

Terms of Reference

National Consultant to conduct a gap analysis on existing national and provincial legislation relevant to Access and Benefit Sharing (ABS), including recommendations on the harmonisation of the ABS regulatory environment in South Africa

Type of Contract: IC (Consultant)
Languages: English
Commencement Date: 1 November (estimated)
End Date: 31st March 2019
Duration: Approximately 60 working days over a 4 months period
Location: South Africa

1. Background

1.1. Introduction:

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS), a supplementary agreement to 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 Nagoya 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.

The UNDP-GEF Global ABS Project “*Strengthening human resources, legal frameworks, and institutional capacities to implement the Nagoya Protocol*” is a 3-year project that specifically aims at assisting 24 countries in the development and strengthening of their national ABS legal frameworks, human resources, and administrative capabilities to implement the Nagoya Protocol. The project seeks to achieve this through its 4 components namely:

- Component 1: Strengthening the legal, policy and institutional capacity to develop national ABS legal frameworks;
- Component 2: Building trust between users and providers of genetic resources to facilitate the identification of bio-discovery efforts; and
- Component 3: Strengthening the capacity of indigenous and local communities to contribute to the implementation of the Nagoya Protocol.
- Component 4: Implementing a Community of Practice and South-South Cooperation Framework on ABS.

The implementation of the basic measures of the Nagoya Protocol in South Africa similarly to the other participating countries will unleash a wide range of monetary and non-monetary benefits for providers of genetic resources. Some of these benefits should be reinvested in the conservation and sustainable use of the biological resources from where the genetic resources were obtained. This will fulfil the three objectives of the CBD.

As per the approved Annual Work Plans for the year 2018 for South Africa, the body of work will require a national consultant (or an individual linked to a company - Reimbursement Loan Agreement) who will conduct a gap analysis on existing national and provincial legislation relevant to ABS and make recommendations on the harmonisation of the ABS regulatory environment in South Africa with the

Nagoya Protocol, relevant national and provincial legislation, and the African Union Guidelines on coordinated implementations of the Nagoya Protocol on ABS (AU Guidelines). The consultant(s) will work closely with key national and provincial stakeholders to identify key relevant legislations, review, analyze and identify regulatory gaps and make recommendations for the harmonisation of the ABS regulatory environment in South Africa. The recommendations for harmonisation should seek to create legal certainty, improve efficiency and improve inter-departmental coordination coherent with the leading national, regional and global ABS instruments.

1.2. Objectives of the assignment

The scope of work of the Consultant is to conduct a gap analysis on existing national and provincial legislations relevant to ABS, and make recommendations on the harmonization of the ABS regulatory environment in South Africa, which is administered by the DEA, with the Nagoya Protocol, relevant national and provincial legislation, and the AU Guidelines. The Consultant shall undertake a detailed benchmark of existing national and provincial instruments, the Nagoya Protocol on ABS, AU Guidelines to inform the gap analysis process. The final report should be based on the findings and recommendations from the national assessments, gap analyses and consultations with key national and provincial stakeholders.

Description of Responsibilities

The consultant shall be responsible for attending to the following considerations:

1. The Consultant shall undertake an assessment of the existing national legal frameworks focusing on the DEA, Department of Science Technology, Department of Health, Department of Trade and Industry, Department of Traditional Affairs, Department of Rural Development and Land Reform, Department of Agriculture, Fisheries and Forestry, Department of Water and Sanitation, Nagoya Protocol on ABS, AU guidelines, and identify and deliver national gaps' analysis on the practical implementation of the ABS regulatory environment in South Africa.
2. The Consultant shall undertake an assessment of the existing provincial legal frameworks focusing on the collection permit, license to sell and export flora and fauna issued by relevant provincial issuing authorities in support of the implementation of the Nagoya Protocol. The Consultant shall conduct an analysis of the different permitting processes and also identify practical implementation issues relevant to the ABS regulatory environment in South Africa.
3. The consultant shall undertake and present to the country teams, in complementarity with the conclusions of the gaps' analysis and the recommendations of the national consultations, a detailed benchmark report on the harmonisation of ABS regulatory environment in South Africa, taking into consideration the different mandates of relevant national and provincial departments.
4. The consultant shall provide technical inputs to address any comments throughout the process of developing the gap analysis report and recommendations for harmonisation.
5. The Consultant shall deliver the following:
 - i. A concise methodology to undertake the national assessments and gap analyses to identify ABS related gaps and shortcomings in the related existing national and provincial legal frameworks relevant to ABS in light of the Nagoya Protocol on ABS and the AU Guidelines.
 - ii. A benchmark for harmonization of ABS regulatory environment in South Africa.
 - iii. Technical inputs provided/ comments received throughout the process of developing the gap analysis report, including by applying a gender analysis as an analytical tool to mainstream gender considerations into the legal ABS framework, and develop recommendations for harmonization.
 - iv. Legal, institutional and policy review to determine gaps and opportunities for harmonization of ABS regulatory environment in South Africa.

- v. Based on iv) above, provide recommendations on options to upgrade the ABS system in South Africa, including an outline of the proposed draft amendments (with main sections and subsections' headings). This will be paralleled by a full table of correspondence between the proposed draft amendments and/or the current articles and the Nagoya Protocol's Articles (core obligations) and it will include a full checklist for each article.
- vi. Propose and develop recommendations on relevant harmonisation measures, guidelines for ABS processes and procedures, for possible use in anticipation of the final adoption of one-stop shop ABS system, in compliance with obligations under the Nagoya Protocol.

Reporting

The Consultant will report to the UNDP South Africa Country Office on administrative and payment matters relating to the contract. The Global ABS Focal Point in the Department of Environmental is responsible for overseeing the technical content and quality assurance approvals that will be supported by the UNDP Regional Project Specialist of the UNDP-GEF Global Team. To this end, the Consultant shall work in close coordination with the project country team including, at minimum the Global ABS Focal Point and Officers at DEA.

2.1 Duration:

The consultant is expected to finalize the assignment within 4 months from its inception. The total work input is 60 work days over the above period.

2.2 Deliverables:

The specific deliverables and payment schedule is provided in the table below.

Deliverable	Time	Payment term
Deliverable 1: Inception report detailing timeframes; conceptual framework; proposed content headings of Deliverables 2-5; methodologies and approach to be used; and stakeholders to be consulted. A mandatory briefing session with DEA and UNDP is required to support the drafting of Inception Report. (See above section 1.2.5.i & ii)	Within three weeks after contracting	10% Work input: 6 days
Deliverable 2: Draft Report: Policy & legal review situation analysis, gaps and needs, including gender mainstreaming, taking into consideration differential institutional mandates + 1 national consultation workshop arranged and facilitated by the service provider (all incl. costs to be included) on behalf of DEA (See above section 1.2.5.iii & iv)	TBD (in 2018)	20% Work input: 12 days
Deliverable 3: Final Report: Policy & legal review situation analysis, gaps and needs. (See above section 1.2.5.v)	TBD (in 2019)	30% Work input: 18 days
Deliverable 4: Draft Report: Recommendations for harmonization including implementation roadmap with targets and milestones and time frame, in accordance with the milestones and targets as per PRODOC (i.e. roadmap to be completed by August 2019). (See above section 1.2.5.vi)	TBD (in 2019)	30% Work input: 18 days
Deliverable 5: Final Report, and consultation & validation process on recommendations and roadmap in the form of 1 national consultation workshop arranged and facilitated by service provider (all incl. costs to be included) on behalf of DEA.	On or before 01 March 2019.	10% Work input: 6 days

2.3 Travel:

The country team will agree, in consultation with the IC, the number of field missions to be conducted, if any, and the duration for each mission in accordance with its national needs. An indicative planning shall be developed at the induction session following the hiring of the consultant.

The lump sum amount indicated in the financial proposal must be “all-inclusive”¹ as per UNDP rules and regulations.

6. Competencies:

- Ability to provide guidance on the implementation of the Nagoya Protocol on ABS;
- Knowledge of the Constitution, Multilateral agreements on ABS issues, environmental law and policy concept and principles and the ability to apply to strategic and/or practical situations;
- Knowledge of cooperative governance principles and policies and ability to apply strategic and/or practical approaches;
- Ability to work with multiple stakeholders across a wide range of disciplines.
- Ability to apply development theory to the specific country context to identify creative, practical approaches to overcome challenging situations.
- Maintains relationships with clients, focuses on impact and result for the client and responds positively to feedback.

7. Qualifications

3.1 Academic Qualifications/Education:

- Minimum Master’s degree in environmental law or policy (environmental, commercial and intellectual property) or related field.

3.2 Experience:

- 10 years of experience in legislative drafting, policy development, domestication of international obligations or drafting legal documents in similar environmental areas;
- Integrated experience in environmental, commercial and intellectual property law;
- Experience in designing institutional arrangements and establishing effective intergovernmental coordination for the implementation of complementary legislative frameworks;
- A good understanding of the main challenges facing the implementation of the Nagoya Protocol and ABS regimes in Africa region;
- Experience in gender mainstreaming;
- Experience in facilitation to lead national discussions involving key experts and stakeholders from relevant national institutions;
- Excellent reporting skills;
- Experience in planning, management, and coordination of multi-national, bi-national or regional projects is an asset;
- Previous work experience in South Africa or in the Africa region related to Access to Genetic Resources and Benefit-Sharing;
- Working experience in an international organization or knowledge of UN policies, procedures and practices is an asset.

¹ The term “All inclusive” implies that all costs (professional fees, travel costs, living allowances, communications, consumables, etc.) that could possibly be incurred by the Contractor are already factored into the final amounts submitted in the proposal.

3.3 Language skills:

Excellent writing, editing, and oral communication skills in English;

8. Evaluation of Applicants

Applications will be evaluated based on a lowest priced technically responsive proposal.

The award of the contract would be made to the individual consultant whose offer has been evaluated and determined as:

a) responsive/compliant/acceptable, and

b) Having received the technical score of 70% and above with the lowest financial proposal

Only those candidates who obtained at least 70% of points in each of the steps of the process will be considered for financial proposal evaluation.

CRITERIA	WEIGHTED SCORE
• relevant education background	10
• 10 years of relevant experience in legislative drafting, policy development, gender mainstreaming, domestication of international obligations or drafting legal documents in similar environmental areas, biodiversity or natural resources management, including experience in Access to Genetic Resources and Benefit-Sharing at national or international levels	20
• Experience in planning, management, and coordination of multi-disciplinary projects	5
• Working experience in an international organization or knowledge of UN policies, procedures and practices	5
• Previous work experience in the region on issues related to Access to Genetic Resources and Benefit-Sharing	15
• Excellent writing, editing, and oral communication skills in English	5
• Good understanding of the main challenges to implement the Nagoya Protocol in the South Africa	10

9. Application procedures

The application should contain:

- **Cover letter** explaining why you are the most suitable candidate for the advertised position and a **brief methodological note on how the work will be undertaken** “describing the main challenges to implement the Nagoya Protocol in South Africa and providing the necessary guidance on how to conduct the national assessments and gap analyses, harmonisation benchmarks.”
- **Financial Proposal*** - specifying a total lump sum amount for the tasks specified in this advertisement. The financial proposal must include a breakdown of this lump sum amount (number of anticipated working days and any other possible costs). **Please note that the **financial proposal is all-inclusive** and shall take into account various expenses incurred by the consultant/contractor during the contract period*

Qualified candidates are requested to submit their proposals online via this email: procurement.za@undp.org by :28th October 2018 with subject titled “**Gap Analysis on existing National and Provincial Legislation relevant to Access and Benefit Sharing (ABS)** Reference #:50716