EXECUTIVE ORDER NO. 247
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 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 right;

WHEREAS, the Department of 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 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 communities.

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 Philippines 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 Philippines 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 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;

i. The Commercial Collector and/or its Principal shall be encouraged to avail of the services of Philippines universities and academic institutions Where applicable and appropriate, the Commercial Collector and/or its Principal shall be required to transfer equipment to a Philippine institution or entity.

j. A fixed fee must be paid to the DENR in accordance with a schedule of fees formulated by the Inter-Agency Committee;

k. The maximum term for a Commercial Research Agreement shall be for three years and renewable upon review by the Inter-Agency Committee.

l. In case of endemic species, there must be a statement that the technology must be made available to a designated Philippine institution and can be used commercially and locally without paying royalty to a Collector or Principal. Provided, however, that where appropriate and applicable, other agreements may be negotiated.

Provided, further, that the following terms shall be considered in an Academic Research Agreement;

m. The Academic Research Agreement may be comprehensive in scope and cover as many areas as may be projected. It may stipulate that all scientists and researchers affiliated with a duly recognized university, academic institution, governmental and intergovernmental entity need not apply for a different Research Agreement but may conduct research and collection activities in accordance with an existing Academic Research Agreement. In such cases, the university, academic institution and governmental entity shall ensure that all terms and conditions of the government are complied with by the affiliated scientist or researcher. In all cases, the university institution or governmental entity must ensure that affected communities have given their prior informed consent to the activities to be undertaken;

n. There must be a provision requiring the Academic Collector to apply for a commercial research agreement when it becomes clear that the research and collection being done has commercial prospects;

o. A minimal fee must be paid to the Philippine government in accordance with a schedule of fees by the Inter-Agency Committee; and

p. The maximum term for an Academic Research Agreement shall be for five years and renewable upon review by the Inter-Agency Committee.

Section 6
Composition and Functions of the Inter-Agency Committee on Biological and Genetic Resources

An Inter-Agency Committee on Biological and Genetic Resources attached to the DENR is hereby created as the regulatory body to ensure that the provisions of this Executive Order are enforced and implemented. The Inter-Agency Committee shall be composed of the following:

1. An Undersecretary of the Department of Environment and Natural Resources designated by the DENR Secretary who shall be the Chairperson of the Committee.

2. An Undersecretary of the Department of Science and Technology (DOST) designated by the DOST Secretary who shall be Co-Chairperson of the Committee.

3. A permanent representative of the Secretary of the Department of Agriculture, who must be knowledgeable about biodiversity or biotechnology.

4. Two permanent representatives of the Philippine science community from the academe and who must be experts in any of the following fields: biodiversity, biotechnology, genetics, natural products chemistry or similar disciplines, shall be appointed by the DOST Secretary after nominations from and consultations with the science community.

5. A permanent representative of the Secretary of the Department of Health who must be knowledgeable about pharmaceutical research and development.

6. A permanent representative of the Department of Foreign Affairs who has to facilitate international linkage relative to bio-prospecting.

7. A permanent representative of the National Museum who has expertise on natural history and/or biological diversity.

8. A representative from a Non-Government Organization (NGO) active in biodiversity protection to be selected by the NGO community through a process designed by themselves and later endorsed by the Philippines Council for Sustainable Development.

9. A representative from a People's Organization (PO) with membership consisting of indigenous cultural communities and/or their organizations to be selected by the PO community through a process designed by themselves and through the endorsement of the Philippine Council for Sustainable Development.

All members of the Inter-Agency Committee shall serve for a period of three years which may be renewed for another three years. In case of death, resignation, removal or other circumstance which requires the replacement of a member, said member may be succeeded by another person with the same qualifications and appointed in a similar process. The replacement shall serve the unexpired term of the member replaced.

A Technical Secretariat, to be headed by the PAWB, shall be created to support the work of the Inter-Agency Committee. The Technical Secretariat shall be staffed with personnel from the PAWB and other agencies who shall be designated by the members of the Inter-Agency Committee.

Section 7
Powers and Functions of the Inter-Agency Committee

The Inter-Agency Committee shall meet at least once every quarter and shall have the following functions:

a. Process applications for Research Agreements and recommend for approval thereof to the Secretary of DENR, DOH, DA or DOST depending on the nature and character of the prospecting activity.

b. Ensure that the conditions for the Research Agreements are strictly observed;

c. Determine the list and amount of biological and genetic materials that may be taken from the area and ensure that these are complied with;

d. Deputize and train appropriate agencies so as to ensure that no biological and genetic materials are taken from the Philippines and exported abroad except under a valid Research Agreement. It shall be ensured that the specimens collected have been deposited in the Philippines;

e. Ensure that the rights of the indigenous and local communities wherein the collection or researches are being conducted are protected, including the verification that the consent requirements in Sections 3 and 4 are complied with. The Inter-Agency Committee, after consultations with the affected sectors, shall formulate and issue guidelines implementing the provision on prior informed consent;

f. Study and recommend to the President and the Congress appropriate laws on the utilization of biological and genetic resources including new laws on intellectual property rights;

g. Involve local scientists in the decision making process by creating a Multi-Disciplinary Advisory Body and other entities as may facilitate local involvement in the research, collection and utilization of biological and genetic resources;

h. Develop a conceptual framework, using the research agreement entered into as well as other data as basis, for significantly increasing knowledge of Philippine biodiversity. The Inter-Agency Committee shall establish mechanisms to ensure the integration and dissemination of the information generated from research, collection and utilization activities;

i. Coordinate with the National Committee on Biosafety when necessary or appropriate;

j. Issue rules and regulations to effectively carry out the provisions of this Executive Order; and

k. Perform such other functions as may be necessary to implement this Executive Order;

All decisions of the Inter-Agency Committee must be by a majority of all its members.

Section 8
Monitoring Implementation of the Research Agreement

The Protected Areas and Wildlife Bureau (PAWB) of the DENR shall be the lead agency in monitoring the implementation of the research agreement. The regional offices of the DENR shall also participate in the monitoring.

Section 9
Appeals

Decisions of the Secretary (DENR, DA, DOH or DOST) may be appealed to the Office of the President. Recourse to the courts shall be allowed after exhaustion of all administrative remedies.

Section 10
Sanctions and Penalties

Undertaking activities in violation of this Executive Order shall be subject to such criminal penalties as may be proper under existing laws including the National Integrated Protected Areas System Act of 1992 and the Revised Forestry Code. Failure to comply with the provisions of the Research Agreements entered into under Sections 3, 4 and 5 shall be a valid cause of immediate termination of the Agreement and the imposition of a perpetual ban on undertaking prospecting of biological and genetic resources in the Philippines.

Section 11
Existing Researches, Contracts and Agreements

All existing research projects, where allowed under existing law, may proceed pending the

negotiation and entry into force of appropriate research agreement. All valid and existing contracts and agreements entered into by the PAWB, the National Museum or other governmental entities shall remain valid and effective; Provided, that all the parties shall be required to enter into a new agreement conforming to this Executive Order.

Section 12
Official Depository

The official depository of all original and official documents such as agreements and minutes of the meeting is the PAWB.

Section 13
Funding

The activities of the Inter-Agency Committee on Biological and Genetic Resources shall be funded in accordance with law. Such funding, where allowed by law, may include savings coming from the appropriate and concerned Departments and proceeds from the fees imposed on the Research Agreements.

Section 14
Effectivity

This Executive Order and Rules and Regulations takes effect immediately upon publication in two newspapers of general circulation and upon filing of three certified copies with the U.P. Law Center.

Section 15
Implementing Rules and Regulations

The implementing rules and regulations shall be formulated by the Inter-Agency Committee and signed by the Secretary of DENR not later than three months after the effectivity of the Executive Order.

Approved: May 18, 1995