

## Access and Benefit Sharing: Ensuring the fair and equitable sharing of benefits from the utilization of genetic resources



Photo by Kyaw Kyaw Winn

### ABS in the ASEAN region

The year 2017 marked the third year of the entry into force of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS). The Nagoya Protocol, an international instrument adopted at the Tenth Meeting of the Conference of Parties to the Convention of Biological Diversity (CBD), sets out the core obligations for contracting Parties of the CBD to take measures in relation to the access, benefit sharing and compliance of providers and users of genetic resources.

To date, Viet Nam sets the pace among the ASEAN Member States (AMS) to have an institutional and regulatory system in place that ensures that benefits are shared fairly and equitably from the use of their genetic resources. Through the joint efforts of the Ministry of Natural Resources and Environment and the Ministry of Agriculture and Rural Development and key stakeholders, the Government of Viet Nam passed into law, Decree No. 59/2017/ND-CP on the Management of Access to Genetic Resources and the Sharing of Benefits Arising from their Utilization, which was made effective on 12 May 2017. According to the Genetic Resources and Biosafety Management Head, Ms. Cuc Dang Thu Nguyen, the decree will facilitate the process of acquiring licenses to access genetic resources and its benefit sharing more functional. The law also complements Viet Nam's Law on Biodiversity, that was enacted in 2008.



With Aichi Biodiversity Target 16 of the Strategic Plan for Biodiversity 2011–2020, Parties to the Convention on Biological Diversity (CBD) have a clear goal: “By 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in force and operational, consistent with national legislation.” As of April 2017, six ASEAN Member States have acceded or ratified the Nagoya Protocol and are establishing national ABS measures.

Under the auspices of the CBD, Aichi Biodiversity Target 16 aims that by 2015, the Nagoya Protocol is in force and operational, consistent with national legislation. In the ASEAN region, two AMS have ratified and four have acceded to the Nagoya Protocol. This moves the region forward in achieving Aichi Biodiversity Target 16 of the Strategic Plan for Biodiversity 2011–2020, and advances the third objective of the CBD and positions the ASEAN region towards achieving fair and equitable sharing of benefits, providing incentives to support capitalizing on the conservation and sustainable use of biological resources.

With the ASEAN identified as a biodiversity-rich region, genetic resources in the countries have been increasingly taken into interest for their commercial value through biotechnology. The AMS need to seize the opportunity to benefit from the use of their own genetic resources. There is much urgency for AMS as provider countries to set defined arrangements for ABS regulations to maximize benefits from user countries.





Photo by Dedi Suwidianoro

## Ways Forward

### ***Facilitation as key to institutionalizing ABS***

The Nagoya Protocol works bilaterally between providers and user countries. It serves as the overarching framework where countries agree that there is a need to seek prior informed consent, and sharing of benefits through mutually agreed terms, taking into consideration associated traditional knowledge, and compliance.

As obligation to the Nagoya Protocol, AMS which ratified the Protocol need to review their national policies related to ABS to be in harmony with the provisions of the instrument. Consequent to the Nagoya Protocol reaffirming the sovereign rights of countries over their natural resources, measures ensuring compliance with the ABS obligations under the CBD also need to be developed.

For AMS to take the reins of the increasing importance of genetic resources from biodiversity in the market, their support towards encouraging the facilitation of access to their resources by setting out ABS regulations in the form of domestic legislation, and administrative or policy measures need to be set in place. Potential collaborative partners are more attracted towards those who have legal certainty, clarity, and transparency, raising their assurance for smooth partnership. This

complementarity constitutes the gains that institutionalizing ABS set out to do.

### ***Keeping the momentum up***

The ASEAN region has made great strides on achieving the Aichi Biodiversity Target 16, as the ASEAN Centre for Biodiversity (ACB) continues to support the AMS in enhancing regional awareness on ABS by building capacities in the development and enhancement of their national regulatory and institutional frameworks on ABS. The recent project of ACB under the China Trust Fund to UN Environment provided technical support to Lao PDR, Myanmar and Viet Nam in developing their national ABS regulatory and institutional frameworks and in piloting their ABS measures. It was a follow-up activity to regional workshops implemented by ACB in 2011–2014, in partnership with the UN Environment-Global Environment Facility, the United National University-Institute of Advanced Studies and the ASEAN Secretariat, which strengthened the capacity of AMS, including Timor Leste, to implement the CBD provisions on ABS, equipping participants with the knowledge on ABS and the Nagoya Protocol and guiding them in the process of building a roadmap to implement ABS activities.



Photo by the ASEAN Centre for Biodiversity





With the Nagoya Protocol already in force, regional, national, and local entities and policy-making bodies are called upon to align their national regulatory and institutional frameworks, and legislative and administrative measures on ABS for effective implementation and enforcement with the Nagoya Protocol.

Capacity building and regional cooperation must be continued and strengthened through stakeholders' participation and public awareness on ABS-related issues. At the regional landscape, a unified regional cooperation on ABS will provide potential partners with a clear, consistent and transparent way to comply with ABS measures as agreed by the region, while enhancing human and institutional capacity of countries.

**References:**

ASEAN Centre for Biodiversity (2017). ASEAN Biodiversity Outlook 2. Philippines. (220 pages).

ASEAN Centre for Biodiversity (2017). ACBeats, p.8.

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## Call for Action

1. AMS need to set clear ABS arrangements as a matter of urgency in order to maximize benefits from the use of their genetic resources and traditional knowledge associated with genetic benefits from the users of these resources.
2. AMS, ACB and the ASEAN Secretariat need to continue their collaboration in reviewing their current national regulatory and institutional frameworks on the use of biological and genetic resources, including traditional knowledge associated with genetic resources to keep them apace with the Nagoya Protocol and its developments.
3. The general public as well as the stakeholders in the ASEAN needs to understand the importance of securing benefits from the use of ASEAN's genetic resources and traditional knowledge associated with genetic resources.





# Access and Benefit-Sharing

Ensuring the fair and equitable sharing of benefits from the utilization of genetic resources

ABS refers to the agreement between user and provider in the access of genetic resources and how benefits are shared between them.



## Prior and Informed Consent (PIC)

seeks permission from appropriate representatives and shares information on the purpose for accessing genetic resources and traditional knowledge.



## Mutually Agreed Terms (MAT)

states monetary and non-monetary benefits in exchange for access as agreed between user and provider.



## Traditional Knowledge

refers to knowledge of indigenous peoples and local communities that are rich sources of information for bio-product development.



## Compliance

is observance of obligations to ensure sharing of benefits when genetic resources leave a provider.

## Opportunities

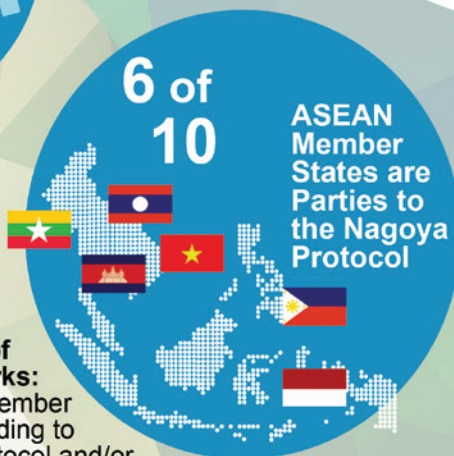


**Research and Development:**  
Advances in biotechnology



**USD 323B**  
worth of  
global market  
products

**Potential Income  
Generation:**  
Creation of products  
worth billions



**Development of  
ABS Frameworks:**  
More ASEAN Member  
States are acceding to  
the Nagoya Protocol and/or  
developing national ABS policies.

## Ways Forward



Raise public awareness  
and increase stakeholders'  
participation



Promote regional cooperation  
and capacity building



Implement legislation and  
administrative or policy  
measures on ABS



Formulate national  
regulatory and institutional  
frameworks on ABS



Protect genetic resources  
from misappropriation  
and misuse