



# POLICY BRIEF

ABS ISSUE 1 JUNE 2013

SERIES

## An Urgent Need: Institutionalizing Access to Genetic Resources and Benefit Sharing in Southeast Asia

Millions of people in Southeast Asia rely on biodiversity for their livelihood. The region occupies only three percent of the world's total area but it is home to 18 percent of the known plant and animal species. Many sectors, including forestry and biotechnology, continue to depend on genetic resources, the basic unit of biodiversity. Despite this richness, the benefits that arise from accessing genetic resources have not been equitably shared between resource providers and users.

### Genetic resources, more valuable than ever

With the high potential of discovering and developing new drugs from natural products<sup>1</sup>, genetic resources have become more valuable than ever. IBISWorld's Global Biotechnology Global Market Research Report predicts a steady growth of the biotechnology market in the coming years, already boasting an overall revenue of USD 262 billion in 2012, and an annual growth of 11 percent between 2008 and 2013. Considering this projection, the ASEAN Member States should seize the opportunity to benefit from the use of genetic resources.

Even with these projections, a country providing genetic resources to industries and other sectors needs a regulatory system to ensure that even with the continued access and utilization of genetic resources, conservation and sharing of benefits are conducted simultaneously. This would involve a contracting system between providers (mostly biodiversity-rich countries) and users of genetic resources (e.g. industries, research entities). Income generated from such interactions can function as an important resource for biodiversity conservation, and even as a means to reduce poverty targeted at those who substantially help to sustain biodiversity. Such is the need to regulate access and benefit-sharing (ABS) of resources.

### Responding to the challenges of ABS

The Convention on Biological Diversity (CBD) provides a clear mandate to member countries in carrying out and developing legal, administrative, or policy measures in accessing genetic resources<sup>2</sup>. This is also one of the provisions provided for in the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of the Benefits Arising from their Utilization<sup>3</sup>.

It should be noted that countries in the ASEAN region have implemented ABS-related legislations and policies in varying degrees even prior to the Nagoya Protocol. For instance, the Philippines and Malaysia have legislation, policies, and institutions focused on ABS.

ASEAN Member States have diverse cultures and indigenous communities, governed by their own set of rules, such as community protocols. This may consist of rituals, customs, practices, and customary laws that relate to the rights of communities over resources and intellectual creations. Community protocols are recognized in Sabah, and in Bukidnon, Southern Philippines. The Sabah Biodiversity Centre, in particular, is implementing the Kinabalu Biocultural Law Project, which aims to support ABS awareness raising and build capacity among the Dusun communities living around Mt. Kinabalu, customary sustainable uses of biodiversity, and the protection of traditional knowledge.

### Regional response to ABS

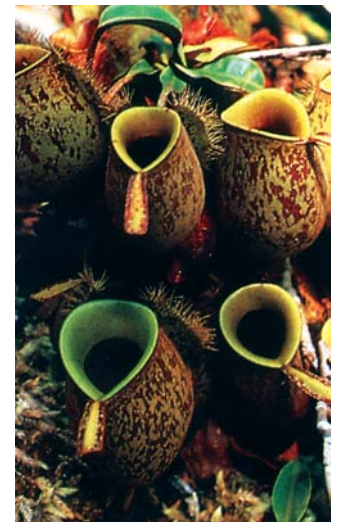
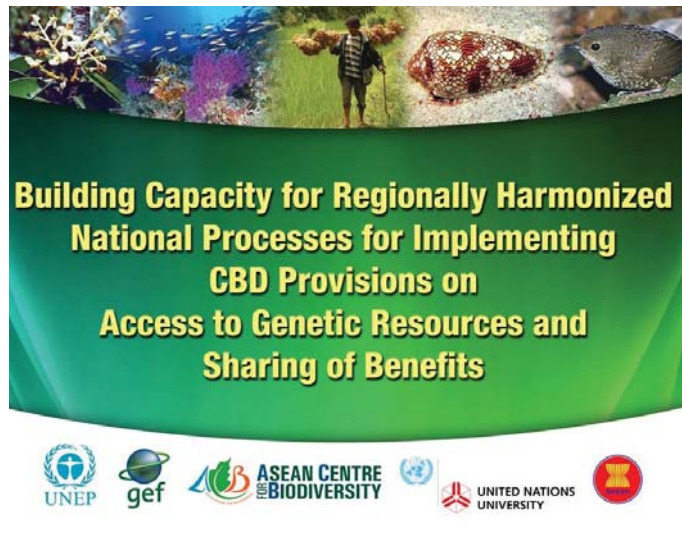
The ASEAN, as a regional response to the call for regulating ABS, has a Draft Framework Agreement on ABS which provides a clear perspective on the status of the development and implementation of an ABS regime. The draft agreement aims to provide a level playing field for all countries that wish to control the exploitation of their genetic resources and to accord recognition and protection to



<sup>1</sup> Newman, D. and G. Cragg, 2007. Natural Products as Sources of New Drugs over the Last 25 Years. *Journal of Natural Products*, 70(3), pp461-477.

<sup>2</sup> Article 15 – Access to Genetic Resources and Article 16 – Access to and Transfer of Technology

<sup>3</sup> The 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 (CBD) is a supplementary agreement to the CBD, providing a transparent legal framework for the effective implementation of the 3rd CBD objective on the fair and equitable sharing of benefits arising out of the utilization of genetic resources. The Protocol was adopted on 29 October 2010 in Nagoya, Japan.



traditional knowledge of indigenous peoples and local communities. The draft agreement requires the ratification of six countries to take effect.

In efforts to promote the draft ASEAN Framework, the ASEAN Centre for Biodiversity (ACB), an intergovernmental organization that facilitates cooperation on biodiversity conservation and sustainable management among ASEAN Member States, is implementing a regional ABS project funded by the United Nations Environment Programme-Global Environment Facility. The project aims to strengthen the capacity of ASEAN Member States to participate in international negotiations on ABS, enable participating countries to understand the Nagoya Protocol through regional workshops, and provide venues for them to exchange experiences in ABS policy implementation. The project is also assisting participating countries in the formulation of a roadmap towards developing national ABS legal frameworks.

### Responding to the Nagoya Protocol

The Nagoya Protocol was adopted at the 10th Conference of the Parties to the CBD, and will enter into force 90 days after the fiftieth instrument of ratification has been deposited. In the region, Cambodia, Indonesia, and Thailand have signed the Nagoya Protocol, while Lao PDR has acceded to the Protocol but is still in the process of enacting a national ABS law. Cambodia, on the other hand, has translated the Protocol into the Khmer language.

### Policy and capacity needs

Implementation of ABS-related policies and legislations in the ASEAN Member States proves to be weak and wanting.

The barriers to successful law implementation include lack of political will, funds, public awareness, information and education about biodiversity conservation. These barriers could be traced to the absence of management systems for compliance; lack of compliance training for personnel; and inability to meet requirements due to insufficient appropriate technology and personnel experts in taxonomy, the field of science most vital to biological diversity conservation.

With the adoption of the Nagoya Protocol, national policies related to ABS in the Southeast Asian countries would have to be reviewed to be in harmony with the provisions of the Nagoya Protocol. Setting a legal framework in place would help facilitate the needed capacities, as identified in the ABS regional project baseline study, and as provided for in the Protocol's Article 22 on Capacity<sup>4</sup>.

### Next Steps

With the Nagoya Protocol on ABS expected to be in effect in 2015, effective national ABS legislative, administrative or policy measures should be formulated and developed as soon as possible. Environmental policy, institutional framework, and legislation all form part of an interlinked whole and cannot be meaningful in isolation. With this in mind, national government and policy-making bodies are called upon to consider the following:

- Formulate and develop national ABS measures backed up by regulations, guidelines, and manuals for effective implementation and enforcement.
- Recognize the linkages among policy, institutional, and regulatory measures. Policy should emphasize the integrated nature of the elements of an ABS regime. Institutional arrangements should be coordinated in implementing the policy and enforcing the law.
- Strengthen environmental legislations with ABS law in mind. This requires management and technological factors that encourage compliance with the ABS legal requirements including, but not limited to, trainings dedicated to compliance, availability of affordable technologies (e.g. laboratory equipment), clear governmental will to enforce the law including capacity building for compliance monitoring, and public support for biodiversity conservation concerns.
- Encourage public participation by involving, informing, and consulting them in planning, management, and other decision-making activities. All stakeholders must be made aware of the value of ABS in terms of providing livelihood to local and indigenous communities through the benefits (monetary and non-monetary) they will receive in exchange for the right of access they have granted. ■

### References:

- ACB, 2012. Capacity impact survey (Baseline). Second Regional Workshop on ABS, Bangkok, Thailand (Unpublished).
- ACB, 2011. Legal and Institutional Development for Promoting Access and Benefit Sharing of Genetic Resources in Southeast Asian Countries. Paper prepared for the Institute for Global Environmental Strategies (IGES).
- OECD, 2011. Key Biotechnology Indicators. KBI1. <http://www.oecd.org/sti/bio-tech/keybiotechnologyindicators.htm>
- IBIS World, 2013. Global Biotechnology Market Research Report. <http://www.ibisworld.com/industry/global/global-biotechnology.html>
- SEARICE Review, January 2002. Community Protocol: An Instrument to Protect the Rights of Communities to Biological and Genetic Resources and Traditional Knowledge. <http://searice.org.ph/>

<sup>4</sup> Article 22 of the Nagoya Protocol outlines the key areas, as well as measures, by which capacity-building and development may be addressed in support of the implementation of the Protocol.