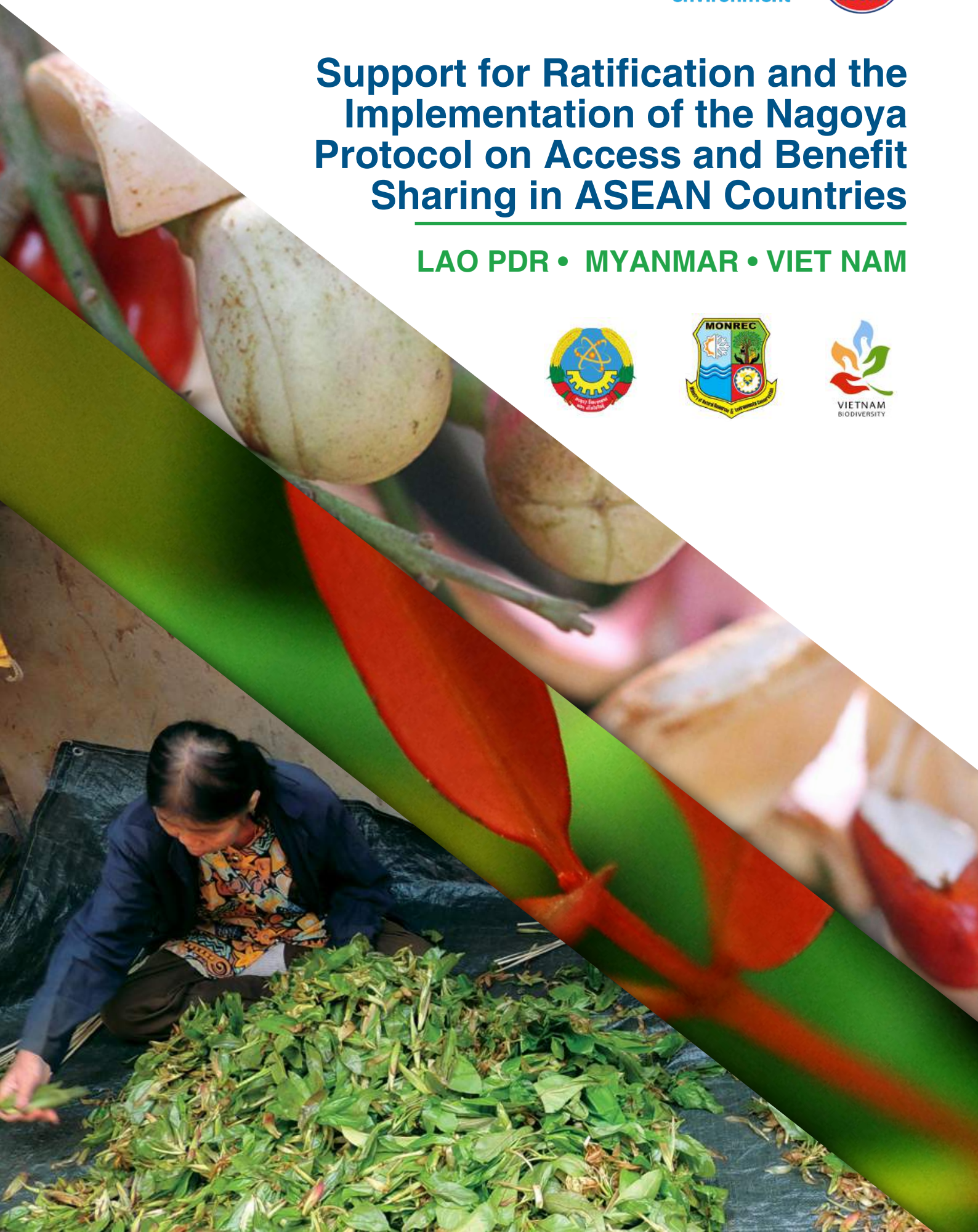




# Support for Ratification and the Implementation of the Nagoya Protocol on Access and Benefit Sharing in ASEAN Countries

LAO PDR • MYANMAR • VIET NAM





# **Support for Ratification and the Implementation of the Nagoya Protocol on Access and Benefit Sharing in ASEAN Countries**

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**Lao PDR • Myanmar • Viet Nam**

# **Report on the Project Support for Ratification and the Implementation of the Nagoya Protocol on Access and Benefit Sharing in ASEAN Countries**

June 2017

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# Table of Contents

<b>Project Final Report</b>	
<b>Project General Information</b>	<b>1</b>
<b>Project Completion</b>	<b>2</b>
<b>Project Results</b>	<b>9</b>
<b>Annex 1 National Completion Reports</b>	<b>20</b>
<b>Lao PDR</b>	<b>21</b>
<b>Myanmar</b>	<b>42</b>
<b>Viet Nam</b>	<b>57</b>
<b>Annex 2 Lessons Learned</b>	<b>81</b>



## Project Final Report

### Reporting Period

30 January 2016 to 31 August 2016

#### Project General Information

<b>Project Title:</b>	<b>Support for Ratification and the Implementation of the Nagoya Protocol on Access and Benefit Sharing in ASEAN Countries</b>
<b>Executing Agency:</b>	ASEAN Centre for Biodiversity
<b>Project partners:</b>	Biotechnology and Ecology Institute, Ministry of Science and Technology (BEI-MOST) - Lao PDR; Environmental Conservation Department, Ministry of Environment Conservation and Forestry (ECD-MOECAF) - Myanmar; Biodiversity Conservation Agency, Vietnam Environment Administration, Ministry of Natural Resources and Environment (BCA-VEA-MONRE) - Viet Nam; China-ASEAN Environmental Cooperation Center (CAEC); United Nations Environment Programme - Regional Office for Asia and the Pacific (UN Environment ROAP)
<b>Geographical Scope:</b>	Association of Southeast Asian Nations
<b>Participating Countries:</b>	China, Lao PDR, Myanmar, and Viet Nam
<b>UN Environment Sub-Programme:</b>	Ecosystem Management
<b>Overall objective:</b>	To provide technical support to countries to test approaches for equity in ecosystem management and addressing ABS, development and climate change adaptation
<b>Total budget:</b>	USD 184,380.00 (UN Environment-China)
<b>Co-Financing:</b>	USD 12,500.00 (Lao PDR); USD 5,055.00 (Viet Nam)
<b>Project actual start date:</b>	5 April 2015
<b>Project intended completion date:</b>	30 June 2016
<b>Project expected completion date:</b>	31 January 2017



### Narrative of project accomplishment summary

The Small-Scale Funding Agreement (SSFA) between the United Nations Environment Programme (UN Environment) Regional Office for Asia and the Pacific (ROAP) and the ASEAN Centre for Biodiversity (ACB) was signed on 03 April 2015, with the first amendment signed on 31 August 2015, second amendment signed on 16 September 2015, and the third amendment signed on 09 December 2016. The first amendment covered the inclusion for the development of a Project Identification Form (PIF) for Access and Benefit Sharing (ABS) implementation in Myanmar for Global Environment Facility (GEF)-6 support, the second amendment covered the additional fund support to cover the mission of the consultant in developing the PIF for Myanmar, while the third amendment covered the extension at no cost to provide sufficient time for Myanmar to close its report and the consultant to finalize the PIF.

Summary of accomplishments are the drafting of national regulatory and institutional frameworks, piloting of ABS measures, development of PIF for Myanmar, and conduct of a project closing meeting.

Highlights of this project were the provision of legal guidance by the commissioned regional expert to national experts (Myanmar and Viet Nam) and national project coordinator (Lao PDR) in drafting the national regulatory and institutional frameworks for Lao PDR, Myanmar, and Viet Nam during the First National Consultation-Workshops (Lao PDR and Viet Nam, both held in September to October 2015; Myanmar, (held in May 2016) and the Second National Consultation-Workshops (Lao PDR and Viet Nam, both held in January 2016; Myanmar, held in August 2016) and writeshop (Lao PDR, held in January 2016). The countries' frameworks were drafted based on discussions with national stakeholders, gap analysis, and recommendations. These frameworks are included in the project completion report of countries. Participants in the consultation-workshops included sectors from the agriculture, education, health, environment, non-governmental organizations (NGOs), and academe. A foreign private sector was able to attend the consultation-workshops in Lao PDR and Viet Nam through invitation by the host countries.

The national regulatory frameworks covered six key elements of the Nagoya Protocol (NP):

1. Access rules to genetic resources (GR) and traditional knowledge (TK) associated with GR (PIC through licensing/ permit requirements; legal certainty, clarity and transparency; fair and arbitrariness; clear rules for establishing mutually agreed terms (MAT) including dispute settlement clause; terms on benefit sharing and intellectual property right (IPR), third party use; and change of intent);
2. Fair and equitable sharing of benefits (presence of legal, administrative and policy measures; monetary and non-monetary benefits; and benefit sharing with indigenous peoples and local communities (IPLCs) through MAT);

3. Monitoring/ tracking rules (checkpoints; communication tools and tracking purposes; internationally-recognized certificate of compliance; and ABS Clearing-House (ABSCH));
4. Rules on Compliance (PIC and MAT in accordance with the legislation of other countries; and measures on non-compliance);
5. Rules on TK associated with GRs (access rules; benefit sharing rules; compliance rules; IPLC customary laws; and community protocols); and
6. Other considerations (measures on access for non-commercial research purposes; cases of imminent emergencies that threaten or damage human animal or plant; GRs for food and agriculture; transboundary cooperation; technology transfer; collaboration and cooperation; and Convention on Biological Diversity (CBD) provisions).

Key elements of national institutional frameworks include the following: Institutional Components for the National Focal Point, Competent National Authority, State Authorities and Divisional Governments, Appeals Committee, and other Agencies; and Institutional Mechanism for Coordination for Cabinet Committee on ABS, Parliamentary Liaison, Communities and other stakeholders.

## **Lao PDR**

### *First Consultation-Workshop*

Key issue discussed during the First Consultation-Workshop in Lao PDR was the overall lack of proper ABS regulations and legislation dealing with GR utilization across different sectors and their integration to government policies and strategies at the national level. The need to engage other sectors and to clearly define the responsibilities of involved ministries and agencies, e.g., Ministry of Science and Technology (MOST) as lead agency supported by the Ministry of Foreign Affairs (MOFA), the Ministry of Natural Resources and Environment (MONRE) and the Ministry of Health (MOH) was brought up. Close collaboration between MOST and MONRE is important given MONRE's direct participation to the CBD and the Project's link to National Biodiversity Strategies and Action Plans (NBSAP). As such, "one window port" was proposed as a system of coordination, monitoring and tracking system among involved ministries and agencies. The stakeholders' understanding of ABS was unclear in general. The scope of ABS, such as GR or biological resources, and activities utilizing GR under an ABS policy need to be communicated. Support is also needed on gathering baseline data on GR and TK documentation, especially on traditional medicine and medicinal plants, information and communication facility, and public awareness and information dissemination on ABS in preparation for its legislation and framework drafting. Multi-sectoral consultation involving business groups, scientific communities, and ethnic communities were regarded as important. Recognizing the rights of IPLC and their participation in ABS were considered for national policy.

## *Second Consultation-Writeshop*

The gap analysis of existing national laws related to ABS of Lao PDR presented during the Second Consultation-Writeshop provided that minor clarifications and adjustments need only be made to ensure that the ABS regulations of Lao PDR are aligned and consistent with the NP. The existing permitting or licensing system may already be considered as the PIC requirement, for formal inclusion of community protocols at the provincial level, and clearance among involved ministries should a “one window port” be implemented. MOST was proposed to expand its role as host of Biosafety CH to include ABSCH. The inclusion of benefit sharing in national laws was stressed. The Institute of Traditional Medicine’s experiences on implementing ABS may be regarded as access and fair and equitable benefit sharing rules under the TK and associated with GRs. Existing checkpoints and reporting system may already be used for monitoring and tracking and sharing of information, for inclusion of establishing an internationally-recognized certificate of compliance. Other considerations made in the drafting of the ABS Decree include: GRs that have no existing regulations, changes on intent when establishing MAT, including third party violations or non-compliance, rules on compliance on accessing GR with Prior Informed Consent (PIC) and MAT in accordance with the legislation of other countries, addressing situations of non-compliance, and dispute settlements, cases of viruses, pathogens, or imminent emergencies that threaten or damage human, animal or plant to include Pandemic Influenza Preparedness Framework of the World Health Organization, GRs for food and agriculture as signatory to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), as well as provisions on non-food/feed, chemical and industrial use, transboundary cooperation, technology transfer collaboration and cooperation.

## **Myanmar**

### *First Consultation-Workshop*

Discussions during the First Consultation-Workshop in Myanmar maintained that ABS is not mentioned in any of the national laws, thus a new decree was supported. TK as a matter of common heritage, and monetary and non-monetary benefit sharing in terms of community sharing were also discussed. Community participation and community rights over their TK were considered important. Research programs with MAT were encouraged at the national and regional levels. Existing permitting or licensing system may remain as is, for review of benefit sharing provisions and internationally recognized certificate of compliance. A review committee was proposed to serve as checkpoint on Intellectual Property application, market product approval, and food and drugs certification. Clarifications were made on the complementation of the CBD provisions with the provisions of World Intellectual Property Organization. Awareness raising campaign, human resources and research development activities on ABS were required. The purpose and importance of piloting ABS measure of the project was also clarified for better understanding.



## *Second Consultation-Workshop*

It was assessed at the Second Consultation-Workshop that Myanmar has a clear vision of prioritizing environmental conservation and protection based on its existing environmental laws, however, fair and equitable sharing as an overarching principle has yet to be realized. Monetary or non-monetary benefits in agreements and contracts were urged to be included and negotiated. Collaboration of key stakeholders are needed to define fair and equitable for Myanmar. The permit system of institutional bodies, e.g., National Land Use Advisory Body, Wildlife Conservation Committee, and their terms and conditions for giving permits are of essence contain ABS. Clarifications were made on the complementarities of NP and ITPGRFA on resources covered under the Standard Material Transfer Agreement (SMTA), however those dealing with chemical, pharmaceutical, and non-food feed industrial uses will revert to the NP permit systems. Issues on TK were stressed, through domestic law as appropriate, or at the international level through the NP. IPLCs and the State should sit down on the recognizing IPLC rights. It was considered that customary laws and practices need to be integrated with the national laws through proper consultation, and participation.

## **Viet Nam**

### *First Consultation-Workshop*

The key issues discussed during the First Consultation-Workshop on ABS in Viet Nam were based on the assessment of the Biodiversity Law and other national regulations related to ABS. The integration of scope and access rules of GR in the Biodiversity Law with community protocols and customary laws of IPLCs were discussed, as well as the streamlining of license issuance. There were clarifications on overlapping functions of involved authorities, e.g., MONRE and Ministry of Agriculture and Rural Development (MARD); and the Copyrights Office under the Ministry of Culture, Sports and Tourism, and MOST as competent agencies of the Biodiversity Law with regard to TK copyrights. Proper incorporation of TK in the legal system, with the guidance of MOST on the implementation of TK copyright was considered. Institutional arrangements that need to be settled include pursuing a single agency authority on ABS or a multi-agency authority, and defining of roles of the local government units and the Provincial Peoples' Committee. Quantifying fair and equitable benefit sharing and other related provisions involving IPLCs also needed to be resolved. The Intellectual Property Office was proposed to serve as checkpoint authority.

To address the identified institutional and regulatory framework gaps, Viet Nam proposed an ABS Roadmap 2020 that included action steps to be taken, as follows: a) develop a legal framework on ABS to be accomplished by 2017; b) develop capacity for ABS management by identifying a national agency on ABS; c) establish clear permit system, implementing PIC and MAT; d) promote researches on ABS and TK to be accomplished by 2018; e) develop a policy on ABS by participating on project strengthening ABS management and TK to be accomplished by 2015; f) develop a national database on GR and TK integrated into the national biodiversity

database, and a national ABSCH linked to the international ABSCH to be accomplished by 2020; g) awareness raising campaigns, trainings and workshop to be accomplished by 2020; and h) pilot an ABS policy measure to be accomplished by 2018. With MONRE as the identified agency to take the lead, proposed activities to implement ABS were: gathering of information from government agencies, research institutions international cooperation relating to GR for inputs on priority areas on ABS; consultations with experts on developing legal framework on ABS; collaboration with ministries, local authorities and communities in the management and research of GR; and collaboration with international organizations on their initiatives on ABS.

### *Second Consultation-Workshop*

Issues raised during the Second Consultation-Workshop in Viet Nam were based on the revised assessment of the legal and institutional frameworks incorporating the comments and recommendations in the First Consultation-Workshop. Discussions focused on arrangements on sharing of benefits with IPLCs as well as with holders of TK without copyright registration. Viet Nam has no specific laws on TK, and TK copyright has issues on expiration. The Biodiversity Law does not provide any procedures for accessing TK associated with GRs, and the question is whether it is time to take into account customary laws and community protocols and TK of the IPLCs. The feasibility and effectiveness of calculating benefit sharing was agreed to be based on mutual negotiation with the user, and monetary and non-monetary benefits sharing need to be weighed given that returns take a long time to materialize. Viet Nam need to decide whether the Plant Variety Protection certificate, as an IPR instrument, should also follow ABS regulations. Clarifications should be made whether the issuance of ABS license replaces other relevant licenses, to simplify and to fast track processes especially for non-commercial researches. Measures on addressing non-compliance especially on dispensing sanctions outside of Viet Nam was also taken up.

Piloting of ABS measures were done in Lao PDR (enhanced Material Transfer Agreement by the Biotechnology and Ecology Institute, MOST), Myanmar (enhanced Memorandum of Agreement (MOA) by the Biotechnology Research Department, Ministry of Education), and Viet Nam (suggested enhancements in the Memorandum of Understanding (MOU) by the Biodiversity Conservation Agency) as indicated in countries' completion reports. Finally, a GEF PIF on ABS implementation in Myanmar was developed.

### **Lao PDR**

Biotechnology and Ecology Institute and James Hutton Institute, Scotland Material Transfer Agreement (MTA), "Building mycological capacity for sustainable resource management in Lao PDR", on transferring plants, animals, and microorganisms found in Lao PDR. The MTA included a certification of origin and list of specimens. Its basic agreements include a yearly evaluation to update and to monitor MTA applications, and that the specimens transferred were for academic and scientific research purposes only will not be subject to any third party without prior execution of new MTA with Biotechnology and Ecology Institute (BEI). In addition,

no expressed or implied licenses or other rights under any patents, patent applications, trade secrets or other proprietary rights including altered forms of the specimens will be provided, and no expressed or implied licenses or other rights are provided to use the specimens for commercial purposes. This piloting provided the necessary experience for Lao PDR on how to align instruments to the provisions of the Nagoya Protocol. Furthermore, this piloting will be a precursor for Lao PDR to build their confidence in negotiating for MAT.

## **Myanmar**

Biotechnology Research Department (BRD), Ministry of Education, and the Yunnan Academy of Agricultural Sciences of China MOU on biotechnological research collaboration. The exchangeable materials may include agricultural resources, plant pathogens and microbial resources. An MOU previously used for science and engineering collaborations was enhanced and used on specific cases of cooperation or collaboration. Agreements on the MOU include ABS arrangements, provisions on equitable biological material exchanges including research result information exchange, third party participation, and intent of use as for research purposes only. The MOU also included clauses on insurance, biosafety and biosecurity, TK associated with GR, and publications and acknowledgement. The piloting of the MOU provided BRD the experience to enhance the instrument aligned to NP and also an opportunity to gain confidence in negotiating MAT.

## **Viet Nam**

There were five cases of ongoing collaborations wherein Biodiversity Conservation Agency (BCA) provided interventions to pilot their ABS measures, as follows:

- a) Hanoi National University of Education and a Japanese Institute on scientific research on taxonomy, life history and population genetics of gobies in Viet Nam. The agreements included collection of samples in both institutions for further research and museum display, provision of funds and equipment to implement the research, and trainings relevant to the research in Viet Nam and in Japan. BCA provided guidance in terms of providing more details on the MOU, especially on publication of research results, intellectual property rights, provisions in cases of third party research, application of the collected GR, including storage and conservation of GR. In case of potential commercialization, requirements for information sharing and periodic reporting to MONRE must be followed.
- b) Viet Nam Agricultural University and Plant Varieties Corporate of the Netherlands on the collection and research of wild and native plant varieties, especially for antibodies against epidemics. BCA provided guidance in terms of requesting specifications on the access of GRs of the cooperation, and to follow existing regulations on collecting GRs in national parks and nature reserves, and the Biodiversity Law. Guidance were also provided regarding publication of research results, applications, storage

and conservation of collected GR. Remarks were given regarding arrangements on benefit sharing, IPR, information sharing, and periodic reporting of the research results.

- c) A Vietnamese and a French private pharmaceutical company on biochemical experiments on plants for pharmaceutical, pesticide, and cosmetic purposes. The agreements of the collaboration included arrangements on specimen transfer from Viet Nam to France, sharing of benefits to native local communities through monetary and non-monetary benefits, IPR and technology transfer. BCA provided guidance in terms of access rules for commercial purposes in accordance to the NP and existing ABS-related regulations of Viet Nam.
- d) National Research Institute of South Korea and Vietnam Environment Administration MOU on survey and research activities, information exchange through learning missions and conferences/ workshops on conservation, sustainable use of biodiversity and ABS.
- e) Assessment on the MAT of Sapa Native Products Trading Joint Stock Company (Sapa Napro Co., Ltd.) Company, a local joint stock company engaged with the Dao and Hmong ethnic farmers on producing traditional medicinal bath products. BCA conducted consultations with the company including its stakeholders, and provided guidance in terms of assistance in following the access rules of the Biodiversity Law by the ethnic groups to conserve and sustainably use the resources as an equivalent responsibility. Another remark was on the benefit sharing arrangements should be placed into formal contracts. There is also a need to register the IPR of the products.

A project closing meeting was held on 17-18 October 2016, in Hanoi, Viet Nam. The Meeting discussed in detail the project accomplishments, potential future activities for implementation, and preparation for a side event in Cancun. The Meeting was conducted at the Fortuna Hotel in Hanoi, Viet Nam. Fifteen participants from national and regional project participating organizations, including the Chinese Research Academy for Environmental Sciences, attended the meeting. Additionally, 20 individuals from Viet Nam attended the presentation of the draft Viet Nam Decree on 17 October 2016. A site visit was made by ACB on 19 October 2016 in Sa Pa, Lao Cai province, Viet Nam. The visit highlighted the benefit sharing scheme of Sapa Napro Co., Ltd. and potential technical assistance of National Park office on the propagation of essential genetic resource for a product manufactured by Sapa Napro Co., Ltd..

The following are the main points and ideas for future areas for collaboration discussed at the Meeting:

- a) The technical assistance provided by National ABS Experts and the Regional ABS Expert and their collaboration in reviewing the countries' ABS-related laws, regulatory and institutional ABS frameworks and ABS Decrees, and in contributing to finalizing their pilot ABS measures were invaluable and essential in the success of the implementation of the project in the countries;

- b) The importance of certainty, clarity and transparency of ABS implementation were emphasized especially on the rules of access to GR, TK associated with GR, fair and equitable sharing of benefits, monitoring and tracking, compliance rules, and other considerations;
- c) ABS implementation at the national level need not reinvent new policies, but refine them in accordance to NP. Existing regulations need only be articulated as the requirements of NP, especially on access rules. It is the benefit sharing arrangement that is needed to be enhanced;
- d) Dealing with TK depends on each country, and the CBD and NP leave matters on TK and IPLC to national legislation;
- e) NP-ABS provisions were made to be mutually supportive of the implementation of the ITPGRFA;
- f) The role and composition of the ABS Committee were of interest among the countries;
- g) The importance of collaboration with all stakeholders and delegation of powers were stressed in implementing ABS. It is best to be facilitative and learn from actual experiences;
- h) There is a need to improve on how the piloting of ABS measures were presented;
- i) Some of the next stages of the ABS framework implementation are tracking matters related to utilization, IPR, and technology transfer; and
- j) Each country presented a proposed 4-year roadmap on implementing ABS, which included the adoption of ABS Decree, awareness-raising activities and capacity development, among others. The action steps in the roadmap may be utilized as guide for future initiatives related to ABS.

Project expenditures totalled to USD 183,281.90 as of 31 January 2017 as reflected in the Financial Report.

## Project Results

### Information on the delivery of the project

<p>1. Agreement with selected ASEAN Member States (AMS) on national work plan</p>	<p>Strengthened the collaboration among UN Environment, CAEC, ACB and project participating countries: Lao PDR, Myanmar and Viet Nam; Successfully implemented work plans within project duration and delivered outputs (Lao PDR – June 2016; Myanmar – August 2016; Viet Nam – June 2016).</p>
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Outputs/Activities	Results/Outcomes
<p>2. Analysis report on selected ABS regulatory and institutional frameworks in selected AMS</p>	<p>Served as basis for project participating countries' enhancement of draft frameworks (Lao PDR: Frameworks assessment and Gap analysis; Myanmar: Gap analysis; Viet Nam: Frameworks assessment and Gap analysis).</p> <p><b><u>Lao PDR</u></b></p> <p>Existing ABS-related laws in Lao PDR were reviewed, consultation-workshops with key stakeholders and a small group consultation-writeshop were conducted to gather comments and recommendations in order to come up with the ABS frameworks assessment and gap analysis. Below details the key findings:</p> <p><i>Access rules to GR and TK associated with GR</i>  There is a need to explicitly mention that the licensing requirements for access to GRs are the PIC requirement of NP. The access rules of involved agencies must be consolidated. ABS regulations on the application, procedure, and criteria for obtaining PIC must be put in place. There are clear rules for establishing MAT regarding dispute settlement, terms on benefit sharing and intellectual property rights, third party use, and change of intent.</p> <p><i>Fair and equitable sharing of benefits</i>  Characteristics of fair and equitable sharing of benefits need to be identified, especially details on monetary and non-monetary benefits with IPLCs through MAT.</p> <p><i>Monitoring and tracking rules</i>  Checkpoints in existing regulations need to be clarified, including reporting requirements, and effective communication tools and systems for tracking purposes. The licensing and access permits should be clarified as the internationally-recognized certificate of compliance.</p> <p><i>Rules on compliance</i>  Measures on GRs utilized in Lao PDR have been accessed with PIC and MAT in accordance with the legislation of other countries, as well as measures on non-compliance, and obligation to cooperate. Provisions on dispute settlement and ADR, opportunity to seek recourse in the legal system, and measures on access to justice and mechanisms for mutual recognition and enforcement of foreign judgments and arbitral awards.</p> <p><i>Rules on TK associated with GRs</i>  Access fair and equitable sharing of benefits, and compliance rules on TK associated GRs need to be cleared out. Provisions on taking into account IPLC customary laws, community protocols, and minimum requirements of MAT need to be included.</p>



Outputs/Activities	Results/Outcomes
	<p><i>Other considerations</i></p> <p>Specifications on simplified measures on access for non-commercial research purposes need to be further developed. Clarifications on cases of imminent emergencies that threaten or damage human, animal, or plant are needed. Further details on GRs for food and agriculture need to be included. Ways on carrying out transboundary cooperation, such as ASEAN member states, need to be included and elaborated. Recommendations on how technology transfer, collaboration and cooperation may be accelerated or up-scaled need to be included.</p> <p>With regard to CBD provisions, there was no mention on specific policy guidance on how to deal with the rights of IPLCs on TK associated GRs. National legislation recognizing the sovereign rights of states over their natural resources also need to be clarified as there are conflicts on legal mandates. Access to and transfer of technology and distribution of benefits from biotechnology need also be included.</p> <p><b><u>Myanmar</u></b></p> <p>Existing environmental laws were reviewed and consultation-workshops were conducted to come up with a draft institutional and policy frameworks assessment. Below are few of the key findings in the assessment:</p> <p>Myanmar has clear vision of prioritizing environmental conservation and protection based on its existing environmental laws, but there needs to be clarity on sharing of benefits. Key stakeholders need to collaborate and define what is fair and equitable for Myanmar. The existing permitting or licensing system of institutional bodies, e.g. National Land Use Advisory Body, Wildlife Conservation Committee may remain as is, but there is a need to review them whether they contain provisions on benefit sharing. Traditional knowledge, as a matter of common heritage, needs to be more clarified, and community participation was highly regarded as important in dealing with their TK, recognizing their rights over their TK. IPLCs and the State should sit down on the recognition of their rights, and customary laws and practices by IPLCs need to be integrated with the national laws through proper consultation, and community participation. A creation of a review committee was also proposed which will serve as checkpoint. There needs to be a common understanding on NP-ABS and its complementation with ITPGRFA.</p>

Outputs/Activities	Results/Outcomes
	<p><b><u>Viet Nam</u></b></p> <p>Existing ABS-related laws, especially the Biodiversity Law, were analyzed whether they were aligned with the NP, CBD, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provisions including the Aichi Targets. Consultation-workshops were also conducted to get the comments and recommendations from the key stakeholders. These were consolidated and incorporated to come up with the frameworks assessment and gaps analysis. Below are few of the key findings in the analysis:</p> <p><i>Access rules to GR and TK associated with GR</i> Licensing requirement must be explicitly mentioned as the PIC requirement of the NP, arising from the public ownership of GRs, and is the same for the ABS requirement in other ABS regulations. Access rules from various national laws and mandates of agencies must be consolidated into a one accessible format. Rules on changes on intent must be clarified.</p> <p><i>Fair and equitable sharing of benefits</i> The principle of fair and equitable sharing of benefits needs to be clarified and included in the ABS-related laws, and the provisions for benefit sharing prior to the NP need to be included and put forward a claim before the Global Multilateral Benefit Sharing Mechanism.</p> <p><i>Monitoring and tracking rules</i> Checkpoints need to be designated, including the Intellectual Property Office and the agency dealing with export of GRs. Include reporting requirements and communication tools and systems for tracking purposes. Clarify is existing access permits are the established internationally-recognized certificate of compliance linked to the ABS CH</p> <p><i>Rules on compliance</i> It should be clarified if there is provision on GRs utilized in Viet Nam have access to PIC and MAT in accordance with the legislation of other countries. Measures on non-compliance need to be in place. There is a need to have provisions on dispute settlements, measures on access to justice and mechanisms for mutual recognition and enforcement of foreign judgment and arbitral awards.</p> <p><i>Rules on TK associated with GRs</i> A policy decision need to be made on the access rules, fair and equitable sharing of benefits, and compliance rules on TK associated GRs, taking into account IPLC customary laws, and community protocols and procedures.</p>

Outputs/Activities	Results/Outcomes
	<p><i>Other considerations</i></p> <p>A policy decision needs to be made on simplified measures on access for non-commercial research purposes. Provisions should take into consideration cases of imminent emergencies that threaten or damage, human, animal, or plant, GRs for food and agriculture, transboundary cooperation, technology transfer, collaboration and cooperation.</p> <p>Convention on Biological Diversity provisions on a national legislation recognizing the rights of IPLCs on TK wherein the TK copyright as a legal instrument promoting the wider application of TK. Make clear on the national legislation on the sovereign rights of states over their natural resources, on the access to and transfer of technology, distribution of benefits from biotechnology</p> <p>The details of the access regulations show compliance with the legal certainty, clarity and transparency requirement of the Nagoya Protocol. It was noted that Viet Nam's access rules are based on its Biodiversity Law and other ABS legal regulations. The National Expert's report made a good suggestion to clarify what is access and what is utilization but there are varying mandates of other ministries/agencies. It was suggested that the various ABS rules be put together in one accessible and cross-referenced format; another way suggested this can be done is by clarifying the mandates of the various agencies (MONRE, MARD, MOST and PPC) on ABS.</p>
<p>3. National consultation-workshop report from each selected AMS</p>	<p>Provided relevant information about NP-ABS to stakeholders in Lao PDR, Myanmar and Viet Nam who may assist in the finalization of the frameworks on ABS in their countries; capacitated participants in understanding about ABS (Lao PDR: 4 meetings; Myanmar: 2 meetings; Viet Nam: 2 meetings).</p> <p><b><u>Lao PDR</u></b></p> <p>The First Consultation-Workshop on Implementing NP on ABS on 30 September-1 October 2015 in Vientiane, Lao PDR brought together 35 participants from government line ministries, including the MONRE, Ministry of Agriculture and Forestry, Ministry of Public Health, Ministry of Industry and Commerce, and the MOST. Also present were from the faculties of the National University of Laos and the Forestry Research Center. A representative from the Secretariat of the CBD, Food and Agriculture Organization, and Nimura Genetic Solutions Co. Ltd. were especially invited to speak at the Consultation Workshop. Lao PDR presented a summary of constraints on implementing ABS policy. The ABS Regional Expert provided a general assessment for Lao PDR.</p> <p>The Consultation-Workshop on Implementing NP on ABS on 18-21 January 2016 in Vientiane, Lao PDR was participated by 13 representatives from the Biotechnology Ecology Institute-Ministry of Science and Technology, Department of Livestock and Fisheries-Ministry of Agriculture and Forestry,</p>

Outputs/Activities	Results/Outcomes
	<p>and Faculty of Science-National University of Laos, Institute of Traditional Medicine-Ministry of Health, including a forestry sector consultant, with the supervision of the ACB. Lao PDR, together with the Regional ABS Expert, reviewed the gaps on its current ABS administrative framework and existing policies related to ABS. The Regional ABS Expert drafted a decree on ABS based on their gap analysis and policy review discussions. Lao PDR outlined their roadmap for ABS regulation for the next four years, 2016-2020.</p> <p><b><u>Myanmar</u></b></p> <p>The First Consultation-Workshop on Implementing the NP on ABS in Myanmar held in 24-25 May 2016 in Nay Pyi Taw, Myanmar was attended by 40 participants representing the ministries, government agencies and NGOs. Delegates from the Education, Health, Agriculture, Livestock and Irrigation, Natural Resources and Environmental Conservation offices were there, including the Attorney General and Intellectual Property offices. Non-government offices in attendance included the Wildlife Conservation Society, Biodiversity and Nature Conservation Association, Myanmar Environment Institute, and Myanmar Environment Rehabilitation-conservation Network. A representative from the Traditional Herbal Companies, a private sector, was also invited. Co-organizing the Consultation-Workshop were the ACB and UN Environment-ROAP. UN Environment made a presentation about the UN Environment-China Trust Fund project on ABS. ACB presented on behalf of the Secretariat of the Convention on Biological Diversity (SCBD) about the international development on implementing NP-ABS including key features about the NP-ABS. The national ABS Expert presented a Draft ABS Institutional and Policy Framework for Myanmar based on the case presentations and discussions with the stakeholders. A roadmap on implementing ABS in Myanmar was developed during a workshop. Possible institutions to be involved in the piloting of the ABS measure have been identified but subject to a joint approval of ECD-MONREC and Biotechnology Research Department of the Ministry of Education.</p> <p>The Second Consultation-Workshop on Implementing Nagoya Protocol on ABS in Myanmar on 9-10 August 2016 in Nay Pyi Taw, Myanmar gathered 70 delegates from various government offices, research institutions and universities, NGOs and international organizations, including UN Environment Consultant working on the GEF-6 PIF proposal. Existing environmental legislations and their relation to ABS were presented by the National ABS Expert, to which the Regional ABS Expert built on together with the comments from and discussions with the participants and presented a Revised ABS Institutional and Policy Framework. The Biotechnology Research Department-Ministry of Education (BRD-MOE) also shared their accomplishments on the implementation of piloting ABS measures especially on the process of developing their MOU template.</p>

Outputs/Activities	Results/Outcomes
	<p><b><u>Viet Nam</u></b></p> <p>The First Consultation-Workshop on Assessment of Legal Framework and Institutional Setting on Genetic Resources Management and Gap Analysis for Implementing NP on ABS on 28 September 2015 in Hanoi, Viet Nam was attended by 50 delegates representing the ministries of agriculture and rural development, health, industry and trade, science and technology, natural resources and environment and other related government agencies joined the Biodiversity Conservation Agency, Vietnam Environment Administration together with ACB and UN Environment-ROAP, with special invitation to the SCBD. Viet Nam presented a comprehensive review of their policies related to ABS. The Regional ABS Expert provided an assessment on the review of Viet Nam's policies based on the requirements of NP-ABS, CBD, and the UNDRIP. Viet Nam identified way forward on piloting ABS measures including their Second Consultation-Workshop.</p> <p>The Second Consultation Workshop on Assessment of Legal Framework and Institutional Setting on Genetic Resources Management and Gaps Analysis for Implementing NP on ABS on 15 January 2016, in Hanoi, Viet Nam gathered 56 participants from ministries, research institutes, universities, and business sector in the country, including Sapa Native Products Trading Joint Stock Company (Sapa Napro Co., Ltd.), and a special invitation was given to Nimura Genetic Solutions Co., Ltd. (NGS). The National ABS Expert presented a re-assessment of the legal framework, institutional setting, and gap analysis on ABS in Viet Nam. The Regional ABS Expert provided a feedback on the review of Viet Nam's policies based on the requirements of NP-ABS, CBD, as well as further recommendations from previous assessment report. There were also presentations on international and local experiences on implementing ABS in Japan, India and Viet Nam.</p>
<p>4. New or enhanced ABS regulatory and institutional frameworks from selected AMS</p>	<p>Served as basis for government discussion, enhancement, consideration, and/or approval; Capacitated participants in facilitating the operationalization of Nagoya Protocol on ABS in their country.</p> <p>The national regulatory framework covered six key elements of the NP:</p> <ol style="list-style-type: none"> <li>1. <i>Access rules to GR and TK associated with GR (PIC through licensing/ permit requirements, legal certainty, clarity and transparency, fair and arbitrary, clear rules for establishing MAT including dispute settlement clause, terms on benefit sharing and IPR, 3rd party use, and changes of intent);</i></li> <li>2. <i>Fair and equitable sharing of benefits (presence of legal, administrative and policy measures, monetary and non-monetary benefits, benefit sharing with IPLCs through MAT);</i></li> </ol>

Outputs/Activities	Results/Outcomes
	<p>3. <i>Monitoring/Tracking rules</i> (checkpoints, communication tools and tracking purposes, internationally-recognized certificate of compliance, ABSCH); 4. Rules on Compliance (PIC and MAT in accordance with the legislation of other countries, measures on non-compliance);</p> <p>5. <i>Rules on TK associated with GRs</i> (access rules, benefit sharing rules, compliance rules, IPLC customary laws, community protocols); and</p> <p>6. <i>Other considerations</i> (measures on access for non-commercial research purposes, cases of imminent emergencies that threaten or damage human animal or plant, GRs for food and agriculture, transboundary cooperation, technology transfer, collaboration and cooperation, CBD provisions).</p> <p>The key elements of the national institutional frameworks include the following: Institutional Components for the National Focal Point, Competent National Authority, State Authorities and Divisional Governments, Appeals Committee, and other Agencies; and Institutional Mechanism for Coordination for Cabinet Committee on ABS, Parliamentary Liaison, Communities and other stakeholders.</p> <p>The frameworks will be set as basis for further improvement or discussion with appropriate key stakeholders for the finalization and adoption as a legislative, administrative or policy measure.</p>
<p>5. Report on piloting of administrative or policy measures to implement community protocols, bioprospecting, and/or biotechnology research as identified priority by selected AMS</p>	<p>Provided documentation of practical enhancement or application of ABS instruments (Lao PDR – Enhanced Material Transfer Agreement; Myanmar – Enhanced Memorandum of Understanding between BRD and Chinese academy; Viet Nam – conceptualization of agreement between Sapa Napro Co., Ltd. and local community, enhancement of MOU between Hanoi National University of Education and a Japanese Institute, enhancement of MOU between Vietnam Academy of Agriculture and Netherland company, and development of agreement between VEA and NIBR-Korea).</p> <p>These enhancements were the inclusion of relevant key elements of the NP into the documents such as matters relating to PIC, MAT, TK, and compliance.</p>
<p>6. PIF for the implementation of the Nagoya Protocol on ABS for submission to the GEF Secretariat</p>	<p>Met with selected stakeholders in Myanmar and discussed potential areas for implementation of ABS activities.</p>
<p>7. Project coordination and technical support</p>	<p>Provided project management support to countries to deliver work plan within scope, cost and schedule. Furthermore, disseminated project related activities at the ACB website:</p> <p><a href="https://aseanbiodiversity.org/key_programme/building-capacity-of-countries-in-support-of-the-development-and-implementation-of-national-abs-frameworks/">https://aseanbiodiversity.org/key_programme/building-capacity-of-countries-in-support-of-the-development-and-implementation-of-national-abs-frameworks/</a></p>



## List of Lessons Learned and Good (Best) Practices

### 1.1.1. Institutional Arrangements, including Project Governance

- 1.1.1.1. A regional inception workshop for the country project coordinators could help in collectively discussing and understanding of the project scope, schedule, budget, risk, resources, and quality.
- 1.1.1.2. As a matter of ASEAN protocol, there is a need to put in place Project Steering Committee with members from the AMS and representatives of China Trust Fund/CAEC and UN Environment-ROAP. The normal practice is to have a project steering committee to provide high-level guidance and support to implement the project. With the given budget and project duration, the project steering function was done by the Executive Committee of ACB with close coordination with UN Environment-ROAP Programme Officer. It would be ideal to include members of the ASEAN Working Group on Nature Conservation and Biodiversity (AWGNCB).

### 1.1.2. Engagement of the Private Sector

- 1.1.2.1. Involving key stakeholders, such as the private sector, is very much needed. This sector's participation was encouraged during national workshops.
- 1.1.2.2. The collaboration with private sector during the workshop could help facilitate in mainstreaming ABS in the business sector.

### 1.1.3. Capacity Building

- 1.1.3.1. The project provided an opportunity to develop the capacity of participating countries' key stakeholders by having them implement activities in their countries with guidance from ABS negotiator from the region and participation of regional and international agency representatives.
- 1.1.3.2. Design of capacity building activities could be developed by executing agencies and approved by the Project Steering Committee. This would provide official endorsement of the project design for capacity building activities. Nevertheless, the project's benefits for the countries were concurred by the agencies through the Work Plan.
- 1.1.3.3. The progress made by this project in selected countries and ACB could be sustained with another phase of project on ABS with regional scope.

### 1.1.4. Factors that Improve Likelihood of Outcome Sustainability

- 1.1.4.1. Policy development relevant to the implementation of the theme would be beneficial and contributory to the sustainability of the outcome. Specific to this project, the indication in official documents (NBSAP and National Report) on the theme or concern with progressive activities is likely to provide sustained activities and support in the country. Moreover, with the accession of the project's participating countries to the Nagoya Protocol on ABS, this

inevitably requires them as Parties to put in place legislative, administrative or policy measures and to implement and enforce these measures.

- 1.1.4.2. With the result from this project, it is expected that project participating countries would be able to further improve on the frameworks for adoption of legislative, administrative or policy measures.

#### 1.1.5. Financial Management and Co-financing

- 1.1.5.1. General flexibility on budget reallocation was well appreciated, including those of timely releases of funds and guidance from UN Environment-ROAP.
- 1.1.5.2. Country reports of co-financing (in-kind financing) should be included to show the investments of partners to the project.
- 1.1.5.3. A conventional method of transferring project funds from the Philippines to Myanmar was done due bank policy restriction. This was addressed by jointly discussing between ACB and MONREC on how to transfer funds. It was agreed that the funds would be deposited to the bank account of MERN-Myanmar, an NGO, and MERN will facilitate transfer to the bank account of Environment Conservation Department.. It has only recently that bank policy restriction on fund transfer from Philippines to Myanmar has been lifted. As such, future project fund transfer could be done through electronic means from the Philippines to Myanmar.

#### 1.1.6. Partnership

- 1.1.6.1. The project has been made a success due to the financial and technical support of the donor, China Trust Fund, and partners, SCBD, UN Environment, MOST-Lao PDR, ECD-MONREC-Myanmar, and BCA-VEA-MONRE-Viet Nam.
- 1.1.6.2. Future endeavor in these countries will involve these existing network of supporters and to expand to other complementing organizations to further improve the capacity of stakeholders in implementing ABS.

### **List of attached documents (Annexes)**

#### 1. National Completion Reports

1.1. Lao PDR

1.2. Myanmar

1.3. Viet Nam

#### 2. Lessons Learned



ABS Project Closing Meeting held in Hanoi, Viet Nam in 17-18 October 2016



ACB's visit to the office of Sapa Napro Co., Ltd. in Sa Pa, Viet Nam.

# **Annex 1**

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## **National Completion Reports**





# Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks

## LAO PDR





# **Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks: Lao PDR**

Ms. Kongchay Phimmakong,  
ABS National Project Coordinator

Vientiane, Lao PDR

March 2016





**Lao People's Democratic Republic**  
Peace Independence Democracy Unity Prosperity

Ministry of Science and Technology

Vientiane, date: 11 MAR 2016

Atty. Roberto. V. Oliva  
Executive Director  
ASEAN Center for Biodiversity

**SUBJECT:** Completion Report of the regional project "Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks: Lao PDR"

Dear Mr. Atty. Roberto. V. Oliva,

The government of Laos through the Biotechnology and Ecology Institute (BEI), Ministry of Science and Technology, has a pleasure to submit the completion project report of the regional project "Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks: Lao PDR"

The Lao Government has signed ABS Work Plan with the ASEAN Centre for Biodiversity on April 25, 2012 under the regional project of Building Capacity for Regionally Harmonized National Processes for Implementing CBD Provisions on Access to genetic Resources and Sharing Benefits. Additional agreement was signed in June 2016 under the ACB-UNEP China Trust Fund of a small scale funding agreement 2015-CFL-5714-2L28-1141. The project is called *Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks: Lao PDR* which the project shall be completed in ten months from June 2015 to March 2016.

Please find attached a set of our completion reports.

Sincerely yours,

Dr. Souriodong SUNDARA  
Nagoya Protocol National Contact Point

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Biotechnology and Ecology Service Center, Biotechnology and Ecology Institute, Km 14, Thangon Road, tel/fax: 856 21 740360

## Project Title

The project title is “Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks: Lao PDR”.

## Start and Completion Dates

The Lao Government signed the Access and Benefit Sharing (ABS) Work Plan with the ASEAN Centre for Biodiversity (ACB) in June 2015 under the regional project for Implementing Convention on Biological Diversity (CBD) Provisions on Access to Genetic Resources and Sharing Benefits. The main objective of the work plan was to provide technical support to Lao PDR in developing and implementing appropriate ABS frameworks. Under this project, several activities were carried out including consultation-workshops, national data inputs, providing technical support, undertaking of pilot administrative measures and regional cooperation promotion. The project was completed on 31 March 2016.

## Reporting Period

A set of substantive progress and expenditure reports were submitted by Biotechnology and Ecology Institute (BEI) to ASEAN Centre for Biodiversity (ACB) before the release of the second fund according to the signed agreement. This is the final technical report for the project duration between June 2015 and March 2016.

## National Implementing Agencies

This project was undertaken by Biotechnology and Ecology Service Center, BEI, Ministry of Science and Technology which is monitored by the Nagoya Protocol National Focal Point.

## Supporting Agencies

This project is financially supported by the China Trust Fund, with the involvement and support of international and national agencies. Those international supporters are ACB, United Nations Environment Programme-Regional Office for Asia and the Pacific (UN Environment-ROAP), Secretariat of the Convention on Biological Diversity (SCBD), Agro-Biodiversity Project (ABP-Global Environment Facility-Ministry of Agriculture and Forestry-United Nations Development Programme-Food and Agriculture Organization) and Nimura Genetic Solutions Co., Ltd. There were many national agencies that were included in the project activities such as BEI, Ministry of Science and Technology, Institute of Traditional Medicine, Ministry of Health, Department of livestock and Fisheries, Department of Agriculture, Ministry of Agriculture and Forestry, Import and Export Department, Ministry of Industry and Commerce, Ministry of Natural Resources and Environment, and the Faculties of Forestry, Agriculture and Science of the National University of Laos.

## Executive Summary

The Ministry of Science and Technology of Lao PDR and BEI have signed the work plan with ACB in June 2015 under the regional project of Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks: Lao PDR. The project duration was between June 2015 and March 2016. The total amount of the project is USD 22,400 which was supported by the ACB-UN Environment China. The project aimed to provide technical support for developing regulatory and institutional ABS frameworks.

Consultation meetings were conducted with the involvement of concerned government agencies, representatives from ACB, UN Environment, and a regional expert. Discussions were held with the staff of BEI in Vientiane Capital. The activities focused on the review of the status of ABS regulatory and institutional frameworks, providing technical support, and the priorities of piloting administrative measures. The stakeholder consultations on the ABS regulatory and institutional frameworks was also used as forum for sharing experiences and analyzing issues on biodiversity activities which is related to ABS. An assessment report and an analysis of ABS regulatory and institutional frameworks were done in order to support the national ABS framework implementation (see Annexes B and D1). Moreover, reports on discussion of piloting administrative measures were also used as an output of the project implementation (see Annex E). All outputs and recommendations from local stakeholders and the regional expert will be used for enhancing Lao PDR's ABS regulatory and institutional frameworks, especially the ABS regulation.

## Objectives

The main objectives of the project are the following:

- Provide technical support for developing ABS regulatory and institutional frameworks;
- Undertake piloting of administrative or policy measures to implement community protocols, bioprospecting, and/or biotechnology research, depending on priorities identified in the country; and
- Support the organization and contribute technically to promote regional cooperation, knowledge sharing, and learning on ABS within ASEAN Member States (AMS) and China.

## Discussions and Accomplishments

In attaining the above objectives, internal meetings at BEI and stakeholder consultations were conducted to gather data, discuss on the ABS regulatory and institutional frameworks, and identify priority areas of administrative measures. The stakeholder consultations on the ABS regulatory and institutional frameworks have been used as a forum for sharing experiences, collecting data and analyzing issues on biodiversity or genetic resource activities in the

country. Moreover, related policies, regulations, case studies, project activities, and relevant documents have also been highlighted and discussed in the workshops. Only two national workshops have been planned at the earlier project designed; inputs from key stakeholders, from the Nagoya Protocol National Focal Point and from the Regional Expert however is a reason to extend the meetings in order to meet the project expectations. Several consultation meetings were conducted to assess the status of regulatory and institutional management and to identify priority areas of piloting administrative measures (see Annexes C1-5). A concrete example is the writeshop held on 18-21 January 2016 (see Annex C6) that is a result of the discussion between ACB, the regional expert, the stakeholders and BEI, based on the assessment of existing regulatory and institutional frameworks on ABS.

Gap analysis of the frameworks were done by the regional expert with inputs from representatives from Department of Livestock and Fisheries, Traditional Medicine Research Centre, the National University, and BEI is an outstanding output from the writeshop and the project. This significant analysis serves as an enhancement of the country regulatory and institutional frameworks which includes several ABS components such as access and fair and equitable rules, monitoring and tracking, rules on compliance, rules on traditional knowledge associated with genetic resources and other considerations under the CBD provision (see Annex D1). The most important is that the assessment report from the consultations and gap analysis are used to serve as key project outputs to enhance regulatory and institutional frameworks. These achievements are great sources for Lao PDR to develop the draft ABS decree and its institutional arrangement. Even though this ACB-UN Environment China project is completed, a development of the draft ABS decree and its administrative instruments to implement the regulation should be carried on with inputs from concerned stakeholders.

Additionally, priority administrative measures have been discussed and highlighted in the national consultation workshops. Due to limited resources and to meet the demand of local needs, the piloting administrative measures were conducted at BEI as a case study before of biotechnology research. Reports on piloting of administrative measures especially the Material Transfer Agreement concerning ABS was conducted on 21 January 2016 (see Annex C6) and on 29 January 2016 (see Annexes E and E1). A summary of how the pilot projects were conducted were written to illustrate relevant activities from the project (see Annex E2).

While implementing the project, there was an opportunity for the project team to attend the ASEAN Conference for Biodiversity 2016 on 15-19 February 2016 in Bangkok, Thailand. This regional meeting provided an occasion to update and to gain knowledge on the global biodiversity strategy (Aichi Targets), natural resource management, access and benefit sharing, and business and biodiversity. The most important is sharing experiences on Nagoya Protocol on ABS implementation among ASEAN countries especially the participating countries of the project.

## Problems Encountered and Possible Solutions

This section identifies the difficulties faced by the project coordinator and the national project team in relation to the implementation of the project to achieve project expectations. Table 1 illustrates the list of problems encountered and possible solutions for dealing with the issues and situations.

**Table 1: List of problems encountered and possible solutions in the implementation of the project activities**

<p>Effective communication between the regional and national project coordinators seem to be an issue when final project outputs did not follow the work plan designed at the beginning of the project discussion.</p>	<p>Follow working plan with clear outputs and accept both sides.</p>
<p>Work plan is important in guiding project activities. However, activities can be changed which might cause an issue to not follow the earlier plan. A good example for this project is only a regional meeting that was in the work plan with expansion based on the demands to fulfill the project tasks.</p>	<p>If needed, the guidelines in the work plan should be flexible to accommodate important changes in the project</p>
<p>Involvement of concerned stakeholders in the consultation process could be a significant indicator in ensuring effective enhancement of ABS regulatory and institutional frameworks. However, increase in the level of participation is costly in terms of the project arrangement.</p>	<ol style="list-style-type: none"> <li>1. A simple solution is an increase in the budget project which can be included in the initial work plan.</li> <li>2. Another possible solution based on the available resources is to identify key stakeholders that can represent other fields such as forestry, fishery, plants, animals and traditional knowledge.</li> </ol>
<p>Regulatory and institutional development is a huge area which includes many stakeholders in the country. Agreement among stakeholders takes time and effort to meet the local situation in order to serve as applicable and effective frameworks.</p>	<p>In order to enhance the ABS regulatory and institutional frameworks, stakeholder participation plays a significant role to fulfill the gaps. This is because of a wide range of genetic resource such as fauna, flora, microorganisms and traditional knowledge.</p>
<p>Technical expertise: limited experience and capacity on ABS among scientific researchers, technical advisors, regulators and others.</p>	<ol style="list-style-type: none"> <li>1. Needs assessment for capacity building nationally should be done to meet the local demand in the ABS activities such as transboundary issues, compliance, bioprospecting, negotiations, communities and traditional knowledge.</li> </ol>

Problems	Solutions
	<ol style="list-style-type: none"> <li>2. Capacity building on ABS and related matters should be provided by ACB, CBD, UN Environment and other concerned organizations. This needs to be brought up in COP 13 in Mexico to support the implementation of Nagoya Protocol on ABS.</li> </ol>
<p>Awareness and communication: stakeholder understanding about NP-ABS related with genetic resource management</p>	<ol style="list-style-type: none"> <li>1. Raising awareness campaign to bring up the issues</li> <li>2. Creating pilot projects on the ABS implementation about genetic resource management with monitoring and sharing experiences in place in order to create a case study</li> </ol>



## Lessons Learned/Good Practices

As a result of this project implementation, lessons learned and good practices have been identified for strengthening capacities in further ABS activities. Some major lessons learned and good practices are illustrated in Table 2.

**Table 2: Lessons learned and Good Practices**

1. Identifying stakeholders is significant to achieve the project activities and to meet the demand of budget limitation.	1. Working with existing technical working groups can result in more efficient work in the ABS context;
2. Good interaction between project coordinators (regional, national) and concerned stakeholders is necessary to receive comments for progressing the project activities.	2. Involve private sectors or GR users in the ABS discussion should be considered to balance the views of ABS regulation establishment.
3. Building on existing regulations and procedures is a significant window to increase stakeholder understanding and participation.	3. The number and a well-represented participants from key stakeholders can be one of the indicators in achieving the objectives of the consultation meetings.
4. Clear explanation by using existing ABS procedures and rules seem to support on track brainstorming and discussion of stakeholder consultations	4. Stakeholders' involvement leads to a productive workshop where relevant information was brought up
5. Identifying scope of work is very important to understand the country situation for knowing what do you have or do not have. Then you can build on what you have to ensure that you are on track.	5. Involving university lecturers in the process of ABS framework formulation
6. Reviewing what others have done at the initial stage is a considerable point for starting process.	6. Working plan with clear expected outputs can guide the project activities to meet the set targets.
7. Identifying priorities and thinking ahead are useful to design further project activities.	

## Acknowledgements

The BEI, Ministry of Science and Technology, Lao PDR would like to take this opportunity to thank ACB and the UN Environment-China Trust Fund for their financial and technical support over this project activities. We would like to acknowledge the role of Dr. Souroudong Sundara, Vice Minister, Ministry of Science and Technology, National Contact Point for Nagoya Protocol on ABS and his contribution to supervise the project.

We also greatly appreciate the inputs from all colleagues and their willingness to share experiences, information and opinions to fulfill the project activities such as Dr. Kosonh Xayphakatsa, Ms. Kongchay Phimmakong, Dr. Vichitt Lamxay, Mr. Onevilay Souvilay, Mr. Sommano Phounsavath. Ms. Viengpasit Vanisaveth, Ms. Somephavanh Radavanh, Mr. Panya Bouphasiri, Mr. Thavisack Panyasack and others who have contributed their support to facilitate the project activities. Special thanks to Atty. Elpidio Peria, Regional Expert, Mr. Anthony C.T.M Foronda, Project Coordinator, and Ms. Patricia Marie C. Tanyag, Programme Associate from ACB.

We are greatly indebted to them for their continuous support, guidance and feedback throughout the project activities. Without these people, the accomplishment of this project would not have been possible.

A DRAFT Decree on the Access to and the Fair and Equitable Sharing of Benefits from the Utilization of Lao Genetic Resources and Traditional Knowledge, or, the ABS Decree

### **PART 1 – PRELIMINARY PROVISIONS**

#### **Article 1 Title of Act and Commencement**

#### **Article 2 Objectives**

The objective of this decree is to implement the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity. Lao PDR deposited its instrument of ratification to the Protocol on September 26, 2012.

#### **Article 3 Use of Terms**

The terms shall apply to the ABS Decree:

1. “Biological diversity” means 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 ecosystems.
2. “Biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.
3. “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.
4. “Country of origin of genetic resources” means the country which possesses those genetic resources in in-situ conditions.
5. “Country providing genetic resources” means the country supplying genetic resources collected from in-situ sources, including populations of both wild and domesticated species, or taken from ex-situ sources, which may or may not have originated in that country.
6. “Derivative” means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.
7. “Ex-situ conservation” means the conservation of components of genetic resources outside their natural habitats.
8. “Genetic material” means any material of plant, animal, microbial or other origin containing functional units of hereditary.
9. “Genetic resources” means any material of plant, animal, microorganism and other origin of actual or potential value, that contain functional units of heredity.

10. "In-situ conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.
11. "In-situ conditions" means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domestic or cultivated species, in the surroundings where they have developed their distinctive properties.
12. "Utilization of genetic resources" means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology.

#### **Article 4 Scope**

The scope of the decree shall apply:

1. To biological material containing genetic resources;
2. To genetic resources;
3. To the benefits arising from the utilization of such resources;
4. To traditional knowledge associated with genetic resources ; and
5. To the benefits arising from the utilization of such knowledge.

### **PART II – COMPETENT NATIONAL MANAGEMENT AND MONITORING AUTHORITIES**

#### **Article 5 Competent National Authority on ABS**

Competent National Authorities on ABS, where they are established as technical and coordinating committee, will, in accordance with applicable national legislative and administrative policy measures, be responsible for approving access and be responsible for technical advice to the Management and Monitoring Organization on ABS on:

1. The negotiating process;
2. Requirements for obtaining prior informed consent and entering into mutually agreed terms;
3. Monitoring and evaluation of access and benefit-sharing agreements;
4. Implementation and enforcement of access and benefit-sharing agreements;
5. Processing of applications and approval of agreements;
6. The conservation and sustainable use of the genetic resources accessed;
7. Mechanisms for the effective participation of different stakeholders, as appropriate for the different steps in the process of access and benefit-sharing, in particular, indigenous and local communities; and
8. Mechanisms for the effective participation of indigenous and local communities while promoting the objective of having decisions and processes available in a language understandable to relevant indigenous and local communities.

## **Article 6 Management and Monitoring Organization on ABS**

Management and Monitoring Organization on ABS includes:

1. The Ministry of Science and Technology, being the management and monitoring organization on ABS at the central level;
2. If any other Ministries are required to establish management and monitoring organizations on biotechnology and ABS, they have to cooperate with the Ministry of Science and Technology;
3. Provinces, municipalities, cities and special zones shall establish their own management and monitoring units on biotechnology and ABS in cooperation with the Ministry of Science and Technology; and
4. Districts and prefectures shall establish their own management and monitoring units on biotechnology and ABS in cooperation with management and monitoring units at the provincial, municipal, city and special zone level in which they are located.

## **PART III – ACCESS TO GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE**

### **Article 7 Access to Genetic Resources**

In the exercise of sovereign rights over its natural resources, access to genetic resources for their utilization shall be subject to the prior informed consent of the Lao PDR as exercised through the Lao PDR Competent National Authorities on ABS (National Competent Authorities) when providing such resources where Lao PDR is the country of origin of such resources or has acquired the genetic resources in accordance with the Convention on Biological Diversity.

Competent National Authorities on ABS shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.

Requiring prior informed consent, and subject to the necessary legislative, administrative or policy measures, Competent National Authorities on ABS shall;

1. Provide legal certainty, clarity and transparency in their application of access and benefit-sharing legislation or regulatory requirements;
2. Provide for fair and non-arbitrary rules and procedures on accessing genetic resources;
3. Provide information on how to apply for prior informed consent;
4. Provide a clear and transparent written decision signed by the competent national authority, in a cost effective manner and within a reasonable period of time;
5. Provide for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms, and notify the access and Benefit-Sharing Clearing House accordingly;

6. Where applicable, and subject to Lao PDR legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and
7. Establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, inter alia:
  - (a) a dispute settlement clause;
  - (b) terms on benefit-sharing, including in relation to intellectual property rights;
  - (c) terms on subsequent third-party use, if any; and
  - (d) terms on changes of intent; where applicable.

#### **Article 8 Contribution to Conservation and Sustainable Use**

Lao Competent National Authorities on ABS shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components.

#### **Article 9 Traditional Knowledge associated with Genetic Resources**

In accordance with Lao PDR Law, policies and administrative measures, Competent National Authorities on ABS shall take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.

With the effective participation of the indigenous and local communities concerned, Competent National Authorities on ABS shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-Sharing Clearing House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

Competent National Authorities on ABS shall endeavor to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

1. Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;
2. Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources;
3. Model contractual clauses for benefit sharing arising from the utilization of traditional knowledge associated with genetic resources;
4. As far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and among indigenous and local communities.

#### **Article 10 Access to Traditional Knowledge associated with Genetic Resources**

Competent National Authorities shall take measures, as appropriate, with the aim of ensuring

that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with their prior informed consent or approval and involvement and that mutually agreed terms have been established.

#### **Article 11 Special Considerations.**

In the development and implementation of Lao PDR access and benefit sharing legislation or regulatory requirements, Competent National Authorities on ABS shall:

1. Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, including through simplified measures on access to non-commercial research purposes, taking into account the need to address a change of intent for such research. The minimum conditions for such simplified conditions may include that the use:
  - (a) does not intend to use the biological resources, to which the proposed action relates, for commercial purposes;
  - (b) undertakes to give a written report on the results of any research on the biological resources to the Competent National Authority on ABS;
  - (c) undertakes to offer a taxonomic duplicate of each sample taken, to a Lao public institutions that is a repository of taxonomic specimens of the same or genus as those collected, for permanent loan or such institution as the National Competent Authority on ABS may determine;
  - (d) undertakes not to give the sample to any person, other than the institution mentioned in paragraph c above, without permission of the Lao PDR; and
  - (e) undertakes not to carry out, or allow others to carry out, research or development for commercial purposes on any genetic resources, or biochemical compounds, comprising or contained in the biological resources unless a benefit sharing agreement has been entered into.
2. Pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally. National Competent Authorities on ABS may take into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of genetic resources, including access to affordable treatments by those in need, especially in the Lao PDR and developing countries;
3. Consider the importance of genetic resources for food and agriculture and their special role for food security.

### **PART IV – BENEFIT SHARING**

#### **Article 12 Fair and Equitable Benefit Sharing**

Benefits arising from the utilization and subsequent applications and commercialization of Lao PDR genetic resources or from genetic resources it has acquired in accordance with the CBD form shall be shared in a fair and equitable way. Such sharing shall be upon mutually agreed terms.

In accordance with Lao PDR legislation, policies and administrative measures, National Competent Authorities on ABS shall aim to ensure that benefits arising from the utilization of genetic resources held by indigenous and local communities, in accordance with Lao PDR legislation or policies regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned and are based on mutually agreed terms.

Benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Annex to the Nagoya Protocol. In accordance with Lao PDR legislation, policies and administrative measures National Competent Authorities on ABS shall also aim to ensure that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

## **PART V – AWARENESS AND ACCESS TO INFORMATION**

### **Article 13 Public Awareness and Participation**

National Competent Authorities on ABS shall take measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit sharing issues. Such measures may include:

1. Promotion of this ABS National Framework, including its objective;
2. Organization of meetings of indigenous and local communities and relevant stakeholders;
3. Establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;
4. Information dissemination through a national clearing-house;
5. Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders;
6. Promotion of, as appropriate, domestic, regional and international exchanges of experience;
7. Education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations;
8. Involvement of indigenous and local communities and relevant stakeholders in the implementation of this Protocol; and
9. Awareness-raising of community protocols and procedures of indigenous and local communities.

### **Article 14 International Information Sharing and the ABS Clearing House**

An Access and Benefit Sharing Clearing-House serving as a means for sharing of information related to access and benefit-sharing and providing legal certainty and acting as a key link to compliance measures introduced by all countries is established under the Nagoya Protocol. In



particular, provides access to information made available by each Party, without prejudice to the protection of confidential information. The Lao Competent National Authorities on ABS shall make available to the Access and Benefit-sharing Clearing-House the following information:

1. Legislative, administrative and policy measures on access and benefit-sharing;
2. Information on the national focal point and competent national authority or authorities;
3. Permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms.
4. Relevant competent authorities of indigenous and local communities, and information as so decided;
5. Model contractual clauses;
6. Methods and tools developed to monitor genetic resources; and
7. Codes of conduct and best practices.

## **PART VI – CAPACITY, TECHNOLOGY TRANSFER AND COOPERATION**

### **Article 15 Capacity**

Lao National Competent Authorities on ABS shall internationally cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities, including through existing global, regional, sub regional and national institutions and organizations, by facilitated the involvement of indigenous and local communities and relevant stakeholders, including non-governmental organizations and the private sector.

Lao National Competent Authorities on ABS shall identify national capacity needs and priorities through its national capacity self-assessments. In doing so, it will support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, emphasizing the capacity needs and priorities of women. Capacity-building and development may address, among other things, the following:

1. Capacity to implement, and to comply with the obligations of the ABS Nagoya Protocol;
2. Capacity to negotiate mutually agreed terms;
3. Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing;
4. Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources.
5. Legal and institutional development;
6. Promotion of equity and fairness in negotiations, such as training to negotiate mutually agreed terms;
7. The monitoring and enforcement of compliance;
8. Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;

9. Development and use of valuation methods;
10. Bioprospecting, associated research and taxonomic studies;
11. Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable;
12. Enhancement of the contribution of access and benefit-sharing activities to the conservation of biological diversity and the sustainable use of its components;
13. Special measures to increase the capacity of relevant stakeholders in relation to access and benefit-sharing; and
14. Special measures to increase the capacity of indigenous and local communities with emphasis on enhancing the capacity of women within those communities in relation to access to genetic resources and/or traditional knowledge associated with genetic resources.

#### **Article 16 Technology Transfer**

National Competent Authorities on ABS shall internationally collaborate and cooperate on scientific research and development programmes, including biotechnological research activities to promote and encourage access to technology, in order to enable the development and strengthening of a sound and viable technological and scientific base.

#### **Article 17 Transboundary Cooperation**

In instances where the same genetic resources are found in situ within the territory of more than one Party, Lao Competent National Authorities on ABS shall endeavor to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties.

#### **Article 18 Model Contractual Clauses**

National Competent Authorities on ABS shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.

#### **Article 19 Codes of Conduct, Guidelines and Best Practices and/or Standards**

National Competent Authorities on ABS shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and standards in relation to access and benefit-sharing.

### **PART VII – MONITORING AND LAW ENFORCEMENTS**

#### **Article 20 Monitoring the Utilization of Genetic Resources**

To support compliance, National Competent Authorities on ABS shall take measures, as appropriate, to monitor and to enhance transparency about the utilization of genetic resources in Lao PDR.

1. Such measures shall include the designation of one or more checkpoints, as follows:
  - (a) Designated checkpoints to collect or receive, as appropriate, relevant information related to prior informed consent, to the source of the genetic resource, to the establishment of mutually agreed terms, and/or to the utilization of genetic resources, as appropriate;
  - (b) Shall, as appropriate and depending on the particular characteristics of a designated checkpoint, require users of genetic resources to provide the information specified in the above paragraph at a designated checkpoint. National Competent Authorities on ABS would take appropriate, effective and proportionate measures to address situations of non-compliance;
  - (c) Such information, including from internationally recognized certificates of compliance where they are available, will, without prejudice to the protection of confidential information, be provided to relevant national authorities of the providing Party, to the Party providing prior informed consent and to the Access and Benefit Sharing Clearing House, as appropriate;
  - (d) Checkpoints must be effective and should be relevant to the utilization of genetic resources, or to the collection of relevant information at, inter alia, any stage of research, development, innovation, pre-commercialization or commercialization;
2. National Competent Authorities on ABS will encourage users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms, including through reporting requirements;
3. Encourage the use of cost-effective communication tools and systems;
4. A permit or its equivalent issued will be made available to the Access and Benefit Sharing Clearing House and therefore constitute an internationally recognized certificate of compliance in accordance with the Nagoya Protocol;
5. An internationally recognized certificate of compliance will serve as evidence in Lao PDR that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the Party providing prior informed consent;
6. Lao PDR recognizes that internationally recognized certificates of compliance contain the following minimum information when it is not confidential:
  - (a) Issuing authority;
  - (b) Date of issuance;
  - (c) The provider;
  - (d) Unique identifier of the certificate;
  - (e) The person or entity to whom prior informed consent was granted;
  - (f) Subject-matter or genetic resources covered by the certificate;
  - (g) Confirmation that mutually agreed terms were established;
  - (h) Confirmation that prior informed consent was obtained; and
  - (i) Commercial and/or non-commercial use.

### **Article 21 Compliance with Mutually Agreed Terms**

National Competent Authorities will encourage providers and users of genetic resources and/or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

1. The jurisdiction to which they will subject any dispute resolution processes;
2. The applicable law; and
3. Options for alternative dispute resolution, such as mediation or arbitration.

National Competent Authorities will ensure that an opportunity to seek recourse is available under the Lao legal system, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms and will take effective measures, as appropriate, regarding:

1. Access to justice; and
2. The utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards where consistent with Lao law.

### **Article 22 Compliance with Access and Benefit Sharing**

National Competent Authorities on ABS shall take appropriate, effective and proportionate action to implement Lao PDR legislative, administrative or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the access and benefit sharing legislation or regulatory requirements of the other Party.

National Competent Authorities on ABS shall take appropriate, effective and proportionate measures to address situations of non-compliance with adopted measures and cooperate in cases of alleged violation of other Party's access and benefit-sharing legislation or regulatory requirements.

### **Article 23 Compliance with traditional knowledge associated with genetic resources**

National Competent Authorities on ABS shall take appropriate, effective and proportionate action to implement the country's legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized from other Parties within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities and that mutually agreed terms have been established, as required by domestic access and benefit sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.

National Competent Authorities on ABS will take appropriate, effective and proportionate measures to address situations of non-compliance with Lao adopted measures and will cooperate in cases of alleged violation of foreign domestic access and benefit-sharing legislation or regulatory requirements.

**PART VIII – POLICY AND PENALTY MEASURES**

**Article 24 Award**

**Article 25 Sanctions**

**Article 26 Liability and Redress**

**PART IX – IMPLEMENTATION MEASURES**

**Article 27 Monitoring**

**Article 28 Final Provision**



# Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks

## MYANMAR





# **Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks: Myanmar**

**Nay Pyi Taw, Myanmar**

**November 2016**



**Republic of the Union of Myanmar**  
**Ministry of Natural Resources and Environmental Conservation**  
**Environmental Conservation Department**  
**Office No. (53), Nay Pyi Taw**

Letter No: NR-ABS (979/2016)

Date: 17<sup>th</sup> November 2016

To

ATTY. ROBERTO V.OLIVA  
Executive Director  
ASEAN Centre for Biodiversity  
University of the Philippines Los Banos  
Los Banos, Laguna  
Philippines

**Subject: Submission of the Completion Report on “Building Capacity of Countries in Support of the Development and Implementation of National ABS Framework: Myanmar”**

We are pleased to submit the Completion Report on “Building Capacity of Countries in Support of the Development and Implementation of National ABS Framework: Myanmar”. The Completion Report includes six Annexes as follow:

1. The First consultation workshop report
2. The Second consultation workshop report
3. National expert contract
4. Agreement on national implementation plan
5. National ABS regulatory and institutional framework of country
6. Piloting of ABS measures in MOU

I would like to draw your kind understanding for our delayed submission of the completion report due to unavoidable circumstances.

Very truly yours,

  
For Director General,

Dr. San Oo

Director

Environmental Conservation Department

Ministry of Natural Resources and Environmental Conservation

Nay Pyi Taw, MYANMAR

## Project Title

Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks: Myanmar

## Start and Completion Dates

30 January 2016 to 31 August 2016

## Reporting Period

30 January 2016 to 31 August 2016

## National Implementing Agencies

Environmental Conservation Department - Ministry of Natural Resources and Environmental Conservation

Biotechnology Research Department - Ministry of Education

## Supporting Agencies



United Nations Environment Programme -  
Regional Office for Asia and the Pacific



ASEAN Centre for Biodiversity

## Executive Summary

The Access and Benefit Sharing (ABS) Work Plan for Myanmar was signed by Environmental Conservation Department - Ministry of Natural Resources and Environmental Conservation (ECD-MONREC) in 30 January 2016 and by the ASEAN Centre for Biodiversity (ACB) in February 2016. ECD-MONREC representatives attended the ABS Session during the ASEAN Conservation on Biodiversity held in Bangkok in February 2016. An inception-planning meeting between ECD-MONREC and ACB was held at ECD, Nay Pyi Taw in April 2016 in preparation for the implementation of the ABS Work Plan activities. The first fund transfer was received by ECD in May 2016 and the first consultation-workshop was held on 24 to 25 May 2016 (report attached as Annex 1). The consultation-workshop was attended by 40 participants from various ministries, non-governmental organizations (NGOs), and private sector including the United Nations Environment Programme (UN Environment) and ACB representatives. A planning meeting for the piloting of ABS measures was done in 25 May 2016.

The second fund transfer was done on 23 May 2016 and the Second consultation-workshop was held on 9 to 10 August 2016 (report attached as Annex 2). The piloting of the ABS measure as implemented by Biotechnology Research Department of the Ministry of Education was implemented from 13 June 2016 to 20 July 2016.

## Objectives

The main objective of the ABS Work Plan is to provide technical support to Myanmar in developing and implementing appropriate ABS frameworks.

Specifically, the Work Plan aims to:

- Organize one (1) national consultation relating to the adoption and implementation of the Nagoya Protocol elements back-to-back with a national workshop on review and assessment of ABS-related provisions in current regulatory and institutional frameworks in Myanmar and recommendations for revisions;
- Provide national level data and inputs to a report on the status of ABS regulatory and institutional frameworks;
- Provide technical support for developing ABS regulatory and institutional frameworks;
- Undertake piloting of administrative or policy measures to implement community protocols, bioprospecting, and/or biotechnology research, depending on priorities identified in the country; and
- Support the organization and contribute technically to promote regional cooperation, knowledge sharing and learning on ABS within ASEAN Member States (AMS) and China, including through providing inputs to the organization of the regional (ASEAN-China) workshop, focused on national ABS regulatory and institutional frameworks, as well as specific thematic areas such as community protocols, bioprospecting and/or biotechnology research.

## Discussions and Accomplishments

The ABS Work Plan for Myanmar was signed by the Director General of the Environmental Conservation Department on 30 January 2016. The signing was done after getting the permission from the Myanmar Cabinet in December 2015. The signed ABS Work Plan was officially submitted to ACB in February 2016, which started the coordination between ACB and ECD-MONREC.

ECD-MONREC officials and staff attended the ABS Session during the ASEAN Conference on Biodiversity 2016 held in Bangkok, Thailand on 15 to 18 February 2016. The ECD-MONREC official made a presentation on the ways forward to implement the ABS Work Plan in Myanmar. The main issue to start implementation of the ABS Work Plan in Myanmar was the unavailability of the Philippine bank to transfer funds to any Myanmar bank.

In March 2016, ECD-MONREC officially communicated to ACB the solution to receive the ABS Work Plan funds from ACB through Myanmar Environmental Rehabilitation-conservation Network (MERN), a local NGO, to ECD. Also, ECD-MONREC indicated that the first consultation-workshop in Nay Pyi Taw will be held in May 2016 and ACB officially replied that the ABS Work Plan is extended until 15 June 2016. ECD, MERN, and ACB exchanged official letters on the arrangement for the first fund transfer with an amount of USD 12,400.

ACB then met with MERN representative in Yangon for the transfer of first fund transfer in April 2016 and met with ECD-MONREC officials and staff to plan for the implementation of the ABS Work Plan starting with the first consultation-workshop. It was agreed between ECD-MONREC and ACB to hold the first consultation-workshop on 24 to 26 May 2016, and the second one on 9 June 2016.

The first fund transfer received by MERN was only USD 9,200 since the bills amounting to USD 3,200 brought by ACB were rejected by the MERN Bank due to stamped/marked bills. The amount of USD 9,200 was successfully transferred to the ECD bank in May 2016.

In preparation for the first consultation-workshop, a national expert was hired in May 2016 (contract attached as Annex 3). The national expert selected is U San Lwin, a legal consultant in Myanmar.

40 participants attended the first consultation-workshop. These participants represented the Ministries of Education, Health, Agriculture, Natural Resources and Environmental Conservation, Attorney General's Office and Intellectual Property Office, among others. Non-Government Offices such as Wildlife Conservation Society (WCS), Flora & Fauna International (FFI), and MERN were present during the consultation-workshop.

Representatives from ACB and UN Environment served as speakers during the consultation-workshop. The consultation-workshop report is attached as Annex 1.

In preparation for the second consultation-workshop, the Biotechnology Research Department (BRD) was requested to implement the piloting of ABS measure, which took place from 13 June 2016 to 20 July 2016. Piloting of ABS measures through a Memorandum of Understanding is attached as Annex 6.

There were 70 participants that attended the second consultation-workshop, composed of representatives from the same offices and organizations who took part in the first consultation-workshop. In addition, a private sector representative from the Farmer Land Union company also attended.

Representatives from ACB and UN Environment served as speakers during the consultation-workshop. The consultation-workshop report is attached as Annex 2.

## Problems Encountered and Possible Solutions

Problems Encountered	Possible Solutions	Remarks
1. Delay in implementation of the ABS Work Plan due to Myanmar's approval process	Seek earlier approval process from the Government	
2. Difficulty in receiving funds from ACB	Seek local NGO partner to receive funds from ACB and to transfer to ECD account	Collaborated with MERN
3. Lack of staff to fully manage the work plan at ECD	To assign staff to do part time on the work plan and hire a project staff	To include hiring of project staff in future projects
4. Coordination among line ministries.	To make them clearly understand benefits that can be attained by implementing this project	To share materials on knowledge and experience of ABS from other countries
5. Limited timeframe	To extend the timeframe for more effective implementation of this project	To allocate enough time
6. Limited facilities for translation (Using microphone instead of transmission materials took more time)	To hire translation materials to save time and have effective communication	To hire translation materials for future workshops to be held

## Lessons Learned / Good Practices

1. Involve a legal person to projects that are legal in scope or context; and
2. Involve CSOs/NGOs, other line Ministries, research institutions, private sector, and other key and concerned stakeholders during the consultation-workshop.
3. Have a strong interest and active participation of each and every attendee from various line ministries at the workshop.
4. Engage a translator who knows about the ABS-related legal and situation in Myanmar.

## Status of Activities

Project Activities	Possible Solutions	% Completed	Remarks
1. Discuss, draft, and finalize plans with Grantee and ACB	Agreement on national implementation plan	100%	The ABS Work Plan was signed by ECD in January 2016.  A planning/meeting between ECD and ACB was done in April 2016 in Nya Pyi Taw.
2. Consolidate, review and analyze national ABS regulatory and institutional frameworks	Analysis report on national ABS regulatory and institutional frameworks of country	100%	ECD hired a national expert, U San Lwin, from April to May 2016.  Made a presentation of the assessment/analysis of ABS-related policies in Myanmar during the first consultation-workshop held in May 2016.  Report was submitted to ECD on June 2016.
3. Conduct national consultation-workshop on the status and plan on implementing NP-ABS; in developing or enhancing national ABS regulatory and institutional frameworks; and in identifying priority issues related to community protocols, bioprospecting and/or biotechnology research aligned to NP-ABS	First National consultation-workshop report  Second National consultation-workshop report	100%	The first consultation-workshop was held on 24 to 25 May 2016 at ECD, Nay Pyi Taw.  The first draft of the national regulatory and institutional frameworks was submitted to ECD on 27 May 2016.  Piloting of ABS measures was agreed with the Biotechnology Research Institute and presented during the second consultation-workshop.

Project Activities	Possible Solutions	% Completed	Remarks
			<p>The second consultation-workshop was held on 09 to 10 August 2016 at Lake Garden Hotel, Nay Pyi Taw.</p> <p>The final draft of the national regulatory and institutional frameworks was submitted to ECD on 5 October 2016.</p>
<p>4. Provide technical support for developing ABS regulatory and institutional frameworks</p>	<p>New or enhanced national ABS regulatory and institutional frameworks of country</p>	<p>100%</p>	<p>The first draft of the national regulatory and institutional frameworks was submitted on 27 May 2016.</p> <p>The final draft of the national regulatory and institutional frameworks was submitted to ECD after the second consultation-workshop.</p>
<p>5. Undertake piloting of administrative or policy measures to implement community protocols, bioprospecting, and/or biotechnology research as identified priority</p>	<p>Report on piloting of administrative or policy measures to implement community protocols, bioprospecting, and/or biotechnology research as identified priority by country</p>	<p>100%</p>	<p>Discussed plans for piloting with the Biotechnology Research Institute in May 2016. Coordinated with the Department of Biotechnology.</p> <p>Agreed with the plans for piloting between BRD and ECD on 25 May 2016.</p> <p>BRD presented the piloting of ABS measures during the second consultation-workshop on 9 August 2016 and submitted the report on 31 August 2016.</p>



# NATIONAL ABS REGULATORY AND INSTITUTIONAL FRAMEWORKS

ASEAN CENTRE FOR BIODIVERSITY

Lao PDR-Myanmar-Viet Nam ABS Institutional and Policy Framework Project

## DRAFT ACCESS AND BENEFIT SHARING (ABS) INSTITUTIONAL AND POLICY FRAMEWORK FOR MYANMAR

27 October 2016

### Institutional Framework

#### 1. OBJECTIVE

The institutional framework seeks to organize Myanmar Government agencies, instrumentalities and civil society stakeholders which includes the business sector and the indigenous peoples and local communities and their support organizations, so that they will work together to fulfill the country's commitments under the Convention on Biological Diversity, the Nagoya Protocol and other relevant international instruments such as but not limited to the International Treaty on Plant Genetic Resources for Food and Agriculture, the Union for the Protection of Plant Varieties (UPOV), the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the World Trade Organization and other relevant international agreements that affect the implementation of the country's goals of ensuring the fair and equitable sharing of benefits from the utilization of Myanmar's genetic resources and the traditional knowledge associated with genetic resources.

#### 2. COMPONENTS

- a. **National Focal Point** – as indicated by Article 13.1 of the NP, provides information for applicants seeking access to genetic resources and traditional knowledge associated with genetic resources, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit sharing.
  - 1) The National Focal Point for Myanmar is the Environmental Conservation Department Ministry of Natural Resources and Environmental Conservation (ECD-MONREC).
  - 2) As such National Focal Point, ECD shall be responsible for liaison with the Secretariat of the Convention on Biological Diversity
- b. **Competent National Authorities** – in accordance with their respective legal and institutional mandates, they shall be responsible for granting access, or, as applicable, issuing written evidence that access requirements have been met. They shall also be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

The following agencies are hereby designated as competent national authorities:

- 1) Ministry of Natural Resources and Environmental Conservation through the

- Environmental Conservation Department and the Forest Department;
- 2) Ministry of Agriculture, Livestock and Irrigation through the Department of Agricultural Research;
  - 3) Ministry of Health, through the Department of Traditional Medicine, and Food and Drug Authority;
  - 4) Ministry of Ministry of Agriculture, Livestock and Irrigation through the Fisheries Department;
  - 5) Ministry of Education through the Department of Sciences and Technology;
  - 6) Ministry of Commerce, for export / import licenses; and
  - 7) Ministry of Ethnic Affairs, to comment on the rights of ethnic peoples.

**c. Role of Region and State Governments** – the authorities dealing with the grant of licenses and permits for the utilization of genetic resources and traditional knowledge associated with genetic resources at the Region and State government level shall likewise exercise their power over these resources concurrently or in a shared manner with the Ministries hereby designated as competent national authorities, in accord with the relevant laws enacted by the Union.

**d. Appeals Committee** – a sub-committee is hereby created that will deal with the appeals that may be made by the applicant for access from any decision that may be made by the relevant competent national authorities. The Union Government should decide whether or not it keeps one or two tiers of Appeal Committee (or Appellate Body).

**e. Other Agencies and Entities** – the following are the recognized agencies and entities with identified roles in the further development of Myanmar genetic resources and traditional knowledge associated with genetic resources:

- 1) Research and Development – the Ministry of Education, through the Biotechnology Department, shall take the lead in coordinating the utilization or the conduct of research and development on the genetic and/or biochemical composition of genetic resources, including through application of biotechnology, and researches that deal with relevant traditional knowledge associated with genetic resources
- 2) Checkpoints – the relevant agencies and bodies are hereby designated to collect or receive relevant information related to prior informed consent, to the source of genetic resource or traditional knowledge associated with the genetic resource, the establishment of mutually agreed terms and the utilization of genetic resources and the traditional knowledge associated with genetic resources
  - a) Research Committee – for the approval of publication of researches involving genetic resources and traditional knowledge associated with genetic resources
  - b) Intellectual Property Office – for the application of patents, trademarks and plant variety protection. It should be in conformity with the intellectual property laws of Myanmar, when enacted. Those laws are now in the process of drafting.
  - c) Food and Drugs Authority – for the marketing approval of products derived from genetic resources and traditional knowledge associated with genetic resources.

- d) Other agencies determined by MONREC at the recommendation of the Union Government Committee on ABS.

### **3. INSTITUTIONAL MECHANISMS FOR COORDINATION**

- a. Union Government Committee on ABS** – a Committee composed of the National Focal Point, and the various designated Competent National Authorities and the suitable citizens, which shall meet at regular intervals to discuss and resolve strategic concerns and those that relate to the full development of the ABS Policy Framework, on matters relating to access to and benefit sharing from, the utilization of Myanmar genetic resources and traditional knowledge associated with genetic resources
- b. Parliamentary (Hluttaw) Liaison** – the Union Government Committee on ABS shall establish a liaison unit that will work with the Parliament on ABS issues and to respond to Parliament’s concerns on access to and benefit sharing from the utilization of Myanmar genetic resources and traditional knowledge associated with genetic resources
- c. Involvement with the Communities and Other Stakeholders** – the Union Government Committee on ABS shall establish coordination mechanisms to ensure the involvement of the ethnic peoples, communities and other stakeholders, including the business sector and the academic community, on matters relating to access to and benefit sharing from the utilization of Myanmar genetic resources and traditional knowledge associated with genetic resources

### **4. IMPLEMENTING ACTIONS**

There is hereby established a technical working group led by the Environmental Conservation Department of MONREC that will review the initial roadmap developed for identifying the actions and resources, including international support, necessary to establish and enhance Myanmar’s institutional and policy framework for ABS.

The technical working group shall commence its task by first articulating the country’s vision for ABS to be realized in a definite timeframe.

## **Policy Framework**

### **1. SCOPE**

The collection, research, utilization and commercialization of Myanmar’s genetic resources and traditional knowledge associated with genetic resources is hereby subject to this Policy Framework.

### **2. OBJECTIVE**

The Policy Framework shall ensure the fair and equitable sharing of benefits from the utilization of Myanmar’s genetic resources and traditional knowledge associated with genetic resources.

**3. ACCESS TO GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES**

The national focal point and the competent national authorities shall take steps to review their existing policies on the grant of permits and licenses to Myanmar's genetic resources and traditional knowledge associated with genetic resources and take steps to ensure that the appropriate by-laws and regulations and whenever necessary, the appropriate legislation is in place to ensure that the provisions of the Nagoya Protocol on Access to Genetic Resources, are taken into account, in the context of the country's stage in its policy and economic development. MONREC shall prepare a draft ABS law, submit to the Union Government for its approval, and submit the bill to the Parliament.

**4. FAIR AND EQUITABLE SHARING OF BENEFITS**

a. The national focal point and the competent national authorities shall take steps to review their existing policies on the fair and equitable sharing of benefits from the utilization of Myanmar's genetic resources and traditional knowledge associated with genetic resources and take steps to ensure that the appropriate by-laws and regulations and whenever necessary, the appropriation legislation is in place to ensure that the provisions of the Nagoya Protocol on Fair and Equitable Benefit Sharing are taken into account, in the context of the country's stage in its policy and economic development.

b. Agreements and licenses that were already approved before the enactment of the Nagoya Protocol on 12 October 2014 shall be reviewed by the agency concerned, to ensure that provisions for fair and equitable benefit sharing, particularly the specification of monetary and non-monetary benefits, on mutually agreed terms, are in place and are readily enforceable with such updated agreements and licenses.

**5. SPECIAL CONSIDERATIONS FOR GENETIC RESOURCES FOR FOOD AND AGRICULTURE AND EMERGENCIES THAT THREATEN OR DAMAGE HUMAN, ANIMAL OR PLANT HEALTH**

a. Plant genetic resources for food and agriculture from Myanmar or accessed by Myanmar agencies and individuals from the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture shall be covered by the relevant Standard Material Transfer Agreement (SMTA) of the International Treaty.

b. In instances however of utilization that are outside the scope and operation of the SMTA, particularly the chemical, pharmaceutical and/or other non-food/feed industrial uses of the said plant genetic resource, the relevant rules on fair and equitable sharing that may be established by the Union Government Committee on ABS shall be applicable. Once these rules are established, the corresponding agreements that contain such uses are to be amended and/or revised.

c. In matters relating to utilization of pandemic influenza preparedness biological materials, especially those covered by the Pandemic Influenza Preparedness Framework of the World Health Organization, said Framework shall apply.

## **6. TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES**

- a. In accordance with legislation that was or may be established for the purpose, the rights of the indigenous peoples and local communities to their traditional knowledge associated with genetic resources are hereby recognized and taken into account by this Policy Framework.
- b. The Union Government Committee on ABS shall discuss ways and means to ensure the active participation and involvement of the indigenous peoples and local communities in matters that deal with their traditional knowledge associated with genetic resources, including through mechanisms provided by the Nagoya Protocol such as their relevant customary laws and community protocols.

## **7. ACCESS PRIOR TO THE ENTRY INTO FORCE OF THE NAGOYA PROTOCOL**

- a. The Union Government Committee on ABS shall discuss and resolve how to secure fair and equitable sharing of benefits arising from the utilization of Myanmar genetic resources and traditional knowledge associated with genetic resources that occurred prior to the entry into force of the Nagoya Protocol on 12 October 2014.
- b. The Union Government Committee shall also discuss how such resources may be considered by the Global Multilateral Benefit-Sharing Mechanism established by Article 10 of the Nagoya Protocol.

## **8. TRACKING AND MONITORING**

- a. The Cabinet Committee shall discuss how tracking and monitoring mechanisms under the Nagoya Protocol, particularly the checkpoints and the internationally recognized certificate of compliance, may be established, in a phased manner, in existing process and procedures of the national focal points and competent national authorities.
- b. The Cabinet Committee shall also consider capacity building initiatives for this particular purpose.

## **9. COMPLIANCE**

The Union Government Committee on ABS shall consider measures for compliance at a later stage to be included in the implementing actions of the ABS institutional framework, taking into account Articles 15 and 16 of the Nagoya Protocol, especially when there are genetic resources and traditional knowledge associated with genetic resources of other Parties to the Nagoya Protocol utilized in Myanmar.

## **10. AWARENESS-RAISING AND CAPACITY-BUILDING**

The Union Government Committee on ABS, upon recommendation by the Technical Working Group, shall make recommendations for further awareness-raising and capacity-building by all sectors and stakeholders, in order that this Policy Framework is effectively implemented taking into account the roadmap that will be developed under the implementing actions of the ABS institutional framework.





# Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks

## VIET NAM







# **Report on Accomplishments**

## Biodiversity Conservation Agency

Hanoi, Viet Nam

March 2016



MINISTRY OF NATURAL RESOURCES AND ENVIRONMENT  
VIETNAM ENVIRONMENT ADMINISTRATION  
**BIODIVERSITY CONSERVATION AGENCY**

7 July 2016

**ATTY. ROBERTO V. OLIVA**  
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ASEAN Centre for Biodiversity (ACB)  
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Los Baños 4031, Laguna, PHILIPPINES  
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**Subject: Completion Report on Implementation of the project “Building capacity of countries in support of the development and implementation of National ABS Frameworks: Viet Nam”**

Dear Atty. Roberto V. Oliva,

Thank you for your letter dated 1<sup>st</sup> June 2015 updating information on implementation of the Project “Building capacity of countries in support of the development and implementation of National ABS Frameworks: Viet Nam”.

Pursuant to the Grant Agreement (2012-0425 ABS Viet Nam) signed on 07 May 2012 and its amendment no.2 between the ASEAN Centre for Biodiversity and the Biodiversity Conservation Agency, Vietnam has acted in accordance with the agreed Work Plan and conducted project activities with regular update to the ACB team upon our progress. With this letter of notification, I would like to send you the completion report that has been prepared using the standard report outline provided by the ACB. Please kindly be noted that the draft Decree on ABS provided herewith is for reporting purpose only, not to be quoted or circulated in any cases. We would highly appreciate your concern in this regard.

Once again, I would like to express my sincere thanks to the ACB for your support during the development and implementation of National ABS Framework in Viet Nam.

I wish you a good health and look forward to more fruitful cooperation in a near future. 



Yours sincerely,

**Dr. Hoang Thi Thanh Nhan,**  
Deputy Director of Biodiversity Conservation Agency  
Vietnam Environment Administration  
Ministry of Natural Resources and Environment

Cc: Mr. Anthony Foronda, Project Coordinator, ASEAN Centre for Biodiversity

## Project Title

“Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks in Viet Nam”

## Project Start and Completion Dates

The Project started on 15 June 2015 and was completed on 31 March 2016.

## Reporting Period




Reports	Dates
The first substantive progress and expenditure reports for the period starting the date of signature of the Grant Agreement until 15 June 2015.	15 June 2015
The second substantive progress and expenditure reports for the period between 16 June 2015 until 31 December 2015	30 January 2016
Final technical and certified final expenditure reports for the period up to the completion of the project	31 March 2016

## National Implementing Agency



Biodiversity Conservation Agency

## Supporting Agencies

Names	Logos
United Nations – Secretariat of the Convention on Biological Diversity	 Convention on Biological Diversity
United Nations Environment Programme	 UN environment
ASEAN Centre for Biodiversity	 ASEAN CENTRE FOR BIODIVERSITY

Names	Logos
The Law and Policy of Sustainable Development Research Center	
National Office of Intellectual Property of Vietnam	
Department of Crop Production, Ministry of Agriculture and Rural Development	
Department of Livestock Husbandry, Ministry of Agriculture and Rural Development	
National Institute of Medicinal Materials	
Institute of Microbiology and Biotechnology, Vietnam National University	
Nimura Genetic Solutions Co., Ltd.	
Sapa Napro Co., Ltd.	

## Executive Summary

In recent years, the management of genetic resources and benefit sharing from the utilization of these genetic resources have gained attention, particularly after the Nagoya Protocol on Access and Benefit Sharing (NP-ABS) was adopted in October 2010 at the 10th Meeting of the Convention on Biological Diversity (CBD-COP10). Viet Nam acceded to the NP-ABS on 23 April 2014 and became its 31st Party on 12 October 2014.

Viet Nam has had a legal framework on access to genetic resources and benefit sharing since 2008, when the Biodiversity Law was passed. Aligned with the obligations of the NP-ABS, the country considered taking preparatory steps in reviewing its existing regulations and proposed changes with an aim to conserve and sustainably use genetic resources and to fair and equitably share benefits arising from the use of these genetic resources.

The Government of Viet Nam looked into: (i) reviewing and evaluating collaborations with local and foreign organizations and institutes within the 2000-2013 accessing genetic resources; (ii) developing a scheme on improving the management capacity in accessing genetic resources, and the fair and equitable sharing of benefits arising from the use of genetic resources in

2015-2016, which has been submitted for approval by the Prime Minister; (iii) developing a legislative Decree on the management of access to genetic resources and the fair and equitable sharing of benefits arising from the use of genetic resources, which is expected to be submitted for promulgation in 2017.

In 2015, Viet Nam participated in the regional project, “Capacity Building for the Ratification and Implementation of the Nagoya Protocol on Access to Genetic Resources and Benefit Sharing,” funded by the Global Environment Fund (GEF) through the United Nations Environment Programme (UN Environment). The project aimed to contribute to the conservation and the sustainable use of biodiversity of global significance in Viet Nam, through strengthening national capacities in implementing the NP-ABS on ensuring the fair and equitable sharing of benefits from the use of genetic resources.

The Grant Agreement 2012-0425 ABS Viet Nam signed on 7 May 2012 set forth the cooperation between the ASEAN Centre for Biodiversity (ACB) and the Biodiversity Conservation Agency (BCA) of the Ministry of Natural Resources and Environment (MONRE) and agreed to implement the small-scale funded project, “Building Capacity of Countries in Support of the Development and Implementation of National ABS Frameworks in Viet Nam”. A second amendment updated the provisions of the Agreement specifically the Title of the Project, Purpose of the Project, Duration of the Project, Operation of the Project, Assistance, and Communication aspects.

The activities of the Project include:

- Organizing two national workshops on the review and assessment of ABS-related provisions of current regulatory and institutional frameworks in Viet Nam and recommendations for revision;
- Developing a report on reviewing of the national ABS regulatory and institutional frameworks and recommendation for revisions; and
- Providing technical support to some of the applications of ABS measures. A case study with Sapa Napro Co., Ltd. in Lao Cai province was especially conducted to review its current legal terms and conditions and to evaluate its alignment with the NP-ABS and current national legal provisions on ABS.

Specific outputs include the following:

- An analysis report on national ABS regulatory and institutional frameworks with comparison to international regulations;
- A report on the piloting of administrative or policy measures to implement community protocols, bioprospecting, and/or biotechnology research as identified priority by country; and
- National consultation-workshop reports

The technical support from the Project has enabled Viet Nam to acquire insights on reviewing and updating its national legislation system on ABS. With the expertise of a team of national and international consultants, relevant issues for consideration and revision to the current ABS frameworks in Viet Nam were brought up. Some case studies have been conducted, though preliminary, still provided a good start for the ABS technical team in MONRE to have an in-depth understanding of the current situation and apply international best practices.

## Objective

The main objective of this Project is to provide technical support to Viet Nam in developing and implementing appropriate ABS frameworks.

## Problems Encountered and Possible Solutions

Since the time Viet Nam acceded to the NP-ABS, there have been organizations applying for access to the country's genetic resources. Given that ABS is still new in Viet Nam, its national legal system, public awareness and implementation capacity are limited. Thus, there are difficulties and constraints for the implementation of access application and licensing procedures for genetic resources, especially on providing guidance and advice on ABS contracts and negotiations.

To address such problems, additional support for Viet Nam is needed especially on organizing trainings and awareness-raising activities for stakeholders, including regulators, businesses, communities, research institutes, and universities. Viet Nam is also in need of support to develop and adjust its legal system on ABS to better fit Viet Nam's context and in harmony with international instruments, while improving its capacity in ABS management and implementation, and awareness of organizations and individuals obligations and benefit sharing from the implementation of ABS.

## Lessons Learned / Good Practices

The Project was conducted in collaboration between ACB and BCA under the Vietnam Environment Administration (VEA). During the course of the project implementation, ACB provided support with the involvement and participation of an international ABS expert.

Under the workplan of the project, two national workshops were organized. The workshops provided BCA, various ministries, research institutes, universities, and other stakeholders with knowledge and experience on ABS at the national and international levels contributing to raising awareness on ABS in Viet Nam.

The Project also provided support and guidance in the implementation of access to genetic resources in Viet Nam specifically on technical consultation on developing a memorandum of understanding on the access to genetic resources and benefit sharing, assessment on the capacity to implement ABS models in Viet Nam and came up with lessons learned from the practical experience.

During the implementation of this Project, the involvement and cooperation of management authorities at the national and provincial levels, companies, organizations, and individuals have been beneficial in providing information for BCA to complete its work. BCA would like to express its sincere thanks to all of them.



## Status of Activities

1. Signing of Agreement	Agreement on national implementation plan	100%	<ul style="list-style-type: none"> <li>- Discussed, drafted, and finalized plans with BCA (national focal point on ABS) and ACB</li> <li>- BCA and ACB signed the Agreement</li> </ul>
2. Consolidate, review and analyze national ABS regulatory and institutional frameworks	Analysis report on national ABS regulatory and institutional frameworks of the country	100%	<ul style="list-style-type: none"> <li>- National expert developed the first draft of the report</li> <li>- National expert, in cooperation with an international expert, reviewed and finalized the report based on the comments in the first workshop</li> </ul>
3. Conduct national consultation-workshop on the status and plan on implementing NP-ABS; in developing or enhancing national ABS regulatory and institutional frameworks; and in identifying priority issues related to community protocols, bioprospecting and/ or biotechnology research aligned to NP-ABS	National consultation-workshop report	100%	<ul style="list-style-type: none"> <li>- Organized the first consultation workshop in Ha Noi on 28 September 2015 with the participation of representatives from related ministries, agencies, institutes, universities and industries</li> <li>- Conducted the second national consultation-workshop in Ha Noi on 15 January 2016 to review and assess ABS-related provisions in current legal framework in Viet Nam and to recommend revisions with the participation of representatives from related ministries, agencies, institutes, universities and industries</li> </ul>
4. Provide technical support for developing ABS regulatory and institutional frameworks	New or enhanced national ABS regulatory and institutional frameworks of country	100%	<i>(combined with Activity 2 above)</i>

PROJECT ACTIVITIES	OUTPUTS	% COMPLETED <sup>1</sup>	DISCUSSION OF ACTIVITIES <sup>2</sup>
<p>5. Undertake piloting of administrative or policy measures to implement community protocols, bioprospecting, and/or biotechnology research as identified priority</p>	<p>Report on piloting of administrative or policy measures to implement community protocols, bioprospecting, and/or biotechnology research as identified priority by country</p>	<p>100%</p>	<ul style="list-style-type: none"> <li>- Developed a Terms of Reference (TOR) and identified a national consultant to assist on tasks relating to legal requirements for the development and implementation of ABS agreements in pilot cases, in accordance with Viet Nam legislation and NP-ABS</li>   <li>- Developed a contract with national expert to assist on tasks relating to legal requirements for the development and implementation of ABS agreements in pilot cases, in accordance with Viet Nam legislation and NP-ABS;</li>   <li>- Worked with stakeholders, and selected the Vietnam Academy of Agriculture, which BCA supported in the development of an ABS agreement with Rijk Zwaan company in Holland; Memorandum of Understanding between VEA and the Korea National Institute of Biological Resources on a cooperation concerning research on biological resources, among others.</li>   <li>- Organized a field visit and a consultation meeting to understand the current situation and to facilitate negotiation and development of ABS agreement between Sapa Napro Co., Ltd. involving households. The field visit and consultation meeting took place in 22 - 26 December 2015 in Lao Cai.</li> </ul>

<sup>1</sup>0% - not yet started; 25% - discussed plans; 50% - implementing activity stage; 75% - finished activity and writing report; and 100% - output delivered

<sup>2</sup>what were done; when were these done; who did these; where were these done; what were discussed and agreed; what are the plans; what are the difficulties in achieving outputs

“Draft Decree on the management of access to genetic resources and fair and equitable sharing of benefits arising from the use of genetic resources” is enclosed for the purpose of reporting only, not to be shared to any party, circulated or quoted”

**GOVERNMENT**

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**DRAFT**

**SOCIALIST REPUBLIC OF VIETNAM**

**Independence - Freedom - Happiness**

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*Hanoi, date*                      201..

## **DECREE**

### **ON THE MANAGEMENT OF ACCESS TO GENETIC RESOURCES AND FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THE USE OF GENETIC RESOURCES\***

*Pursuant to the Law on Organization of the Government dated 19 June 2015;*

*Pursuant to the Law on Biodiversity dated 13 November 2008;*

*Upon request of the Minister of Natural Resources and Environment;*

*The Government issues a Decree on the management of access to genetic resources and fair and equitable sharing of benefits arising from the use of genetic resources*

## **Chapter 1.**

### **GENERAL PROVISIONS**

#### **Article 1. Scope of regulation**

1. This Decree prescribes activities of access to, use of genetic resources, traditional knowledge associated with genetic resources and sharing of benefits arising from the use of genetic resources, traditional knowledge associated with genetic resources

2. Human genetic resources, genetic resources beyond the scope of sovereignty and jurisdiction of Vietnam, genetic resources collected in laboratories related to the prevention and control of sanitary and phytosanitary flora, food security, disease threats to humans are not subject to this Decree

3. Traditional knowledge on genetic resources which could not be attributable to any certain local and indigenous community are not under the governing of this Decree.

#### **Article 2. Subjects of application**

\*The draft decree has been revised. “Decree No. 59/2017/ND-CP on the Management of Access to Genetic Resources and the Sharing of Benefits arising from their Utilization” was approved on 12 May 2017, and shall take effect from 1 July 2017.

This Decree applies to organizations, households and individuals in the country, overseas Vietnamese, foreign organizations and individuals carrying out activities related to access to and use of genetic resources, traditional knowledge on genetic resources.

### **Article 3. Interpretation of terms**

In this Law, the terms below are interpreted as follows:

1. *Genetic resource*: includes all species and genetic specimens in nature, conservation areas, biodiversity conservation facilities and scientific research and technological development institutions and in nature. (Law on Biodiversity, 2008)

2. *Traditional knowledge of genetic resources* means knowledge, experience and initiatives of native people on the conservation and use of genetic resources. (Law on Biodiversity, 2008)

3. *Access to genetic resources* means activities of investigating and collecting genetic resources for research and development and production of commercial products. (Law on Biodiversity, 2008)

4. *Utilization of genetic resources* means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology. (Nagoya Protocol on ABS, 2010)

5. *Derivative* means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity. (Nagoya Protocol on ABS, 2010)

## **Chapter 2.**

### **ORGANIZATION OF STATE MANAGEMENT ON ACCESS TO GENETIC RESOURCES AND SHARING BENEFITS ARISING OUT OF THE USE OF GENETIC RESOURCES, TRADITIONAL KNOWLEDGE ON GENETIC RESOURCES**

#### **Article 4. State competent management agencies**

1. Ministry of Natural Resources and Environment is responsible to the Government for consistently managing and monitoring the grant and withdrawth of licenses for access to genetic resources, traditional knowledge on genetic resources, developing and operating a national database on genetic resources, in collaboration with relevant ministries and branches guiding the use of benefits arising from the use of genetic resources.

2. Ministry of Agriculture and Rural Development is responsible for the management, grant and withdrawth of licenses for access to genetic resources of crops and livestock; notifying in writing following a standard form provided in Appendix ... of this Decree to the Ministry of Natural Resources and Environment regarding procedures for licensing an internationally recognized certificate of compliance with access to genetic resources and benefit sharing.

3. Ministry of Health is responsible for the management, grant and withdrawth of licenses for access to genetic resources of extreme urgency against international epidemic and of cases at the request of the World Health Organization (WHO);

notifying in writing following a standard form provided in Appendix ... of this Decree to the Ministry of Natural Resources and Environment regarding procedures for licensing an internationally recognized certificate of compliance with access to genetic resources and benefit sharing.

4. Ministry of Science and Technology is responsible for the management, grant and withdrawth of a protection certificate for registration applications for traditional knowledge on genetic resources, collections of genetic resources; notifying in writing to the Ministry of Natural Resources and Environment regarding procedures for licensing such certificate.

#### **Articel 5. National focal agency**

1. Ministry of Natural Resources and Environment is the national focal point on access to genetic resources and sharing of benefits arising from the use of genetic resources.

2. Responsibilities of the national focal agency:

a) Acting as a contact point liasing and providing information for the Secretariat of the Convention on Biological Diversity and the Clearing House of access to genetic resources and benefit-sharing of the Nagoya Protocol.

b) Providing information and guidance on registration procedures for access to genetic resources; Publishing information related to access to genetic resources and benefit-sharing in accordance with the law.

c) Assigning a sub-unit to be the standing agency managing access to genetic resources and benefit-sharing and helping with the implementation of activities specified in Clause 1, Article 4.

d) Pubishing the list of internationally recognized certificates of compliance with access to genetic resources and benefit sharing; complying with its cooperation obligation in case of identical genetic resources found in the wild in the territory of more than one country.

e) Proposing and implementing proper measures to enhance management efficiency, raising awareness about the importance of genetic resources and traditional knowledge on genetic resources, and access to genetic resources and sharing of benefits arising from the use of genetic resources.

### **Chapter 3.**

#### **LICENSE FOR ACCESS TO GENETIC RESOURCES, TRADITIONAL KNOWLEDGE ON GENETIC RESOURCES**

##### **Article 6. Requirements for activities of access to genetic resources, traditional knowledge on genetic resources**

1. Organizations, households and individuals in the country carrying out activities related to access to and use of genetic resources, traditional knowledge on genetic resources for purposes of scientific research, biological surveys shall register with the local government where such access shall be conducted.

In case, genetic resources, traditional knowledge on genetic resources have been already used for commercial activities, product development or transfer of

research results to third parties, organizations and individuals must have been granted licenses for access to genetic resources.

2. A license for access to genetic resources is required for foreign organizations, households and individuals in the country carrying out activities related to access to and use of genetic resources, traditional knowledge on genetic resources for purposes of scientific research, biological surveys

3. Where there is changes in purposes for access to genetic resources, organizations and individuals shall submit a new application for a new license for access to genetic resources.

#### **Article 7. Conditions for granting Licenses for access to genetic resources and traditional knowledge**

1. An application for a License has been certified and confirmed of validity and completeness by a state competent management agency.

2. A contract on access to genetic resources and benefit sharing has been signed with organizations, households or individuals assigned to manage genetic resources in clause 2, Article 55 of the Law on Biodiversity.

3. Access to genetic resources which are not in following cases <sup>1</sup>:

a) Genetic resources of species in the List of endangered and rare species of protected precedence except those allowed by state competent management agencies.

b) The use of genetic resources of potential harm to humans, environment, security, defense and national interests.

#### **Article 8. Competence, order and procedures for access to genetic resources, traditional knowledge on genetic resources**

1. Organizations and individuals applying for licenses for access to genetic resources shall submit a dossier of application and pay issuance fee to a state competent agency pursuant to Article 4 of this Decree. A dossier of application for a license for access to genetic resources comprises<sup>2</sup>:

a) An application for a license for access to genetic resources<sup>3</sup> following a form provided in Annex XX of this Decree.

b) A copy of the contract on access to genetic resources and benefit sharing following a form provided in Annex YY of this Decree.

c) An electronic file containing information of the Application, the Contract access to genetic resources and benefit-sharing and other information (if any).

2. Within five (05) working days since its receipt of an application for dossiers a License for access to genetic resources, the state competent agency shall send a written notice to applying organizations and individuals specifying their applications are valid or requesting any supplements to complete the applications. The time to complete the application shall not be calculated in the overall assessment time.

<sup>1</sup> Clause 4, Article 59 of the Law on Biodiversity, supplementing a List of documents requesting approval of the Minister of Agriculture and Rural Development;

<sup>2</sup> Clause 2, Article 59 of the Law on Biodiversity, supplementing point c;

<sup>3</sup> Including a plan for access to genetic resources;



3. Since its receipt of a valid application, the competent state agency shall establish an interdisciplinary evaluation council to evaluate submitted documents in the Application for a License for access to genetic resources from organizations and individuals (if necessary). The assessment time ranges on case basic as follows:

a) Forty-five (45) working days for an Application for a License for access to genetic resources for purposes of research, biological exploration.

b) Ninety (90) working days for an Application for a License for access to genetic resources for commercial purposes.

During the assessment time, the state competent agency is eligible to request the parties having signed the contract on access to genetic resources and benefit sharing to interpret, adjust for any where not appropriate.

4. Within fifteen (15) days since evaluation results come out, the state competent agency shall decide to grant a License for access to genetic resources in the form prescribed in Appendix ... of the Decree and certified on the contract on access to genetic resources and benefit sharing. Where the application should be refused or fail to reach consensus on the Contract on access to genetic resources and benefit sharing, the state competent agency shall notify in writing its refusal stating the reasons.

5. Access and use of genetic resources by organizations and individuals may be conducted are only allowed with a granted license for access to genetic resources and benefit-sharing and a Contract on access to genetic resources and benefit-sharing certified by the state competent agency.

6. Ministry of Agriculture and Rural Development, the Ministry of Health shall announce the Ministry of Natural Resources and Environment on their decision to the grant, refuse or revoke any licenses for access to genetic resources under their management.

7. Ministry of Finance, in collaboration with the Ministry of Natural Resources and Environment shall provide for specific fee rate, the management and use of such fees for evaluating licensing applications.

**Article 9: Shortened order and procedures for access to genetic resources, traditional knowledge on genetic resources**

1. Shortened order and procedures for access to genetic resources, traditional knowledge on genetic resources shall be applied to following applications by organisations and individuals:

a) Access to genetic resources of extreme urgency against international epidemic and of cases at the request of the World Health Organization (WHO)

b) Tiếp cận nguồn gen trong bộ sưu tập nguồn gen đã được chứng nhận bởi Bộ Khoa học và Công nghệ, trong chương trình Quỹ gen do Bộ Khoa học và công nghệ quản lý.

b) Access to genetic resources in collections of genetic resources certified by the Ministry of Science and Technology, under the Gene Bank Program by the Ministry of Science and Technology.

c) Access to genetic resources carried out by enterprises of BIOTRADE program has already complied with principles, criteria and conditions of BioTrade.



2. The assessment time for Applications for a License for access to genetic resources under cases provided for in Clause 1 of this Article shall be fifteen (15) working days since the receipt of a valid application.

3. Ministry of Science and Technology shall provide for specific regulations on the recognition criteria for collections of genetic resources and related management regulations.

4. Ministry of Natural Resources and Environment, in collaboration with the Ministry of Industry and Trade, the Ministry of Health shall regulate specific principles, criteria and conditions for biotrade and related management regulations.

#### **Article 10. Contracts on access to genetic resources and benefit sharing**

1. A contract on access to genetic resources and benefit-sharing is an agreement on access to genetic resources, traditional knowledge on genetic resources and specific provisions on benefit sharing between parties having access to genetic resources and organizations, individuals assigned to manage genetic resources as specified in Article 55 of the Law on Biodiversity.

For access to traditional knowledge on genetic resources, the contract should be agreed between parties having access and local, indigenous communities holding traditional knowledge to be accessed and used.

2. The contract shall be in compliance with the principle of fair and equitable sharing of benefits among stakeholders<sup>4</sup>:

a) The State;

b) Organizations, households and individuals assigned to manage genetic resources;

c) Individuals, local communities, indigenous peoples holding traditional knowledge associated with genetic resources to be accessed and used

d) Local communities living in areas where genetic resources shall be accessed and their livelihoods depend such genetic resources.

e) Organizations and individuals licensed for access to genetic resources and other relevant parties specified in their licenses for access to genetic resources.

3. The contract shall include specific provisions on notice of disputes, time, dispute resolution, dispute resolution jurisdiction (if any) settlement process, applicable laws, with priority for applying relevant Vietnam laws resolve disputes.

4. The contract on access to genetic resources and benefit sharing shall be certified by the state competent management agency as prescribed in Clause 4, Article 10 of this Decree<sup>5</sup>.

Where consensus can not met in setting terms of the contract on access to genetic resources and benefit sharing, the state competent agency reverses the right to stop its evaluation on the relevant application for access to genetic resources.

#### **Article 11. Granting and withdrawing licenses for access to genetic resources**

<sup>4</sup> Stakeholders are defined in Article 61 of the Law on Biodiversity, however the Decree added points c, d

<sup>5</sup> Additional condition of certification of the state competent management agency.

1. Rights and obligations of organizations and individuals granted licenses for access to genetic resources are defined in Article 60, Law on Biodiversity<sup>6</sup>.

2. A license for access to genetic resources shall be only used once in accordance with the access plan attached with the application for the license and considered an internationally recognized certificate of compliance with access to genetic resources and benefit-sharing .

3. A license for access to genetic resources shall be considered of withdrawn in the following cases:

a) When such license expires but organizations and individuals granted the license have no need to extend it.

b) Organizations and individuals fail in comply with contents as prescribed in the license for access to genetic resources.

4. The Ministry of Natural Resources and Environment shall decide to withdraw a License for access to genetic resources; noting in writing to organizations or individuals having their licenses withdrawn.

5. Since the date of the decision to withdraw their granted licenses, organizations and individuals are not allowed to have access to and use of genetic resources previously licensed.

#### **Chapter 4.**

### **FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THE USE OF GENETIC RESOURCES, TRADITIONAL KNOWLEDGE ON GENETIC RESOURCES**

#### **Article 12. Principles of sharing benefits arising from the use of genetic resources, traditional knowledge on genetic resources**

1. The sharing of benefits is based on the contract on access to genetic resources and benefit-sharing approach between parties having access and organizations and individuals assigned to manage genetic resources has been certified by the State competent agency.

2. Forms of sharing of benefits (monetary and non-monetary) from the use of genetic resources are specified in Article 13 of this Decree.

3. Methods of implementing sharing of benefits are provided for in Article 14 of this Decree.

4. Benefit-sharing ratio (currency) is determined on specific case and contribution of genetic resources, traditional knowledge on genetic resources and investment in human resources, technology, and capital of the use of genetic resources.

Benefit-sharing ratio (currency) is not less than 1% and no more than 3% of total sales generated by accessing and using genetic resources<sup>7</sup>.

<sup>6</sup> Note point c, Clause 1, Article 60: Rights and obligations of organizations and individuals that are granted licenses for access to genetic resources not on the list of those banned from export under law.

<sup>7</sup> Or xx% out of net profit

### **Article 13. Forms of sharing of benefits from the use of genetic resources**

Benefits from the use of genetic resources accessed in Vietnam shall be shared in monetary and non-monetary forms, including:

1. Monetary benefits;
  - a) Lump-sum in cash;
  - b) Payment at certain times;
  - c) Payment for property owners calculated as rents for land with resources
  - d) Fees/charges for access/collection or acquirement in other ways
  - e) Franchise fees in commercialization
  - f) Special fees shall be contributed to trust funds supporting conservation and sustainable use of biodiversity;
  - g) Salaries and preferential terms under the agreement;
  - h) Research fund;
  - i) Money contributed to joint ventures;
  - k) Joint ownership of intellectual property rights
2. Non-monetary benefits:
  - a) Sharing of development research result
  - b) Participation in the development and production of commercial products
  - c) Cooperation in research and development of genetic resources; access to scientific and technical information related to genetic resources;
  - d) Technology transfer to the supplier of genetic resources under fair and profitable terms, including preferential terms if agreed, namely knowledge and genetic technology using genetic resources, including biotechnology, or relating to conservation and sustainable use of biodiversity;
  - e) Training and capacity building in research and development of genetic resources;
  - f) Contribution in local economic development, development of public works and poverty reduction;
  - g) Research towards priority needs, such as health and food security, taking into account the use of genetic resources in the providing country;
  - h) Benefits of food security and social security
  - i) Joint intellectual property rights for innovative results based on access to genetic resources
  - k) Other forms under a written agreement and provisions in licenses for access to genetic resources;

### **Article 14. Implementation of benefit sharing**

1. Monetary benefits shall be shared among providers of genetic resources and traditional knowledge on genetic resources in two ways:

a) A lump sum in cash, depending on the agreement by the parties but no lower than 10% of the total investment for the project, to be paid immediately after being licensed for access to genetic resources. This prepayment is considered the value of genetic information excluding the cost for the provision of materials for later commercial production.

The total investment value of the research and development project shall be determined in accordance with tax statement to tax authorities and/or investment certificates, business registration with investment management agencies, bank credit documents and other proofs.

b) Payment at certain time since the collection, exploitation, research and development of products and derivatives from genetic resources starts until profits from the commercialization of such products and derivatives are generated.

2. Sharing of benefits in certain cases:

a) Where users of traditional knowledge on genetic resources should apply for intellectual property protection, local communities, indigenous people supplying such traditional knowledge on genetic resources would then be shared the intellectual property copyright in any form.

b) Where organizations and individuals assigned to manage genetic resources are employees, capital contributors and also providers of genetic resources for the production of raw materials, then sharing of benefits from genetic resources can be done in many forms such as wages, salaries, bonuses, dividends, shares of capital contribution, other types of monetary benefits and a part shall be contributed to the State Trust Fund for conservation of genetic resources.

c) Where access to genetic resources, traditional knowledge on genetic resources is for non-commercial purposes of scientific research, users of genetic resources can choose how to share benefits such as a lump sum in point a, Clause 1 of this Article or other non-monetary benefits as stipulated in Clause 2, Article 14 of this Decree, which prioritize research and development activities carried out in Vietnam, investments in technology, facilities, cooperation and use of research human resources Vietnam

In case, research and development can not be conducted in Vietnam, users of genetic resources shall prove it impossible to transferring and carrying out such beyond the territory of Vietnam.

d) Where access to genetic resources, traditional knowledge on genetic resources is for special purposes as stated in Article 8 of the Nagoya Protocol, the parties shall negotiate to apply forms of sharing as specified in this Decree; however where access to genetic resources is for production of medicines, vaccines in case of epidemics or emergency, product resulted from the use of accessed genetic resources shall be given to Vietnamese people in priority.

**Article 15. Sharing of benefits arising from the use of genetic resources, traditional knowledge on genetic resources of Vietnam before the Nagoya Protocol takes effect**

Ministry of Natural Resources and Environment is responsible for directly receiving information, working with users for the sharing of benefits in this case. Benefit shared in the form of currency will contribute directly to the Trust Fund for conservation of genetic resources.

**Article 16. Management of shared benefits from access to and use of genetic resources, traditional knowledge on genetic resources**

1. The management of benefits from access to and use of genetic resources shall be made through the Trust Fund for conservation of genetic resources. The Trust Fund serves directly for biodiversity conservation, priority tasks of conservation of species, indigenous genetic resources, operating the national database on genetic resources and managing access to genetic resources and benefit sharing.

Ministry of Natural Resources and Environment, in collaboration with the Ministry of Finance shall propose a plan to establish and operate the Trust Fund for conservation of genetic resources.

2. Monetary benefits derived from access to and use of genetic resources, traditional knowledge on genetic resources are defined as follows:

a) Where the organization assigned to manage genetic resources is the communal People's Committee, the Management Board of protected areas, conservation facilities, research organizations under state management, 70% out of shared money shall be transferred to the Trust Fund for conservation of genetic resources, the remaining 30% shall be under responsibility of the organization assigned to manage genetic resources for using for its operation and activities of access to genetic resources and benefit sharing.

b) For remaining cases, then 50% out of shared money shall be transferred to the Trust Fund for conservation of genetic resources, the 50% remaining shall be assigned to organizations and individuals managing such genetic resources to use for their operational organization.

Organizations and individuals must comply strictly with provisions on taxes related to the proceeds.

c) Where sharing of monetary benefits related to traditional knowledge on genetic resources, if such traditional knowledge belongs to one or several individuals, those individuals shall receive a full portion of the money as agreed with the user in the contract on access to genetic resources and benefit-sharing certified by the competent state agency.

Where traditional knowledge belongs to a local indigenous community, peoples represent such village or town shall set up a joint fund under supervision of at least 3 (three) representatives of traditional knowledge holders to receive monetary benefits which shall be transferred to, the fund will be prioritized for investments in the production and protection of accessed genetic resources, and no expenditure for consumption is allowed.

Local communities may include one or more villages and hamlets ... as defined in the Civil Code and the Ordinance on Democracy at local level.

## Chapter 6.

### PROTECTION OF TRADITIONAL KNOWLEDGE ON GENETIC RESOURCES

#### **Article 17: Principles of State protection on copyright of traditional knowledge associated with genetic resources.**

1. The State recognizes copyright of traditional knowledge associated with genetic resources of local, indigenous communities.

2. Issuing protection documents related to the use of traditional knowledge on genetic resources should be in consent individuals and indigenous communities holding traditional knowledge.

Local, indigenous communities holding traditional knowledge on genetic resources should be shared results of research, intellectual property rights for research, and benefits arising from the use of traditional knowledge about such genetic resources.

3. Ministry of Science and Technology shall specify the implementation of protection of traditional knowledge on genetic resources.

## Chapter 7.

### CONTROLLING, SUPERVISING AND MONITORING, COMPLIANCE

#### **Article 18: Responsibility of controlling the compliance with obligations on access and sharing of benefits from the use of genetic resources, traditional knowledge on genetic resources**

1. Ministry of Science and Technology<sup>8</sup> responsible for controlling and ensuring the compliance with obligations on access and sharing of benefits arising from the use of genetic resources, traditional knowledge on genetic resources when reviewing applications for the protection of intellectual property rights.

2. Ministry of Finance<sup>9</sup> is responsible for controlling the compliance with obligations on access and sharing of benefits arising from the use of genetic resources, traditional knowledge on genetic resources through controlling customs declaration dossiers

3. Agencies competent for granting license for exports of goods are liable to control and ensure the compliance with obligation on access and sharing of benefits arising from the use of genetic resources, traditional knowledge on genetic resources when reviewing applications for export licenses from individuals and organizations.

#### **Article 19. Measures of forced monitoring, compliance with access and sharing of benefits arising from the use of genetic resources, traditional knowledge on genetic resources**

1. Ministry of Natural Resources and Environment shall carry out inspection, interdisciplinary monitoring on the implementation of provisions on access to genetic resources and benefit sharing; the implementation of coercive measures, sanctions in

<sup>8</sup> The state management agency on intellectual property

<sup>9</sup> Customs Agency



accordance with law in case of any detection of violations to provisions of the Decree; reporting to the Government on the compliance of regulations and laws on access to genetic resources and benefit sharing.

2. State competent agencies pursuant to their functions and duties are assigned to conduct inspection, regular and unscheduled checkings for entities engaged in activities related to access to and use of genetic resources; implementing coercive measures, sanctions in accordance with law in case of any detection of violations.

3. National focal agencies and state competent agencies on access and benefit-sharing from the use of genetic resources, traditional knowledge on genetic resources shall strengthen cooperation with countries having already employed requirements of compliance with laws on access to genetic resources and benefit sharing, enforcement measures applied to countries (users) of foreign genetic resources.

4. The parties entering the contract to access genetic resources, competent agencies are encouraged and given favorable conditions for their use of judicial power, the right to request for the implementation of foreign judgements to guarantee the implementation of the contract and dispute resolution if any.

## **Chapter 8.**

### **INFORMATION ON ACCESS TO GENETIC RESOURCES AND SHARING OF BENEFIT ARISING FROM THE USE OF GENETIC RESOURCES, TRADITIONAL KNOWLEDGE ON GENETIC RESOURCES**

#### **Article 20. Information On Access To Genetic Resources And Sharing Of Benefit Arising From The Use Of Genetic Resources, Traditional Knowledge On Genetic Resources**

1. Organizations and individuals applying for licenses for access to genetic resources are entitled to request state competent agencies not to disclose any information on research, development and business related to the information required to declare when applying for licenses.

2. Ministry of Agriculture and Rural Development, Ministry of Health, Ministry of Science and Technology are responsible for providing with information on licensing access to genetic resources and benefit sharing, protection certificates of traditional knowledge on genetic resources for the Ministry of Natural Resources and Environment to aggregate, update information and data.

3. Ministry of Natural Resources and Environment is responsible for publishing information on internationally recognized certificate of compliance with access to genetic resources and benefit sharing, regularly exchanging information with the Clearing House on access to genetic resources and benefit sharing of the Nagoya Protocol on ABS.

## **Chapter 9.**

### **IMPLEMENTATION ARRANGEMENT**



**Article 21. Regulations on transitional steps in the implementation of this Decree**

State management agencies competent to license access to genetic resources are entitled to proactively identify activities related to access to genetic resources and benefit sharing, disseminating information to entities carrying out such activities to apply for licensed access to genetic resources under the provisions of this Decree in a period of 06 (six) months since this Decree takes effect.

After that time, if those subjects fail to conduct registration for licensed access to genetic resources, state competent management agencies shall carry out sanctions or require governments of users of genetic resources outside the territory of Vietnam to conduct compliance, inspection measures and penalties.

**Article 22. Enforcement**

1. This Decree shall take effect from the date of

2. Where genetic resources, traditional knowledge on genetic resources of Vietnam have been already accessed before the Nagoya Protocol takes into force and after the Biodiversity Convention takes into force, without a license for access to genetic resources, they are still subject to obligation of sharing benefits arising from the use of genetic resources, traditional knowledge associated with such genetic resources of Vietnam.

3. This Decree shall replace contents of access to genetic resources and sharing of benefits arising from the use of genetic resources in Articles 18, 19 and 20 of Decree No. 65/2010/ND-CP dated June 11, 2010 of the Government on detailed regulations on and guidelines for the implementation of some articles of the Law on Biodiversity.

4. Ministers, Heads of ministerial-level agencies, heads of government agencies, Chairman of People's Committees of provinces and centrally-run cities shall implement this Decree./.

**Recipients:**

- Party Central Committee's Secretariat;
- Prime Minister, Deputy Prime Ministers;
- Ministries, ministerial-level agencies, agencies under the Government;
- People's Council, People's Committees of provinces and centrally run cities;
- Central Office and Commissions;;
- Office of the General Secretary;
- Office of the President;
- Nationalities Council and the Committees of the National Assembly;
- Congress office;
- Supreme People's Court;
- People's Procuratorate of the Supreme;
- State Audit;
- National Finance Supervision Committee;
- Vietnam bank for social policies;
- Vietnam Development Bank;
- Central Committee of the Vietnam Fatherland Front;
- Central bodies of unions;
- Government Office: Chairman, Deputy Chairmen, Assistant to the PM, electronic information portal, departments, subordinate units
- Archive: Clerical, KGVX (3 sets).

**ON BEHALF OF THE GOVERNMENT  
PRIME MINISTER**

#### **ANNEXES. FORMS**

1. Form 1: Application for a License for access to genetic resource with a place for access to genetic resource enclosed
2. Form 2: Sample contract on access to genetic resources and benefit sharing
3. Form 3: Sample license for access to genetic resources
4. Form 4: Application for registration of collections of genetic resources

# **Annex 2**

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## **Lessons Learned**

# **LESSONS LEARNED**

## **SUPPORT FOR RATIFICATION AND THE IMPLEMENTATION OF THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT SHARING IN ASEAN COUNTRIES LAO PDR, MYANMAR, AND VIET NAM**

(APRIL 2015 – JANUARY 2017)

**ASEAN CENTRE FOR BIODIVERSITY  
LAGUNA, PHILIPPINES**

**25 APRIL 2017**

## Introduction

The purpose of the lessons learned document for the ***Support for Ratification and the Implementation of the Nagoya Protocol on Access and Benefit Sharing in ASEAN Countries: Lao PDR, Myanmar, and Viet Nam*** is to capture the project's lessons learned in a formal document for use by other project managers (PM) on similar future projects. This document may be used as part of new project planning for similar projects in order to determine what problems occurred and how those problems were handled and may be avoided in the future.

Additionally, this document details what went well with the project and why, so that other project managers may capitalize on these actions. Project managers may also use this document to determine who the project team members were in order to solicit feedback for planning their projects in the future. This document will be formally communicated with the organization and will become a part of the organizational assets and archives.

## Lessons Learned Approach

The lessons learned from the ABS Project are compiled from mission reports throughout the project lifecycle. Lessons learned were also gathered from both realized and unrealized risks in the project risk register as well as through interviews with project team members and other stakeholders as necessary. The lessons learned from this project are to be used as references for future projects and contain an adequate level of detail so that other project managers may have enough information on which to help base their project plans. The lessons learned in this document are categorized by project knowledge area.

These knowledge areas consist of: procurement management, risk management, integration management, quality management, time management, cost management, scope management, human resource management, and communications management. Note that some knowledge areas may not contain lessons learned if none were documented throughout the project lifecycle.

## Lessons Learned from the Project

The following chart lists the lessons learned from the ABS project. These lessons are categorized by project knowledge area and descriptions, impacts, and recommendations are provided for consideration on similar future projects. Successes as well as deficiencies from the implementation of the project are noted.

## Lessons Learned: Project Implementation and Management

Category	Issue	Problem/Success	Impact	Recommendation
Integration Management	Change control	Changes were mostly appropriately addressed when communicated accordingly between the implementing and executing agencies, and executing and partner agencies. However, there was an instance that a change in scope was implemented without coordinating properly with the executing agency.	Change in schedule was approved upon close coordination with UN Environment. However, because of non-coordination, the capacity for a national legal person to develop ABS frameworks was not realized.	Include in a formal agreement and develop a Project Management Plan (PMP) with the national project implementers, and agree with the Plan to be guided on the process of managing the project and how to address changes, among others.
Scope Management	Scope variation	Project outputs were enumerated but few outputs were misinterpreted by country's project focal persons	The PM did not have a plan for a kick-off activity with project focal persons to be clear with the scope including requirements to be submitted. As a result, few outputs were moderately satisfactory.	The PM must have a clear definition of the outputs as basis for agreement with participating countries. A budget for kick-off activity could provide a venue for stakeholders to level-off on the project's scope, budget, schedule, quality, risk, and resources.
Time Management	Delays	With the proper coordination with national implementing partners, most of the partners were able to implement the project activities as scheduled.  However, a partner had considerable delay in implementation due to internal policy procedural requirements that necessitate clearance at the inter-ministerial level.	National project implementation of activities in majority were on time.  Additional costs occurred from travel expenses and personnel time required to visit and support the partner in an extended manner.	Close coordination on the planned schedule with implementing partners need to be made to facilitate internal preparation to implement activities simultaneously with other countries.

Category	Issue	Problem/Success	Impact	Recommendation
Cost Management	Utilization variance	The project utilized 99.4% of the allocated total funds.	Efficient utilization of funds in delivering project outputs.	The project should have a well-designed work and financial plan. Furthermore, an effective and efficient internal and external processes to get clearance for changes should be put in place at ACB and UN Environment.
Quality Management	Outputs format or template	A process for determining acceptable outputs was planned into the project but some outputs were not satisfactory.	This allowed the project team to work with project participating countries to smoothly ensure all outputs were of acceptable quality and avoided any re-work and delays associated with substandard outputs.  However, there was misinterpretation on a deliverable requiring arbitration by the implementing agency.	The PM needs to always make outputs clear, specific and well defined with project stakeholders.
Human Resources Management	Project HR support	Hiring of project staff in project participating countries to do the technical and administrative work was planned but budget was inadequate.  The support of a technical staff at ACB provided the necessary support to project management. Also, the project provided logistical support to finance officers of ACB.	The project focal persons in the countries had to carry additional tasks on her/himself or assign to another staff. As such, delays in realizing outputs resulted.  The technical staff provided quality and timely delivery of reports to UN Environment and support to national workshops.  Quality national financial reporting	The project should include budget for hiring project staff in each project participating country to assist the project focal person in providing technical and administrative work for the project.  At least budget costs to provide logistical support for ACB technical and financial staff to assist countries in project management and implementation.



Category	Issue	Problem/Success	Impact	Recommendation
			were facilitated with the participation of finance officers of ACB.	Ideally, project funds could include hiring necessary project staff for technical and financial work.
Communication Management	Communication Protocol	Agreeing with project stakeholders on communication processes facilitates project implementation. However, delay in feedback resulted in delay of necessary actions.	Timely instructions facilitated delivery of outputs.  Delays in implementation of project activities in a participating country.	The PM needs to get the agreement with stakeholders on the appropriate communication process and protocol that would result to the most effective and efficient action.
Risk Management	Risk Planning	Risk identification and planning were not done.	Delays in project implementation due to unidentified risks.	The PM needs to do Risk Management Processes.
Procurement Management	Contract Requirements	Regional and national expert service providers were acquired and delivered outputs.	Draft national frameworks were satisfactorily developed for the project participating countries.	Qualified expert service providers within the ASEAN region and from the country should be tapped. Service providers outside of the region and country can be acquired to supplement the inadequacy/ies of the regional and/or national service providers.
Stakeholder Management	Stakeholder management process	Stakeholders were manageable.	Successful completion of the project.	The PM needs to do stakeholder management processes in every project, monitor and manage the stakeholders.

## Lessons Learned: Developing National ABS Regulatory and Institutional Frameworks

\*As extracted from country completion reports:

National Project Coordination and Management	<ul style="list-style-type: none"> <li>a. Good interaction between project coordinators (regional and national) and concerned stakeholders is necessary to move the project activities forward.</li> <li>b. Adhering to the agreed work plan is recommended; however, flexibility during unexpected changes is needed.</li> <li>c. Collaborating with existing technical working groups can fast track the progression of the project development</li> <li>d. It is beneficial to have a group of specialists perform part time work, and hire a project staff to fully manage the work plan.</li> <li>e. ACB played a significant role in the project implementation, as the Centre provided support to country members by involving international experts in country-specific activities.</li> <li>f. The involvement of a legal expert in the legal aspects of the project is important.</li> </ul>
Project Implementation	<ul style="list-style-type: none"> <li>a. The two national workshops organized based on the work plan provided important information, knowledge, and experiences on ABS at national and global levels. These contributed to raising awareness of representatives from different ministries, research institutes, and universities.</li> <li>b. Work plan with clear expected outputs can guide the project activities to meet the set objectives or targets.</li> <li>c. Seeking approval in advance from the government will lessen the delays in implementation of the work plan.</li> </ul>
Stakeholder Engagement	<ul style="list-style-type: none"> <li>a. Strategically identifying stakeholders is significant in achieving project activities and in meeting the demand of budget limitation.</li> <li>b. Involving private sectors or GR users in the ABS discussions should be considered to balance the views on the establishment of ABS regulations.</li> <li>c. Active involvement of participants in achieving the objectives of consultation meetings is crucial in the project's success.</li> <li>d. Involvement of stakeholders from the academe is important in constructing the ABS framework.</li> <li>e. Reviewing the methodology and the recommendations from previous projects are beneficial.</li> <li>f. Involvement of CSOs/NGOs, other line ministries, research institutions, private sector, and other key and concerned stakeholders during the consultation-workshop is a must.</li> <li>g. It is important to partner with a local NGO to receive funds from executing agency and to transfer funds to a partner implementing agency.</li> </ul>

Capacity Building and Policy Support	<ul style="list-style-type: none"> <li>a. Building on existing regulations and procedures at the national or institutional level is an opportunity to increase stakeholder understanding and participation for which they are familiar with.</li> <li>b. Clear explanation by using existing ABS procedures and rules support brainstorming and discussion during stakeholder consultations would assist in the learning and innovating processes.</li> <li>c. Identifying scope of work is very important by understanding the country's situation in terms of existing policies and policies to develop.</li> <li>d. Capacity building on ABS and related matters should be provided by ACB, SCBD, UN Environment and other concerned organizations.</li> <li>e. Case studies based on monitoring and sharing experiences can help in drafting pilot projects on the ABS implementation about GR management</li> <li>f. Prioritizing and thinking ahead are useful to design further project activities. Formulation can bring up a combination of education and research and development perspectives.</li> <li>g. The project also provided support and guidance in the implementation of access to genetic resources specifically technical consultation on developing a memorandum of ABS, assessment on capacity to implement ABS models in place and came up with lessons learned from practical experience.</li> <li>h. Stakeholders of the project will benefit from more training and awareness raising activities.</li> </ul>
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## LESSONS LEARNED KNOWLEDGE BASE / DATABASE

The lessons learned for the ABS Project will be contained in the organizational lessons learned knowledge base maintained by the Programme Development and Implementation (PDI) unit of the ASEAN Centre for Biodiversity (ACB). This information will be catalogued under the project's year (2017) and the type of project (ABS). This information will be valuable for any project manager assigned to a construction of new project in the future.

## LESSONS LEARNED APPLIED FROM PREVIOUS PROJECTS

The ABS Project utilized several lessons learned from past projects:

1. The inclusion of a project closing meeting was held in preparation for project completion reporting by reflecting on the experience reported in the UN Environment-GEF Regional Project on ABS implemented in 2011 to 2014.
2. Perspective of the private sector was highlighted by inviting a representative of the private sector to make a presentation during the consultation-workshop. This lesson learned was based on the report in the UN Environment-GEF Regional Project on ABS.
3. The national key stakeholders were tapped as lead or resource persons during consultation-workshops. This lesson learned was based on the report in the UN Environment-GEF Regional Project on ABS.

## PROCESS IMPROVEMENT RECOMMENDATIONS

As indicated in the lessons learned chart above, recommendations were highlighted. Such as: (1) develop PMP; (2) conduct Kick-off activity; (3) define deliverables; (4) coordination on the planned schedule; (5) identify processes to facilitate appropriate utilization of funds; (6) specify outputs; (7) allocate budget for hiring regional and national project staff; (8) identify communication process and protocol; (9) consider qualified experts within the region; and (10) implement stakeholder management process. Not only is this a lesson learned for similar future projects; but ACB must ensure that all project managers including national project coordinators are aware of the need for this process to be included in the planning of all future projects.



## ABOUT THE PROJECT

With the support from the Ministry of Environmental Protection of China, under the China Trust Fund to the United Nations Environment Programme (UN Environment), a project entitled, “Support for Ratification and the Implementation of the Nagoya Protocol on Access and Benefit Sharing (ABS) in ASEAN Countries” was launched and implemented by UN Environment Regional Office for Asia Pacific (UN Environment-ROAP). The project aims at providing technical support to countries in developing national ABS regulatory and institutional frameworks for selected ASEAN Member States and piloting initiatives to implement the Nagoya Protocol on ABS, with a strong focus on promoting regional cooperation, knowledge sharing and learning on ABS within ASEAN Member States and China.

The collaboration between UN Environment-ROAP and the ASEAN Centre for Biodiversity aims to implement part of the activities under the said project by engaging actively with the ASEAN Member States and China specifically under the project name, “Building capacity of countries in support of the development and implementation of National ABS Frameworks.” The project supported the region through capacity building in Lao PDR, Myanmar and Viet Nam in further enhancing their national regulatory and institutional frameworks on ABS and in piloting ABS measures.

