquatic resource development; the Department of Health (DOH), the agency responsible for the formulation, planning, implementation, and coordination of policies and programs in the field of health, including the research, regulation, and development of drugs and medicine; the Department of Foreign Affairs (DFA), the agency responsible for promoting international relations;

WHEREAS, an inter-agency approach is the most appropriate way of regulating the research, collection, exploitation and use of biological and genetic resources;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by Law and the Constitution, do

hereby order:

SECTION 1. Policy of the State. It shall be the policy of the State 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. Further, it shall promote the development of local capability in science and technology to achieve technological self-reliance in selected areas.

SECTION 2. Consent of Indigenous Cultural Communities.

a. Prospecting of biological and genetic resources shall be allowed within the ancestral lands and domains of indigenous cultural communities only with the prior informed consent of such communities; obtained in accordance with the customary laws of the concerned community.

b. Prospecting of biological and genetic resources shall be allowed only with the prior informed consent of the concerned local communities.

SECTION 3. When Research Agreement Is Necessary. The prospecting of biological and genetic resources shall be allowed when the person, entity or corporation, foreign or domestic, undertaking such activities, on recommendation of the Inter-Agency Committee on Biological and Genetic Resources, has entered into a Research Agreement with the Philippine government, represented by the DENR, DOH, DA, or DOST, depending on the nature and character of the prospecting activity. For purposes of this Executive Order, traditional uses of biological resources by indigenous and local communities shall not require a Research Agreement.

If the research and collection of biological and genetic resources is intended, directly or indirectly, for commercial purposes, the agreement must be a Commercial Research Agreement. For purposes of this Executive Order, all Research Agreements with private persons and corporations, including all agreements with foreign or international entities, shall conform with the minimum requirements of a Commercial Research Agreement.

If the prospecting of biological and genetic materials is intended primarily for academic purposes, the agreement shall be an Academic Research Agreement. Only duly-recognized Philippine universities and academic institutions, domestic governmental entities, and intergovernmental entities may apply for an Academic Research Agreement.

Where the Commercial or Academic Collector is merely an agent or merely collecting for another person or entity, the agreement between the Commercial Collector and the Principal must be reviewed by the Inter-Agency Body to determine the latter agreement does not undermine the substantive requirements of this Executive Order.

SECTION 4. Application for Academic Research Agreement and Commercial Research Agreement The applicant shall first submit an application for a Research Agreement to the Inter-Agency Committee on Biological and Genetic Resources through the Protected Areas and Wildlife Bureau (PAWB). It must include a research proposal stating the purpose, source of funds, duration, and a list of biological and genetic materials and the amount to be taken. The requisites for research agreements are in Appendix B.

For Academic Research Agreement, the proposal may be broader and more general in character as provided in Section 5 (m).

A copy of the proposal must be submitted to the recognized head of the local or indigenous cultural community or communities that may be affected. Action on the proposal shall be made only after 60 days has lapsed after a copy of the proposal is received by the persons concerned.

SECTION 5. Minimum Terms of the Commercial Research Agreement and Academic Research Agreement.

The Minimum Terms of the Commercial Research Agreement and Academic Research Agreement are as follows:

(a) There must be a limit on samples that the Commercial/Academic Collector may obtain and export and that the approved list and amount of the samples taken from the area must be followed strictly;

(b) A complete set of all specimens collected shall be deposited by the Commercial/Academic Collector with the National Museum or a duly designated governmental entity; Provided that holotypes designated by the author must be maintained at the National Museum;

(c) Access to collected specimens and relevant data shall be allowed to all Filipino citizens and the Philippine governmental entities whenever these specimens are deposited in depositories abroad;

(d) The Commercial/Academic Collector, or in appropriate cases, its Principal, must inform the Philippine Government, as well as the affected local and indigenous cultural communities all discoveries from the activity conducted in the Philippines, if a commercial product is derived from such activity.

(e) The agreement shall include a provision for the payment of royalties to the National Government, local or indigenous cultural community and individual person or designated beneficiary in case commercial use is derived from the biological and genetic resources taken. Where appropriate and applicable, other forms of compensation may be negotiated;

(f) There shall be a provision allowing the Philippine government to unilaterally terminate the agreement whenever the Commercial/Academic Collector has violated any of its terms. The Agreement may also be revoked on the basis of public interest and welfare;

(g) A status report of the research and the ecological state of the area and/or species concerned shall be submitted to the Inter-Agency Committee regularly as agreed upon;

(h) If the Commercial Collector or its Principal is a foreign person or entity, it must be stipulated that scientists who are citizens of the Philippines must be actively involved in the research and collection process and, where applicable and appropriate as determined by the Inter-Agency Committee, in the technological development of a product derived from the biological and/or genetic resources taken from any area in the Philippines. This involvement shall be at the cost of the Commercial Collector;