



TERMS OF REFERENCE

Individual Contractor

1. Assignment Information

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| Assignment Title: | International Consultant to develop National ABS Instruments, Administrative Measures and Procedure Guidelines to support the implementation of the Nagoya Protocol |
| Cluster/Project: | Programme and Results Unit |
| Post Level: | Senior Specialist |
| Contract Type: | Individual Contractor (IC) |
| Duty Station: | Based in MoE with travel to the project targeted provinces (in-country missions) within Cambodia |
| Expected Place of Travel: | Phnom Penh, Cambodia |
| Contract Duration: | 65 days (From February to May 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 bioprospecting and of access and benefit- sharing (ABS) national regime that is constrained by several factors. Cambodia has no existing

policy or legislation on ABS, excepted preliminary draft of ABS sub-decree, 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 (GR) 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 international consultant to develop the National ABS Instruments and Measure Procedures, including (i) ABS procedures and dossier of supporting legal instruments; (ii) Effective financial mechanism; and (iii) Administrative permitting system and check-points, including PIC and MAT and its guidance documents to support the implementation of the Nagoya Protocol.

3. Scope of Work and objective

Under the overall guidance and supervision of the National Project Director the selected International Consultant (IC) will work closely with Project Coordinator MoE and relevant institutions/stakeholders to complete the assignments.

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

- A. Develop national legislation on ABS including procedure for access of genetic resources:
 - a) Develop joint Prakas (MoE and MoEF) on filing fee of application for Access to GR or a TK and extension of Access Permit
 - b) Develop Prakas on the guideline for determination of providers; and
 - c) Develop legislative formats for implementation of ABS legislation as following:
 - 1. Application for Access to GR and TK
 - 2. Decision to Commence the Process
 - 3. Request for Extension of Validity Period of Decision to Commence the Process

4. Decision to Extend the Period of Decision to Commence the Process
 5. Decision to Request Further Submission
 6. Decision to Conduct Further Investigation
 7. Decision to Deny the Application
 8. Request for Access Permit
 9. Access Permit
 10. Request for Extension of Access Permit
 11. Decision for Extension of Access Permit
 12. Decision to Request Further Submission
 13. Decision to Deny Access Permit
 14. Decision to Revoke Access Permit and to Impose Administrative Fine
 15. Penalty Letters (Written Warning and Publication of Violator's Name)
 16. Penalty Letter (Letter of Seizure of Genetic Resources or Derivatives)
 17. Letter to Impose Administrative Fine; and
 18. Other relevant instruments that support to the implementation of National ABS Sub-decree and Nagoya Protocol, if necessary.
- B. 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; and
 - c) Develop ABS Financial Mechanisms (legal instruments/proclams) which include the provisions and procedures for establishment of the financial instrument(s), fund flow arrangements, guidelines for use and application of these funds and financial reporting procedures:
 - Develop/establish detailed modalities regarding benefit sharing on the minimum rate of benefit sharing for each type of Access and Utilization or type of benefit of Genetic Resources and Associated Traditional Knowledge ;
 - Develop Prakas (MoE) on ABS Financial Mechanism (ABS Fund) for receiving monetary benefits derived from Utilization of Genetic Resources and Associated Traditional Knowledge ; and
 - Develop joint Prakas (MoE and MoEF) on the Establishment and Management of Biodiversity Conservation Fund.
- C. Develop administrative and permitting system (PIC and MAT) for the implementation of 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 administrative measures and permitting system:

- Prior Informed Consent (PIC) ; and
- Mutually Agreed Terms (MAT) .
- e) Develop Prakas (MoE) on Check Point Establishment to ensure the compliance and the monitoring and tracking GR-TK ; and
- f) Develop guideline documents:
 - To access genetic resources and associated traditional knowledge;
 - To obtain PIC and to negotiate MAT establishment; and
 - To facilitate the implementation of checkpoints.
- D. Participate and present in the consultation meetings and workshops, including ABS Sub-TWG meeting;
- E. Consolidate the comments, recommendations and feedback from stakeholders' consultation meeting, workshop(s) and ABS Sub-TWG meetings with assistance from National Consultant
- F. Compile reports about the finding and documentation
- G. Submit the final documents and all related references to project management unit (PMU) and UNDP for reviewing and project director (PD) for approval; and

4. Expected Outputs and Deliverables

| No. | Deliverables/Outputs | # days | Target Due Dates | Review and clearance |
|------------|---|---------------|---------------------------------------|---|
| 1 | Deliverable 1: Approved the Inception Report with methodologies and details work plan | 3 days | 2 nd week of February 2022 | National Project Director and Programme Analyst |
| 2 | Deliverable 2: Submit to PMU, UNDP and MoE as follows: A. Draft national ABS instruments: (a) Joint Prakas (MoE and MoEF) on filing fee of application for Access to GR or a Traditional Knowledge (TK) and extension of Access Permit; (b) Prakas on the guideline for determination of providers; and (c) All listed legislative formats for implementation of ABS legislation from 1 to 19 above; B. Draft documents on ABS Financial Mechanism: (i) Detailed modalities regarding benefit sharing; (ii) Prakas (MoE) on ABS Fund; and (ii) Joint Prakas (MoE and MoEF) on the Establishment and Management of Biodiversity Conservation Fund; and C. Draft documents on administrative and permitting system: | 26 days | 3 rd week of March 2022 | |

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| | (i) Prior Informed Consent (PIC); (ii) Mutually Agreed Terms (MAT); (iii) Prakas (MoE) on Check Point Establishment; and (iv) Guideline documents to facilitate the accessing of GR-TK, obtaining PIC and MAT establishing, and check-point. | | | |
| 3 | <p>Deliverable 3: Address comments and inputs provided by PMU, ABS-sub-group and other relevant stakeholders and 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 a TK and extension of Access Permit; (b) Prakas on the guideline for determination of providers; and (c) All listed legislative formats for implementation of ABS legislation from 1 to 19 above;</p> <p>B. Final documents on ABS Financial Mechanism: (i) Detailed modalities regarding benefit sharing; (ii) Prakas (MoE) on ABS Fund; and (ii) Joint Prakas (MoE and MoEF) on the Establishment and Management of Biodiversity Conservation Fund; and</p> <p>C. Final documents on administrative and permitting system: (i) Prior Informed Consent (PIC); (ii) Mutually Agreed Terms (MAT); (iii) Prakas (MoE) on Check Point Establishment; and (iv) Guideline documents to facilitate the accessing of GR-TK, obtaining PIC and MAT establishing, and check-point.</p> | 36 days | 3 rd week of May 2022 | |

5. **Institutional Arrangement**

Under the supervision of the Project Director, the International Consultant will liaise day-to-day work with the National consultant and the Project Coordinator. 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. The deliverables will be submitted to the Project Director through UNDP's Programme Analyst who will review and share it with other relevant colleagues in MoE and UNDP for comments. Once the quality of the deliverable is satisfied by the National Project Director, the Head of

Programme Unit of UNDP will subsequently approve the payment release. The International Consultant will be responsible for his/her own transportation within Phnom Penh.

6. Duration of the Work

The assignment is expected to be completed within 65 days from February to May 2022. In Cambodia, the working week is from Monday to Friday. The consultant is expected to reserve some days for interview with stakeholders in Cambodia and produce the documents as stated in expected outputs and deliverables this ToR. It is expected that the final documents will be submitted by the 2nd week of May 2022.

7. Duty Station

The main duty station is Phnom Penh, Cambodia. Given the current situation of Covid 19, the consultant may work remotely, but if the situation is back to normal, the IC will be based at MoE Office for the total working days is 65 days. If foreseen travel outside Phnom Penh to the provinces (Siem Reap, Monduliri, Preah Vihear and etc..) is required and there is prior written agreement from the Project Director, the ABS project will cover the per diem up to 5 days.

The consultant should submit financial proposal covering the professional fee, airfare, travel and other related cost incurred when she/he is in Cambodia. Selected individual contract(s) who is expected to travel to Cambodia to undertake the assignment is required to undertake the Basic Security in the Field (BSAFE) training prior to travelling at <https://training.dss.un.org/course/category/6>

8. Minimum Qualifications of the Individual Contractor

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| Education: | <ul style="list-style-type: none"> At least Master or PhD (is preferable) degree in law or policy relevant to natural resource management or environmental science, genetic resources, ecosystem services, and/or related field. |
| Experience: | <ul style="list-style-type: none"> 5 years 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 and knowledge in ABS procedure, policy and legislation development in both user and provider countries Specific international or country experience working on programs, projects research through any international or bilateral organization on ABS, natural resources or negotiation related to fair and equitable sharing of benefit arising from the use of natural/genetic resources of the CBD will be an asset Experience working with a wide variety of development actors in Cambodia including with the Royal Government of Cambodia, international development organizations, private sector entities, and/or civil society organizations including community groups; and Experiences in ABS legislation development, especially ABS sub-degree development in Cambodia. |

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| Competencies: | <ul style="list-style-type: none"> • Strong analytical skills and ability in development of Policy and Frameworks; • 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; • Ability to understand Cambodia's context and communication in Khmer language; • 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: | <ul style="list-style-type: none"> • Fluency in written and spoken English required • Command of Khmer language is an asset. |

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

| Technical Evaluation Criteria | Obtainable Score |
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| At least 5 years relevant work experience in the preparation and development of law and regulatory instruments related to natural resources management and biodiversity conservation, particularly experience in ABS legislation development in Cambodia, including ABS supporting measure and mechanisms to implement the Nagoya Protocol | 20 |
| At least Master or PhD degree in law or policy relevant to natural resource management or environmental science, genetic resources, ecosystem services, and/or related field. | 20 |
| Experience in UNDP Programming cycle, applied rule and regulation, and experiences in ABS legislation development, especially ABS sub-degree development in Cambodia. | 30 |
| Country-specific working experience on the development of law and regulation related to ABS and/or NRM, projects and/or research supported by international or bilateral organizations. Specific international or country experience working on programs, projects research through any international or bilateral organization on ABS, natural resources or negotiation related to fair and equitable sharing of benefit arising from the use of natural/genetic resources of the CBD will be an asset | 30 |
| Total Obtainable Score: | 100 |

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 | 2 nd week of February 2022 | 20% |
| 2 | Upon satisfactory completion of Deliverable 2 | 3 rd week of March 2022 | 40% |
| 3 | Upon satisfactory completion of Deliverable 3 | 3 rd week of May 2022 | 40% |