

CBA2012-07NSY-ARIDA

Building Capacity on Access and Benefit-Sharing in Southeast Asia

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ABSTRACT: Fair and equitable sharing of benefits arising from the utilisation of genetic resources is one of the core objectives of the Convention on Biological Diversity (CBD). To achieve this objective, the Nagoya Protocol (NP) on Access and Benefit-Sharing (ABS) was adopted at the Tenth Meeting of the Conference of the Parties of the CBD in October 2010. Implementation of the Protocol requires building capacities to implement and comply with the obligations of the Protocol, including developing and implementing domestic legislative, administrative or policy measures on ABS. It also requires countries to develop research capabilities to add value to genetic resources and capacity to negotiate mutually agreed terms. To enhance understanding of the policy, mechanisms and implementation of the NP, a capacity building workshop for Southeast Asian key stakeholders was conducted. About 56 representatives from various sectors participated in the 3rd Regional Workshop on ABS held in Malaysia in December 2012. The four-day workshop covered key topics on ABS. A visit to the Forest Research Institute Malaysia (FRIM), which included discussions with representatives from indigenous and local communities (ILCs) on their experience in documenting traditional knowledge associated with genetic resources, provided valuable input on the interface of science and policy. Overall, the regional workshop analysed guidelines on ABS, developed procedures for benefit-sharing and ABS implementation in different countries, and prepared participants to craft national roadmaps towards developing ABS legal frameworks.

KEYWORDS: *access and benefit-sharing, genetic resources, traditional knowledge, ASEAN*

Introduction

Effective implementation of the NP requires building capacities in developing regulatory frameworks, especially to understand the legal, institutional, administrative, scientific and technological aspects of ABS. Moreover, ILCs need support to prepare them in national ABS processes because more than 80% of the population in developing countries still depends on traditional medicine for their daily needs, thus making traditional knowledge a crucial part of the scientific knowledge base.

The ASEAN Centre for Biodiversity (ACB) with support from the CAPaBLE Programme of the APN convened a training workshop on building capacity involving ABS ASEAN national focal points, academia, scientists, researchers, lawyers, policy makers, representatives from industries, ILCs, and NGOs. This was held complementary to a workshop under the UNEP-GEF Regional ABS Project “Building Capacity for Regionally Harmonized National Processes for Implementing CBD Provisions on Access to Genetic Resources and Sharing of Benefits.”

The training workshop aimed to: (1) build capacity in developing regulatory frameworks and mechanisms to effectively implement the NP; (2) understand the legal, institutional, administrative, scientific and technological aspects of ABS; (3) help prepare ILCs in their participation in national ABS processes through in-depth training of their representatives and trainers such as key educators and NGOs; and (4) learn about recent trends, developments and best ABS practices from resource persons from Japan and other developed country partner organisations and ABS experts.

Methodology

The training workshop was convened on 10-13 December 2012 in Kuala Lumpur, Malaysia. Fifty-six (56) participants took part, representing providers, regulators and users of genetic resources from the AMS (except Indonesia) and Timor Leste. Resource speakers were from the Centre for Biodiversity Law (CEBLAW)-Malaysia, United Nations University-Institute for Advanced Studies (UNU-IAS), Environment Division-ASEAN Secretariat, FRIM, Sarawak Biodiversity Centre, Third World Network, and Japan Bioindustry Association.

The workshop was built on two previously held workshops supported under the auspices of a UNEP-GEF project (Building Capacity for Regionally Harmonized National Processes for Implementing

HIGHLIGHTS

- » Enabling ABS stakeholders to raise their critical understanding of the legal, institutional, scientific and technological capabilities in terms of discussions on ABS topics including bioprospecting, biotechnology and biopiracy.
- » Providing capacity building opportunities for ASEAN Member States (AMS) and Timor Leste participants in the development of country ABS legal frameworks.
- » Facilitating exchanges amongst participants, especially in experiences of actual ABS processes through field visits and forums on the linkages between and among science, traditional knowledge and policy development.
- » Interactive sharing of the mechanisms on benefit-sharing and country experiences on ABS, as well as the experiences of a Japanese Bioindustry.

CBD Provisions on Access to Genetic Resources and Sharing of Benefits). The workshop comprised lectures, discussions and a field visit. The activity enhanced the understanding of the participants about the procedural aspects of ABS such as Prior Informed Consent (PIC), Mutually Agreed Terms (MAT), fair and equitable sharing of benefits, and other relevant issues.

Lectures focused on developing national laws to implement the Protocol; benefitting from traditional knowledge; preparation and assessment of national roadmaps; and reviewing the draft ASEAN ABS Framework. The workshop provided a venue for participants to scrutinise ABS practices in some specific countries, including national experiences on PIC, MAT and existing model instruments. The training included preparing ILC representatives in their participation in national processes. The perspectives of the industry sector in the region were incorporated into the design.

A visit to FRIM provided additional views of the applications of the ABS mechanism. A special presentation was made and discussion was held during the field visit regarding an ABS arrangement to document traditional knowledge of medicinal and aromatic plants of an indigenous community from peninsular Malaysia.

Results and Discussion

As countries prepare towards implementation of

the NP, lectures and discussions regarding development of national ABS laws, and the different processes and elements that need to be considered, are very relevant. Professor Gurdial Singh Nijar from CEBLAW divided his presentation into three sessions.

The first session examined the important articles of the NP and what is required of Parties to fulfill their obligations under the Protocol. The second session examined the pre-NP ABS laws

of Viet Nam and the Philippines, assessing key provisions of these laws in light of the Protocol. This session sought to develop the participants' capacity to identify key issues important to their national interest and needs, so as to create national laws to protect their national interests in compliance with the NP. The third session presented a step-by-step process that a developing country could take towards developing an ABS legal framework.

Workshop Topics	Speakers
Ratification of the Nagoya Protocol and Way Forward Towards Entry into Force	Mr. Olivier Rukundo Programme Officer ABS, SCBD
Developing National Law to Implement the Nagoya Protocol by Examining All Relevant Articles (highlighting elements of NP)	Prof. Gurdial Singh Nijar Centre of Excellence for Biodiversity Law (CEBLAW),
Incorporating Elements of the Nagoya Protocol: Policy Review of Selected National Policies on ABS	Prof. Gurdial Singh Nijar Centre of Excellence for Biodiversity Law (CEBLAW),
Preparing and Assessing National Roadmap in Developing and Implementing ABS Legal Frameworks	Prof. Gurdial Singh Nijar Centre of Excellence for Biodiversity Law (CEBLAW)
The Draft ASEAN ABS Framework and the Nagoya Protocol	Dr. Raman Letchumanan Head, Environment Division ASEAN Socio-Cultural Community Department ASEAN Secretariat
Developing Regional Benefit-Sharing Procedures and/or Mechanisms: Focus on PIC, MAT, Compliance, Ownership, and IPR	Mr. Geoff Burton Adjunct Senior Fellow UNU-IAS
Briefing on the Documentation of Medicinal & Aromatic Plants of the Indigenous peoples in Malaysia Introduction & progress to date of the project Bio-Propecting Sharing Experience by Indigenous leader	Dr. Norini Haron Dr. NikMusa'adah Mustapha Mr. NoryaAbas
Biopiracy case studies and the importance of ABS laws	Ms. Lim Li Ching Third World Network
Implementing PIC and MAT: Procedures and experiences in selected countries	Dr. Rita Manurung Chief Operating Officer Sarawak Biodiversity Centre Atty. Elpidio Peria Legal Adviser on ABS Philippines Mr. Geoff Burton
Implementing ABS in Southeast Asia: Experiences of an industry	Dr. Sumida Seizo Technical Advisor Japan Bioindustry Association

Table 1. Presentations during the ABS Training Workshop.

The ASEAN Regional Framework on ABS was drafted in 2005 even before the NP came into effect. At the workshop Dr. Raman Letchumanan of the ASEAN Secretariat provided historical background on the regional draft framework on ABS, emphasising that the Framework Agreement has a set of minimum standards.

The workshop concluded that benefit-sharing procedures, including negotiating MAT and permits, are necessary elements in ABS policies, especially as countries gear up to establishing their own ABS policies. Requirements to develop “trusted collections,” referring to materials that are being held in trust on behalf of countries from where the materials originated, should also be set up in accordance with the requirements of provider countries with respect to national obligations of collections and materials acquired.

The visit to FRIM showcased an example of the working linkages between science, traditional knowledge and policy. Ensuring that the local community is involved and empowered from the outset was emphasised in the discussions on their project “Documentation of Traditional Knowledge on Medicinal and Aromatic Plants Used by Orang Asli Peninsular Malaysia.” This project focused on a rapid rural appraisal involving the local community and on including local community members as part of the National Technical Working Committee.

The experiences of the Sarawak Biodiversity Centre (SBC), Malaysia and the Philippines on actual implementation on PIC and MAT were shared. The SBC has been facilitating (a) research and development and bioprospecting programmes for sustainable utilisation of the state’s biodiversity, and (b) processes for application for research permits (with detailed elements found in the licensing agreement). The Philippines, on the other hand, has national policies in place addressing bioprospecting - Executive Order 247 and the Wildlife Act.

The Japan Bioindustry Association

shared, from a different perspective, Japan’s experience in implementing ABS, including the institutional set-up, awareness raising activities, lessons learned, tools, and key points needed to ensure successful partnerships and collaborations. Under its National Strategy for Biodiversity, Japan is expected to ratify the NP by 2015, and legally binding compliance measures will have to be put in place before ratification.

Conclusions

Vital to the development of national ABS legal frameworks is the need to examine existing obligations with other agreements vis-à-vis the provisions of the NP. Since the NP defines sovereign rights of countries and not ownership over genetic resources, there is a need for countries to establish clear regulatory requirements for compliance, especially in reaching fair terms for both local and foreign applications.

The review of selected national ABS policies led to further identification of capacity building needs, including awareness raising activities. It also drew attention to the need to update current legislation in order to fully comply with new obligations under the NP, highlighting the compliance provisions.

Developing regional benefit-sharing provisions and mechanisms gives the opportunity to focus on the elements of PIC, negotiating MAT, and developing the concept of “trusted collections,” which make such material available on terms as desired by the country of origin.

Traditional knowledge should be integrated into national systems and the CBD ABS mechanism to make the process transparent and allow users to follow the process. The NP provides for States to take measures in accordance with domestic law such as setting in place some form of documentation (community protocols) to set up rules and procedures on use of traditional knowledge.

The training workshop, with full

participation of critical stakeholders, effectively built capacity in implementing the NP on ABS and developing national access and benefit-sharing procedures with full participation of critical stakeholders. The workshop provided detailed guidance for country representatives in developing national roadmaps towards ABS legal frameworks.

References

ASEAN Centre for Biodiversity. (2012). Report of the 3rd regional Workshop on ABS: Developing national roadmap towards ABS legal frameworks. Kuala Lumpur, Malaysia: (Unpublished).

Acknowledgements

ACB would like to thank the APN for this partnership to raise capacities in biodiversity conservation and providing

financial support for the participation of key stakeholders in the Third Regional Workshop on ABS: Developing a national roadmap towards ABS legal frameworks.

Project Publications

Foronda, A. C. T. M. (2013). An Urgent Need: Institutionalising Access to Genetic Resources and Benefit Sharing in Southeast Asia (Policy Brief). ASEAN Centre for Biodiversity.

ASEAN Centre for Biodiversity Policy Brief Series, ABS Issue 1 June 2013. An Urgent Need: Institutionalising Access to Genetic Resources and Benefit Sharing in Southeast Asia.

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PROJECT TITLE

ASEAN Training Workshop on Building Capacity on Access and Benefit Sharing (ABS)

COUNTRIES INVOLVED

Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Timor Leste, Thailand, Viet Nam

PROJECT DURATION

One-year project

APN FUNDING

US\$ 40,000

PROJECT LEADER

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