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ASEAN Regional Cooperation in the Implementation of Access and Benefit Sharing¹

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EXECUTIVE SUMMARY

Some access and benefit sharing (ABS) issues are beyond national boundaries and could not be addressed only by a bilateral approach. The United Nations Convention on Biological Diversity (UNCBD) and Nagoya Protocol encourage cooperation among neighboring countries in ABS related issues. As a region with shared similar genetic resource, traditional knowledge and interconnected biodiversity, the ASEAN has to strengthen its regional cooperation. Several issues worth considering in ASEAN regional cooperation are transboundary access and benefit sharing, regional information sharing, a common biodiversity trust fund, common minimum standards of access and benefit sharing, common understanding on the reciprocity clause, capacity building, technology transfer and raising public awareness efforts.

The Need for a Regional Framework on Access and Benefit Sharing

In the past decade, Asian medicinal plants have been patented by cosmetics firms and incorporated into their skin care products. Some of the plants – including *Bignay*, *Bai Yanang* and *Sapindus Rarak* – are commonly found all across Southeast Asia and have been used in multiple cultures for traditional medicine, including skin care and treatment.³ To address this issue, it is unlikely any single country can exclusively assert sovereignty over the claim. This is one of the significance of regional cooperation to complement Nagoya Protocol implementation.

The Nagoya Protocol, including the Bonn Guidelines, provide an overarching framework to achieve the CBD's third objective on fair and equitable sharing of the benefits arising from the utilization of genetic resources. However, it is important to note that the Nagoya Protocol approach works bilaterally with

emphasis on reciprocity between provider countries and user countries. It is noteworthy that there are several issues beyond national borders such as how to manage shared genetic resources and shared traditional knowledge⁴ in the context of ABS. As such, a regional cooperation approach is needed.⁵



Although several ASEAN Member States (AMS) have ABS-related measures⁶, a regional ABS cooperation framework can increase bargaining power. By acting regionally, countries can voice their interest in a politically unified stance and avoid competing with neighboring countries. A unified regional cooperation will provide potential partners with a clear, consistent and transparent way to comply with ABS measures as agreed by the region. AMS can consider a regional cooperation approach on ABS as much as national measures are required under the Nagoya Protocol.

¹Disclaimer. The opinions expressed in this policy brief are the authors' own and do not reflect the view of the ASEAN Centre for Biodiversity.

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³Edward Hammond, *Biopiracy Watch: A Compilation of Some Recent Cases*, 2013, Penang Malaysia: Third World Network, page 8-17.

⁴De Jesus, C., 2013. Traditional Knowledge and ABS: Beyond protection and recognition. Policy Brief Series on ABS Issue 4. ACB.

⁵UNCBD article 14 point 1.c and Nagoya Protocol article 11 both promotes regional cooperation on access and benefit sharing.

⁶Foronda, A., C. de Jesus, A. Tolentino, and S. Schmidt. 2013. An Urgent Need: Institutionalizing Access to Genetic Resources and Benefit Sharing. Policy Brief Series on ABS, Issue 1.

Emerging Regional Framework on Access and Benefit Sharing

There have been regional frameworks on ABS long before the Nagoya Protocol. Some regional frameworks that can be taken as examples are:

- The Andean Community of Nations Common Regime of Access to Genetic Resource (The Andean Pact), came into force on 17 July 1996 and is effective in Bolivia, Colombia, Ecuador, Peru and Venezuela.
- African Union Guidelines for Coordinated Implementation of Nagoya Protocol (Adopted in March 2015) and African Model Law (adopted in 2003) for ABS Legislation. Both of these framework are voluntary guidelines for African Union Member States.
- European Union Regulation No 511/2014 on Compliance Measure for Users from the Nagoya Protocol on Access to Genetic Resource and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union.

ASEAN Regional Cooperation on Access and Benefit Sharing

ASEAN began efforts to establish a regional framework agreement in 2000 by drafting the ASEAN Framework Agreement on Access to, and Fair and Equitable Sharing of Benefits Arising from the Utilization of Biological and Genetic Resources⁷. The Nagoya Protocol may have overtaken this draft agreement in terms of provision on user and provider measures, but it cannot replace the regional cooperation aspired in the previous draft agreement. Some ideas on regional cooperation worth considering are:

- Measures when genetic resources and traditional knowledge shared in two or more AMS are accessed. In this condition, transboundary cooperation is certainly needed on how Prior Informed Consent (PIC) will be granted and how benefits will be shared through Mutually Agreed Terms (MAT)⁸.
- The previous draft agreement suggest that AMS should notify the regional clearing house if certain access is refused or granted along with the reason for refusal or grant. This information can be a common reference for all AMS. In addition, information on compliance⁹ and non-compliance to MAT, benefit sharing agreement or national legislation on ABS could also be shared at the regional clearing house.
- Biodiversity has no boundaries and it is interconnected in a complex web of life. Since the ASEAN ecosystem is connected to each other, it is important to share efforts to conserve¹⁰ its common ecosystem. Some monetary benefits from ABS can be set aside to finance regional biodiversity conservation initiatives.
- To act as a region, AMS need to agree on minimum standards of ABS regulation particularly on safeguards. Common minimum standards will create legal certainty,

clarity, and transparency for users and also encourage countries to strengthen enforcement of regulations.

- Capacity building is a continuous activity as there are always ongoing developments on ABS. Good practices in the region could be shared, and adapted or innovated by Member States.
- Priority of access could be given to users from countries with compliance measures in place. Applying this reciprocity clause in the region will push ASEAN Member States to establish ABS user measures.

Opportunities

The harmonization of minimum requirements for ABS at the regional level would create common standards and shared benefits across the region. This would benefit the resource users with legal certainty, clarity and transparency, and also benefit the resource providers since the regional approach will facilitate cooperation among countries.

The ASEAN Centre for Biodiversity was given a directive to develop regional cooperation on building capacity on ABS measures¹¹. As most of ASEAN Member States already ratified the Nagoya Protocol and are developing their own ABS measures, it is a good momentum to strengthen ASEAN regional cooperation on ABS.

Way Forward

A framework can be referred to as “guidelines” instead of “agreement.” Guidelines are easier to be adopted by ASEAN Member States. An agreement can be further pursued when the Member States are ready to adopt such a framework. The guidelines can cover mainly the regional cooperation on capacity building on skills¹², knowledge and developing an ABS policy¹³. Moreover, the guidelines can specify other mechanisms on ABS such as information sharing through a regional clearing house and a common fund for biodiversity¹⁴.

Further Reading

Hammond, Edward. 2013. *Biopiracy Watch: A Compilation of Some Recent Cases*. Penang Malaysia: Third World Network.

Nijar, Gurdial Singh. 2011. *The Nagoya Protocol on Access and Benefit Sharing of Genetic Resources: Analysis and Implementation Option for Developing Countries*. Kuala Lumpur: CEBLAW.

Plessis, Pierre du. 2015. *AU Guidelines for the Coordinated Implementation of the Nagoya Protocol in Africa*. Presented at 9th Pan-African ABS Workshop in Addis Ababa.

SCBD, 2011. *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*. Montreal, Canada: SCBD.

⁷Tolentino, A. 2013. Understanding the Key Elements of Access and Benefit Sharing Legal Framework. Policy Brief Series on ABS, Issue 2. ACB.

⁸De Jesus, C., and S. Schmidt. 2013. Prior Informed Consent and Mutually Agreed Terms: A must for Access and Benefit-Sharing. Policy Brief Series on ABS, Issue 3. ACB.

⁹Foronda, A. 2013. Compliance: Ensuring effectiveness of the access and benefit sharing system. Policy Brief Series on ABS, Issue 5. ACB.

¹⁰ASEAN Heritage Parks, Mekong River Commission, Heart of Borneo, Coral Triangle Initiative, and East Asian Flyway, among others.

¹¹17th Meeting of the Governing Board of ACB.

¹²De Jesus, C., and P. Reblora. 2014. Moving Forward on ABS: Building on capacity impacts. Policy Brief Series on ABS, Issue 8. ACB.

¹³Sukprasert, S., and A. Foronda. 2014. Developing a Common Understanding of Access and Benefit-Sharing. Policy Brief Series on ABS, Issue 9. ACB.

¹⁴Barrer, S., and L. Cabebe. 2014. Strengthening Cooperation Towards Regional ABS Implementation. Policy Brief Series on ABS, Issue 7. ACB.

