



Developing a Comprehensive Framework for Practical Implementation of the Nagoya Protocol (ABS)



TERMS OF REFERENCE

Individual Contractor

1. Assignment Information

Assignment Title:	Develop National ABS Instruments, Guidelines, Procedures and Administrative Measures to support the implementation of the Nagoya Protocol
Cluster/Project:	Programme Unit
Post Level:	Senior Specialist (National Consultant)
Contract Type:	Individual Contractor (IC)
Duty Station:	Home-based or be based in MoE with target areas in-country missions within Cambodia
Expected Place of Travel:	Phnom Penh, Cambodia
Contract Duration:	From October 2021 to January 2022

2. Project Description

Cambodia's specific geographical location and long history and complicated topographical, ecological and social features has resulted in it becoming a prosperous, rich and diverse plant genetic resource country. While diverse climatic conditions diversified the country's flora with both tropical and temperate plants, thousands of years of agricultural practice by ethnic groups enriched its crop genetic resources with large numbers of local cultivars and land races. In terms of medicinal plants, the high level of genetic diversity makes Cambodia an attractive country for bio-prospecting, especially given that there are approximately 800 known medicinal plants, many of which have associated traditional knowledge. However, Cambodia faces a wide range of issues that threaten its biological diversity and ecological security. These threats emanate from the transition from a subsistence-based agrarian economy to a consumption-based cash economy, competing land use from urbanization and infrastructure development, poaching of wild plants and animals, localized overharvesting of timber, fuel wood and non-wood forest products, human-wildlife conflicts, and climate change. Because of the threat to biological resources, the traditional knowledge of local communities that is associated with genetic resources is disappearing rapidly, due to the change of traditional lifestyles. A large volume of traditional knowledge, such as medicinal use of biological resources, is being replaced by modern technology. The National Biodiversity Strategy and Action Plan (NBSAP) of Cambodia was adopted in 2002. The NBSAP identified equity as the most important thing biological resources sustainably in the long run and calls for consideration of poor and economically disadvantage group to secure their access to common resources.

To counter the various threats to biodiversity, the country has planned various strategies for

the conservation and sustainable use of biological resources for socio-economic development. However, making use of its biodiversity and traditional knowledge for the promotion of bio-prospecting and of access and benefit-sharing (ABS) national regime that is constrained by several factors. Cambodia has no existing policy or legislation on ABS, the government recognizes the importance of establishing innovative schemes to derive equitable benefits through economic activities that are linked to sustainable utilization of natural resources and the institutional and personal capacity to carry out bio-prospecting beyond basic level and develop and manage ABS schemes that are compliant with Nagoya Protocol.

The project aims at strengthening human resources, legal frameworks and institutional capacities on access and benefit sharing of genetic resources to facilitate the implementation of the Nagoya Protocol on Access and Benefit Sharing. The above objective would be achieved through two components, namely

Component 1: Creating an enabling national policy, legal and institutional framework for ABS consistent with the CBD and its Nagoya Protocol

Component 2: Developing capacity and administrative measures for the implementation of the national ABS legal framework.

The specific problem that this project will seek to address is the lack of a functioning national legal, policy, and institutional framework that will enable the equitable sharing of benefits from the use of genetic resources and traditional knowledge (TK) between the state (national and state governments), commercial interests, and the owners and custodians of these resources and TK (such as Indigenous and Local Communities [ILCs]). This issue is compounded by the lack of trust between users and providers of genetic resources that prevents unleashing the potential of genetic resources as a source of innovation, biodiversity conservation, market development, and poverty alleviation.

Following an inception workshop organized in June 2019 and project work plan, and in order to take the project implementation forward, Cambodia is looking for an experienced national consultant to work with international consultant in order to develop the National ABS Instruments and Measure Procedures, including (i) ABS procedures and dossier of supporting legal instruments; (ii) Models on bio-prospecting, research procedures and guideline for user and provider; (iii) Guidelines for community protocols; (iv) Effective financial mechanism; and (v) Administrative permitting system and check-points, including PIC and MAT and guidance documents to support the implementation of the Nagoya Protocol.

3. Scope of Work and objectives

Under the overall guidance and supervision of the National Project Director (PD), the selected national consultant will work closely with the International Consultant (IC), Project Coordinator (PC), UNDP Programme Analyst, MoE and relevant institutions/stakeholders to complete the assignments.

Tasks and responsibilities of the national consultant include but are not limited to:

- A. Together with IC, develop national legislation on ABS, including procedure for access of genetic resources as following:
- a) Develop joint Prakas between Ministry of Environment (MoE) and Ministry of Economic and Finance (MoEF) on filing fee of application for Access to GR or aTK and extension of Access Permit;
 - b) Develop joint Prakas (MoE and MoEF) on the Establishment and Management of Biodiversity Conservation Fund;
 - c) Develop Prakas on the guideline for determination of providers; and
 - d) Develop legislative formats for implementation of ABS legislation as following:
 1. Application for Access to GR and TK (art. 5);
 2. Decision to Commence the Process (art. 11);
 3. Request for Extension of Validity Period of Decision to Commence the Process (art. 12);
 4. Decision to Extend the Period of Decision to Commence the Process (art. 12);
 5. Decision to Request Further Submission (art. 13);
 6. Decision to Conduct Further Investigation (art. 14);
 7. Decision to Deny the Application (art. 15);
 8. Prior Informed Consent (PIC) (art. 16);
 9. Mutually Agreed Terms (MAT) (art. 17);
 10. Request for Access Permit (art. 19);
 11. Access Permit (art. 22);
 12. Request for Extension of Access Permit (art. 23);
 13. Decision for Extension of Access Permit (art. 23);
 14. Decision to Request Further Submission (art. 24);
 15. Decision to Deny Access Permit (art. 25);
 16. Decision to Revoke Access Permit (art. 29);
 17. Penalty Letter (Written Warning);
 18. Penalty Letter (Publication of Violator's Name);
 19. Penalty Letter (Letter of Seizure of Genetic Resources or Derivatives); and
 20. Other relevant instruments that supporting to the implementation of ABS Sub-Decree.
- B. Together with IC, develop institutional framework including procedure and measure for access genetic resources defined and established for implementation of the Nagoya Protocol:
- a) Develop models on bio-prospecting and research procedures available to national and provincial research institutions:
 1. Review stock-taking on the institutional framework conducted by national consultant, analysis and identify appropriate system in the country;
 2. Review the existing bio-prospecting models and its applications;
 3. Develop model on bio-prospecting and research procedures; and
 4. Identify and prioritize the research to demonstrate opportunities for improving the economic value of biodiversity and ecosystems.
 - b) Develop guideline for users and providers:

1. Review the existing guideline to define the requirements involving in the utilization of genetic resources, particularly the process of bio-prospecting between users and providers; and
 2. Develop users and providers guideline which include rules and procedures.
- C. Assist IC develop guidelines for community protocols:
- a) Review and analysis the existing guideline for community protocols conducted by national consultant;
 - b) Based on the review above, develop guidelines for community protocols, including an Environmental Impact Assessment (EIA) analysis in ABS projects; and
 - c) Develop guideline for the process of negotiation and content of potential agreements between different users and providers.
- D. Together with IC, develop ABS financial mechanism that conformed to the national commercial and financial laws and regulations, particularly national best practice mechanism(s):
- a) Undertake a legal analysis of options for establishment of the financial mechanism for Cambodia related to environmental management and biodiversity conservation;
 - b) Review the existing and analysis of legal options for establishment of the financial mechanism from ABS agreement;
 - c) Develop a proposal based on best options for creation of the desired financial instrument(s), seeking an operational modality that is in the best interest of the producers/companies and country conservation effort; and
 - d) Develop legal instruments (Prakas on ABS Financial Mechanism), including the provisions and procedures for establishment of the financial instrument(s), fund flow arrangements, guidelines for use and application of these funds, financial reporting procedures, etc.
- E. Together with IC, develop administrative and permitting system (PIC and MAT) for the implementation of the ABS Framework and legislation:
- a) Review and clarify existing legislative measures for ABS permitting and administrative procedures in Cambodia by identifying gaps and opportunities for enhancing such measures;
 - b) Review and analysis on the existing legislative measures for ABS permitting and administrative procedures conducted by national consultant;
 - c) Identify the gaps and opportunities for enhancing the measures;
 - d) Develop draft proposals on strengthening the implementation of permitting and administrative measures, including PIC and MAT to promote access and use of genetic resources and associate traditional knowledge; and
 - e) Develop guideline documents:
 - To access genetic resources and associated traditional knowledge with the fair and equitable sharing of benefits;
 - To obtain PIC and to negotiate MAT establishment for accessing GR-TK and the fair and equitable sharing of benefits; and

- To facilitate the monitoring of GR-TK at checkpoints to ensure the compliance and tracking system.
- F. Participate and present in the consultation meetings and workshops, including ABS Sub-TWG meeting;
- G. Consolidate the comments, recommendations and feedback from stakeholders' consultation meeting, workshop(s) and ABS Sub-TWG meeting with assistance from National Consultant;
- H. Assist project management unit (PMU) to prepare national consultation workshop and ABS Sub-TWG meeting for further inputs and recommendations;
- I. Assist and support international consultants to finalize the development of all national ABS instruments, guidelines, procedures and administrative measure and translate into Khmer language;
- J. Compile report about the finding and documentation;
- K. Submit the final documents and all related references to PMU and UNDP for reviewing and PD for approval; and
- L. Other tasks may require.

4. Expected Outputs and Deliverables

No.	Deliverables/Outputs	Target Due Dates	Review and Approvals Required
1	<p>Deliverable 1: Submit an Inception report to PMU and MoE as follows:</p> <ul style="list-style-type: none"> - Methodology, work plan and budget plan 	3 rd week of October 2021	Reviewed by Project Coordinator and approved by Project Director
2	<p>Deliverable 2: Submit to PMU, UNDP and MoE as follows:</p> <p>A. Draft national ABS instruments:</p> <ul style="list-style-type: none"> (a) Joint Prakas (MoE and MoEF) on filing fee of application for Access to GR or aTK and extension of Access Permit; (b) Joint Prakas (MoE and MoEF) on the Establishment and Management of Biodiversity Conservation Fund; (c) Prakas on the guideline for determination of providers; and (d) All legislative formats for implementation of ABS legislation from 1 to 20 above. <p>B. Draft documents on: (a) Models on bio-prospecting and research procedures;</p>	2 nd week of December 2021	

	<p>and (b) Guideline for users and providers.</p> <p>C. Draft guidelines for community protocols, including EIA analysis in ABS project and guideline for the process of negotiation and content of potential agreements between different users and providers.</p> <p>D. Draft documents on: (i) Analysis report of legal options for establishment of the financial mechanism from ABS agreement; (ii) proposal based on best options for creation of the desired financial instrument(s); and (iii) Prakas on ABS Financial Mechanism.</p> <p>E. Draft documents on: (i) Analysis report on the existing legislative measures for ABS permitting and administrative, including gaps and opportunities and proposals on strengthening the implementation; and (ii) Guideline documents to facilitate the accessing GR-TK, obtaining PIC, establishing MAT and check-point.</p>		
3	<p>Deliverable 3: Submit to PMU, UNDP and MoE as follows:</p> <p>A. Final documents of national ABS instruments: (a) Joint Prakas (MoE and MoEF) on filing fee of application for Access to GR or aTK and extension of Access Permit; (b) Joint Prakas (MoE and MoEF) on the Establishment and Management of Biodiversity Conservation Fund; (c) Prakas on the guideline for determination of providers; and (d) All legislative formats for implementation of ABS legislation from 1 to 20 above.</p> <p>B. Final documents on: (a) Models on bio-prospecting and research procedures;</p>	4 th week of January 2022	

	<p>and (b) Guideline for users and providers.</p> <p>C. Final documents on guidelines for community protocols, including EIA analysis in ABS project and guideline for the process of negotiation and content of potential agreements between different users and providers.</p> <p>D. Final documents on: (i) Analysis report of legal options for establishment of the financial mechanism from ABS agreement; (ii) proposal based on best options for creation of the desired financial instrument(s); and (iii) Prakas on ABS Financial Mechanism.</p> <p>E. Final documents on: (i) Analysis report on the existing legislative measures for ABS permitting and administrative, including gaps and opportunities and proposals on strengthening the implementation; and (ii) Guideline documents to facilitate the accessing GR-TK, obtaining PIC, establishing MAT and check-point.</p>		
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5. Institutional Arrangement

The Consultant will be performed under the supervision of the Project Director. The consultant will liaise on a day-to-day issue with PMU, UNDP Programme Analyst and MoE for ABS project in Cambodia. S/he will also work closely with the relevant institutions, development partners and academic/research institutions to ensure full cooperation and collaboration from all stakeholders.

6. Duration of the Work

The assignment is expected to be performed between from October 2021 to January 2022. It is expected that the final documents will be submitted by the 4th week of January 2022.

7. Duty Station

The duty station of this assignment is a combination of home-based and/or be based in Ministry of Environment in Phnom Penh. If any travel to the provinces for stakeholder consultations, the Daily Substantive Allowance (DSA) and transportation will be covered by the project and will be arranged by PMU.

8. Minimum Qualifications of the Individual Contractor

Education:	<ul style="list-style-type: none"> • At least bachelor degree of law or preferable Master’s degree of relevant to natural resource management or environmental science, genetic resources, ecosystem services, and/or related field.
Experience:	<ul style="list-style-type: none"> • Proven experience in ABS procedure, policy and legislation development in both user and provider countries; • Prior experience in drafting or developing legislation on NRM or specific to ABS including research and development, knowledge on Nagoya Protocol, particularly ABS-related issues; • Proven experience in the management of projects including familiarity with logical frameworks, SMART indicators and strategic planning. ABS projects will be an asset. Knowledge about UNDP Programming cycle, applied rules and regulation is an asset; • Proven experience in National ABS Legislation development, particularly in Cambodia’s context.
Competencies:	<ul style="list-style-type: none"> • Strong analytical skills and ability in development of legislation, policy or framework. • Excellent analytical capacity and ability to synthesize project outputs and relevant findings for the preparation of quality project reports; • Ability to understand ABS terminology and its concepts and to analysis/synthesize information from different sources into a coherent project log-frame and framework; • Skill in achieving results through persuading, influencing and working with others; • Maturity and confidence in dealing with senior members of international, regional and national institutions; • Displays sensitivity and adaptability to different cultures, genders, religions, races, nationalities and age groups; • Good team player, self-starter, has ability to work under minimum supervision and maintain good relationships.
Language:	Fluency in Khmer and English required;

9. Criteria for Evaluation of Level of Technical Compliance of Individual Contractor

Technical Evaluation Criteria	Obtainable Score
At least 5 years relevant work experience in legislation development related to environmental management and biodiversity conservation, particularly experiences in National ABS Legislation development, including relevant supporting ABS measures and procedure to implement the Nagoya Protocol).	60
Relevant educational background	10
Experience in UNDP Programming cycle, applied rule and regulation	15
Experience in project design and planning	15

Total Obtainable Score:	100
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10. Payment Milestones

The consultant will be paid on a lump sum basis under the following installments.

No	Outputs/Deliveries	Payment Schedule	Payment Amount
1	Upon satisfactory completion of Deliverable 1		30%
2	Upon satisfactory completion of Deliverable 2		40%
3	Upon satisfactory completion of Deliverable 3		30%

Interested candidates should submit a letter of interest and CV with support references no later than 18th October 2021 to Ministry of Environment (MoE), Morodok Techo Building, Lot 503, Sangkat Tonle Bassac, Chamkarmon, Phnom Penh, Cambodia.

And/or email to: keosamnang.tiep@gmail.com.

For further information, please contact at: 069 393 666. Only short-listed candidates will be contact for interview.