

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD



GUIDELINES AND MODEL CLAUSES ON
ACCESS AND BENEFIT-SHARING AND
BIOTRADE IN THE
LAO PEOPLE'S DEMOCRATIC REPUBLIC



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Acronyms and abbreviations

ABS	Access to genetic resources and benefit sharing
ASEAN	Association of South East Asian Nations
BEI	Biotechnology and Ecology Institute
BTI	BioTrade Initiative
CBD	Convention on Biological Diversity
GEF	Global Environment Facility
IPR	Intellectual property rights
MAF	Ministry of Agriculture and Forestry
MoA	Memorandum of Agreement
MoNRE	Ministry of Natural Resources and Environment
MoST	Ministry of Science and Technology
MoU	Memorandum of Understanding
NAFRI	National Agriculture and Forestry Research Institute
NBSAP	National Biodiversity Strategy and Action Plan
PIC	Prior informed consent
R&D	Research and development
SECO	Swiss State Secretariat for Economic Affairs
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
WIPO	World Intellectual Property Organization

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For further information on UNCTAD's BioTrade Initiative please consult the following website: <http://www.unctad.org/biotrade> or contact us at: biotrade@unctad.org.

28 October 2020

1. INTRODUCTION

1. The United Nations Conference on Trade and Development (UNCTAD) launched the BioTrade Initiative (BTI) in 1996 “...to contribute to the conservation and sustainable use of biodiversity through the promotion of trade and investment in BioTrade products and services in line with the objectives and principles of the Convention on Biological Diversity (CBD)”.¹

2. The seven BioTrade principles are: conservation of biodiversity; sustainable use of biodiversity; fair and equitable sharing of benefits derived from the use of biodiversity; socio-economic sustainability (productive, financial and market management); compliance with national and international regulations; respect for the rights of actors involved in BioTrade activities; and clarity about land tenure, use and access to natural resources and knowledge.² UNCTAD identified criteria for each BioTrade principle and the BTI and its partners promote the implementation of these principles and criteria using a value-chain approach, an adaptive management approach, the ecosystem approach, and a sustainable livelihoods approach.³

BioTrade

BioTrade is understood to include activities related to the collection or production, transformation, and commercialization of goods and services derived from native biodiversity (genetic resources, species and ecosystems) according to criteria of environmental, social and economic sustainability.

3. Under the BTI, UNCTAD with the support of the State Secretariat for Economic Affairs SECO is implementing the programme “Linking trade, biodiversity and sustainable development”. This programme contributes to national and regional policy

frameworks by facilitating access, mobilizing research and addressing relevant policy topics required under regulations and requirements for access to biological and genetic resources and benefit sharing (ABS). Project interventions support actions by partners on the ground to enable BioTrade-friendly implementation and effective use of ABS regulations.

4. This report documents a BTI initiative in Lao People’s Democratic Republic which is part of a sub-regional collaboration between UNCTAD and Helvetas Swiss Intercooperation⁴ in Lao People’s Democratic Republic, Myanmar, and Viet Nam. The UNCTAD-Helvetas Swiss Intercooperation collaboration is developed under the UNCTAD Global BioTrade Programme, and Helvetas Swiss Intercooperation project “BioTrade: Ethical Trade in Plant-Based Resources”, both of which are funded by the Swiss State Secretariat for Economic Affairs SECO. Lao People’s Democratic Republic had not regulated ABS and related traditional knowledge as of late 2018. Thus, BTI commissioned a study to provide inputs and guidance to the Government of Lao People’s Democratic Republic and national ABS stakeholders, to develop sample model clauses for eventual ABS or BioTrade contracts to be used in the country. This report is based on an assessment of a prior national undertaking that developed a draft policy and decree on ABS and BioTrade, as well as on the responses of questionnaires and interviews conducted jointly with the Biotechnology and Ecology Institute (BEI) of the Ministry of Science and Technology (MoST), which is the competent national authority for ABS in Lao People’s Democratic Republic. Finally, the study also considered examples of ABS contracts and guidelines for ABS contracts currently being used in other countries and regions including those from UNCTAD BTI experience in Peru⁵ as well as inputs from a Lao national expert in commercial law. Afterwards, BEI convened a consultation on the draft model clauses that was held in Vientiane, Lao People’s Democratic Republic, on 1 November 2019. See Annex 6 for the list of participants.

2. ABS IN LAO PEOPLE'S DEMOCRATIC REPUBLIC

5. The Lao People's Democratic Republic is one of many countries that are Parties to the CBD and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol) which still face, at national and local levels, significant challenges in understanding the issues involved in ABS and differentiating them from other issues involved in conserving and sustainably using biological resources. Lao People's Democratic Republic acceded to the Nagoya Protocol and became a Party in 2014⁶. In preparation for becoming a Party, with support from a Global Environment Facility (GEF) project⁷ implemented by the United Nations Environment Programme (UNEP) and executed by the ASEAN Centre for Biodiversity, Lao People's Democratic Republic developed a document that contained drafts of a government policy on ABS, a law on genetic resources, ABS administrative systems, and mechanisms for public education awareness and participation, which was completed in 2013.⁸ The draft law on genetic resources was not adopted and ABS regulations, including provisions for an administrative system for ABS, are not yet in place. With increased interest from companies and institutions seeking access to genetic resources in the country, Lao People's Democratic Republic wants to develop contractual guidance for ABS negotiations while efforts to adopt the national regulatory framework continue. UNCTAD's BTI is providing support for that process in order facilitate compliance with ABS requirements by BioTrade organisations. This report reflects the results.

6. The barriers to implementing the Nagoya Protocol in Lao People's Democratic Republic are considerable:

- The policy and regulatory framework is minimal and incomplete, there are *ad hoc*, case-by-case administrative procedures, and there are no guidelines for users and providers.

7. Reconciling the needs of Lao People's Democratic Republic's predominantly rural population with facilitating access to genetic resources and traditional knowledge and sharing benefits is a major challenge for the country. While Lao People's Democratic Republic's rural communities may have an idea of the value of the biological resources they manage, they are generally unaware of the potential additional value of the genetic resources. In Lao People's Democratic Republic, as well as globally, there is a generalized lack of knowledge and exchange of information among scientific researchers, policy makers and decision-makers, the private sector, and the public. The country has minimal capacity for non-commercial research or commercial research and development (R&D), which makes it difficult or impossible to do the work required to add value to genetic resources in-country. This means that international collaboration will be essential to generating value from genetic resources. Implementing the Nagoya Protocol will require sustained coordination and cooperation between the public and private sectors and civil society, particularly the local people and their communities that are the stewards of biological resources, and the genetic resources they contain, as well as the holders of valuable associated traditional knowledge.

8. Since becoming a Party to the CBD in 1996⁹, Lao People's Democratic Republic has identified ABS as part of the efforts the country intends to make to institutionalize biodiversity conservation. During 2000-2004, the country produced its first National Biodiversity Strategy and Action Plan¹⁰ (NBSAP) which noted the following key issues with respect to ABS: the lack of regulations relating to the protection

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