

The Philippines

Department Administrative Order No. 96-20

Implementing Rules and Regulations on the Prospecting of Biological and Genetic Resources

Pursuant to Section 15 of Executive Order No. 247 dated 18 May 1995 otherwise known as "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", this Administrative Order setting forth the rules and regulations governing the implementation of the Order is hereby promulgated.

The purpose of this Order is to provide in detail the processes by which the DENR and other concerned institutions and agencies will administer Executive Order 247 in order to regulate the research, collection, and use of biological and genetic resources.

SECTION 1 X BASIC POLICY

1.1. Section 2 Article XII of the Philippine Constitution 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. The policy of the State further provides that the management, protection, sustainable development and/or use of biological and genetic resources shall be undertaken primarily to ensure the conservation of the same and that the use of these resources must be consistent with that principle.

1.2. Section 10 Article XIV of the Philippine Constitution provides that the State shall support indigenous, appropriate, and self-reliant scientific and technological capabilities, and their application to the country's productive systems and national life.

1.3. The Preamble of the United Nations Convention on Biological Diversity, of which the Philippines is a state-party, recognizes the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.

SECTION 2 X DEFINITION OF TERMS

2.1. For the purpose of these rules and regulations, the following terms shall be defined as follows:

a) Academic Research Agreement - refers to the agreement entered into by and between duly recognized Philippine universities and academic institutions, domestic governmental entities or inter-governmental entities and national government agencies concerned for the purpose of undertaking academic and scientific researches relative to bioprospecting;

b) Affiliate - refers to a registered student or scientist/researcher who is formally appointed to a staff or faculty position in a University or other academic institution acting as a Principal, or a representative of a domestic academic or governmental institution or a representative of an inter-governmental institution

assisting in the bioprospecting research by virtue of a formal Agreement duly signed by both the Principal and the affiliate or a certified true copy of his enrollment form in the case of a registered student.

c) Ancestral domains - refer to all lands and natural resources occupied or possessed by indigenous cultural communities/indigenous peoples, 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;

d) Ancestral land - refers to land occupied, possessed and utilized by individuals, families or clans who are members of the indigenous cultural communities/indigenous peoples since time immemorial by themselves or through their predecessors-in-interest, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit or stealth;

e) Benefit sharing - refers to the sharing of results of bioprospecting activity and benefits arising from the utilization or commercialization of the biological or genetic resources fairly and equitably with the indigenous cultural community/local community/protected area/private land owner concerned and the national government by the Principal/Collector. Among the results and benefits that may be shared are payment for access to specimens, royalties, data, technology, capacity building, training, joint research;

f) Biological diversity - refers to the variability among living organisms from all sources, including inter-alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;

g) Biological resources - include genetic resources, organisms or parts thereof, populations or any other biotic components of ecosystems with actual or potential use or value for humanity such as plants, seeds, tissues and other propagation materials, animals, microorganisms, live or preserved whether whole or in part thereof;

h) Bioprospecting or Prospecting - refers to the research, collection and utilization of biological and genetic resources, for purposes of applying the knowledge derived therefrom for scientific and/or commercial purposes;

i) Biotechnology - refers to any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

j) By-product - refers to any part taken from biological and genetic resources such as hides, antlers, feathers, fur, internal organs, roots, trunks, branches, leaves, stems, flowers and the like, including compounds indirectly produced in a biochemical process or cycle;

k) Collector - refers to any person commissioned by the Principal to conduct for him prospecting of biological and genetic resources;

l) Commercial Research Agreement - refers to the Research Agreement entered into by and between private persons or corporations, or foreign international entities, and the government agency concerned for the purpose of undertaking bioprospecting intended directly or indirectly for commercial use;

m) Derivative - refers to something extracted from biological and genetic resources such as blood, oils, resin, genes, seeds, spores, pollen and the like, taken from or modified from a product;

- n) Equitable sharing - refers to the benefit sharing mutually agreed upon by the parties to the Research Agreement;
- o) Genetic material - refers to any material of plant, animal, microbic, or other origin containing functional units of heredity;
- p) Genetic resources - refers to genetic materials of actual or potential value;
- q) Holotype - refers to 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;
- r) Indigenous Cultural Communities or Indigenous Peoples (IPs) - refer to a homogenous society identified by self-ascription and ascription by others, who have continuously lived as community on communally bounded and defined territory, sharing common bonds of language, customs, traditions and other distinctive cultural traits, and who, through resistance to the political, social and cultural inroads of colonization, became historically differentiated from the majority of Filipinos;
- s) IACBGR - refers to the Inter-Agency Committee on Biological and Genetic Resources created to ensure the enforcement and implementation of the provisions of this Order;
- t) Inter-governmental entity - refers to academic and/or scientific organization and institution, whether global or regional created by an agreement among different States and with the Republic of the Philippines as a party thereof;
- u) Local Community - refers to the basic political unit wherein the biological and genetic resources are located;
- v) Principal - refers to any person or institution, corporation, domestic governmental entity, inter-governmental entity, or foreign international entity, represented by its President, Head, or duly designated official who enters into a Research Agreement with the Philippine Government for the prospecting of biological and genetic resources;
- w) Prior informed consent - refers to the consent obtained by the applicant from the Local Community, IP, PAMB or Private Land Owner concerned, after disclosing fully the intent and scope of the bioprospecting activity, in a language and process understandable to the community, and before any bioprospecting activity is undertaken;
- x) Protected Area - refers to a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives. It refers to identified portions of land and water set aside by reason of their unique physical and biological significance, managed to enhance biological diversity and protected against destructive human exploitation;
- y) Protected Area Management Board (PAMB) - refers to the decision-making body created by R.A. 7586 which exercises jurisdiction over a protected area within its areas of responsibility;
- z) Public Domain - refers to water and lands owned by the State that have not been declared alienable and disposable;
- aa) Sustainable use - refers to 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 and genetic resources, thereby maintaining its potential to meet the needs and aspirations of present and future generations;

bb) Traditional use - refers to the customary utilization of biological and genetic resources by the local community and indigenous people in accordance with written or unwritten rules, usages, customs and practices traditionally observed, accepted and recognized by them`.

SECTION 3 X SCOPE AND COVERAGE

3.1. This Order shall govern the following:

a) Prospecting of all biological and genetic resources in public domain, including natural growths in private lands, intended to be utilized by both foreign and local individuals, entities, organizations, whether government or private;

b) Except traditional use, all bioprospecting activities aimed at discovering, exploring, or using these resources for pharmaceutical development, agricultural, and commercial applications.

SECTION 4 X BIOPROSPECTING WITHIN PROTECTED AREAS

4.1. Prospecting of biological and genetic resources shall be allowed in all categories of protected areas (PAs), in conformity with RA 7586 and its implementing rules and regulations.

4.2. All Research Agreements entered into by any person, entity or corporation, foreign or domestic, with the Philippine government, upon recommendation of the IACBGR, shall be reviewed and approved first by the concerned PAMB of the protected area as stipulated under DENR Administrative Order No. 42, as amended by DAO No. 95-10, Series of 1995.

SECTION 5 X BIOPROSPECTING WITHIN ANCESTRAL LAND, DOMAIN AND LOCAL COMMUNITIES

5.1. Prospecting of biological and genetic resources within areas of local communities, including ancestral lands and domains of Indigenous Cultural Communities/Indigenous Peoples (IPs) shall be allowed only with the prior informed consent of such communities obtained through the procedures prescribed under Section 7 hereof;

5.2. The government agency concerned in the areas, including the PAMBs in Protected Areas (PAs), shall see to it that the consent required is obtained in accordance with the customary traditions, practices and mores of the concerned communities and, where appropriate, concurrence of the Council of the Elders in a public consultation/meeting in the site concerned.

SECTION 6 X REQUIREMENTS AND PROCEDURES FOR APPLICATION AND PROCESSING OF RESEARCH AGREEMENTS

6.1 REQUIREMENTS: The Principal/Collector shall be required to submit the following:

6.1.1 Letter of Intent addressed to the IACBGR and 3 copies of Research Proposal following the attached format (Annex A);

6.1.2 Duly accomplished application form (Annex B) accompanied by the following supporting documents:

- a) Letter of acceptance from Filipino counterpart(s) authorized by or representing the host institutions, to cooperate in the activities in the Philippines, where applicable;
- b) Letter of endorsement from Head of Institution where applicant is affiliated or reputable Institution, Museum or University as may be required;
- c) Company/Institution/ Organization/Agency Profile; and,
- d) Others as may be required by the concerned government agency.

6.1.3. Prior Informed Consent (PIC) Certificate obtained in accordance with Section 7 hereof from the following:

- a) Indigenous Cultural Communities/Indigenous Peoples (IPs) - in cases where the prospecting of biological and genetic resources will be undertaken within their ancestral domains/lands;
- b) Local Communities (LC) - in cases where the prospecting of biological and genetic resources will be undertaken within their area/s of jurisdiction;
- c) Protected Area Management Board (PAMB) - in cases where the prospecting of biological and genetic resources will be undertaken within a protected area. Provided that, if the PAMB for a certain protected area has not been organized, a letter of consent shall be obtained from the concerned Regional Executive Director under whose jurisdiction the protected area is located;
- d) Private Land Owner - in cases where the prospecting of biological and genetic resources will be undertaken within the private land.

6.1.4. Environmental Impact Assessment (EIA) as determined by the Technical Secretariat;

6.1.5. Application/Processing fees in the following amounts to be paid upon application:

Philippine national - P1025/application

Foreign national - P2025/application

6.2. Procedures for Processing of Application. - The procedure for processing of applications shall follow the process indicated hereunder (Annex C):

6.2.1. Initial Screening of Proposal - The IACBGR, through the Technical Secretariat, shall undertake an initial screening of the research proposal to determine whether the research/project activity is within the coverage of EO 247.

6.2.2. Submission of Other Requirements - Upon determination by the IACBGR, through the Technical Secretariat, that the proposed research/project undertaking is within the coverage of EO 247, the Principal/Collector shall submit additional documents based on the checklist to be provided by the TS and other requirements as may be required depending on the nature of the bioprospecting activity to be undertaken. Also, the Principal/Collector shall submit a copy of the research proposal to the recognized head of the IP, Municipal or City Mayor of the Local Government Unit, PAMB or Private Land Owner concerned for the required PIC Certificate;

6.2.3. Submission of the PIC Certificate - The Principal/Collector shall submit to the IACBGR, through the Technical Secretariat, a PIC Certificate signed by the recognized head of the IP, Municipal or City Mayor of the Local Government Unit, PAMB, or Private Land Owner concerned, together with proof/s of public notification and/or sectoral consultation, as the case maybe, pursuant to Section 7 hereof. In the case of applications for an ARA, the applications may be processed and ARA may be executed without the PIC Certificate; Provided, that the Principal/Collector shall secure the PIC Certificate prior to commencement of actual bioprospecting activity in accordance with Section 7.2 hereof;

6.2.4. Initial Review and Evaluation of the Application and Documents - The Technical Secretariat shall conduct initial review and evaluation of the application and documents, and shall submit the evaluation results including the draft Research Agreement to the IACBGR for final evaluation within 30 days from receipt of all requirements from the Principal/Collector;

6.2.5. Final Evaluation - The IACBGR shall conduct final evaluation and submit its recommendation to the agency concerned after receipt of the documents from the Technical Secretariat;

6.2.6. Approval - The Secretary of the Agency concerned shall approve the Research Agreement favorably recommended by IACBGR.

6.2.7. Transmittal - The Agency concerned shall transmit the signed Research Agreement to the Technical Secretariat who shall furnish a copy to the Principal/Collector, IP, Local Community, PAMB or Private Land Owner concerned.

SECTION 7 X PRIOR INFORMED CONSENT (PIC)

Prospecting of biological and genetic resources shall only be allowed with the PIC of the concerned IPs, LCs, PAMBs and Private Land Owners.

7.1. PIC for Commercial Research Agreement. -The Principal/Collector must secure the PIC Certificate from the concerned IPs, Municipal or City Mayor of the Local Government Unit, PAMB or Private Land Owners as a requirement in the processing of and prior to approval of the CRA, following the procedure (Annex D) hereunder enumerated:

7.1.1. Public Notification. - The Principal/Collector shall inform the IPs, LCs, PAMB or Private Land Owners concerned through various media such as, but not limited to, newspaper, radio or television advertisements that the Principal/Collector intends to conduct bioprospecting within their particular areas, fully disclosing the activity to be undertaken; that copy/ies of a summary of the research proposal fully disclosing the activity has been filed with the recognized head of the IP, Municipal or City Mayor of the Local Government Unit, PAMB or Private Land Owner concerned, and an application for Research Agreement has been filed with the IACBGR through the Technical Secretariat;

7.1.2. Sector Consultation. - the Principal/Collector shall call for a community assembly, notice of which shall be announced or posted in a conspicuous place in the area where bioprospecting shall be conducted, at least a week before said assembly. The Principal/Collector shall likewise furnish the recognized Head of the IP, Municipal or City Mayor of the Local Government Unit, PAMB and Private Land Owners concerned, a copy/ies of a brief summary or outline of the research proposal in a language or dialect understandable to them stating therein the purpose/s, methodology/ies, duration, species/specimen and number/quantity to be used and/or taken, equitable and reciprocal benefits to parties concerned before, during and after the duration of the approved bioprospecting activity and a categorical statement that said activity to be conducted in their area/s will not in any way affect their traditional use

of the resources. Where IPs are concerned, the proposal shall be coursed through or taken up in accordance with their customary laws/ traditions/practices.

7.1.3. The recognized head of IPs, Municipal or City Mayor of the Local Government Unit, PAMB or Private Land Owner concerned shall issue the PIC Certificate upon compliance with Sections 7.1.1 and 7.1.2 hereof. Provided, however, that no PIC Certificate shall be issued until after 60 days have lapsed since the submission of the proposal pursuant to Section 4 of EO 247;

7.1.4. A representative/s of the IACBGR and/or non-government organizations/people's organizations may participate in the conduct of activities provided for under Sections 7.1.1 and 7.1.2 hereof, and shall sign as witnesses in the PIC Certificate.

7.2. PIC for Academic Research Agreement. - The Principal must ensure that its affiliates have secured the necessary PIC Certificates from the concerned IPs, Municipal or City Mayor of the Local Government Unit, PAMB or Private Land Owner prior to commencement of actual bioprospecting activity, following the procedure hereunder enumerated:

7.2.1. Public Notification. - the Principal/Collector or its affiliate shall inform the IPs, Local Communities, PAMB or Private Land Owners concerned through various media advertisements or direct communication that the Principal/Collector intends to conduct bioprospecting within their particular areas, fully disclosing the activity to be undertaken; and that copy/ies of a summary of the research proposal fully disclosing the activity has been filed with the recognized head of the IP, Municipal or City Mayor of the Local Government Unit, PAMB or Private Land Owner concerned; and that an application for Academic Research Agreement had been filed with the IACBGR through the Technical Secretariat, or that, an Academic Research Agreement exists between the Principal/Collector and the agency concerned;

7.2.2. Sector Consultation. - The Principal/Collector or its affiliate shall call for a community assembly, notice of which shall be announced or posted in a conspicuous place in the area where bioprospecting shall be conducted, at least one week before said assembly. The Principal/Collector or its affiliate shall likewise furnish the recognized head of IP, Municipal/City Mayor of the Local Government Unit, PAMB and Private Land Owner concerned, a copy/ies of a brief summary or outline of the research proposal in a language or dialect understandable to them stating therein the purpose/s, methodology/ies, duration, species/specimen and number/quantity to be used and/or taken, equitable benefits, if any, to parties concerned, and a categorical statement that said activity to be conducted in their area/s will not in any way affect their traditional use of the resources;

7.2.3. The recognized head of IPs, Municipality/City Mayor of the Local Government Unit, PAMB or Private Land Owner concerned shall issue the PIC Certificate upon compliance with Sections 7.2.1. and 7.2.2. hereof. Provided, further, that opposition/protest has been brought to his attention against the proposal for bioprospecting by concerned members of the communities; Provided, further, that issuance of PIC Certificate shall be made only after 60 days from the submission of the proposal pursuant to Section 4 of EO 247;

7.2.4. A representative/s of the IACBGR and/or non-government organizations/people's organizations may participate in the conduct of activities provided for under Sections 7.2.1. and 7.2.2. hereof, and shall sign as witnesses in the PIC Certificate.

7.2.5. Undergraduate, masteral and doctorate students carrying out researches strictly for the purpose of complying with academic requirements and who do not receive any funding from a commercial entity need not comply with Sec. 7.2.2. Provided that where there is a request for a sector consultation on the

basis of the proposal, the Principal/Collector or its affiliate shall ensure that such shall be conducted and witnessed by representative/s of the IACBGR and/ or NGOs/POs.

7.3. PIC Certificate. - The PIC Certificate (Annex E) shall be submitted by the Principal/Collector to the IACBGR, through the TS, together with proofs of compliance with Sections 7.1 and 7.2 hereof.

SECTION 8 X MINIMUM TERMS AND CONDITIONS OF A RESEARCH AGREEMENT

8.1. General Terms and Conditions of a Research Agreement. - The following terms and conditions shall apply to both the Academic Research Agreement and Commercial Research Agreement:

1) The Principal/Collector shall ensure that animals collected from the wild and/or transported outside the country are free from any diseases that can pose danger to the health and safety of human and other living organisms;

2) A complete set of all voucher specimens collected shall be deposited with the National Museum of the Philippines (NMP) or duly designated entity in the area, provided that holotypes, properly labeled and preserved, are retained at the NMP;

3) A complete set of all living specimens collected, shall be deposited in mutually agreed and duly designated depositories, i.e., National Plant Genetic Resources Laboratory (NPGRL) of the Institute of Plant Breeding (IPB) for agriculture species; Ecosystems Research and Development Bureau (ERDB) for forest species, and in the National Institute of Biotechnology and Applied Microbiology (NIBAM) for microorganisms;

4) All Filipino citizens and any Philippine governmental entities shall be allowed complete access to specimens deposited at an internationally recognized ex-situ depository or genebank; Provided that, access to these materials and documents shall be governed by International Agreement consistent with the Convention on Biological Diversity, the FAO International Undertaking on Plant Genetic Resources, and other international agreements to which the Philippines is a party thereof;

5) Exportation of biological and genetic resources shall be subject to strict quarantine procedures, existing CITES rules and regulations on exportation and other applicable rules and regulations;

6) Exportation of varieties, lines, strains, and planting materials for scientific or international germplasm exchange purposes shall be governed by the provision of Article 42, Section 5 of the IRR of the Seed Industry Development Act of 1992, Republic Act No. 7308;

7) Transport of collected biological and genetic resources shall be subject to a transport or postal clearance/permit secured from the concerned government agency;

8) A quarterly report of the collections made, indicating the kind and quantity of the biological and/or genetic material/resources/specimens collected, and semi-annual progress reports, including the ecological condition/state of the study area/s and/or species and research results shall be submitted to the IACBGR through its Technical Secretariat; Provided that, the concerned parties shall take all the necessary and reasonable steps to ensure the confidentiality of information and relevant data mutually agreed to be regarded as such;

9) All discoveries of commercial product/s derived from Philippine biological and genetic resources shall be made available to the Philippine government and local communities concerned.

10) The Principal shall submit a list of Philippine species that have already been collected, utilized or are currently developing, including database and other information, such as the year, area of collection and collector; and shall also provide a list of private and government museums, herbaria, zoos, breeding farms and ranches and any other institution that have used or are currently using Philippine species and their database and information as required by the agency concerned;

11) All immediate, medium and long term benefits resulting directly or indirectly from the bioprospecting activities conducted, shall be shared equitably and upon mutual consent among the Philippine government, communities concerned and the principal;

12) All bioprospecting researches, including technological development of a product derived from the collected biological and/or genetic resources, by any foreign individual, entity, etc. shall be conducted in collaboration/cooperation with the Philippine scientists from the government agency concerned, Philippine universities or academic institutions and/or other agencies, whether government or non-government or in an affiliate capacity with a Principal which is a duly-recognized Philippine university, academic institution, domestic governmental entity and/or intergovernmental entity. All expenses to be incurred for the purpose by the Philippine scientists shall be borne by the Collector;

13) In instances where technology/ies are developed from the conduct of Research on Philippine endemic species, the Principal shall make available to the Philippine government, through a designated Philippine institution, the use of such technology, commercially and locally without paying royalty to the Principal. Provided, however, that where appropriate and applicable, other agreements may be negotiated by the parties. Provided, further, that in case of germplasm exchange the technology shall be shared with the collaborating National Agricultural Research systems in line with the mission statement of such center in accordance to the protocol under the International Law thereof;

14) A separate agreement shall be made for the transfer of royalty, benefits, technology and agreements; Provided that, said benefit sharing agreement must ensure that benefits and results received shall also accrue to the benefit of the Local Communities/IPs/PAs concerned and be allocated for conservation measures;

15) A bioprospecting fee as determined by the IACBGR shall be paid by the Principal upon approval of the Research Agreement.

16) The ownership of all biological and genetic resources shall remain with the state.

17) Where the commercial or academic collector is merely an agent or merely collecting for another person or entity, the agreement between the collector and the principal must be reviewed by the IACBGR to ensure that the said agreement does not undermine the substantive requirements of EO 247;

8.2. Specific Terms and Conditions of a Commercial Research Agreement (CRA). - The following specific terms and conditions shall apply to a CRA:

1) Only the kind and quantity of biological and genetic resources listed/specified in the CRA shall be collected. Collection shall be made only in designated collection sites. Any changes in the quantity or collection area shall be made only upon written request of the collector and/or Principal subject to the approval of the Secretary of the Agency/PAMB concerned;

2) In the event that a technology or a commercial product is developed and marketed out of the biological and/or genetic resources/specimens collected in the Philippines, an equity or remittance, in the amount to be mutually agreed upon by the parties concerned, shall be equitably shared with the

Philippine government, or with the Integrated Protected Areas Fund (IPAF) if the materials or resources come from the PAs or with the concerned IP, local community who gave the PIC and with the individual person who modified such material or resource that came from private property;

3) The Principal shall donate some of the equipment used in the conduct of the research to the Philippine government agency, institutions or universities concerned;

4) The Principal shall submit a performance, compensation, ecological rehabilitation bond to be deposited in favor of the government and the amount be determined by the IACBGR in accordance with the extent and scope of the project;

5) The CRA shall be valid and effective for a period of three (3) years, and may be renewed by the concerned Agency, subject to review and recommendation by the IACBGR. A separate agreement shall be drawn between the Principal and the Government Agency concerned regarding payment of royalties.

8.3. Specific Terms and Conditions of an Academic Research Agreement (ARA). - The following specific terms and conditions shall apply to an ARA:

1) The ARA may be comprehensive in scope, and may cover, at the maximum, four administrative regions as may be projected;

2) Any scientist/researcher who is an affiliate of a duly-recognized university, academic institution, domestic governmental and/or intergovernmental entity with a valid ARA with the concerned government agency, shall be allowed to undertake the research under the aegis of the said ARA subject to the acquisition of a PIC Certificate from the communities/PAMB concerned. Provided that the terms and conditions stipulated in the said ARA are complied with by the affiliated scientist or researcher: Provided further, that the principal shall duly inform the IACBGR of the research to be conducted by its affiliate/s;

3) The principal applying for an ARA must include as part of its application a Code of Conduct to be prepared by the IACBGR which shall govern subsequent bioprospecting activity to be undertaken by collector/s affiliated with it;

4) The principal with an existing ARA shall be bound to enforce the Code of Conduct referred to in Section 8.3.3. Failure to enforce said Code of Conduct shall merit cancellation of the ARA;

5) Data or materials collected under an ARA shall be for the exclusive use of the Parties thereof and shall not in any manner be transferred to other commercial groups or institutions unless the agreement is reclassified as a CRA. Provided, however, that the institutions shall have to present their data, in thesis or open publications;

6) In case the academic research being conducted has potential commercial prospects, as determined by IACBGR, a CRA shall be applied for by the Principal and drawn between the parties concerned;

7) The ARA shall be valid for a period of five (5) years and may be renewed upon review and recommendation by the IACBGR.

SECTION 9 X RESCISSION OF THE RESEARCH AGREEMENT

9.1. When the PIC Certificate has been obtained and a Research Agreement has been entered into by the proper parties, subsequent recantation by the concerned IPs, Municipal or City Mayor of the Local Government Unit, PAMB or Private Land Owner of the PIC Certificate shall not be a cause for rescission of the Research Agreement unless it is based on any of the following lawful causes:

- 1) That the consent of the IPs was obtained thru fraud, stealth, false promises and/or intimidation;
- 2) That the continuance of the Research Agreement shall impair the rights of the IPs to the traditional uses of biological resources;
- 3) That the continuance of the Research Agreement is against public interest and welfare;

9.2. The parties may rescind the Research Agreement should the other party violate any of the terms and conditions therein stipulated.

9.3. The Principal concerned has the right to apply for a rescission of the Research Agreement on the grounds of bankruptcy, force majeure and security problems. Provided, that in the case of bankruptcy, all bonds shall be forfeited and all equipment, materials and knowledge shall be transferred to the institutions previously identified in the Research Agreement. In case of force majeure or security problem, an alternative site for collection may be provided, subject further to the submission of PIC Certificate.

SECTION 10 X INTER-AGENCY COMMITTEE ON BIOLOGICAL AND GENETIC RESOURCES (IACBGR)

10.1. Composition of the IACBGR. - The IACBGR shall be attached to the DENR and its members shall comprise the following:

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

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

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

10.1.d 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;

10.1.e A permanent representative of the Secretary of the Department of Health who must be knowledgeable about pharmaceutical research and development, with emphasis on medicinal plant/herbal pharmaceutodynamics;

10.1.f A permanent representative of the Department of Foreign Affairs who has to facilitate international linkage relative to bioprospecting;

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

10.1.h A representative from Non-Government Organization (NGO) active in biodiversity protection;

10.1.i A representative from a People's Organization (PO) with membership consisting of indigenous cultural communities/indigenous peoples and/or their organizations.

10.2. Duties and Functions of the IACBGR.

10.2.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 bioprospecting activity;

10.2.b Ensure that the conditions for the Research Agreements are strictly observed as provided for in Section 8 hereof;

10.2.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;

10.2.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 also ensured that the specimens collected have been deposited in the designated depository in the Philippines;

10.2.e Ensure that the rights of the indigenous cultural communities/indigenous peoples and local communities wherein the collection or researches being conducted are protected, including the verification that the PIC requirements in Section 7 are complied with. The IACBGR, after consultations with the affected sectors, shall formulate and issue guidelines implementing the provision on PIC;

10.2.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;

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

10.2.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 IACBGR shall establish mechanisms to ensure the integration and dissemination of the information generated from research, collection and utilization activities;

10.2.i Coordinate with the National Committee on Biosafety in the Philippines (NCBP) when necessary or appropriate;

10.2.j Issue rules and regulations to effectively carry out the provisions of this Implementing Rules and Regulations;

10.2.k Perform such other functions as may be necessary to implement these Implementing Rules and Regulations.

10.3. Roles and Functions of IACBGR Member-Agencies. -

10.3.1. Department of Agriculture (DA)

The DA shall:

- a) Through the Bureau of Agricultural Research (BAR), assist in the review and evaluation of proposals in the areas of agricultural, fishery, and other resources which management falls within its jurisdiction;
- b) Create a multi-disciplinary committee that will evaluate the proposals on bioprospecting in agriculture and fishery concerns and recommend for further evaluation to the IACBGR;
- c) Through the Secretary, sign/approve Research Agreements concerning prospecting of agricultural and fishery biological and genetic resources;
- d) Through BAR, monitor and evaluate the implementation of the Research Agreements the agency entered into.
- e) Formulate policies and issue permits relative to the acquisition, importation and exportation of agricultural and fishery commodities on biological prospecting and genetic resources not covered in this IRR.

10.3.2 Department of Foreign Affairs (DFA)

The DFA shall:

- a) Serve as the lead agency in the negotiation of Commercial Research Agreements with foreign entities. It shall consult and seek the advice of the IACBGR on the advisability or non-advisability of entering into an Agreement;
- b) Through its embassies and missions abroad, assist in monitoring the implementation of Research Agreements with foreign entities and inform the IACBGR of a breach of agreement committed by said entities which shall thereafter act on it;
- c) Ensure that the Research Agreements entered into and their implementation are in accord with international standards and do not conflict with the Philippine's international obligations;
- d) Serve as the link to international activities on biological and genetic resources. It shall periodically apprise the IACBGR of recent developments on the UN Convention on Biological Diversity. It shall inform the IACBGR of relevant meetings and conferences, and shall take the lead in coordinating Philippine positions for said meetings.

10.3.3. Department of Science and Technology (DOST)

The DOST shall:

- a) Thru PCARRD and PCAMRD, assist in the review and evaluation of proposals in the areas of germplasm collection, documentation, conservation, evaluation and utilization and related bioprospecting activities;
- b) Thru PCARRD and PCAMRD, assist in the identification, assessment and involvement of local and international institutions that may wish to be part of bioprospecting activities;
- c) Thru the Secretary or his authorized representative, sign/approve Research Agreements concerning germplasm collection, documentation, conservation, evaluation and utilization, and related bioprospecting activities;

d) Thru PCARRD and PCAMRD, monitor and evaluate the implementation of the Research Agreements the agency entered into;

e) Through PCARRD in collaboration with the NPGRL of the IPB, and the PCAMRD in collaboration with the National Marine Science Institute, be responsible in setting directions and formulating policies on plant aquatic and marine genetic resources.

10.3.4. Department of Health (DOH)

The DOH shall:

a) Thru the Traditional Medicine Unit (TMU), assist in the review and evaluation of research proposals in the areas of pharmaceutical/ medicinal research and development, including the utilization of extracts, products and by-products and derivatives for commercial and academic purposes;

b) Thru the Secretary or his authorized representative, sign/approve Research Agreements relative to activities on pharmaceutical/medicinal research and development, including the utilization of extracts, products and by-products and derivatives for commercial and academic purposes;

c) Thru the TMU, monitor and evaluate the implementation of the Research Agreements the agency entered into;

d) Thru the TMU, coordinate all research activities related to medicinal plants and act as a screening body to prevent duplication of proposals by keeping a database on these proposals;

e) Thru the TMU, enforce the protection of our medicinal plants from unauthorized exploitation by channelling appropriate action to the appropriate government agencies.

10.3.5. Department of Environment and Natural Resources (DENR)

The DENR shall:

a) Act as the primary government agency responsible for the implementation and enforcement of EO 247 and its Implementing Rules and Regulations;

b) Thru PAWB and/or ERDB, assist in the review and evaluation of research proposals pertaining to terrestrial wildlife;

c) Thru the Secretary or his authorized representative, sign/approve Research Agreements relative to prospecting of wildlife resources which management falls within its area of jurisdiction;

d) Thru PAWB and/or ERDB, monitor and evaluate the implementation of the Research Agreements the agency entered into.

e) Thru the PAWB Director, act as Chairman of the Technical Secretariat of the IACBGR and lead in the performance of the functions of the TS as stipulated under Section 11.2 hereof;

f) Thru PAWB, serve as the central depository of all documents relative to bioprospecting.

10.3.6. National Museum of the Philippines (NMP)

The NMP shall:

- a) Assist in the review and evaluation of proposals submitted to the IACBGR;
- b) Assist in the monitoring and evaluation of the implementation of the Research Agreements as may be requested by other member-agencies concerned;
- c) Act as the official depository of holotypes, properly labelled and preserved, including voucher specimens collected as indicated in the Research Agreement;

10.3.7. Non-Government Organizations (NGOs)

The NGOs shall:

- a) Thru their representative in the IACBGR, assist in the review and evaluation of proposals submitted to the IACBGR;
- b) Thru their representative in the IACBGR, assist in the monitoring and evaluation of the implementation of the Research Agreements;
- c) Thru the Sub-Committee on Biodiversity (SCB) of the Philippine Council for Sustainable Development (PCSD), assist in disseminating information and raising awareness of communities and civil society on the provisions of the Executive Order in particular and on bioprospecting issues in general; and,
- d) Either thru their representative in the IACBGR or through their own initiative, shall monitor the conduct of community consultations and the process followed in obtaining the PIC Certificate.

10.3.8. People's Organizations (POs)

The POs, consisting of Indigenous Cultural Communities/Indigenous People and/or their organizations, shall:

- a. Thru their representative in the IACBGR, assist in the review and evaluation of proposals submitted to the IACBGR;
- b) Thru their representative in the IACBGR, assist in the monitoring and evaluation of activities as stipulated in the Research Agreement;
- c) Thru the SCB of the PCSD, assist in disseminating information and raising awareness of communities and civil society on the provisions of the Executive Order in particular and on bioprospecting issues in general; and,
- d) Either thru their representative in the IACBGR or through their own initiative, monitor the conduct of community consultations and the process followed in obtaining the PIC Certificate.

10.4. Designation of IACBGR Members. - The Secretary of the concerned government agency shall designate its representative to the IACBGR. Representatives of the Philippine science community from the academe shall be designated by the DOST Secretary after nomination from and consultations with the science community. Representatives of the NGOs/POs shall be nominated through a process designed by themselves and later endorsed by the PCSD.

An alternate representative for each of the IACBGR members shall be designated to ensure continuity of the participation of the concerned agency. Said alternate shall participate only in the absence of the permanent member.

10.5. Term of Office and Compensation. - IACBGR members shall serve for a period of three years, renewable for another three years. They shall be entitled to actual and necessary travelling, subsistence and other expenses incurred in the performance of their duties. Provided that 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.

10.6. Meetings. - The IACBGR shall meet at least once every quarter. Provided that the Chairperson may call special meetings as deemed necessary. The IACBGR shall formulate guidelines on calling special meetings and how they should be conducted. A quorum shall consist of a majority of the IACBGR members. All decisions of the IACBGR must be by a majority of all its members.

10.7. Minutes of the Meeting. - Minutes of the IACBGR meetings shall be prepared by the Technical Secretariat created under Section 6 of said EO, and approved by the Chairperson of the IACBGR within seven days of the meeting.

SECTION 11 X TECHNICAL SECRETARIAT OF THE IACBGR

11.1. Technical Secretariat.- There shall be created a Technical Secretariat (TS) to support the IACBGR. The Technical Secretariat shall be chaired by the Director of the Protected Areas and Wildlife Bureau (PAWB) or his duly authorized representative. It shall be staffed with personnel from the PAWB and other designated personnel from IACBGR member-agencies

An alternate representative of each of the members of the TS shall be designated to ensure continuity of the participation of the concerned agency.

11.2. Functions of the Technical Secretariat. - The TS shall have the following functions:

a. Sign notices of IACBGR meetings, serve as Secretariat during said meetings and prepare minutes of the meetings; and,

b. Undertake initial screening of proposals, sign IACBGR Form I and refer the proposals to agency concerned if the proposed research/project activity is not within the coverage of EO 247;

c. Conduct initial review and evaluation of bioprospecting applications and documents;

d. Prepare evaluation results, draft Research Agreement and submit same to the IACBGR for final evaluation;

e. Furnish concerned parties with copies of signed Research Agreements;

f. Establish a mechanism to ensure the integration and dissemination of the information generated from the research, collection, and utilization activities;

g. Perform such other functions as may be assigned by the IACBGR.

SECTION 12 X MONITORING AND IMPLEMENTATION OF THE RESEARCH AGREEMENT

12.1. The monitoring of the Research Agreement shall be conducted by the respective member agencies using a standard monitoring scheme to be devised by the IACBGR for the purpose;

12.2. The IACBGR Monitoring Team shall be headed by the Technical Secretariat with the participation of the concerned PAMB and/or regional offices of the member agencies of IACBGR. The Team shall be responsible in establishing a mechanism to ensure the integration and dissemination of the information generated from research, collection, and utilization activities;

12.3. A separate Monitoring Team headed by the IACBGR through DOST and DFA, shall monitor the progress of the research, utilization, commercialization done out of the country.

SECTION 13 X APPEALS

13.1. Decisions of the concerned Secretary regarding approval, disapproval and/or rescission of the Research Agreement may be appealed to the Office of the President within 30 days from receipt of such decision, otherwise, said decision shall be final. Recourse to the courts shall be allowed after exhaustion of all administrative remedies.

SECTION 14 X SANCTIONS AND PENALTIES

14.1. Any act of bioprospecting without the required Research Agreement and/or PIC Certificate as mandated under E.O. 247 shall be subject to criminal prosecution as may be proper under existing laws, including NIPAS Law of 1992 (R.A. 7586) and the Revised Forestry Code (PD 705), as amended.

14.2. Where the violator is a juridical person, its Head, President or General Manager shall be held liable therefor.

14.3. Non-compliance with the provisions stipulated in the Research Agreement shall result to the automatic cancellation/revocation of said agreement and confiscation of collected biological and genetic specimens in favor of the government, forfeiture of bond, and imposition of perpetual ban on prospecting of biological and genetic resources in the Philippines, without prejudice to the imposition of administrative sanctions by the concerned agency. The violation committed shall be published in national and international media, and shall be reported by the IACBGR to the Secretariats of international agreements/treaties and regional bodies.

SECTION 15 X TRANSITORY PROVISIONS

15.1. All existing researches, contracts and agreements entered by DENR, DA, DOH, DOST, and other government agency with any person/institutions, foreign or local, shall likewise remain valid and effective, provided that a new agreement conforming with this Order shall be entered into between the parties concerned;

15.2. All existing agreements relative to bioprospecting within protected areas shall be reviewed and ratified by the PAMB concerned. The PAMB shall decide whether these agreements warrant amendment or not. In either case, the parties shall enter into a new agreement to conform with the provisions of EO 247.

SECTION 16 X FUNDING

16.1. The activities of the IACBGR 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. The fund shall be administered by DENR-PAWB through a trust fund, thereafter, all IACBGR member-agencies shall allocate an annual appropriation to finance the activities of IACBGR. In case of PAs, such fees shall accrue to the IPAF in accordance with Section 16 of R.A. 7586.

SECTION 17 X GENERAL PROVISIONS

17.1. Amendment. - This Order may be amended wholly or in part by the Secretary through public notification.

17.2. Repealing Clause. - This Order repeals, modifies or amends accordingly all previous orders, memoranda, circulars and other issuances inconsistent herewith.

17.3. Effectivity. - This Order shall take effect fifteen (15) days after its complete publication in two(2) newspapers of general circulation.

VICTOR O. RAMOS
Secretary