

MALACAÑANG

Manila

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 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 Biodiversity 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 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 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 inter-governmental 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 purposes, source of funds, duration, and a list of biological and genetic materials and amount to be taken. The requisites for research agreements are in Appendix B.

For Academic Research Agreements, 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.

(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 Principal 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 cases 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 purposes 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 Philippine 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 the 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 inter-governmental entity need

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, and 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 bioprospecting;

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 production to be selected by the NGO community through a process designed by themselves and later endorsed by the Philippine Council for Sustainable Development; and

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.

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 the 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

(q) 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 (DA) who must be knowledgeable about biodiversity or biotechnology;

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 site 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 also 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 Section 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 agreements entered into as well as other data as basis, for significantly increasing knowledge on 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 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.

DONE in the City of Manila, on this 18th day of May in the year of our Lord, Nineteen Hundred and Ninety Five.

By the President:

TEOFISTO T. GUINGONA, JR.

Executive Secretary

APPENDIX A

DEFINITION OF TERMS

(a) "Biological diversity" means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystem and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

(b) "Biological resources" includes genetic resources, organisms or parts thereof, populations or any other biotic component of ecosystems with actual or potential use or value for humanity. It shall include, but not be limited to, all biological specimens such as plants, seeds, tissues and other propagation materials, animals, microorganisms, live or preserved, whether whole or in part thereof.

(c) "Biotechnology" means any technological application that uses biological systems, living organisms or derivatives thereof, to make or modify products or processes for specific use.

(d) "Genetic material" means any material of plant, animal, microbe or other origin containing functional units of heredity.

(e) "Genetic resources" means genetic material of actual or potential value.

(f) "By-product" refers to any part taken from wildlife species such as hides, antlers, leathers, fur, internal organs, roots, hunks, branches, leaves, stems, flowers and the like.

(g) "Derivative" means something extracted from wildlife such as blood, oils, resin, genes, seeds, spores, pollen and the like.

(h) "Holotype" means either the sole specimen or element used by the author of scientific name or the one specimen or element designated by such author as the type.

(I) "Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, hereby maintaining its potential to meet the needs and aspirations of present and future generations.

(j) "Biospeciing ? or bioprospecting" refers to the research, collection and utilization of biological and genetic resources for purposes of applying the knowledge derived therefrom to scientific and/or commercial purposes.

(k) "Indigenous Cultural Communities" refers to a group of people sharing common bonds of language, customs, traditions, and other distinct cultural traits, and who have since time immemorial, occupied, possessed and utilized a territory except when such possession is either prevented or interrupted by war, force majeure, displacement by force, deceit or stealth, or other usurpation.

(l) "Ancestral domains" are all lands and natural resources occupied or possessed by indigenous cultural communities by themselves or through their ancestors, communally or individually, in accordance with their customs and traditions since time immemorial, continuously to the present except when prevented or interrupted by war, force majeure, displacement by force, deceit or stealth, and other usurpation. It includes all adjacent areas generally belonging to them and which are necessary to ensure their economic, social and cultural welfare.

(m) "Local Communities" refer to the basic political units wherein the biological and genetic resources are located.

(n) "Non-governmental entity" means those academic and/or scientific organizations and institutions, whether global or regional, created by agreement among different states and with the Republic of the Philippines a party thereof.

(o) "Research Agreement" means the agreement entered into by the Philippine government, through the Department of Environment and Natural Resources (DENR) and upon the

recommendation of the Inter-Agency Committee on Biological and Genetic Resources, and a private or public person or entity allowing the latter to conduct prospecting of biological and genetic resources in the Philippines.

(p) "Commercial Research Agreement" is the Research Agreement that must be entered into if the research and/or collection is intended, directly or indirectly, for commercial use. For purposes of this Executive Order, all Research Agreements with private persons and corporations, including all agreements with foreign international entities, shall conform with the minimum requirements of a Commercial Research Agreement.

(q) "Academic Research Agreement" is the Research Agreement that must be entered into if the research is intended primarily for academic and scientific purpose. Only duly recognized Philippine universities and academic institutions, domestic governmental entities, and inter-governmental entities may apply for an Academic Research Agreement.

(r) "Collector" refers to the person, entity, or corporation conducting prospecting of biological and genetic resources under a Research Agreement. "Commercial Collector" refers to those with Commercial Research Agreements while "Academic Collector" means those with Academic Research Agreements.

(s) "Principal" refers to the person, entity or corporation who enters into an agreement with a Collector for the latter to undertake the prospecting of biological and genetic resources in their behalf.

(t) "Inter-Agency Committee on Biological and Genetic Resources" or "Inter-Agency Committee" is the regulatory body that shall be tasked with the enforcement of this executive Order.

APPENDIX B

REQUISITES FOR RESEARCH AGREEMENTS

- a. That the collector shall satisfactorily comply with the requisites for application.
- b. That the prospecting of biological and genetic resources or its results do not, directly or indirectly, harm the biological diversity and biological balance of the inhabitants of the area where a sample of the specific genus or their products are procured.
- c. In cases where the prospecting of biological and genetic resources are undertaken in protected areas, the Research Agreement entered to must contain all the requirements under Republic Act No. 7586 (the National Integrated Protected Areas System Act of 1992), including conformity with the management plan formulated by the Protected Areas Management Board.
- d. All activities under the Research Agreement must comply with all Philippine environmental laws and the rules and regulations implementing the same, where appropriate, an environmental impact assessment of the proposed activities shall be required.
- e. The Research Agreement shall remain in effect so long as the conditions prescribed in paragraphs b, c & d, above remain; Provided that the Collector fully complies with the terms of the Research Agreement.