

THE ASEAN FRAMEWORK AGREEMENT ON ACCESS TO BIOLOGICAL AND GENETIC RESOURCES

The Member States of the Association of South East Asian Nations (ASEAN) :

CONSCIOUS of the fact that the Member States of the Association of South East Asian Nations possess ecosystems considered as among the most diverse in the world in which the ASEAN have a common interest;

REALIZING the value of biological and genetic resources in the development of products, compounds and substances that have medicinal, industrial, agricultural and related applications;

RECOGNIZING that access to biological and genetic resources are currently unregulated, thus the urgent need to protect ASEAN interests in these biological and genetic resources from biopiracy;

NOTING the provisions of the Convention on Biological Diversity on the sovereignty of States over their genetic resources and the need to promote the conservation and sustainable use of these resources as well as the fair and equitable sharing of benefits arising from its utilization;

RECALLING the numerous decisions of the Conference of the Parties of the Convention on Biological Diversity promoting and encouraging regional approaches to access and benefit-sharing arrangements;

RESPECTING the sovereignty of each Member State over their biological and genetic resources;

AWARE of the fundamental principle that the prior informed consent of the Member State and its indigenous peoples and local communities embodying traditional lifestyles would have to be secured before access can take place;

ACKNOWLEDGING the need to ensure the uniformity and consistency of access regulations in the ASEAN region by setting minimum requirements for national implementation and maximize opportunities for the conservation and sustainable use of biological and genetic resources.

Have agreed as follows :

Article 1 - Declaration of Principles

The Association of South East Asian Nations (ASEAN) adheres to the following principles with regards to access to biological and genetic resources:

- a) That the Member States have sovereignty over biological and genetic resources within their territories in accordance with the provisions of the Convention on Biological Diversity;
- b) That the Member States shall recognize, respect, preserve and maintain the knowledge, innovations and practices of indigenous peoples and local communities embodying traditional lifestyles to their natural resources, including genetic resources;
- c) That the Member States shall ensure the conservation and sustainable utilization of the biological diversity in the ASEAN region;
- d) That the Member States shall ensure fair and equitable sharing of benefits arising from the utilization of biological and genetic resources at the community, national and regional levels;
- e) That the Member States regard biological and genetic resources as a sacred heritage for all humankind and reject the application of the patent system thereon; and
- f) That the Member States recognize the importance of ensuring that food security in the region is enhanced and recognize the importance of the exchange and utilization of food crop germplasm already widely dispersed and utilized.

Article 2 - Objectives

The Framework Agreement shall have the following objectives :

- a) To ensure the conservation and sustainable use of biological and genetic resources and equitable sharing of benefits arising from access to those resources, consistent with the principle of prior informed consent;
- b) To accord recognition and protection to traditional knowledge of indigenous peoples and local communities, and to facilitate fair and equitable sharing of benefits with the said communities where traditional knowledge is utilized;

- c) To ensure that the peoples of ASEAN derive maximum and fairly shared benefits from the development and uses of biological and genetic resources within their territories;
- d) To promote cooperation among ASEAN Member States in the utilization of, and providing access to biological and genetic resources and encourage the sharing of resources;
- e) To ensure that access regulations within the ASEAN region are uniform and consistent in accordance with identified minimum requirements as set out in this Framework Agreement;
- f) To set minimum standards in regulating access to biological and genetic resources and strengthen national initiatives towards this objective; and
- g) To promote technology transfer and capacity building at the regional, national and community levels.
- h) To establish effective and participatory measures for the grant of prior informed consent up to the local level taking into account national perspectives and priorities.

Article 3 - Definition of Terms

Under this Framework Agreement, the following terms shall mean:

Access to Biological and Genetic Resources -- the acquisition and use of biological and genetic resources as well as the derivatives thereof or, as applicable, intangible components, for purposes of research, bioprospecting, conservation, industrial application or commercial use, among others.

Biological and Genetic Resources -- includes genetic materials , organisms and parts thereof, population, or any other biotic component of ecosystems with actual or potential use or value for humanity.

Bioprospecting – the search for wild species with genes that produce better crops and medicines, or the exploration of biodiversity for commercially valuable genetic and biological resources.

Resource Providers – shall include federal, state governments, local authorities, land owners, land users, indigenous and local communities.

Indigenous Peoples and Local Communities – shall be defined according to ILO 169 with the following elements : identity, Territory, culture, tradition and knowledge

Traditional Knowledge – knowledge, innovations and practices of indigenous and local communities relating to the use, properties, values and processes of any biological and genetic resource or any part thereof.

Derivatives -- something extracted from biological and genetic resources such as blood, oils, resins, genes, seeds, spores, pollen and the like as well as the products derived from, patterned on, or incorporating manipulated compounds and/or genes.

Article 4 - Scope and Coverage

The Framework Agreement shall cover all biological and genetic resources including the traditional knowledge associated therein. However, access to biological and genetic resources shall not automatically mean access to the traditional knowledge associated with the resource. Access to such traditional knowledge shall be explicitly indicated in the application for access.

The ASEAN Member States shall consider *ex-situ* materials originating from the ASEAN region collected prior to the adoption of the Convention on Biological Diversity as held in trust for the benefit of humankind where the application of intellectual property rights shall not be allowed.

The ASEAN Member States shall not allow the patenting of plants, animals, microorganisms or any parts thereof, and traditional and indigenous knowledge.

The Framework Agreement shall not allow the prospecting as well as the application of intellectual property rights on genetic materials of human origin. Furthermore, the Member States strongly urge the establishment of a multilateral process to effectively regulate the access, use, and commercialization of human genetic materials.

The Framework Agreement shall not apply to the traditional uses of biological and genetic resources by indigenous and local communities in accordance with their customary practices and traditions. All other individuals, agencies and institutions shall comply with the access regulations that may be established by the Member States.

Article 5 - Access Instrument

The nature of the access instrument shall be determined by each Member State based on their respective national policies and legislation in accordance with the minimum terms and conditions laid down by this Framework Agreement.

Article 6 - Implementation of the Framework Agreement

The implementation of the Framework Agreement shall be effected by an entity to be identified from existing ASEAN bodies that may fulfill a clearing house function to attain the objectives of this Agreement. Whenever it becomes necessary, the ASEAN Member States shall make a decision on whether a separate body within the ASEAN may be created to attain the objectives of the Framework Agreement.

There shall be established an interim clearing house mechanism the functions of which may be initially performed by the ASEAN Regional Centre For Biodiversity Conservation (ARCBC) until such time when a permanent body shall have been designated by the ASEAN. To this end, the ARCBC shall establish and maintain a database on the status of biological and genetic resources, as well as access agreements and applications.

Article 7 – Regional Clearing House Mechanism

The regional clearing house mechanism shall be responsible for:

- a) Providing relevant information to resource users and the competent national authorities. Provided that some information received by the clearing house mechanism may not be shared to parties other than the resource providers and shall be subject to appropriate security precautions;
- b) Serving as an information node to which Member States that allowed access to genetic resources shall report such access and to disseminate such information to the other Member States;
- c) Providing technical and legal support to competent national authorities;
- d) Reporting to the Standing Committee the status of implementation of the Framework Agreement;
- e) Monitoring the implementation of national access legislations;
- f) Adopting a system of warning other Member States on applications that have been denied by a Member State including a dissemination of the reasons and circumstances for such a refusal or rejection;

Article 8 – Competent National Authority

The Member States shall have the obligation to designate their respective competent national authorities which shall be responsible for:

- a) Formulating and implementing the national legislations on access;
- b) Establishing procedures for the granting of prior informed consent at the national and local levels with the direct involvement of resource providers;
- c) Disseminating information on the access regulation;

- d) Establishing links with the ARCBC in the interim period and with the regional clearing house mechanism once it has been established;
- e) Providing information to the regional clearing house mechanism which they view to be of regional importance

A Standing Committee composed of competent national authorities shall be established and shall be responsible for :

- a) Reviewing the Framework Agreement;
- b) Assisting Member States in the establishment of competent national authorities;
- c) Settling disputes between and among the Member States

Article 9 – Settlement of Disputes

In cases of dispute between Member States, between a Member State and communities, or between communities regarding access, such cases shall be settled among the concerned parties through dialogue. Dispute between a resource user and a Member-State shall be settled at the national level following the provisions of the national access regulation. Disputes among Member-States shall be settled through an arbitration process in a manner similar to what has been laid down in applicable international treaties.

Article 10 - Prior Informed Consent and Participation of Key Stakeholders

The prior informed consent of the Member State providing the biological and genetic resources is necessary before access to genetic resources can take place. The competent national authority designated by Member States shall establish legally-binding procedures for the determination of prior informed consent up to the local level.

The procedures leading to the grant of prior informed consent at the local level shall provide for the active involvement of indigenous peoples and local communities embodying traditional lifestyles. The prior informed consent process shall respect and comply with the customary laws, practices and protocols of indigenous peoples and local communities and the disclosure of any information pertaining to the access shall be in a language understandable to the local communities.

The Member States shall provide in their access regulations that each application for prior informed consent shall be accompanied by a full disclosure of the following information :

- a) name of the researcher, collector or collaborator;

- b) specific area and location of the bioprospecting activity;
- c) the defined period when the collection activities will take place;
- d) the specific purposes, objectives, resources to be used, activities and methodologies, expected outputs and other related information;
- e) information on the local collaborator;
- f) information on the potential environmental and ecological impact of the bioprospecting activity; and
- g) potential benefits to the country

If a Member State decides to deny access to a particular application, the regional clearing house mechanism shall disseminate the appropriate information to Member-States for their reference and appropriate action.

Article 11 - Fair and Equitable Sharing of Benefits

All resource providers, particularly indigenous peoples and local communities embodying traditional lifestyles, shall be actively included in the negotiation of benefits on the basis of a full disclosure of potential benefits and risks arising from the use of the resource. Any benefit sharing arrangements that may be entered into shall not negatively interfere with traditional knowledge systems and practices of indigenous peoples and local communities.

The ASEAN Member States shall recognize the indigenous peoples and local communities as the legitimate users and custodians of biological and genetic resources, and creators of traditional knowledge. In this connection, the ASEAN Member States shall establish legal processes to ensure fair and equitable sharing of benefits arising from the use of such knowledge and resources.

The negotiation of any benefit sharing arrangements that may come in the form of technology transfer, capacity building, monetary and non-monetary benefits arising from the utilization of a Member State's biological and genetic resources shall be left to its own initiative and discretion based on a minimum set of requirements which shall include the following :

- a) The participation of nationals in research activities;

- b) The sharing of research results, including all discoveries;
- c) A complete set of all voucher specimens left in national institutions;
- d) Access by nationals to all national specimens deposited in international *ex situ* collections;
- e) The receipt by resource providers, without payment of a royalty, of all technologies developed from research on provided materials;
- f) Fees, royalties and financial benefits; and
- g) The donation to national institutions of equipment used as part of research.

For the guidance of the Member States, the Framework Agreement shall provide an Annex that will illustrate options and guidelines for appropriate benefit-sharing arrangements particularly those that have been discussed and noted by any *ad-hoc* body or Experts Panel created by the Conference of the Parties to the Convention on Biological Diversity for the purpose. Other options for benefit-sharing shall be determined by the Member States at the national level or whatever they may be able to negotiate in every application for access.

The Member States shall provide for the renegotiation of whatever benefit-sharing arrangements that may have been entered into and this renegotiation shall be done with the originally identified resource providers on the terms of benefit sharing during the development and when new uses are discovered for those biological and genetic resources that have been collected.

Article 12 - Common Fund for Biodiversity Conservation

There is hereby created, at the level of the ASEAN, a Common Fund specifically and only for biodiversity conservation. Contributions to this Fund shall be sourced from a share in the revenues derived from any commercialization of the use of common and shared resources among the Member States. The ASEAN Working Group on Nature Conservation and Biodiversity (AWGNCB) shall make the appropriate recommendations on the implementation mechanisms for the said Fund.

The Common Fund shall also be sourced from a portion of whatever the Member States shall impose as the appropriate charges and fees on each access application submitted to their respective competent national authorities. Additional support to the Common Fund shall also be derived from whatever benefit-sharing arrangements that may be negotiated by each Member State, on a case-to-case basis.

Article 13 - Environmental and Social Impact and Biosafety Concerns

In view of its importance in realizing the objectives of biodiversity conservation, this Framework Agreement shall conform with any national, regional and international guidelines on biosafety without prejudice to a separate and distinct framework or protocol on the issue that may be developed by the ASEAN Working Group on Nature Conservation and Biodiversity (AWGNCB) taking into account the work of other relevant ASEAN bodies.

This Framework Agreement shall also take into consideration the various environmental and social impacts of access to genetic resources in conformity with national, regional and international guidelines.