

UNITED NATIONS DEVELOPMENT PROGRAMME

Terms of Reference for the recruitment of a National Consultant for the drafting of a National Traditional Knowledge Policy incorporating Appropriate Legal Instruments on Access to Genetic Resources and Benefit-Sharing (ABS) in Seychelles

TITLE: National Consultant (SC)
SECTOR: Legal and Environment
LOCATION: Seychelles
DUTY STATION: UNDP Seychelles Country Office
DURATION: 45 person-days spread over 10 months

STARTING DATE: March 2018

A. Project Title: Strengthening human resources, legal frameworks and institutional capacities to implement the Nagoya Protocol

B. Project Description

Context and Objectives of Project

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS), an agreement under the Convention on Biological Diversity, was adopted on 29 October 2010 in Nagoya (Japan) and entered into force on 12 October 2014. It provides a transparent legal framework for the effective implementation of the 3rd objective of the Convention on Biological Diversity (CBD); “the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.” The Protocol applies to genetic resources that are covered by the CBD and to the benefits arising from their utilization, it also covers traditional knowledge (TK) associated with genetic resources held by indigenous and local communities. Contracting parties to the Nagoya Protocol need to fulfil core obligations to take measures in relation to access to genetic resources, benefit-sharing and compliance.

Article 8(j) of the CBD states “Each contracting Party shall, as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices”.

The UNDP-GEF Project “Strengthening human resources, legal frameworks, and institutional capacities to implement the Nagoya Protocol” (Global ABS Project) is a 3-year project that specifically aims at assisting 24 countries in the development and strengthening of their national ABS frameworks, human resources, and administrative capabilities to implement the Nagoya Protocol. Component 1, Output 1.1.1 of the project seeks to, strengthen the legal, policy and institutional capacity to develop national ABS frameworks through the drafting and

submitting of national ABS law/regulation and policy proposals, for approval to competent authorities.

Seychelles

The Republic of Seychelles is a Party to the Nagoya Protocol since its entry into force (ratification) on October 12, 2014. Seychelles does not have a comprehensive legislative/regulatory ABS framework in place.

Seychelles developed a draft bill in 2005 on access and benefit-sharing entitled “Genetic Resources Bill.” The objective of the bill was to set the perimeters for the development of all aspects of a full-fledged legislation and supporting legislation on ABS in the Seychelles. The process for the development of the draft bill is documented in a publication title ‘Commentary on the development of the Republic of Seychelles Access to Genetic Resources and Benefit Sharing’. However, the bill was never adopted even if it was considered a priority under the 1st NBSAP produced in 1997, A new NBSAP or NBSAP 2.0 was published in 2014, which considers a comprehensive review of biodiversity-related legislation including the promulgation of ABS regulations (Project 25). Similarly, the ABS is considered a priority under the Sustainable Development Strategy of Seychelles 2012-2020.

The Seychelles Bureau of Standards (SBS), through its parent ministry, the Ministry of Industries and International Business, has a facilitator role as a hub where all the stakeholders and research partners can bring their application and or seek additional information. The Ministry of Environment, Energy and Climate Change (MEECC) will have a regulatory role. Other line ministries such as the Ministry of Fisheries and Agriculture and now the National Institute of Science Technology and Innovation (NISTI) have more of the decision-making roles.

The Department of Environment, under the MEECC is the designated Competent Authority where the focal point of the Nagoya Protocol on ABS is hosted.

C. Scope of work

This national consultancy aims to support

- i. the identification, the drafting and assist the validation process of a national traditional knowledge policy in Seychelles. This policy should be simple, efficient, adapted to national and local circumstances and coherent with existing and planned mechanisms in complementarity with other national or global ABS related instrument.
- ii. the Seychelles in drafting country specific processes and guidelines, in line with national and local circumstances of local communities, to access their knowledge, innovation and practices related to genetic resources and to ensure a fair and equitable sharing of benefits arising from their utilization, for the conservation and sustainable use of biodiversity.

The national traditional knowledge policy to be developed, should be compliant with the Nagoya Protocol and the CBD. In line with national and local circumstances, the instruments shall include both a legislative and a regulatory component covered by this consultation.

The national consultant will be aided by the international consultant who will provide clear orientations and high quality advisory services to guide the work of the national consultants, covered by this consultation throughout the process of design, drafting and the validation process of nationally appropriate traditional knowledge policy in compliance with the Nagoya protocol and the CBD.

The national traditional knowledge policy should be based on the findings and recommendations of the analysis and consultations with key national and local stakeholders as indicated in the Project Document of the Global ABS Project.

Key Responsibilities

The consultant(s) will adhere to National procedures for development and adoption of National guidelines, regulations, policies and legislative mechanisms, in various levels of consultations and liaisons with the Ministry of Environment, Energy and Climate Change.

The consultant will be responsible to undertake the following specific tasks and services:

- a) The national consultants will be given the necessary guidance, methodology and technical inputs by the International Consultant (referred to from here on as IC) to assess if there are any existing national institutional frameworks on TK, Genetic resources and deliver an analysis for the implementation of the Nagoya Protocol,
- b) Within this analysis; document any existing and evolving legislations and regulations related to TK (traditional knowledge), GR (genetic resources) and ABS in Seychelles (work in parallel with the Legal Consultant).
- c) Draft the national traditional knowledge policy and working alongside the IC, document the appropriate legal instrument(s) and amendments of the legislative and regulatory components (depending on national and local circumstances and while ensuring compliance with the provisions of the Nagoya protocol and the CBD (the proposed instruments should provide a clear description of the operational mechanisms for Monitoring the use of GR/TK and dispute management including penalties. It should also provide standard clauses for Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT) and elaborate a guideline on how to apply the regulations clarifying both access procedures for applicants and user procedures for compliance measures)).

D. Expected Outputs and Deliverables:

Deliverables	Tentative Date	% Fees	Review and Approvals required
Upon Submission of work plan	Wednesday 7 th March	10	UNDP Country Office
Deliverable 1 : Assess if there are any existing national institutional frameworks such as legislations and regulations related to/on TK, Genetic resources and deliver an analysis for the implementation of the Nagoya Protocol Assess existing laws relevant to ABS and the Nagoya Protocol, including	Friday 30 th March 2018	15	UNDP Country Office ABS National Focal Point (ABS NFP)

Culminate this analysis in the LC's report and in the workshop to be presented to stakeholders during the IC's country mission.			
Deliverable 2: Develop a comprehensive TK policy, including, innovations and practices and customary uses of biological and genetic resources.	Friday 27 th April 2018	10	UNDP Country Office ABS National Focal Point (ABS NFP) MEECC
Deliverable 3: Conduct consultations with the relevant ministries and stakeholders to present the Traditional Knowledge Policy, this may be done parallel to the Legal Consultant.	Wednesday 6 th June 2018	10	UNDP Country Office ABS National Focal Point (ABS NFP)
Deliverable 4: Present the Traditional Knowledge Policy either alongside the ABS Policy or as part of the latter, to the Cabinet for its endorsement (this is a prerequisite for the Cabinet to instruct the Attorney General's office to begin drafting the ABS law).	Thursday 6 th June 2018	10	UNDP Country Office ABS National Focal Point (ABS NFP) MEECC
Deliverable 5: Assist the LC in drafting a national law on ABS for review and endorsement by the National Assembly, to include guidelines of TK including, innovations and practices and customary uses of biological and genetic resources...(from	Wednesday 28 th August 2018	15	UNDP Country Office ABS National Focal Point (ABS NFP) MEECC

2018)- (The draft law might run in parallel with policy documentation but will be reviewed only upon approval of the Policy).			
Deliverable 6: Work alongside the LC who will be Drafting ABS regulations under the ABS Act to include guidelines of TK including, innovations and practices and customary uses of biological and genetic resources.	Wednesday 7 th November 2018	15	UNDP Country Office ABS National Focal Point (ABS NFP) MEECC
Deliverable 7: Finalized Act (working alongside the LC to ensure traditional knowledge and genetic resources are in the final product)	Wednesday 19 th December 2018	15	UNDP Country Office ABS National Focal Point (ABS NFP)
Total		100%	

E. Institutional Arrangement

The Consultant shall work under the supervision of the UNDP Country Office, National Project Coordinator and the ABS Focal Point and shall report to them for the fulfillment of his/her duties. The consultant is expected to be a part/host any relevant workshops/ presentations that may occur during the contract time. The Consultant is expected to liaise, interact and meet with government, UNDP, relevant ministries and all stakeholders involved with the project. The identified ministries and stakeholders for are as follows:

- The Seychelles Bureau of Standards (SBS), through its parent ministry, the Ministry of Industries and International Business
- The Ministry of Environment, Energy and Climate Change (MEECC)
- The Ministry of Fisheries and Agriculture
- Ministry of Youth, Sports and Culture – Research Unit and National Heritage Research Section

- National Institute of Science Technology and Innovation (NISTI) - decision-making roles.
- Attorney General's Office
- Seychelles Heritage Foundation
- Blue Economy
- University of Seychelles- BERI
- National Biosecurity Agency
- CEPS
- Seychelles Island Foundation
- Marine Conservation Society of Seychelles
- Nature Seychelles
- PCA
- ICCS

F. Duration

The contract will start in March 2018 and will end (expected) 31st December 2018. The total working days estimated are 45.

G. Duty Station

Home based (Seychelles)

H. Qualifications of the Successful Individual Contractor

Education

Qualifications

- Minimum Bachelor's degree in environmental law or policy, multi-lateral environmental agreements, or other related field.

Language skills:

- Excellent writing, editing, and oral communication skills in English, Creole and French

Competencies:

- Knowledge of environmental issues, environmental law and policy concept and principles and the ability to apply to strategic and/or practical situations;
- Ability to work with multiple stakeholders across a wide range of disciplines.
- Demonstrates practical knowledge of inter-disciplinary development issues;
- Seeks and applies knowledge, information, and best practices from within and outside of UNDP.
- Maintains relationships with stakeholders , focuses on impact and result for the project and responds positively to feedback;
- Consistently approaches work with energy and a positive, constructive attitude;
- Proven networking, team-building, organizational and communication skills.
- Demonstrates openness to change and ability to manage complexities;
- Demonstrates strong oral and written communication skills;
- Remains calm, in control and good humored even under pressure.

Experience:

- Minimum 3 years of experience in drafting legal documents in similar environmental areas; ;

- Experience in environmental law and regulations
- Experience in facilitation to lead national discussions involving key experts and stakeholders from relevant national institutions;
- Excellent reporting skills

I. Scope of Price Proposal and Schedule of Payments

The financial offer should be quoted as a lump sum amount, all-inclusive (professional fee, insurance). Fees will not include duty related travel outside of Mauritius which will be borne by the project or from the Global Budget.

The contract price is fixed regardless of changes in the cost components. Payments will be effected based on deliverables as per section D above.

J. Recommended Presentation of Offer

The following documents are requested:

- a) Duly completed **Letter of Confirmation of Interest and Availability** using the template provided by UNDP;
- b) **Personal CV or P11**, indicating all past experience from similar projects, as well as the contact details (email and telephone number) of the Candidate and at least three (3) professional references;
- c) **Financial Proposal** that indicates the all-inclusive fixed total contract price, supported by a breakdown of costs, as per template provided by UNDP.

K. Criteria for Selection of the Best Offer

Individual consultants will be evaluated based on the following methodology:

Cumulative analysis

When using this weighted scoring method, the award of the contract should be made to the individual consultant whose offer has been evaluated and determined as:

- a) Responsive/compliant/acceptable, and
- b) Having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.

Short-listing criteria:

Minimum LLB in environmental law, multi-lateral environmental agreement or other related academic backgrounds ,	Solid knowledge of core governmental policies and national systems, in relation to the Environment field	A proven expertise related to designing and drafting environmental legal documents carried out within the last 3 years or more	Understanding of the socio-economic context of the Seychelles	-Excellent writing, editing, and oral communication skills in English, Creole and French to be able to lead relevant consultations	Total,
15 marks	20marks	25 marks	20	20 marks	100

Candidates scoring 50 or above will be short-listed.

The financial offers will be evaluated giving the lowest price proposal 30 marks and marking the other more expensive proposals reverse proportionally to the cheapest offer.

The final scoring of short-listed candidates will take into account the technical Evaluation and the financial score:

Criteria	Weight	Max. Point
• Technical score	70%	70
• Financial score	30%	30

The candidate ranking highest shall be selected.

Annexes to the TOR

The approved Prodoc is available for download if requested, from the NPC.

L. Approval

This TOR is approved by:

Signature 

Name and Designation Roland Alcindor, Programme Manager

Date of signing 21st February 2018