



Regional Framework on Access and Benefit Sharing (ABS) in the Himalayan Region

Political boundaries do not limit the movement of biological resources and knowledge. Countries in the Himalayan region share common biological resources and traditional knowledge, and protection and sustainable use cannot be planned effectively by single countries in isolation. The unsustainable exploitation of wild flora and fauna is continuing through cross-border trade, and especially sensitive areas with high levels of biodiversity such as in the mountains need special protection and regulation. Regional cooperation needs to be strengthened to address the violation of national laws on genetic resources and associated traditional knowledge. A regional access and benefit sharing (ABS) framework will increase the bargaining power of countries sharing these common resources. By acting regionally, countries can express their priorities more strongly.

Introduction

The Convention on Biodiversity (CBD) came into force in 1993 with the objectives of the conservation and sustainable use of biological diversity, and the fair and equitable sharing of benefits arising from the utilisation of biological resources and traditional knowledge. The CBD translates its objectives into binding commitments in its substantive provisions contained in Articles 6 to 20. These Articles regulate access to biological resources and the sharing of benefits.

Objectives of the Convention on Biological Diversity

- Conservation of biological diversity
- Sustainable utilisation of biological diversity
- Fair and equitable sharing of benefits

The CBD also establishes institutional mechanisms like the Conference of Parties (COP) to facilitate and monitor implementation. The COP is an important mechanism for driving the agenda. To date (2008) there have been nine COP meetings, in which access and benefit sharing (ABS) of biological resources and associated traditional knowledge has been a central agenda item. Regional cooperation is

also important for the CBD and the ABS process, and a number of regional and sub-regional meetings have also been held to discuss implementation. Article 5 of the CBD affirms the need to cooperate with other contracting parties in relation to areas beyond national jurisdiction and on other matters of mutual interest; similarly, Article 14 (1.c) talks about the promotion of regional cooperation in the context of minimising adverse environmental impacts; and these articles are supplemented by COP decisions such as V/6, VI/12, and VII /11 that provide the international framework for increasing regional cooperation.

Existing regional frameworks

There are a number of regional ABS frameworks in place or being formulated in different regions of the world including the Andes, Africa, Central America, and Asia. The Andean Community of Nations Common Regime of Access to Genetic Resources came into force on 17 July 1996 and is effective in Bolivia, Colombia, Ecuador, Peru, and Venezuela. The Andean Pact is the most elaborate

Current regional frameworks

- Andean Pact (came into force in July 1996)
 - African Model Law (came into force in 2003)
 - Central American Agreement (recently came into force)
 - ASEAN ABS Framework (draft)
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framework formulated so far and is a legally binding instrument. The African Model Law came into force in 2003 and provides a model for the development of ABS legislation in African countries. The Central American Agreement has only recently come into force, and the ASEAN ABS Framework is still a draft.

These regional ABS frameworks all cover areas where there are multiple biodiversity hotspots and are, in essence, ABS agreements that have been incorporated into existing regional economic integration frameworks.

Implementation of regional frameworks

Although the Andean Pact has been in operation for more than a decade, results have been mixed. Regional and national level legal frameworks are in place, but there have not been the anticipated number of ABS agreements with users of genetic resources. This has been attributed to cumbersome procedures and the lack of institutional capacity to handle the application process.

The African Model Law is different from the other regional regimes in the sense that it is only a guide for member countries to follow. However, the results of this framework have been equally mixed. Although a common African position on ABS issues has been articulated, a number of factors have contributed to the slow response by African countries in developing national legislation implementing the African Model Law. These include a lack of national expertise in legal drafting to translate the African Model Law into national legislation; constraints on implementation capacity; lack of information on the utility of protecting traditional knowledge; and inconsistent interpretations of the meaning of the Law by African countries.

It is too early to come to any conclusions about the ASEAN ABS Framework and the Central American Agreement as the first is still in draft form and the second only came into force recently.

National ABS regimes in the Himalayan region

The Himalayan region is home to a large number of people who share a common cultural and biological heritage with their immediate neighbouring countries. The region also contains two of the world's 10 mega-centres for biodiversity, along with all or part of four of the 34 global biodiversity hotspots. The Himalayas are also a 'mega language centre' with over 400 languages spoken by less than 100,000 speakers [check eklabya's]. Despite these rich resources, the remoteness of many areas and the high-altitude environment means that many of the people are among the poorest in the world.

Reconciling the needs of local communities, while conserving ecosystems and sharing benefits, has become a major challenge in the region. Since 1992, various transboundary biodiversity conservation efforts have been developed to address these issues resulting in the development of a proposed transboundary protected area policy which is being discussed by the countries concerned.



The countries in the region are at different stages in developing national ABS regimes. China, Pakistan, Afghanistan, and Myanmar do not have dedicated biodiversity and ABS related legislation; they regulate biodiversity and ABS through different forms of environmental legislation. India has developed a Biodiversity Act (2002) and Biodiversity Rules (2004) under which state biodiversity boards are being established and state biodiversity rules are being promulgated. Bhutan enacted a Biodiversity Act in 2003 and is drafting Biodiversity Rules to implement the Act. Nepal has drafted a Bill on Access to Genetic Resources and Benefit Sharing and is developing an ABS policy. Similarly, Bangladesh has drafted a Bill on Biodiversity and Community Knowledge Protection.

Rationale for a regional ABS framework in the Himalayan region

The present international borders in the Himalayan region are political boundaries only. Ecosystems existed long before political boundaries and the political boundaries do not limit the movement of species and communities of plants, animals, and even humans. Transboundary exchange of traditional knowledge and best practices is commonplace and, as a result, the countries in the region share common biological resources and traditional knowledge. A common ABS framework would facilitate the fair and equitable sharing of benefits from the commonly held biological resources and associated traditional knowledge; maintenance of the ecology and improvement of management; and the creation of economic opportunities. Such a framework would also bring isolated mountain people together and provide the basis for peace and collaboration, and reducing hostilities related to access.

The Himalayan region is a biodiversity hotspot. Sensitive areas with high levels of biodiversity, such as in mountain areas, require special protection and regulation. Although the Convention on Biological Diversity reaffirms national sovereignty over genetic resources, national legal frameworks are inadequate to protect biological resources and traditional knowledge and are not effectively implemented. The unsustainable exploitation of wild flora and fauna continues virtually unrestricted through cross-border trade. At the same time, the benefits from extraction have not reached the local and indigenous (and often marginalised) communities; most have gone to elite groups and international bioprospectors, who are not the custodians of the resources and knowledge. There is a need to strengthen regional cooperation to address the violation of national laws in relation to access and benefit sharing of biological resources and traditional knowledge and to provide a regional approach for the regional resources.



Continuity is needed to ensure fair access and benefit sharing mechanisms and the stable supply of biological resources. The harmonisation of requirements for access and benefit sharing at the regional level would create similar conditions across the region. This would provide users with greater predictability and streamlined processes for obtaining access to genetic resources.

A regional ABS framework would also help to increase bargaining power. By acting regionally, countries can express their priorities in a stronger way. Operating independently, countries risk these priorities being played off against each other, both in international negotiations and by bioprospectors seeking to access shared resources. A regional approach would facilitate cooperation among countries at the technical level as well as the exchange of information.

Cooperation among all the countries in the region to develop a common regional ABS framework will help regulate access, promote a more equitable sharing of benefits with local communities, and promote the sustainable use of biodiversity. Regional institutions such as ICIMOD can play an important role in enabling countries with limited specific expertise in this field to benefit from expertise in the region. The institutional mechanism for collaboration to develop a regional ABS agreement is already in place in the form of the South Asian Association for Regional Co-operation (SAARC). SAARC's focus areas are the environment and bio-technology, making it the ideal vehicle to develop a regional ABS framework. ICIMOD, as a regional mountain specific institution can facilitate this process. Such a framework could take the form of the African Model Law or be a supra-national framework like the Andean Pact. The agreement could create a regional framework that would benefit both the regional member countries and the users/providers of genetic resources and associated knowledge from both within and outside the region.

Conclusions

Natural ecosystems existed long before political boundaries in the Himalayan region and do not respect them or adjust to them in any way. Political boundaries do not limit the movement of communities of plants and animals, or confine traditional knowledge systems. Thus the countries in the Himalayan region broadly share genetic resources and traditional knowledge systems. There has been growing concern over the ways in which genetic resources and traditional knowledge are being appropriated by corporations and research institutions without equitable sharing of the benefits with communities and countries of origin, and often even without their knowledge. A regional ABS framework would help to govern and manage such an important common heritage. This information sheet provides the rationale for the development of a regional ABS framework for the Himalayan region.

Further reading

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