

**Legal frameworks and mechanisms for public participation in decision-making processes regarding LMOs in Asia-Pacific Region: An analysis of approved national biosafety frameworks**

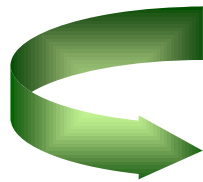
**CARTAGENA  
PROTOCOL  
ON  
BIOSAFETY  
TO THE  
CONVENTION  
ON  
BIOLOGICAL  
DIVERSITY**

**TEXT AND ANNEXES**



# Cartagena Protocol on Biosafety

*A balanced approach toward Modern Biotechnology*



**Embrace Benefits**



**Ensure adequate safety**

# Objective(s)



To assist Eligible parties through institutional strengthening and training in the implementation of the draft final NBFs in line with its obligations and to ensure compliance to the Cartagena Protocol on Biosafety



To develop measures , process & tools to facilitate national biosafety decision making



# Cartagena Protocol Provisions

## Article 23 para 2

The Parties shall, in accordance with their **respective laws and regulations**, **consult** the **public** in the **decision-making** process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with Article 21.

# Areas of Coverage

- **Data from the BCH – national laws**
- **Internet sources**
- **Functional roles of Competent National Authorities as spelt out on the BCH**
- **Citations from the relevant law on provisions on public participation**
- **Presentation on Regional Distribution of selected countries as case studies [Asia - South East, South, East, West (no approved laws on BCH except draft NBFs)?, Central and the Pacific]**

# Cambodia



- **Competent National Authority: Ministry of Environment [All functions to the CPB]**
- **The Ministry of Environment in collaboration with other concerned ministries, shall manage and control all activities involving LMOs covered by the law**
- **Ministry of Agriculture, Forestry & Fisheries [no function listed on the CPB]**

# Cambodia – Legal Provisions

## Biosafety Act 2008

### Chapter IX (articles 32 – 34): Public Information, Public Awareness and Public Participation

#### Specific Provisions on Public Participation – art. 34

*The Ministry of Environment and other concerned ministries shall encourage public to **participate** and provide **feedback** in planning and decision making process relevant to biosafety issues*

- Provisions on confidential information – Chapter VII
- Article 27 – “... use of confidential information shall have the written consent of the applicant before public dissemination
- **Additional provisions in the sub decree Mechanisms and procedures to implement the biosafety Law**

# Cambodia – Legal Provisions

- **Sub Decree on Implementing the Law on Biosafety**
- **Additional provisions in articles 59 – 60**
- **Article 59 – *The Ministry of Environment shall make available to the public any information that does not qualify as confidential under article 25 of the Law on Biosafety***
- **Article 60 – *Any person may submit written comments on request for prior approval within sixty (60) days from the date the notice is published. Such comments shall be **considered** as part of the decision making process, Any comments received by the Ministry of Environment and response thereto shall also be made available to the public upon request***



# Malaysia

## Competent Authorities

- i. **Ministry of Natural Resources and Environment [MONRE], Malaysia**
- ii. **Department of Biosafety, MONRE**

***All functions pursuant to the CPB for both?***

- **Relevant websites**
- **<http://www.nre.gov.my/> [In Malaya and English]**
- **<http://www.biosafety.nre.gov.my/> [In Malaya & English]**

# Malaysia - Legal Provisions

## Biosafety Act 2007 [Act 678]

- Establishes Genetic Modification Advisory Committee [section 6] – provides advise on scientific, technical and other matters to the Board or the Minister

### Section 60. Public disclosure

1) Subject to the discretion of the Board, the public may have access to such information relating to any application for approval, approval granted or notification, which has not been granted confidentiality under subsection 59(2) in such manner as the Board thinks fit.

(2) Any decision made under Part III and Part IV shall be made available to the public in such a manner as the Board thinks fit

- *A lot of discretionary power in the hands of the National Biosafety Board and the Minister in the decision making process. No direct reference to public participation? Provisions made for any matters of relevance to be decided by the designated institutions*

# India



**Competent Authority: Ministry of Environment and Forests**

**All functions pursuant to the Cartagena Protocol on Biosafety and Rules 1989**

**Relevant websites**

<http://moef.nic.in/>

<http://moef.nic.in/modules/project-clearances/geac-clearances/>

**Indian GMO Research Information System**

<http://igmoris.nic.in/>

# India – Legal Provisions

## The Environment (Protection) Act, 1986

***Section 20- The Central Government may, in relation to its functions under this Act, from time to time, require any person, officer, State Government or other authority to furnish to it or any prescribed other information and such person, officer, State Government or other authority shall be bound to do so.***

***Section 25 [para 2h] - The rules may provide for - the manner in which notice of the offense and of the intention to make a complaint to the Central Government shall be given under clause b of section 19; the authority or officer to whom any report, returns, statistics, accounts and other information shall be furnished under section 20***

- Provisions implicitly laid out in chapter 2 – Functions of central government and chapter 4 – miscellaneous provisions
- **Rules for the manufacture, use, import, export & storage of hazardous micro organisms, genetically engineered organisms or cells, 1989**
- Several other provisions and guidelines on the biosafety regulatory framework See <http://dbtbiosafety.nic.in/>

# Japan

Competent Authorities [Art. 36 of Biosafety Law –Competent Ministers]

i. **The Ministry of the Environment of Japan**

**[All functions pursuant to the CPB]**

ii. **The Ministry of Agriculture, Forestry and Fisheries of Japan**

**[Functions not spelt out]**

iii. **Ministry of Education, Culture, Sports, Science and Technology**

**[All functions pursuant to the CPB]**

**Others specified in the law – Finance, Labour & Welfare, Trade not on BCH**

**Relevant websites - <http://www.env.go.jp/> ;**

**<http://www.maff.go.jp/> <http://www.mext.go.jp/> ;**

**Japanese BCH -**

**[http://www.bch.biodic.go.jp/english/e\\_index.html](http://www.bch.biodic.go.jp/english/e_index.html)**

# Japan - Legal provisions

## **Act on the Conservation and Sustainable Use of Biological Diversity through Regulations on the Use of Living Modified Organisms [Act 8 of 2007]**

### **Article 35 (Public Consultation)**

*The government shall publicly announce information pertaining to the assessment of Adverse Effect on Biological Diversity, information that has been collected, arranged and analyzed under the provisions of the preceding Article, and other information, and broadly consult the public, in order to reflect public opinion in measures based on this Act and encourage mutual exchanges of information and opinions between the parties concerned.*

# Mongolia



## Competent National Authorities

i. Ministry of Nature and Environment

ii. National Biosafety Committee

• i & ii – All Functions Pursuant to the CPB [All types of Organisms]

iii. Institute of Public Health

All Functions Pursuant to the CPB [Mandate – Bacteria & Viruses]

Relevant websites – None provided on the BCH?

# Mongolia – Legal provisions

- **Registering, monitoring and evaluation of the LMOs [Act 258/2003]**
- **Law on LMOs [2007]**



# Tajikistan



**Competent National Authority:**

**National Biodiversity and Biosafety Center**

- **All Functions pursuant to the CPB**

**Relevant Websites**

<http://www.biodiv.tj/html/EN/biosafe-en.html>

**nBCH -**

<http://tj.biosafetyclearinghouse.net/>

**Websites: Russian & English**

# Tajikistan - Legal Provisions

- **All functions vested in the Competent Authority – art. 8**

## **Article 26**

- **10 day window for informing public on notifications**
- **30 day window for public comments, review and consideration in decision making Based on comments, CAN can organise a public dialogue on issues raised**
- **Provision for public participation in decision making allowed as per the law and regulations to national and international legislation**



## **Competent National Authority: Environment and Conservation Division Center**

- **All Functions pursuant to the CPB**

## **Relevant Website**

<http://www.environment.gov.ki/>

# Kiribati - Legal Provisions

- **Environment Act Amended (No. 1 of 2007)**

**Section 53 – Power to ask for information and records**

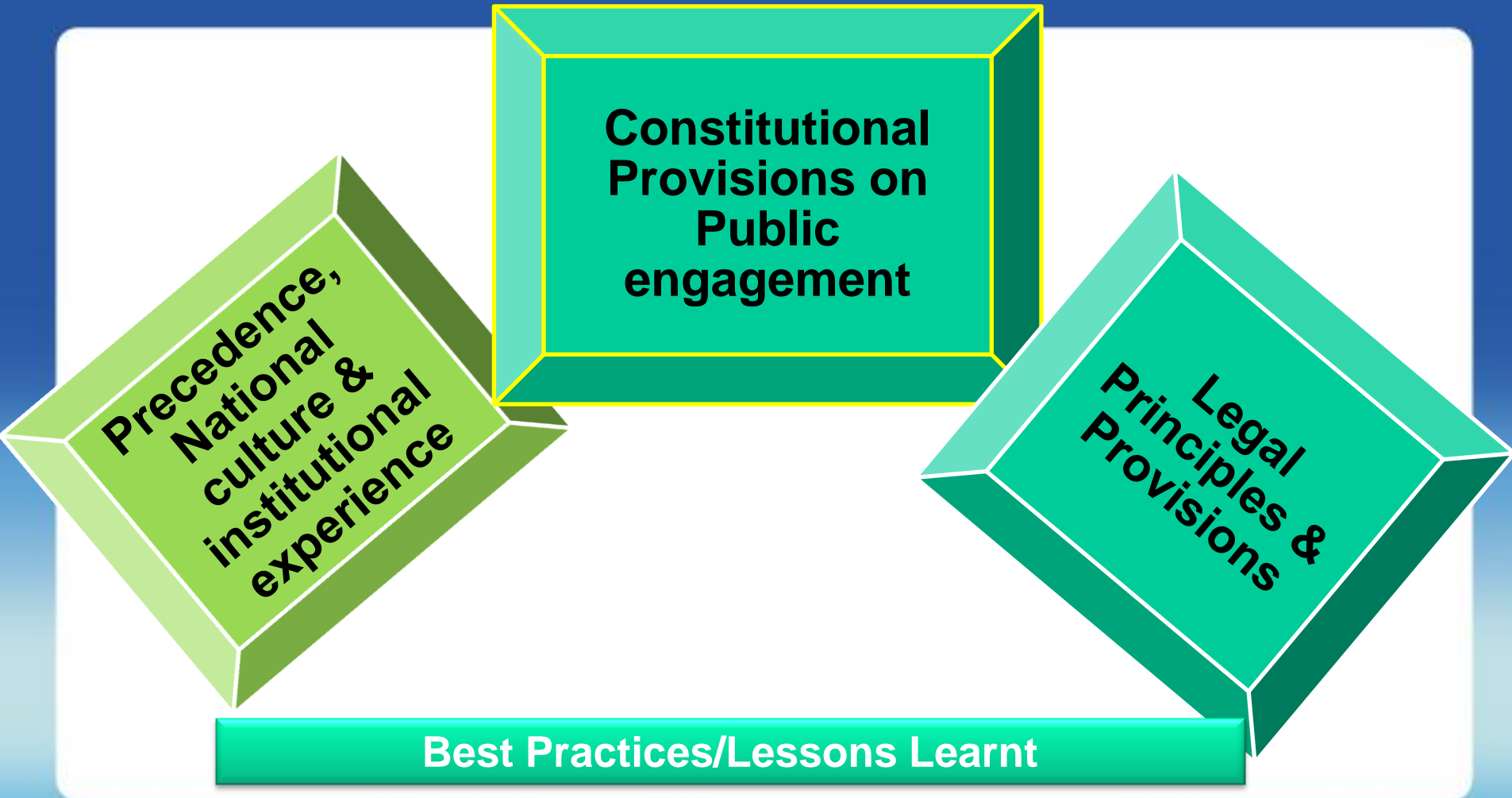
**promote the participation of the community in environmental decision making – summary on website;**

- **Biosafety (LIVING MODIFIED ORGANISMS) (Draft) Regulations 2005**

**i. Public engagement functions entrusted to Competent Authority – art. 7 (paras f. v-vi)**

**ii. art. 9 (para 1d) - *conducting programs of public awareness and education in relation to living modified organisms and applications of modern biotechnology, and facilitating public participation in relation to the processes prescribed by these Regulations and envisaged by the Cartagena Protocol in relation to their use and development within Kiribati***

# Legal & Policy Imperatives



# Tools & Measures for Public participation

## Toolkit on consultation & analysis

- [http://www.unep.org/biosafety/Documents/Drafting\\_the\\_NBF\\_Formulation\\_of\\_the\\_regulatory\\_regime.pdf](http://www.unep.org/biosafety/Documents/Drafting_the_NBF_Formulation_of_the_regulatory_regime.pdf)
- <http://www.unep.org/biosafety/files/Toolkit/ToolkitBSF2FR.pdf>

## Public Participation guidelines

- <http://www.unep.org/biosafety/Documents/PublicParticipationIDS.pdf>

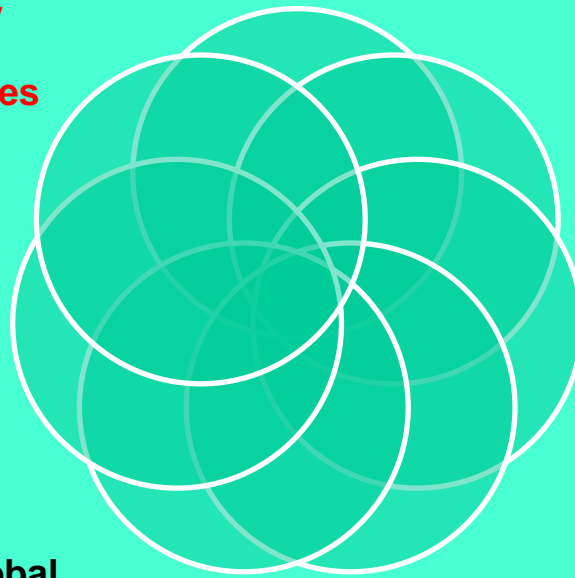
# Key Issues from the analysis

## Stocking of existing instruments

**Measures defined by wider constitutional /policy/Legal imperatives**

**Public participation – general & case specific expertise**

**Mainstream national/global discourse eg. COP/MOP processes, BS Strategy, PoW on Public Awareness & Participation**



**Identify relevant publics**

**Agreement on Simplified procedures (art.13)**

**Identify entry points through a national strategy on public participation**

# Recommendations

**Strengthened public participation measures could strengthen Decision making processes**

**Utilise national & regional measures and Biosafety Protocol related measures from the Programme of Work on Public Awareness and Participation**

**Implementing BS Strategy 2011 – 2020**



# Recommendations

**Need for Public engagement  
Strategy and Action Plan(s)**

Update national information on the BCH clearly showing responsibility(ies) of competent authority(ies) as per art. 19 of CPB

Implementing BS Strategy 2011 – 2020

# What could be the Target(s)?

*Ensure a vibrant public participation process to support national decision making on biosafety with clearly defined guidance*

*Disseminate recommendations, best practices and feedback for replication .....build capacities to facilitate public engagement*



# Contacts



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*Thank you*

**Cartagena Protocol on Biosafety**



United Nations  
Environment Programme

**UNEP-GEF Biosafety Projects**



Global Environment  
Facility