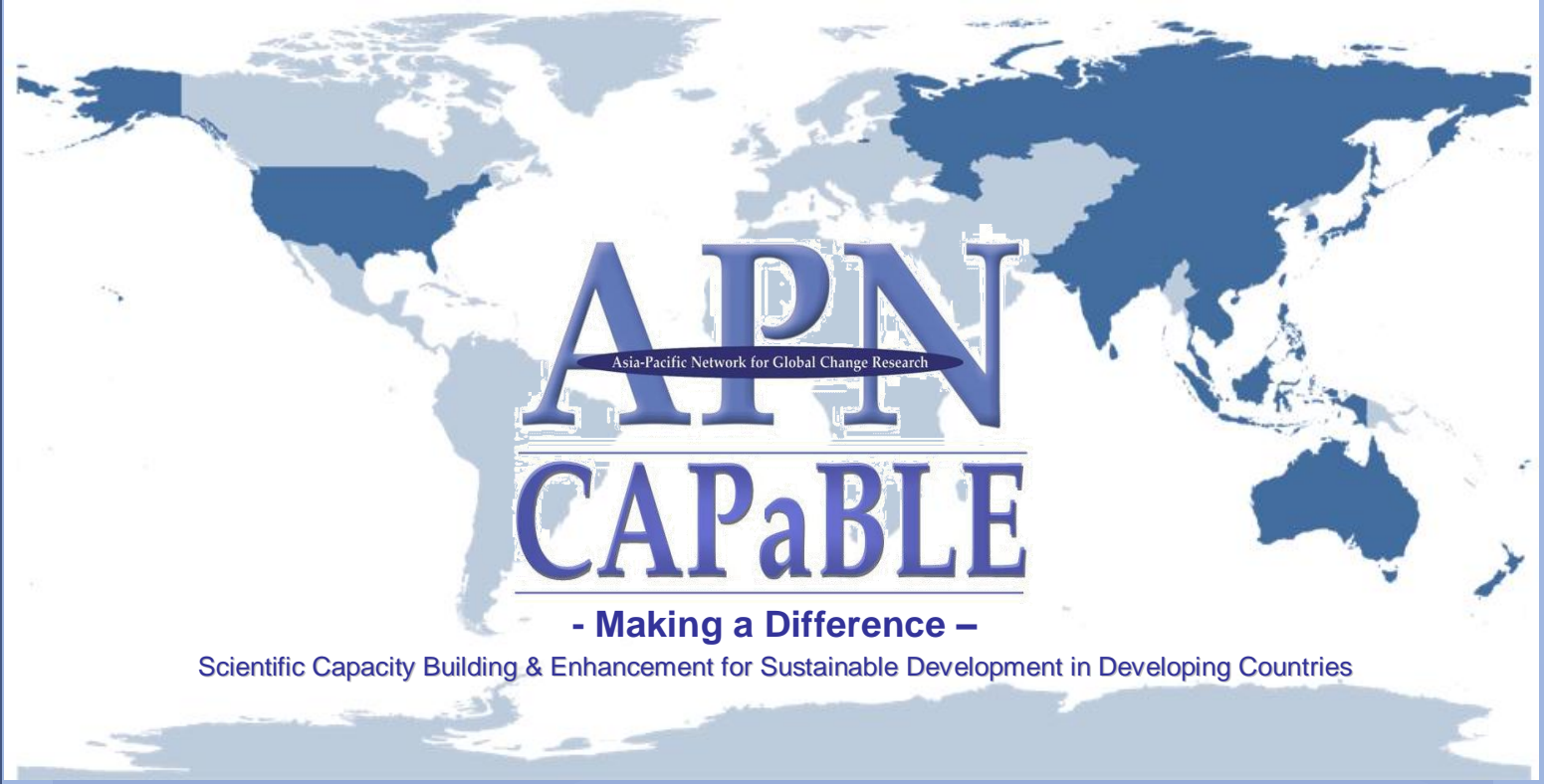


ASEAN Training Workshop on Building Capacity on ABS



APN
Asia-Pacific Network for Global Change Research
CAPaBLE

- Making a Difference -

Scientific Capacity Building & Enhancement for Sustainable Development in Developing Countries

The following collaborators worked on this project:

Clarissa C. Arida, Director-Programme Development and Implementation, ASEAN Centre for
Biodiversity, ccarida@aseanbiodiversity.org

Anthony C.T.M. Foronda, Ana Maria E. Tolentino, and Corazon de Jesus, Jr.,
odi@aseanbiodiversity.org

ASEAN Training Workshop on Building Capacity on ABS

**Project Reference Number: CBA2012-07NSY-Arida
Final Report submitted to APN**

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OVERVIEW OF PROJECT WORK AND OUTCOMES

Non-technical summary

A capacity building activity for Southeast Asian key stakeholders was conducted to enhance their understanding of the policy, mechanisms, and implementation of the third objective of the Convention on Biological Diversity on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization (ABS). To assist countries in the enforcement of the Nagoya Protocol (NP), the 3rd Regional Workshop on ABS was held in Kuala Lumpur, Malaysia in December 2012. About 60 representatives from academe/science community, lawyers/policy-makers, NGOs, indigenous and local communities, industry, and ABS National Focal Points participated in the 4-day workshop comprised of lectures and a field visit to a research institute. The workshop critically discussed the status and key elements of the NP, relevance of the draft ASEAN Framework Agreement on ABS, procedures for sharing of benefits and country experiences in implementing ABS policies. The field visit demonstrated the experience of FRIM in documenting selected traditional knowledge associated with genetic resources and its interface with science and policy development. The activity provided an analysis of the international and regional guidelines on ABS, procedures of benefit sharing, ABS implementation in different countries including by an industry, and prepared the participants in developing national roadmap towards ABS legal frameworks.

Keywords

ABS, access and benefit sharing, genetic resources, Prior Informed Consent, Mutually Agreed Terms, traditional knowledge, Nagoya Protocol, Convention on Biological Diversity

Objectives

The main objectives of the project were:

1. Build capacity in developing regulatory frameworks and mechanisms to effectively implement the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS);
2. Understand the legal, institutional, administrative, scientific and technological aspects of access and benefit-sharing;
3. Help prepare indigenous and local communities in their participation in national access and benefit sharing processes through in-depth training of their representatives and trainers such as key educators and NGOs; and
4. Avail of expertise of resource persons from Japanese and other developed country partners organization and access and benefit sharing experts on recent trends, developments and adaptable best access and benefit sharing practices.

Amount received and number years supported

The Grant awarded to this project was: USD 40,000

Activity undertaken

Southeast Asia Workshop on Building Capacity on Access and Benefit Sharing (ABS)

Results

The workshop was conducted at Hotel Novotel, Kuala Lumpur, Malaysia on 10 to 13 December 2012. There were 56 participants from the nine ASEAN Member States (except Indonesia) and Timor-Leste. Resource speakers were from the Centre of Excellence for Biodiversity Law-Malaysia (CEBLAW), United Nations-University-Institute for Advanced Studies (UNU-IAS), Environment Division-ASEAN Secretariat, Forest Research Institute Malaysia (FRIM), Sarawak Biodiversity Centre-Malaysia, Third World Network-Malaysia and Japan Bioindustry Association.

Participants were exposed to an analysis of the Nagoya Protocol on ABS including the draft ASEAN Framework Agreement on ABS. They were shown the procedures/mechanisms on benefit-sharing and investigate experiences on ABS in Malaysia, Viet Nam and the Philippines, including that of a Bioindustry. Also, the Workshop was able to guide participants on possible steps to prepare a roadmap towards national ABS legal frameworks.

Moreover, they witnessed the interface among science, TK and policy. In a field trip at the FRIM in Kepong, the researchers at the Institute presented a project in documenting TK associated to genetic resources of selected indigenous and local communities (*Orang Asli*) in Peninsular Malaysia. The researchers highlighted the methodology in getting PIC, MAT, documenting TK and genetic resources, testing of pharmaceutically important biochemical and conserving these TK and biological resources.

This field visit at FRIM provided participants an extended application of the ABS mechanism that was observed in the Thailand field trip held in August 2012 at Ban Santitham Centre for Agroforestry and Community Development during the 2nd Regional ABS Training-Workshop. At Ban Santitham Centre, it showcased the community's long-term management approach in conserving botanical resources including TK associated to these resources. In terms of ABS, a PIC from the community is required and a sharing back to the community of one percent of revenue from community sales of botanical resources of plant-based products like facial treatment mask, shampoo, balm oil, and mouthwash.

The success of the FRIM project can be attributed to attainment of PIC by the Institute from the community together with the empowerment and involvement of the community every step of project activities including MAT as negotiated between the researchers and community leaders. Its success provides an example of how to create a harmonious relationship between researchers and indigenous and local communities, a relationship which can simply be built on mutual respect, trust, and sincerity.

Another activity of this project is the improvement of the ABS webpage in the ACB portal. It is expected that the webpage will enhance the capacity of key stakeholders in Southeast Asia by serving as a regional information and learning facility on ABS.

Relevance to the APN Goals, Science Agenda and to Policy Processes

The project is for an ASEAN training workshop on building capacity that involved ABS National Focal Points, academe/scientists/researchers, lawyers/policy-making agency representatives, representatives of indigenous and local communities/NGOs, and industry. They were informed of the procedural aspects of Prior Informed Consent (PIC), Mutually Agreed Terms (MAT), and issues such as ownership of genetic resource and traditional knowledge (TK).

The project is very relevant to APN goals because it will be able to provide inputs and improve legal, institutional, scientific and technological capabilities in terms of extensive discussions on ABS topics including bioprospecting, biotechnology, and biopiracy. The APN research agenda was appropriate because ABS naturally requires the search of biodiversity for valuable genetic and chemical

information found in plants, animals, and micro-organisms, thus enriching biological inventories and taxonomy. Through this project, the need for ASEAN capacity building took on special significance as capacity-related issues are at the root of most developing countries' inability to conserve their genetic resources which prevented them from ensuring a more equitable benefit-sharing from the use of their resources.

Self evaluation

The implementation of the Project provided an essential opportunity for key stakeholders in the region to better appreciate ABS activities and the potential in their own States. The generation of information materials could have supplemented the expected outputs of the Project if utilization of unexpended fund balances were allowed.

Potential for further work

It has been realized from Workshop discussions, the ASEAN region would benefit from learning how to develop ABS arrangements, explore the potential of its genetic resources, develop useful products from these resources and share benefits with resources providers. This capacity building activity requires further support for generating information on socio-institutional arrangements, scientific capability to gather genetic and biochemical data, process new information, and develop potential products for pharmaceutical, industrial, and/or agricultural use. These activities specifically on ABS are important elements to realize the third objective of the Convention on Biological Diversity.

Publications (please write the complete citation)

The finalization of publications of the final report, ABS policy brief, and workshop presentations in hard and soft copies are in progress.

References

ASEAN Centre for Biodiversity (2012). Report of the 2nd Southeast Asia Training-Workshop on Building Institutional and Stakeholder Capacities on ABS. Bangkok, Thailand. 20-23 August 2012, Bangkok, Thailand (Unpublished).

ASEAN Centre for Biodiversity (2012). Report of the 3rd Regional Workshop on ABS: Developing national roadmap towards ABS legal frameworks. Kuala Lumpur, Malaysia. 10-13 December 2012 (Unpublished).

Acknowledgments

Acknowledgment to collaborating institutions, resource persons, etc., should be placed here

The ASEAN Centre for Biodiversity would like to thank the **Asia Pacific Network for Global Change Research** for this meaningful partnership to raise capacities in biodiversity conservation and for providing financial support for the participation of key stakeholders in the 3rd Regional Workshop on ABS: Developing a national roadmap towards ABS legal frameworks. These key stakeholders are academe/scientists/researchers, NGO/indigenous and local community representatives, and

lawyers/policy making body representatives from Cambodia, Lao PDR, Malaysia, the Philippines, Thailand and Viet Nam and resource speakers from the United Nations University-Institute of Advanced Studies, Sarawak Biodiversity Centre and the Japan Bioindustry Association.

The 3rd Regional Workshop on ABS was kindly hosted by the Ministry of Natural Resources and Environment-Malaysia, co-implemented by United Nations University-Institute of Advanced Studies and the ASEAN Secretariat, and co-funded by UNEP-GEF.



TECHNICAL REPORT

Preface

This activity proceeds from the United Nations Environment Programme-Global Environment Facility (UNEP-GEF) funded regional project “Building Capacity for Regionally Harmonized National Processes for Implementing CBD Provisions on Access to Genetic Resources and Sharing of Benefits”. So far, the regional project, through a series of workshops, (1) provided key stakeholders an understanding of the Nagoya Protocol on ABS; (2) equipped stakeholders with tools and methods for implementing ABS; and (3) further strengthened the capacities of stakeholders by providing more detailed guidance in developing national roadmaps towards ABS legal frameworks.

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1.0 Introduction

This section should include background information, scientific significance, objectives, and other relevant information leading to the development and justification of the current project.

On account of the disparity in the economic, social and institutional development among the ASEAN countries, the need for capacity takes on a special significance in terms of the ability to implement the third objective of the Convention on Biological Diversity (CBD) which is to “facilitate access to genetic resources in return for a fair and equitable share of the benefits derived from their use” (Art. 2). Progress in its implementation is acknowledged to be slow because development of appropriate national access and benefit sharing schemes raises issues concerning legislative and institutional arrangements, identification and effective engagement of stakeholders, public awareness and education, among others. Specifically, the trade-off between access to genetic resources and the transfer of information/technology to the Contracting Party (CP) who provide the genetic resources, their participation in scientific research and their ability to effectively share in the benefits derived from the development of genetic resources ultimately depends, to a large extent, on CPs having the capacity to do so.

There are three key references from the CBD that could be used to assist Parties in establishing an ABS mechanism in their respective countries.

The main reference is Article 15 of the CBD which sets out rules and guides Parties on how to put in place mechanisms for access to genetic resources and to ensure that benefits from the utilization of such resources are shared fairly and equitably between users and providers. The Bonn Guidelines adopted in 2002 outline key steps in the ABS process, which includes identifying the basic elements required for Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT), among other elements. Finally, the Nagoya Protocol on ABS provides greater legal certainty and transparency for both providers and users of genetic resources for obligations on access, benefit-sharing, and compliance.

It was known at the outset that a UNEP-GEF approved, two year, ASEAN Centre for Biodiversity (ACB) implemented regional project, “Building Capacity for Regionally Harmonized National Processes for Implementing CBD Provisions on Access to Genetic Resources and Sharing of Benefits” aims to (1) strengthen their capacity to implement the CBD provisions on access and benefit sharing through the development of full and effective national access and benefit sharing frameworks; (2) increase understanding of access and benefit sharing issues among stakeholders and the general public; and (3) improve public understanding of the contribution access and benefit sharing can make to biodiversity conservation. Most of the activities to be undertaken in the project focuses on the review and assessment of existing national policies to be elevated to the regional level to capacitate stakeholders involved and to assist in the formulation of new, if not revised/amended access and benefit sharing policies in line with the 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS).

In connection therewith, the project was for an ASEAN workshop on building capacity on access and benefit sharing (ABS) which will involve key stakeholders representing the academe/science community, lawyers/policy-makers, NGOs, indigenous and local communities, industry and ABS National Focal Points from the ASEAN Member States (AMS) and Timor-Leste which will be held complimentary with a workshop in accordance with the approved UNEP-GEF project mentioned above. The objectives of the project are to (1) build capacity in developing regulatory frameworks

and mechanisms to effectively implement the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS); (2) understand the legal, institutional, administrative, scientific and technological aspects of access and benefit sharing; (3) help prepare indigenous and local communities in their participation in national access and benefit sharing processes through in-depth training of their representatives and trainers such as key educators and NGOs; and (4) avail of expertise of resource persons from Japanese and other developed country partners organization and access and benefit sharing experts on recent trends, developments and adaptable best access and benefit sharing practices. In addition, participants to the workshop were informed of the various complex procedural aspects of access and benefit sharing such as PIC, MAT, fair and equitable sharing of benefits as well as issues relating to ownership and valuation of genetic resources, intellectual property rights (IPR), knowledge innovations, traditional knowledge/engaging indigenous and local communities. They likewise examined access and benefit sharing practices in some countries with the purpose of developing or improving and effectively implementing access and benefit sharing procedures in the ASEAN countries.

The existing access and benefit sharing site found in ACB's website was also enhanced to become an ABS information sharing network and learning facility wherein which a specific part of the site was dedicated to the workshop on building capacity on ABS.

2.0 Methodology

Explain how you carried out the project, which should follow logically from the aims. Depending on the kind of data, this section may contain subsections on experimental details, materials used, data collection/sources, analytical or statistical techniques employed, study field areas, etc. Provide sufficient detail for a technical/scientific audience to appreciate what you did. Include flowcharts, maps or tables if they aid clarity or brevity.

The general objective of the workshop conducted was to build the capacity of key stakeholders in developing and implementing ABS frameworks. Specifically:

1. Move towards the harmonization of national, regional and international ABS regimes
 - a. Provide an update on the ratification of the Nagoya Protocol on ABS
 - b. Promote the draft ASEAN Framework Agreement on ABS
2. Strengthen stakeholder capacity
 - a. Assist key stakeholders in comprehending the key ABS elements (benefit-sharing, PIC, MAT and traditional knowledge/engaging indigenous and local communities)
3. Promote regional cooperation and learning
 - a. Observe and appreciate ABS practice in Malaysia
 - b. Analyze selected national policies on ABS
 - c. Understand the implementation of ABS in Sarawak, the Philippines and Japan, specifically the project implemented by Japan Bioindustry Association
4. Develop national ABS frameworks
 - a. Support project participating countries in developing a roadmap towards a national ABS legal framework

The participants learned from the lectures conducted by key experts. The discussions included sharing of experiences during open forum and group discussions. The lectures focused on the status of the ratification of the Nagoya Protocol, overview on developing national law to implement the Nagoya Protocol by examining all relevant articles specifically highlighting the elements of the

Protocol, traditional knowledge and national implementation challenges, preparing and assessing national roadmap in developing and implementing ABS legal frameworks, and the draft ASEAN ABS Framework.

Also discussed were ways to develop regional benefit-sharing procedures and/or mechanisms focusing on PIC, MAT, compliance, ownership and intellectual property rights (IPR); an overview of the draft European Union ABS Regulations; biopiracy case studies; procedures and experiences on implementing PIC and MAT, specifically in the Sarawak Biodiversity Centre and the Philippines; and experiences of an industry in implementing ABS in Southeast Asia.

To further enrich their understanding of ABS, the participants visited the Forest Research Institute Malaysia (FRIM). Presented and discussed during the field trip was an ABS arrangement to document traditional knowledge of medicinal and aromatic plants of an indigenous community from Peninsular Malaysia. The participants also visited the ethno-botanic garden and the National Product Division laboratory.

3.0 Results & Discussion

Explain your actual findings, including figures, illustrations and tables. Make comments on the results as they are presented, but save broader generalizations and conclusions for later. Discuss the importance of your findings, in light of the overall study aims. Synthesize what has (and has not) been learned about the problem and identify existing gaps. Recommend areas for further work.

Opening Remarks

Ms. Clarissa Arida, Director, Programme Development and Implementation, ACB, emphasized that one of the strategic goals of the CBD is to enhance the benefits to all from biodiversity and ecosystem services, as specifically mentioned in the Aichi Targets (No. 16) - that by 2015, the Nagoya Protocol on ABS should be enhanced and operational consistent with national legislation. In support of this goal, she said, the workshop was organized to focus on developing national roadmaps on ABS legal framework, designed for all relevant stakeholders expected to be actively involved in developing and implementing national ABS legal frameworks.

Mr. K. Nagulendran, Deputy Undersecretary, Biodiversity and Forest Management Division, Ministry of Natural Resources and Environment, Malaysia, said that as one of the mega-diverse countries in the world, Malaysia has acknowledged the importance of its biodiversity guided by the 1998 Biodiversity Policy. Biodiversity has been identified as an important element to prepare Malaysia as a fully developed nation by 2020 and it has been identified with the injection of biodiversity for this wealth creation. He said that this has been highlighted in the country's new economic policy model 2010 and its implementation is underscored through the Biotech Transformation Programme, which in essence is a bio-economic agenda of the nation.

Lectures

1. Ratification of the Nagoya Protocol and Way Forward Towards Entry into Force

Mr. Olivier Rukundo, Programme Officer, ABS, Secretariat of the Convention on Biological Diversity, provided an overview of the current status of the Nagoya Protocol - 92 Parties already signed (including Indonesia and Lao PDR) and nine Parties (including Lao PDR) already ratified the Protocol. He mentioned the ongoing GEF Medium-Sized Project on *Capacity Building for the Early Entry into Force of the Nagoya Protocol* together with the Nagoya Protocol Implementation Fund, which provides for briefing sessions for parliamentarians and decision-makers; the integration of an ABS component in NBSAP workshops; and capacity building workshops for national focal points and indigenous and local communities. He provided as an example the case of Thailand which has initiated national-level activities towards the adoption and/or revision of national measures to meet the obligations set out in the Nagoya Protocol. Mr. Rukundo also discussed the conduct of Intergovernmental Committee for the Nagoya Protocol 3 which will be either by the end of 2013 or early 2014.

2. Developing National Law to Implement the Nagoya Protocol by Examining All Relevant Articles

Prof. Gurdial Singh Nijar from Malaysia's Centre of Excellence for Biodiversity Law discussed the different processes involved in developing national law to implement the Nagoya Protocol. These processes may vary depending on whether or not there is an ABS law in place in a country.

Discussions on his presentation centered on the importance of taking into account existing obligations with agreements and provisions of the Nagoya Protocol which are important to a country; the importance of communicating with land administrators in relation to the issue of private lands since the Nagoya Protocol defines only sovereignty rights and not ownership over genetic resources; how permits submitted to the ABS Clearing-House Mechanism (CHM) becomes a recognized international certificate and becomes accessible to all; the importance of having clear regulatory requirements for compliance measures; and how the national law should be fair in terms of the process for both local and foreign applications.

3. Traditional Knowledge under the Nagoya ABS Protocol and National Implementation Challenges

Prof. Gurdial provided an overview of the evolution of traditional knowledge (TK) and its present status. He mentioned the gaps as regards to the Nagoya Protocol, specifically where TK is diffused; the monitoring measures; publicly available TK; and acquired resources prior to the adoption of the Nagoya Protocol. He also talked about implementation challenges such as the status of indigenous and local communities (ILCs) in national law; recognition of rights; nature of rights recognized; nature of governance systems; and development of community protocols, among others. Prof. Gurdial mentioned recognition of rights to land, genetic resources and TK; community governance; biocultural protocols; overlapping rights; and trans-international rights

between communities and countries as ways forward in dealing with national implementation challenges on TK.

4. Incorporating Elements of the Nagoya Protocol: Policy Review of Selected National Policies on ABS

Viet Nam

Viet Nam has several laws and decrees in place that implicitly or explicitly deals with access to genetic resources and its modalities. However, these are generally deemed inadequate as they fall short of addressing traditional knowledge and require additional provisions on PIC and benefit sharing, among others. It is also important to identify needs for capacity building and develop awareness raising activities.

Philippines

The Philippines can be considered as a pioneer on ABS. Even prior to the adoption of the Nagoya Protocol, the country already had bioprospecting regulation in place. Since then, the country has revised its ABS legislation with respect to its scope and some of the procedures on PIC. The country's substantial experience with ABS has resulted in a comprehensive set of measures which generally complies with the provisions of the Nagoya Protocol. However, as with any law, the current legislation needs to undergo some updating in order to fully comply with the new obligations provided for under the Nagoya Protocol. One concern raised was that while a very good regulation is desirable, it could also pose a barrier for local researchers.

Discussions centered on the importance of having user measures for a country to become a Party to the Nagoya Protocol. However, in terms of having PIC, Article 6.1 of the Protocol provides that access can be dispensed with, but, there is no option provided as regards to compliance. Furthermore, a question was raised on consequences if a country decides not to become party to the Nagoya Protocol. In response, it was highlighted that the Protocol provides an added value as it provides for compliance provisions (Art. 18) and more details or information as regards to ABS. Compliance provisions are important especially when resources are taken out of the country. It is important to have definite binding obligations and clear regulatory requirements. The Protocol talks about what needs to be done. If a country is not a party to the Nagoya Protocol and resources are taken out of the country, compliance measures cannot be invoked. There would be no avenue to seek remedy, no access to justice, and no access to tools being used for ensuring compliance at the international level. In addition, it is more difficult for country institutions to collaborate with research partners since they would want legal certainty and protection. As a result, biotechnology in the country will be affected and research and development will be hindered.

5. Preparing and Assessing National Roadmap in Developing and Implementing ABS Legal framework

Prof. Gurdial presented possible steps towards developing and implementing ABS legal frameworks:

- 1) Identify single Lead Agency (LA)
- 2) LA identifies core groups within the LA
- 3) Preliminary inventory of genetic resources (GR) and TK
- 4) Stock-taking of existing laws and frameworks – gap analysis
- 5) Preliminary Draft 1
- 6) Internal review by LA – within LA
- 7) Identification of stakeholders – government agencies dealing with biological resources, (environment, agriculture, research institutes, ministries dealing with commodities, trade ministry, foreign ministry, ministry and organizations dealing with ILCs in protected areas), industries (those who access resources), researchers (universities, private researchers, corporations set up by institutes), national parks/protected area managers, collection centers
- 8) Commencement of consultative process (1st Round/Preliminary) -
- 9) Done separately per stakeholder/independent (ILC only, government only, etc.)
- 10) 1st round – government agencies
 - i. 2nd round – others (stakeholders)
- 11) Revision of Draft 1 = becomes Draft 2
- 12) Based on the inputs /feedback received from consultations
- 13) Done by the Core Group
- 14) Consultation with focus groups/stakeholders
- 15) Those who have raised the most problematic areas
- 16) Posting of Draft 2 (created as a result of the feedback received)
- 17) For transparency
- 18) To all stakeholders
- 19) On webpage for external consultation, for people to provide feedback (citizens, stakeholders)
- 20) Need to fine tune = Draft 3 = done by the Core Group
- 21) Take into account feedbacks from the public
- 22) Send to Attorney General’s Office for legal fine-tuning/legal scrubbing
- 23) Government format for laws
- 24) LA to prepare final papers for submission to the Cabinet for government approval
- 25) Submission to Parliament and briefing for the members of Parliament
- 26) Act/Law is passed

6. The Draft ASEAN ABS Framework Agreement

Dr. Raman Letchumanan of the ASEAN Secretariat provided a historical background and an overview of the draft ASEAN Framework Agreement on Access and Benefit Sharing. The draft Framework Agreement was initiated in 2002 and drafted in 2005 even before the Nagoya Protocol came into existence. Unfortunately, it has yet to be signed and ratified by the ten ASEAN Member States (AMS). Worth noting is that since 2005, five AMS (Brunei Darussalam, Lao PDR, Myanmar, Philippines and Singapore) had already signified their willingness to sign the Draft Framework Agreement. Following the ASEAN process, the draft Framework Agreement needs to be signed at the Ministerial level which will then be ratified by the AMS.

It was also made clear that the objective of the draft Framework Agreement is not to compete with the Nagoya Protocol, but rather to have a set of minimum standards in terms of ABS in the region. Dr. Letchumanan further explained that the draft Framework Agreement is a neutral agreement which will not compromise national policy. The complementary aspect of the draft Framework Agreement to the Nagoya Protocol was highlighted specifically in relation to Article 10 (Global Multilateral Benefit-Sharing Mechanism) and Article 11 (Transboundary Cooperation) and how these articles are well discussed and provided for in the draft Framework Agreement. Other provisions of the draft framework agreement were likewise highlighted including its provisions on the need for national legislative requirements for PIC and MAT, food security, adoption of new technologies and technology transfer, capacity building, establishment of effective and participatory measures for granting of PIC, and establishment of a regional CHM for ABS information sharing.

Discussions on the topic included the relevance of the draft Framework Agreement to the AMS, specifically in terms of the Agreement being a legally binding instrument for countries to use in their national legislations but cannot be used on issuing or negotiating contracts, but can likewise serve as a guide. While a regional approach was generally welcomed by the participants, it was also highlighted that a regional approach could be difficult as countries have different approaches and distinct legislative requirements with regard to ABS. As a result, the need to have and emphasize the “value added” factor of the draft Framework Agreement was also highlighted specifically in terms of strengthening such provisions and the draft framework Agreement being seen as a supplement to the Nagoya Protocol.

7. Developing Regional Benefit-Sharing Procedures and/or Mechanisms: Focus on PIC, MAT, Compliance, Ownership and IPR

Mr. Geoff Burton of the UNU-IAS covered the following: recap on the basis for PIC, MAT, and compliance; ownership and IPR; negotiating guiding principles for countries in negotiating MAT and permit; basis for the creation of a regional approach; and opportunities for in-situ and ex-situ collection as provided for under the Nagoya Protocol.

Discussions on his presentation covered aspects of the “concept of trusted collections” which pertains to materials from outside countries’ jurisdiction, whether obtained before or after the CBD and the Nagoya Protocol, as being held in trust in behalf of the countries from where the material came and will make such material available on the terms as desired by the country of origin. Furthermore, it was highlighted that such requirements, in relation to trusted collections,

should also be set up in accordance to the requirements of provider countries with respect to national obligations as regards to collections and materials as acquired. An example of how traditional knowledge is associated with genetic resources was also provided.

8. Field Trip to a Working ABS Arrangement Involving an Indigenous and Local Community with a Government Research Institute

a. Documentation of Traditional Knowledge on Medicinal and Aromatic Plants Used by Orang Asli Peninsular Malaysia

- Dr. Norini Haronof of the TK Research Team (FRIM) introduced the documentation of the TK on medicinal and aromatic plants used by Orang Asli Peninsular Malaysia. She presented an overview of selected issues and challenges in documenting TK including the issues of biopiracy, protection and documentation, and dissemination and loss of bioresources. Also discussed were TK research under the 9th and 10th Malaysia Plans, as well as the current status of the documentation process including the process of the laboratory analysis they have conducted from the collected resources and the benefits gained from the endeavor.
- The importance of ensuring that the local community is involved, informed, empowered and acknowledged from the outset was clearly highlighted in the presentation. The process of “rapid rural appraisal” which they have conducted was explained where the local community was given the opportunity to understand what exactly was happening around them, to have open discussions with them, and to have local community members included as part of the National Technical Working Committee - the concept of giving back to the community, teaching them, and making them involved. The importance of getting the prior informed consent of the local community, first and foremost, was also noted.

b. Indigenous Traditional Knowledge (TK) in Peninsular Malaysia: Phytochemical and Bioactivity Screening

- Dr. Nik Musa’adah Mustapha of FRIM’s TK Research Team made a presentation on the research activities being conducted by her organization, including TK awareness workshops, obtaining of PIC, socio-economic survey, documentation and specimen collection training, sample collection, and phytochemical and bioactivity studies of selected species. The TK documentation process was also explained to include the selection of community and tentative sites which was then followed by the “rapid rural appraisal” followed by household survey (PIC 1), a capacity building workshop (PIC 2), and documentation in the TK database and TK website. The process involved in the selection of species was also discussed, specifically species which are commonly used or popular among the community; the medicinal uses of such species which are not publicly available; species which are traditionally used for fever, infection, diabetes, personal care, among others; and the availability of such species. The process of the phytochemical and bioactivities screening was also explained.
- Dr. Mustapha highlighted the importance of holding meetings and discussions with the local community to inform them of the results gained from the analysis, to preserve and maintain TK, and to empower the local Orang-Asli community. She mentioned the

potential product development and possible benefit sharing with the communities from the project.

c. Indigenous Involvement in Documenting Traditional Medicinal and Aromatic Plants

- Mr. Norya Abas, Batin, headman of Gau-Pelawan Village from Semelai indigenous sub-ethnic group in the Bera Lake area, a Ramsar wetland site in Pahang, Peninsular Malaysia, explained the local communities' reasons for their involvement in the TK project, which are to protect the intellectual property of their TK and the loss and erosion of their TK over the years. He focused on the point that FRIM's approach is very practical and beneficial to their communities including the good relationship they have with the researchers from FRIM.

d. Compliance Provisions in the European Union

- Mr. Burton's presentation focused on the actual provisions of the explanatory memorandum such as those which provide for incentives for intermediary collections and highlights the exercise of due diligence. Another provision highlighted and explained how the Competent National Authority is required to keep records of the collections made. The provision provides evidence that materials were obtained lawfully and for evidence or additional information to be provided when uncertainties arise. He also mentioned the International Certificate of Compliance consistent with the requirements of the CBD. The provision provides for cooperation between the EU and a third Party which, as a result, obliges the EU to cooperate with the competent national authorities (CNAs) of the ASEAN Member States.

e. Biopiracy Case Studies and the Importance of ABS

- Ms. Lim Li Ching, a Senior Researcher at the Third World Network based in Malaysia, explained the concept of biopiracy and presented some illustrations of biopiracy cases. The following lessons were learned from the presentation: that documentation of the relevant traditional medicinal uses should be assembled; genetic users should be asked to produce documentation of where, when and with what informed consent, benefit-sharing arrangement and knowledge it has collected from the plants; the need for a robust clearing-house mechanism under the Nagoya Protocol to help early detection and responses to such cases; and regional cooperation when biological resources and associated traditional knowledge crosses borders.
- The discussions on the two presentations centered on the following:
 - The Explanatory Guidelines being one of the three documents (press release, explanatory memo to the draft law and the draft law) used in the European Union, together with the draft law, and in such case, the draft law is now before the EU Parliament and Commission and if both institutions approve it, it shall be a binding law on all 27 States of the EU. In terms of penalties, the EU regulates trade but not criminal conduct per se. It can, however, require individual Member States to introduce penalties and introduce the nature of such penalties. In terms of PIC, such is established in European countries that require it. The law in the EU states that if a country uses genetic resources and traditional knowledge from another country, the

user country is obliged under the law to take due diligence and to make sure that resources are obtained legally.

- Bolivia was mentioned as an example of a country which has acted against biopiracy. Its experience was used as an example during World Trade Organization-Trade Related Aspects of the Intellectual Property Rights discussions. Peru has also set up an Anti-Biopiracy Commission.
- For provider countries not be treated as “banana republics”, it was suggested that national legislations provide standards on MAT (at the contractual level) and in putting up measures in establishing checkpoints (at the national level). It was also suggested that reasonable laws or regulatory requirements be set in place.
- The training of patent officers and examiners was also highlighted.

9. Implementing PIC and Mutually Agreed Terms: Procedures and experiences in selected countries

a. The Sarawak Biodiversity Centre Experience

- Dr. Rita Manurong, Chief Executive Officer of the Sarawak Biodiversity Centre, introduced the work of her institution, including its role and functions to facilitate TK documentation among the Sarawak State’s indigenous communities and to implement research and development/bioprospecting programmes for sustainable utilization of state’s biodiversity. She explained the process of obtaining PIC, MAT and benefit sharing, as well as the “journal methodology”, obtaining a written consent to document (as a form of approval of the project), the Centre’s TK database and its Natural Products Library. She likewise discussed the process for application of research permit and elements found in the licensing agreement.

b. Lessons Learned and Some Thoughts for Nagoya Protocol Implementation – Philippines

- Atty. Elpidio V. Peria, Legal Adviser of the Philippines’ Department of Environment and Natural Resources-Protected Areas and Wildlife Bureau, shared the Philippines’ experience in implementing PIC and MAT. He mentioned Executive Order 247, the first regulation set in place for bioprospecting, and the issues encountered during its implementation. Atty. Peria mentioned the revision of the term “Prior Informed Consent” to “Free, Prior and Informed Consent (FPIC)” and provided an overview of the existing relevant laws and regulations on FPIC.

c. ABS: Australian Experience and Opportunities

- Mr. Burton presented the underlying basis for Australia’s national ABS policy considering its status as both a provider and user country with a biotechnology industry. He discussed the features of the Australian systems and how they fit with the Nagoya Protocol. He also mentioned the challenges faced and the steps that need to be taken. Mr. Burton highlighted the needs to invest in regional cooperation and develop minimum standard contractual forms and clauses, as well as the need to support development of common science and industry standards.

d. Implementing ABS in Southeast Asia: Experiences of an Industry

- Dr. Sumida Seizo of the Japan Bioindustry Association discussed and shared with the participants the experiences of Japan, as a user country, in implementing ABS including the institutional set-up, awareness raising activities, lessons learned, tools, and key points needed to ensure successful partnerships and collaborations.

Discussions on the presentations centered on the role of the Nagoya Protocol vis-à-vis biodiversity conservation; how the Japanese “Guidelines on ABS for Users” is being monitored and if there are any plans by the Japanese Government in developing a legal binding instrument as a user country; the process of selection of communities and sharing of benefits; and the importance of TK.

On the role of the Nagoya Protocol as regards to biodiversity conservation, Mr. Seizo said that Articles 4.1 and 9 provide for the conservation and sustainable use of biodiversity. On the role of communities, Mr. Seizo shared Sarawak Biodiversity Centre’s experience in encouraging communities to establish their own community patents where they conserve the resources they have documented, and for resources that are not yet documented to be used as a source of material later for their own use and commercialization. Such communities were encouraged to develop gardens that can attract tourists. In such situations, the communities will not only be able to conserve their resources but also generate income and livelihood. In the case of the Philippines, even before the adoption of the Executive Order 247 on Bioprospecting, a law was enacted establishing protected areas and their management. Awareness-raising was highlighted as one of the recommendations in order to help protect and conserve protected areas. The case of Australia recently extending the jurisdiction of its marine protected areas in recognition of its scientific and economic value was also highlighted.

On the Japanese “Guidelines on ABS for Users”, Japan uses consultations as monitoring mechanism in order to guide and inform industries of their responsibilities on ABS. Under its National Strategy for Biodiversity, Japan will ratify the Nagoya Protocol by 2015. As such, a legal instrument - legally binding compliance measures - will have to be put in place before the Protocol’s ratification. At the moment, the Government of Japan is undertaking consultations and committee activities; however, it may take some time as Ministries have conflicting views particularly on education, science and technology.

In the case of Sarawak Biodiversity Centre, selection of a community is conducted by giving first priority to communities which are affected by major projects. Second priority is focused on the Centre’s own research preferences and depends on the availability of funds. It was also made clear that no priority is given in terms of ethnic groups. On sharing of benefits, as there is an overlap in terms of the location of resources, benefits and incentives should be given to communities and not to individuals. The establishment of a trust or foundation for the community was also suggested to be used for community development.

The value of traditional knowledge was also highlighted. From a user country perspective, the situation of TK is still unclear and generally, companies are not inclined

to get involved. However, if the TK system is integrated into the national system and the CBD ABS clearing-house mechanism, the process will become transparent and will allow users to follow such process. This view was opposed because the Nagoya Protocol contains clear provisions as regards to TK. Specifically, it provides for an obligation for States to take measures in accordance to domestic law such as setting in place some form of documentation – community protocols – to set up rules and procedures on TK.

Closing Remarks

Mr. Max Zieren, GEF Regional Focal Point Asia/Task Manager, Biodiversity and Land Degradation, UNEP Regional Office Asia-Pacific, expressed his thanks to ACB and NRE Malaysia for the excellent, high level, informative and useful workshop. He highlighted benefit sharing as still being a big issue which needs to be continually dealt with. He also expressed hope that countries should be more serious in implementing the compliance mechanisms of the Nagoya Protocol. Mr. Zieren mentioned the importance of biotech companies introducing self-regulating mechanisms. He recommended that countries look into the presentation of Dr. Rita Manurong from the Sarawak Biodiversity Centre as it really brings everything together – participatory process, business agreements – which highlighted the importance of having a transparent process.

4.0 Conclusions

Restate the study aims or key questions and summarize your findings

As emphasized, the workshop aimed at strengthening stakeholder capacity in ABS implementation, develop national ABS frameworks, promote regional cooperation and learning and move towards the harmonization of national, regional and international ABS regimes.

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 Nagoya Protocol. Since the Nagoya Protocol defines only sovereignty rights and not ownership over genetic resources, land administrators should be consulted in regard to private land concerns. This will lead to clear regulatory requirements for compliance measures especially in reaching fair terms for both local and foreign applications.

The steps identified at developing and implementing ABS legal frameworks include, but are not limited to, the following: inventory of existing laws with gap analysis, identification of lead agency and stakeholders, consultative processes including external consultation through webpage use.

Review of selected national ABS policies (Viet Nam, the Philippines) led to further identification of capacity building needs including awareness raising activities. It also drew attention to current legislation updating in order to fully comply with new obligations under the Nagoya Protocol. In this regard, the Protocol's compliance provisions (Art. 18) were highlighted, in particular, the importance of having definite binding obligations and clear regulatory requirements.

Developing regional benefit-sharing provisions and/or mechanisms gives the opportunity to once more focus on the elements of PIC; guide to negotiating MAT; as well as opportunities for in-situ and ex-situ collection as provided for under the Nagoya Protocol. Most important is the concept of

“trusted collections” which make such material available on terms as desired by the country of origin.

Towards achievement of the workshop objectives, some activities amply provided great learning experiences on ensuring that the local community is involved, informed, empowered and acknowledged from the outset, holding meetings and discussions with them to inform of results leading ultimately to resources documentation (*Orang Asli* in Peninsular Malaysia). All this will help counteract instances of biopiracy.

Other lessons learned include (1) “journal methodology” (obtaining written consent as a form of approval of the project) (Sarawak Biodiversity Centre Experience); (2) The Philippines’ Free and Prior Informed Consent (FPIC); (3) Australia’s need to invest in regional cooperation and development of minimum standard contractual forms and clauses as well as development of common science and industry standards.

Japan’s closely monitored “Guidelines on ABS for Users” in order to guide and inform industries of their responsibilities under ABS.

Mention should likewise be made, though opposed, that the traditional knowledge system be integrated into the national system and the CBD ABS mechanism to make the process transparent and allow users to follow the process. The reason for the opposition is because the Nagoya Protocol clearly provides for an obligation 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 TK. Be that as it may, integration into the national system and the CBD ABS clearing-house mechanism is worth considering for the purpose of future amendment of the Nagoya Protocol if it will lead to effective implementation of ABS.

The project effectively built capacity in effectively implementing the Nagoya Protocol on ABS and developing national access and benefit sharing procedures with full participation of critical stakeholders. Specifically, it provided more detailed guidance for country representatives in developing national roadmaps towards ABS legal frameworks.

5.0 Future Directions

It has been realized from Workshop discussions that the ASEAN region would benefit from learning how to develop ABS arrangements, explore the potential of its genetic resources, develop useful products from these resources and share benefits with resources providers. This capacity building activity requires further support for generating information on socio-institutional arrangements, scientific capability to gather genetic and biochemical data, process new information, and develop potential products for pharmaceutical, industrial, and/or agricultural use. These activities specifically on ABS are important elements to realize the third objective of the Convention on Biological Diversity.

References

Follow a standard format when citing your references

ASEAN Centre for Biodiversity (2012). Report of the 3rd Regional Workshop on ABS: Developing national roadmap towards ABS legal frameworks. Kuala Lumpur, Malaysia. 10-13 December 2012 (Unpublished).

Appendix 1

**Third Regional Workshop on ABS:
Developing National Roadmap Towards an ABS legal framework**
Kuala Lumpur, Malaysia
10-13 December 2012

PROGRAMME

TIME	TOPICS	SPEAKERS
Day 01 (10 December 2012)		
0830	Registration	NRE ACB
0900	Welcome Remarks ASEAN Centre for Biodiversity	Ms. Clarissa C. Arida, Director, PDI, ACB
0910	Opening Speech by Deputy Undersecretary, Ministry of Natural Resources and Environment	Mr. K. Nagulendran Deputy Undersecretary NRE
0920	<i>Group Photo</i> <i>Morning Tea Break</i>	
0935	Introduction of Participants	
0945	Ratification of the Nagoya Protocol and Way Forward Towards Entry Into Force	Mr. Olivier Rukundo Programme Officer ABS, SCBD
1015	Developing National Law to Implement the Nagoya Protocol by Examining All Relevant Articles (highlighting elements of NP)	Prof. Gurdial Singh Nijar Director CEBLAW University of Malaya
1230	<i>Lunch break</i>	
1400 - 1700	Developing National Law to Implement the Nagoya Protocol by Examining All Relevant Articles (highlighting elements of NP) ... continued	<i>Running Tea</i>
	Free night	
Day 02 (11 December 2012)		
0830	Registration	NRE ACB
0900	Recap of Day 1 and Overview of Day 2	ACB

TIME	TOPICS	SPEAKERS	
0910	Incorporating Elements of the Nagoya Protocol: Policy Review of Selected National Policies on ABS	Prof. Gurdial Singh Nijar	
1030	<i>Morning Tea Break</i>		
1045	Preparing and Assessing National Roadmap in Developing and Implementing ABS Legal Frameworks	Prof. Gurdial Singh Nijar and Participating Countries	
1300	<i>Lunch</i>		
1400	The Draft ASEAN ABS Framework and the Nagoya Protocol	<i>Running tea</i>	Dr. Raman Letchumanan Head Environment Division ASEAN Secretariat
1530 – 1700	Developing Regional Benefit-Sharing Procedures and/or Mechanisms: Focus on PIC, MAT, Compliance, Ownership, and IPR		Mr. Geoff Burton Adjunct Senior Fellow UNU-IAS
1700	Field Trip Details		NRE
1930 - 2100	Casual Dinner Hosted by NRE		
Day 03 (12 December 2012)			
0715	Assembly at Hotel Lobby		
0730	Leave Hotel		
0830 – 1200	Field trip to a working ABS arrangement involving an indigenous and local community with a Government Research Institute (FRIM, Kepong)		Malaysia
1400	Biopiracy case studies and the importance of ABS laws		Ms. Lim Li Ching Third World Network
	Free night		
Day 04 (13 December 2012)			
0830	Registration		
0900	Recap of Day 3 and Overview of Day 4		ACB
0910	Implementing PIC and Mutually Agreed Terms: Procedures and experiences in selected countries	<i>Running Tea</i>	Dr. Rita Manurung Chief Operating Officer Sarawak Biodiversity Centre Atty. Elpidio Peria Legal Adviser on ABS Philippines Mr. Geoff Burton

TIME	TOPICS	SPEAKERS
1100	Implementing ABS in Southeast Asia: Experiences of an industry	Dr. Sumida Seizo Technical Advisor, Japan Bioindustry Association
1200	Closing Remarks	Mr. Max Zieren Task Manager UNEP-GEF Dr. Raman Letchumanan
1215	Distribution of Certificates	
1300	Lunch break	
Day 05 (14 December 2012) – Checkout: 12 noon; Homebound		

Appendix 2

PARTICIPANTS LIST					
		STKLDR	NAME	ORGANIZATION / INSTITUTION	CONTACT INFORMATION
1	BRU	ABS NFP	Ms. Kim Hon binti Bangau	Senior Environment Officer, Department of Environment, Parks and Recreation, Ministry of Development	Email: kimhon_bangau@yahoo.com, jastre.brunei@yahoo.com, jastre.brunei@env.gov.bn
2	BRU	National Policy Making Body	Ms. Norlida binti Suhailee	Environment Officer, Department of Environment, Parks and Recreation, Ministry of Environment	Email: norlidasuhailee@hotmail.com , jastre.brunei@yahoo.com, jastre.brunei@env.gov.bn
3	CAM	ABS NFP	Ms. Somaly Chan	Director, International Convention and Biodiversity, General Department of Administration for Nature Conservation and Protection	Fax: +85 5 23 721 073 Mobile: +855 12 45 77 99 Email: somalychan@hotmail.com
4	CAM	National Policy Making Body	Dr. Phou Leang	Deputy Director General, Directorate General of Health , Ministry of Health	Mobile: +855 92 526 562 Email: phouleang@gmail.com
5	CAM	Academe	Ms. Sopunnaleap Seth	Voluntary Staff, Center for Agricultural and Environmental Studies, Royal University of Agriculture	Mobile: +855 12 766 381 Email: sethsopunnaleap@yahoo.com

6	CAM	NGO	Mr. Pouk Bunthet	Chief of Office, Community Conflict Facilitation Office, Department of Research and Community Protected Areas Development Contestation, Ministry of Environment	Tel: +855 12 97 38 87 Mobile: +855 12 97 38 87 Email:kethbunthet@yahoo.com
7	CAM	National Policy Making Body	Mr. Sothearith Yourk	ABS Project Coordinator Vice Chief of Office International Conventions and Biodiversity Department Ministry of Environment	Tel.: +855 23 6445 222 Fax: +855 23 721 073 Mobile: +855 17 53 26 27 E-mail: thearith_17@yahoo.com
8	LAO	ABS NFP	Dr. Souriodong Sundara	Director General, Biotechnology and Ecology Institute, Ministry of Science and Technology	Tel: +856 21 732 207 Fax: +856 21 740 630 Mobile: +856 20 55 629 190 Email: souriodong@yahoo.co.uk
9	LAO	Industry	Mr. Saysamone Phothisat	Deputy Director General, Department of Forest Resource Management, Ministry of Natural Resources and Environment	Tel: +856 21 261 187 Fax:+856 21 261 187 Mobile:+856 20 5533 6888 Email: saiphothisat@yahoo.com
10	LAO	National Policy Making Body	Mrs. Chay Bounphanousay	Deputy Director, Rice and Cash Crop Research Institute, National Agricultural and Forestry Research Institute, Ministry of Agriculture and Forestry Research Institute, Ministry of Agriculture and Forestry	Tel: +856 20 99964473 Fax: +85 6 21 770047 Mobile: +856 020 99964473 Email: bb_chdd@yahoo.com

11	LAO	Academe	Ms. Khamphachanh Sihavong	Technical Officer, Ecology Division, Biotechnology and Ecology Institute, Ministry of Science and Technology	Tel: +856 21 732 207 Fax: +856 21 740 630 Mobile: +856 20 55 900 102 Email: ksihavong@live.com
12	LAO	NGO	Mr. Athisone Silitham	Technical Staff, ASEAN Cooperation on Environment Division, Lao National Mekong Committee Secretary, Ministry of Natural Resources and Environment	Tel: +856 21 260 983 Fax: +856 21 260 984 Mobile: +856 20 2888 5195 Email: athisonekee@gmail.com
13	MAL	National Policy Making Body	Ms. Margarita Naming	Research Officer, Sarawak Biodiversity Centre	Tel.: +6082-610242 E-mail: tk@sbc.org.my
14	MAL	National Policy Making Body	Mr. George Daniel Gaing	Deputy Director, Sabah Biodiversity Centre	Tel.: +6088-8423111 Fax: +6088-8430574 Mobile: +60123838767 E-mal: George.Gaing@sabah.gov.my
15	MAL	NGO	Ms. Jenita Engi	The Indigenous People's Network of Malaysia	E-mail: rotanmanau@gmail.com
16	MAL	National Policy Making Body	Ms. Mohizah Binti Mohamad	Research Officer, Sarawak Forest Department	Tel.: +6082615203 Fax: +6082615127 Mobile: +60198182294 E-mail: mohizahm@sarawaknet.gov.my

17	MAL	NGO	Mr. Ricky Akub Ganang	Advisor, Alliance of the Indigenous People of the Highlands of Borneo, FORMADAT	Mobile: +60 14 351 1355 Email: riganang@yahoo.com
18	MAL	Industry	Ms. Maria Alina Ahmad	Malaysian Biotechnology Corporation	
19	MAL	National Policy Making Body	Mr. Mohd Zin B. Yusop	Department of Forestry Peninsular Malaysia	
20	MAL	Academe	Dr. Nik Musaadah Mustafa	Forest Research Institute Malaysia	Email: musaadah@frim.gov.my
21	MAL	National Policy Making Body	Ms. Lim Ai Gaik	Officer, Department of Marine Parks Malaysia	
22	MAL	National Policy Making Body	Mr. Faridz Gohim Abdullah	Legal Officer, MONRE	
23	MAL	National Policy Making Body	Mr. Burnahuddin Md. Nor		
24	MAL	Academe	Ms. Gan Pei Fern	Assistant Consultant, Centre for Excellence for Biodiversity Law, Faculty of Law, University of Malaya	Tel: +603 79676579 Fax: +60 03 7967 6582 Email: peifern2010@yahoo.com
25	MAL	National Policy Making Body	Mr. Juprin Wong Adamal	Sabah State Legal Officer	Email: jadamal@gmail.com , juprin.adamal@sabah.gov.my

26	MAL	ABS NFP	Mr. Nagulendran Kangayatkarasu	Deputy Under Secretary, Biodiversity and Forestry Management Division, NRE	Tel: +603 8886 1130 Fax: +603 88904021 Mobile: +60193380423 Email: nagu@nre.gov.my
27	MAL	ABS NFP	Ms. Therese Tiu Kok Moi	Principal Assistant Secretary, Biodiversity and Forestry Management Division, NRE	Tel: +603 8886 1133 Fax: +603 88904504 Email: therese@nre.gov.my
28	MAL	ABS NFP	Ms. Noor Haliza Abdul Halim	Assistant Secretary, Biodiversity and Forestry Management Division, NRE	Tel: +603 8886 1080 Fax: +603 88904021 Mobile: +60193380423 Email: noorhaliza@nre.gov.my
29	MAL	ABS NFP	Ms. Rahmah Bt. Ashari	Biodiversity and Forestry Management Division, NRE	Email: rahmah@nre.gov.my
30	MAL		Mr. Hariramalu Ragavan	Resident Representative, UNDP	Tel.: +6 03 20915178 Fax: +6 03 20952870 Mobile: +6 016 2056517 Email: hariramalu.ragavan@undp.org
31	MYA	ABS NFP	Dr. San Oo	Deputy Director, Environmental Conservation Department, Ministry of Environmental Conservation and Forestry	Tel: +95 067 431325 Fax: +95 067 431 322 Mobile: +95 09 49 206171 Email: env.myan@mtmail.net.mm, sthandaroo@gmail.com

32	MYA	National Policy Making Body	Ms. Khin Thida Tin	Environment Officer, Environmental Conservation Department, Ministry of Environmental Conservation and Forestry	Tel: +95 067 431325 Fax: +95 067 431 322 Mobile: +95 09 49227725 Email: env.myan@mtmail.net.mm, thidatin@gmail.com
33	MYA	National Policy Making Body	Mr. Aung Kyaw Soe	Staff Officer, Forest Department, Ministry of Environmental Conservation and Forestry	Tel: +95 67 405395 Fax: +95 67 405395 Mobile: +95 9 91012087 Email: agkyawsoeone@gmail.com
34	MYA	NGO	Dr. Saw Mon Theint	Executive Committee Member, Biodiversity and Nature Conservation Association	Tel: +95 67 017069 Mobile: +95 09 519 6159 Email: bancamyanmar@gmail.com, dimple@gmail.com
35	PHL	ABS NFP	Atty. Elpidio Peria	Legal Adviser on ABS Issues, Protected Areas and Wildlife Bureau, Department of and ABS Project Consultant	Tel: +632 924 6031 to 35 Fax: +632 924 0109 Email: pingperia16@yahoo.com
36	PHL	National Policy Making Body	Atty. Gina D. Naimes	Legal Officer, National Commission on Indigenous Peoples	Tel: +632 373 9534 Fax: +632 373 9534 Mobile: +639167191313 Email: naimesginacastor@yahoo.com.ph
37	PHL	Academe	Dr. Reynaldo V. Eborá	Director, National Institute of Molecular Biology and Biotechnology (BIOTECH), University of the Philippines, Los Banos	Tel: +63 49 536 2721/536 1620 Fax: +63 49 536 2721 Mobile: +63 915 371 9677 Email: rvebora@gmail.com

38	PHL	Industry	Atty. Dave Escalona	Assistant Vice President and Head of Legal Services, United Laboratories, Inc.	Mobile: +63 917 838 2691 Email: dgescalona@unilab.com.ph
39	PHL	NGO	Ms. Ma. Elena Regpala	Research and Policy Advocacy, CBD Team, Tebtebba - Indigenous Peoples' International Centre for Policy Research and Education	Tel: +63 74 444 7703 Fax: +63 74 443 9456 Mobile: +63 927 203 8752 Email: l.regpala@tebtebba.org
40	SIN	ABS NFP	Ms. Wendy Yap Hwee Min	Assistant Director, International Relations, National Biodiversity Centre	Tel: +65 6465 1688 Fax: +65 6465 5196 Email: Wendy_YAP@nparks.gov.sg
41	SIN	National Policy Making Body	Mr. Jeremy Woon	Manager, Biodiversity Information and Policy, National Biodiversity Centre National Parks Board	Tel.: +65 6465 1685 Fax: +65 6465 5196 Email: Jeremy_woon@nparks.gov.sg
42	THA	ABS NFP	Ms. Pattarin Tongsima	Senior Environmental Official, Biological Diversity Division, Office of Natural Resources and Environmental Policy and Planning	Tel: +662 265 6564 Fax: +662 265 6564 Mobile: Email: torpattarin@yahoo.com
43	THA	Industry	Dr. Boonyanath Nathwong	Executive Committee, Thai Seed Trade Association	Tel: +6681 839 5972 Email: boonyanath.nathwong@monsanto.com

44	THA	National Policy Making Body	Dr. Pentida Tipyotha	Director, Research and Policy Strategy, National Research Council of Thailand	Tel: +662 579 0192, +6681 8469857 Fax: +662 579 7819 Email: pentida@hotmail.co.th
45	THA	NGO	Mr. Rawee Thaworn	Thailand Country Program Officer, Regional Community Forestry Training Center for Asia and Pacific	Tel: +662 940 5700 ext 2302 Fax: +662 561 4880 Email: rawee@recoftc.org
46	THA	Academe	Assoc. Prof. Panuwan Chantawannakul	Associate Professor, Department of Biology, Faculty of Science, Chaing Mai University	Tel: +6653 943 346 Fax: +6653 892 259 Mobile: +66 85 520 3330 Email: panuwan@gmail.com
47	TL	ABS NFP	Dr. Marcal Gusmao	ABS NFP Lecturer, Department of Agronomy, Faculty of Agriculture, National University of East Timor	Mobile: +670 789 4147 Email: marcalgusmao@gmail.com
48	TL	National Policy Making Body	Mr. Flaminio Xavier	Senior Staff, Biodiversity Department, National Directorate of Environment, Secretariat of State for Environment	Tel: +670 3339119 Fax: Mobile: +670 77379940 Email: c/o anopinto@yahoo.com
49	TL	National Policy Making Body	Mr. Andre Soares	Head, Biodiversity Department, National Directorate of Environment, Secretariat of State for Environment	Tel: +670 3339119 Mobile: +670 77291371 Email: soares.andre@yahoo.com
50	TL	Academe	Ms. Donata O. de Araujo	Researcher/Lecturer, National University of East Timor	Mobile: +670 7726 9614 Email: cjeticia@yahoo.com

51	VIE	ABS NFP	Mrs. Nguyen Dang Thu Cuc	Deputy Head, Genetic Resources and Biosafety Management Division, BCA	Fax: +844 39412033 Mobile: +84 942868636 Email: nguyendt.cuc@gmail.com
52	VIE	NGO	Dr. Tran Thi Huong Trang	Expert, The Law and Policy of Sustainable Development Research Center	Tel: +844 62852660 Fax: +844 62852660 Mobile: +84 988558718 Email: tranglpsd@gmail.com
53	VIE	National Policy Making Body	Mrs. Pham Anh Huyen	Cadre, Department of Policy and Legal Affairs, Vietnam Environment Administration, Ministry of Environment and Natural Resources	Tel: +844 3822 3221 Fax: +844 38223189 Mobile: +84 983977582 Email: huyenanh1802@yahoo.com
54	VIE	Academe	Mr. Truong Quang Luc	Researcher, Center for Ginseng and Medicinal Resources, Ho Chi Minh City	Mobile: +844 933 674569 Email: truongquanglucsh@yahoo.com
55	VIE	Industry	Mrs. Nguyen Thi Van Anh	R&D Deputy Manager, Traphaco Joint Stock Company	Tel: +84 4 36815250 Fax: +84 4 36815260 Mobile: +84 904245845 Email: vananhnt@traphaco.com.vn
56	JBA	Industry	Mr. Ayumu Inouye	Director, Research Institute of Biological Resources , Japan Biodiversity Association	Email: inoueayumu@jba.or.jp
57	ACB	Secretariat	Ms. Clarissa Arida	Director, Programme Development and Implementation	Email: ccarida@aseanbiodiversity.com

58	ACB	Secretariat	Mr. Anthony Foronda	ABS Project Coordinator	Email: actmforonda@aseanbiodiversity.org
59	ACB	Secretariat	Ms. Corazon de Jesus	ABS Project Staff/Technical Specialist Assistant	Email: cadejesus@aseanbiodiversity.com
60	ACB	Secretariat	Ms. Ana Maria Tolentino	ABS Project Staff/Technical Specialist Assistant	Email: ametolentino@aseanbiodiversity.org
61	ACB	Secretariat	Ms. Angela Metin	Communication and Public Affairs Assistant, Communication and Public Affairs Unit	Email: arcametin@aseanbiodiversity.org
62	ACB-BCCP	Secretariat	Mr. Hauke Broecker	Biodiversity and Climate Change Project (ACB-GIZ)	Email: hauke.broecker@giz.de

	RESOURCE SPEAKERS	NAME	ORGANIZATION/INSTITUTION	CONTACT INFORMATION
1	University of Malaya	Prof. Gurdial Singh Nijar A/L sadu Singh	ABS International Consultant, UNEP-GEF ABS Project	Tel: +60379676580 Fax: +60379676582 Mobile: +60123321032 E-mail: director.ceblaw@um.edu.my
2	UNU-IAS	Mr. Geoffrey Burton	Adjunct Senior Fellow (GMG/TKI), UNU-IAS Principal Consultant, Genetic Resources Management & International Co-operation, Jean Shannon & Associates Pty. Ltd	Tel: +61 2 6284 1465 Mobile: +61 (0) 419 238 751 Email: geoff@jeanshannon.com

3	UNEP	Mr. Max Zieren	GEF Regional Focal Point Asia/ Task Manager Biodiversity and Land Degradation, Division of Environmental Policy Implementation (DEPI) UNEP Regional Office Asia Pacific	Tel: +66 2 2882101 Fax: +66 2 2881087 Mobile: Email: max.zieren@unep.org
4	ASEC	Dr. Raman Letchumanan	Head, Environment Decision, ASEAN Socio-Cultural Community Department, ASEAN Secretariat	Tel: +62-21-7262991 Fax: +62-21-7398234 Mobile: +601-236-360-26 Email: raman@asean.org
5	JBA	Dr. Sumida Seizo	Technical Advisor, Japan Bioindustry Association	Email: sumidasiz@jba.or.jp
7	SBC	Dr. Rita Manurong	Chief Executive Officer, Sarawak Biodiversity Centre	Email: ritam@sbc.org.my
8	SCBD	Mr. Olivier Rukundo	Programme Officer - Access and Benefit Sharing, Secretariat of the Convention on Biological Diversity	Tel: +1 514 2876679 Fax: +1514 2886588 Mobile: +15146275621 Email: olivier.rukundo@cbd.int
9	TWN	Ms. Lim Li Ching	Senior Researcher, Third World Network	
10	FRIM	Dr. Norini Haron		Email: norini@frim.gov.my
11	FRIM	Dr. Nik Musa'adah Mustapha		

12	FRIM-Headman (Batin) of Pau Pelawan Village	Mr. Norya Abas		Kampung Gau D/A Pejabat JAKOA Daerah Bera No. 27, Jalan Kerayong 3, 28200 Bandar Bera Pahang
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Appendix 3

Funding sources outside the APN

A list of agencies, institutions, organisations (governmental, inter-governmental and/or non-governmental), that provided any in-kind support and co-funding for the project and the amount(s) awarded. If possible, please provide an estimate amount.

Organization	Amount
UNEP-GEF	USD \$ 34,077.25
Government of Malaysia	USD \$17,318

Appendix 4

List of Young Scientists

Include brief detail (full name, involvement in the project activity) and contact detail (name of institution/country and email address) of your scientists involved in the project. Also include short message from the young scientists about his/her involvement in the project and how it helps develop/build his capacity and the knowledge he gained.

Ms. Khamphachanh Sihavong (Lao PDR)

Technical Officer, Ecology Division, Biotechnology and Ecology Institute, Ministry of Science and Technology

Tel: +856 21 732 207

Fax: +856 21 740 630

Mobile: +856 20 55 900 102

Email: ksihavong@live.com

This workshop provides me an update of ABS activities in Southeast Asia under the Nagoya Protocol. I get to know the meaning of BIOPIRACY and TRADITIONAL KNOWLEDGE which are important perspectives regarding to sharing benefits. In addition, knowing other people experiences and opinions in the context of biological conservation is one of significant experiences that I gained from the 3rd Regional Workshop on ABS in Malaysia.

As I am a person who is in charge in the ACB-UNEP-GEF-ABS project in my country, understanding Access and Benefit Sharing is required to move forward project activities. Moreover, I am working at Biotechnology and Ecology Institute, Ministry of Science and Technology where the majority of works are related to genetic resources. These therefore ABS is very important.

Appendix 5

Glossary of Terms

Include list of acronyms and abbreviations

ABS	Access and benefit sharing
ACB	ASEAN Centre for Biodiversity
AMS	ASEAN Member States
CBD	Convention on Biological Diversity
CHM	Clearing House Mechanism
CP	Contracting Party
FPIC	Free and Prior Informed Consent
FRIM	Forest Research Institute Malaysia
GR	Genetic resources
ILCs	Indigenous local communities
IPR	Intellectual property rights
LA	Lead Agency
MAT	Mutually Agreed Terms
PIC	Prior Informed Consent
TK	Traditional knowledge
UNEP-GEF	United Nations Environment Programme-Global Environment Facility
UNU-IAS	United Nations University-Institute of Advanced Studies