

# Laos Peoples' Democratic Republic

## Guidelines and Model ABS-BioTrade Clauses

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# Overview

- Background -- why these model clauses were developed
- Process of developing the model clauses
- Survey of the contents of the model clauses

# Background

- 2011-2013 UNEP/GEF project supported preparation of drafts of:
  - Government policy on ABS
  - Law on genetic resources
  - ABS administrative systems
  - Mechanisms for public education awareness and participation
- Draft policy and law have not been adopted
- Administrative system for ABS is being implemented on a case-by-case basis – no standard contract

# Background

**2018**

UNCTAD BioTrade Initiative offered support to develop model clauses for ABS contracts

**2019**

Ministry of Science and Technology (MOST) proposal for UNEP/GEF project on ABS endorsed

**2020-2021**

UNEP/GEF project will support updating the 2013 draft policy and draft regulatory framework based on Lao PDR's experience with ABS



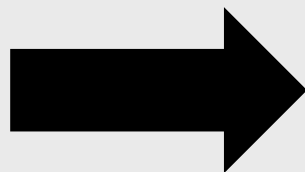
# Process

## UNCTAD

- Contracted consultant
- Provided questionnaires

## Lao PDR Biotechnology and Ecology Institute (BEI)

- Adapted and translated questionnaires
- Interviewed stakeholders and translated responses



## Consultant

- Identified issues for model clauses based on responses to questionnaires
- Reviewed examples of model clauses from other regions and countries
- Drafted model clauses

## UNCTAD & BEI

- Reviewed draft model clauses

# Content of Model Clauses

## **Required by Lao PDR national contract law:**

- Name and addresses of the contracting parties;
- Purpose, price, execution term, payment, delivery;
- Scope, quantity and quality of the objective;
- Place of contract execution and obligation to notify each other;
- Form and dispute resolution body; and
- Conditions of modification and termination of the contract before term.

# Content of Model Clauses

**Parties**

**Preamble**

**Purpose – options:**

- Academic, non-commercial research
- Bioprospecting and utilization that seek to identify genetic resources with potential for development into a marketable product
- Non-commercial research with the understanding that such research may identify genetic resources with potential for development into a marketable product

# Content of Model Clauses

## Scope – options:

- Bioprospecting with no specific biological or genetic resource targeted
- Access to and use of a specific biological or genetic resource *in-situ*
- If traditional knowledge associated with a biological or genetic resource will be accessed as well
- If the contract is for access to and utilization of a specific biological or genetic resource from an *ex-situ* collection

## Definitions



# Content of Model Clauses

## Benefits – options:

- If the purpose of the contract is to enable bioprospecting, collection *in-situ*, or obtaining biological or genetic resources from an *ex-situ* collection, and utilization that seeks to identify biological or genetic resources with potential for development into a marketable product
- If the purpose of the contract is to support academic, non-commercial research, with and without monetary benefits

# Content of Model Clauses

## Benefits – options (continued):

- Monetary – to be stipulated in ABS decree
- Non-monetary – options:
  - infrastructure support for provider community/communities
  - equipment
  - involve Lao scientists in the research
  - training
  - scholarships and/or other educational opportunities for human resource development
  - technical advice or support
  - assistance with fund raising

*All types of non-monetary benefits, and particularly training and education, should be considered as options for support to communities as well as government institutions*

# Content of Model Clauses

## **Activities that may be carried out under the contract**

- Collection in-situ
- Obtain specimens from ex-situ collections

## **Activities that may not be carried out under the contract**

- Transfer to third party without prior written approval
- Use for any purpose not specified in the contract without prior written approval
- Claim IPR in any way not specified in the contract
- Assign rights, benefits, or obligations without prior written consent
- Competent national authority grant any other party access to same genetic resource during the period of the contract

# Content of Model Clauses

## **Specific obligations of the competent national authority**

- Issue permit that will serve as the internationally recognized certificate of compliance
- Advise on other permits that may be required
- ABS Clearing-house obligations

## **Specific obligations of the party requesting access**

- Comply with all applicable laws
- Bear all costs incurred in bioprospecting or accessing resources in-situ or from ex-situ collections, delivering duplicate samples, if required, carrying out research, utilizing genetic resources, and sharing the results
- Involve individual and institutional local partners

# Content of Model Clauses

## Specific obligations of the party requesting access

- Contribute to building capacity for bioprospecting and using genetic
- Utilize the accessed GR in Lao People's Democratic Republic to the extent feasible
- Share results with the competent national authority and provide any assistance that may be required to interpret the results
- Acknowledge the contribution of LPDR, national scientists and researchers, local partners, and all providers in all communications and publications concerning the activities carried out under the contract
- Provide to the competent national authority printed copies of any publication based on the use of the accessed GR and links to the site or sites where the publication may be accessed online
- Enter into a written agreement with the provider or providers of ATK that clearly describes the TK and clearly expresses the provider's or providers' PIC to its use
- Additional conditions for collecting in protected areas

# Content of Model Clauses

## **Delivery**

- Monetary and non-monetary benefits

## **Intellectual property rights**

- Co-ownership OR
- Free, non-exclusive global license

## **Communications**

## **Dissemination of knowledge**

- Disclosure of digital sequence information
- Publications
- No disclosure of TK without prior informed consent

# Content of Model Clauses

## **Monitoring contract performance**

- Right of competent national authority to monitor
- Access to premises and documents
- Periodic progress reporting
- Financial reporting
- Protection of confidential information
- Retaining records
- Option of face-to-face meetings

# Content of Model Clauses

## **Guarantees, indemnification and insurance**

- Competent national authority does not guarantee:
  - the quality, viability or purity of the accessed resources
  - title to the accessed resources
  - the truthfulness or accuracy of any associated traditional knowledge and any other information provided with the accessed resources
  - that use of the accessed resources for research or utilization does not infringe any third-party intellectual property rights
- Competent national authority not liable for any loss incurred by the receiving party



# Content of Model Clauses

## **Guarantees, indemnification and insurance (continued)**

- Receiving party guarantees that it obtained all permits
- Receiving party guarantees that its facilities and the qualifications of its personnel are appropriate and adequate for the purpose of the contract.
- Receiving party is solely responsible for insuring its personnel, equipment, and operations
- The contract does not affect the sovereign rights of LPDR, which retains the authority to grant access to genetic resources

# Content of Model Clauses

- Confidentiality
- Severability
- Modification
- Consequences of a breach
- Termination
- Governing law
- Dispute resolution
- Warranty
- Entire agreement

# Resources

- United Nations University/Institute for the Advanced Study of Sustainability (UNU/IAS)  
CBD. 2014. Open-ended *ad hoc* Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. *Report of the Informal Meeting for the Implementation of Articles 19 and 20 of the Nagoya Protocol*. UNEP/CBD/ICNP/3/INF/3. Available online: <http://www.cbd.int/icnp3/submissions>
- Swiss Academy of Sciences. 2016. *Agreement on Access and Benefit-sharing for Academic Research*. Available online: [http://www.swiss-academies.ch/dms/E/Publications/Reports/AccessBenefitSharing\\_ABS\\_Model\\_Clauses.pdf](http://www.swiss-academies.ch/dms/E/Publications/Reports/AccessBenefitSharing_ABS_Model_Clauses.pdf)
- African Union Commission. 2015. *African Union Practical Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa*. Annexes 3 and 4. Available online: [http://www.abs-initiative.info/fileadmin//media/Knowledge\\_Center/Publications/African\\_Union\\_Guidelines/AU\\_Practical\\_Guidelines\\_On\\_ABS\\_-\\_20150215.pdf](http://www.abs-initiative.info/fileadmin//media/Knowledge_Center/Publications/African_Union_Guidelines/AU_Practical_Guidelines_On_ABS_-_20150215.pdf)
- Ethiopia Model contract on access to genetic resources and benefit sharing and MicroB3 Model Agreement on Access to Marine Microorganisms and Benefit Sharing. Available online: <https://www.cbd.int/icnp3/submissions/>
- Model Access and Benefit Sharing Agreement between Australian Government and Access Party. Available online: [www.wipo.int](http://www.wipo.int)
- Drafting successful ABS contracts – practical examples. Fridtjof Nansen Institute. Dakar. 7 March 2017. PowerPoint presentation. Available online: [http://www.abs-initiative.info/fileadmin//media/Events/2017/6-10\\_March\\_2017\\_Dakar\\_Senegal/07\\_Tvedt\\_17030714\\_Contracts\\_for\\_Dakar.pdf](http://www.abs-initiative.info/fileadmin//media/Events/2017/6-10_March_2017_Dakar_Senegal/07_Tvedt_17030714_Contracts_for_Dakar.pdf)