

ASSESSMENT OF POLICIES ON NON-TIMBER FOREST PRODUCTS



Regional Summary

ASSESSMENT OF POLICIES ON NON-TIMBER FOREST PRODUCTS (NTFPs) IN SOUTHEAST ASIA TOWARDS ENABLING COMMUNITY FORESTRY ENTERPRISES

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Regional Summary

**NON-TIMBER FOREST PRODUCTS
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Cover Photo:

Woman CF member of Thlok Russey,
Kampong Thom weaving rattan handicraft
Photo: NTFP-EP Cambodia

CONTENTS

1	Executive summary
3	Introduction
4	Key findings
6	I. Community access to NTFPs for harvest, utilization, production and management
8	II. NTFP transport and trade
9	III. Recognition and protection of indigenous knowledge, systems and practices on NTFP use and management
10	IV. NTFP value addition and processing
11	V. NTFP Financing
11	VI. Investments and partnerships for NTFP development and micro, small and medium enterprises (MSMEs)
12	Barriers to development of community forestry enterprises
15	Opportunities for the development of NTFP-based community forestry enterprises
17	Recommendations
19	References

EXECUTIVE SUMMARY



Non-Timber Forest Products (NTFPs) policy studies were conducted in four countries: **Cambodia**, **Malaysia**, **Indonesia**, and the **Philippines**. The policy studies aimed to assess policies on the harvest, utilization, trade, transport, and management of non-timber forest products in Southeast Asia through desk research and analysis of gathered literature and documentation of policies and programs on NTFPs in Southeast Asia.

Definition and classification of NTFPs vary per country. Overall, NTFPs are considered as an important subsector in the forestry sector. However, despite the growing economic importance of NTFPs, it is still not reflected fully in relevant national policies and there is a lack of a specific policy agenda to promote its development, management, and its sustainable utilization. This, in effect, hampers the development of NTFPs as a subsector, particularly on financing and investments.

In the area of community access to NTFPs for harvest, utilization, production, and management, across the four countries, there is a prevailing rule of state ownership of forest resources including NTFPs. However, rules for access and use rights of indigenous communities and local communities are in place. Overall, community access to NTFPs in forest areas are provided and can be deduced from the policies. Despite existing mechanisms (social forestry, Memorandum of agreement, partnerships with concessions etc.), the policies oftentimes only allow for subsistence level of access and will require local communities to apply for permits for commercial or trade purposes.

For NTFP transport and trade, existing regulations for forest products are in place. Generally, local communities may harvest beyond subsistence but require applying for a permit to harvest and transport. The policy framework for business operations for

micro, small, and medium enterprises (MSMEs) are also present in all countries. However, accessing the system still pose an enormous challenge for indigenous peoples and local communities and will only be easy if supported by non-government organizations (NGOs) or the government.

In terms of recognition and protection of indigenous knowledge, systems, and practices (IKSPs) on NTFP use and management, the extent of recognition of IKSPs in general and on NTFP harvesting and development greatly varies across the four countries.

Philippines have the most responsive policies and **Malaysia** have the least responsive policies among the four countries.

For value addition and processing, regulation and protection are in place under various laws beyond forestry such as food and drug safety laws, trade laws, access and benefit sharing and intellectual property rights (IPR) to name a few.

Financing for NTFPs mainly comes from government and NGOs. There is an increasing and accessible capital from microfinance that can be availed of by MSMEs, but procedures and tax and non-tax revenues can still be demanding for local communities and disincentivizes community forestry enterprises.

Lastly, on investments and partnerships for NTFP development and MSMEs, there is not much significant investment on NTFPs that emanate from forestry departments, except for **Indonesia** and some special cases (e.g. bamboo) in the **Philippines**. Trade and industry sectors have different programs that support businesses such as shared facilities, financial services support, entrepreneurship promotion center, to name a few, and these are common to all the four countries.

In connection to NTFP development, several barriers to development of community forestry enterprises have been identified. These are issues on community access to NTFPs for harvest, utilization, production, management, and trade. The issue emanates from highly regulatory policy frameworks, with clear rules on commercial extraction of timber and access for private business organizations and limited conditions allowing for community access and use rights. Most of the community access rules are designed for traditional and customary use which is limited or interpreted to be only for subsistence. With the access

and use rights issues, community forest enterprises are already starting at a disadvantage. In addition, transport documents are often difficult to secure and unnecessarily costly for community groups. They are unable to legally progress to trading and cannot participate in any investment and partnership for NTFP development and MSMEs. Furthermore, there is lack of data on NTFPs in the formal statistics and data collection is limited to very few major NTFPs. Existing policies also have gaps on provisions to improve the capacity of communities to sustainably manage their resources.

Despite these barriers, there are opportunities that can be unpacked for the development of NTFP-based community forestry enterprises. There are movements towards streamlining regulations to facilitate government transactions as well as enable ease of availing technical and financing support for MSMEs in all four countries. There are NTFPs gaining popularity for their medicinal value and due to government programs supporting development of medicine from plants classified as NTFPs. The biggest opportunity for community forestry enterprises is the increasing appreciation towards community-based products, deforestation-free, green, and sustainable commodities, socially conscious manufacturers and customers and increased purchasing power of customers. This market trend is likely to stay and expected to expand more.

From the analyses and findings generated, the paper provides the following key recommendations:

(1) Promote and support social forestry schemes anchored in sustainable forest management that integrates sustained contribution in the development of community forestry enterprises; **(2)** Lobby with the forestry departments and other concerned government agencies to provide clarity on the extent of traditional user rights, customary user rights, and sustainable resource rights; **(3)** Simplify policies and monitoring protocols to ensure that community forestry enterprises are competitive and well linked to the market; **(4)** Strengthen the network of agencies, organizations, and people involved and promote NTFPs supported by better data collection and management; and **(5)** Encourage governments to be aggressive in promoting NTFPs for handicrafts, cosmetics, industrial, and pharmaceuticals uses and to support research and development on NTFPs by communities, scientists, and researchers.

INTRODUCTION

Interests on forest, its products and services have been increasingly driven by the role of forests in climate change, popularity of nature tourism and the boom of green, natural and sustainable materials and products. There is quantitative evidence to show that forests are being managed more sustainably and that forests and trees contribute to achieving SDGs relating to livelihoods and food security for many rural poor, access to affordable energy, sustainable economic growth and employment (in the formal sector), sustainable consumption and production, and climate change mitigation, as well as sustainable forest management (FAO, 2018).

About a hundred million people live in the forests of Southeast Asia and they depend on non-timber forest products (NTFPs). People in these forests depend on these products for subsistence and cash income either in raw or value-added or processed forms, such as honey, resins and exudates, medicinal and aromatic plants, canes and vines, and others. NTFPs are all biological materials from the forest that are extracted and consumed for human use (de Beer and McDermott, 1996). There are other terminologies used to refer to NTFPs, such as non-wood forest products, ordinary minor products, special forest products and other forest products.

NTFPs have been shown to contribute to a large part of forest peoples' incomes and livelihoods, and accounts for an estimated 25% of the income of close to one billion people (Monlar, et al. 2004 as cited in Guerrero et al., 2015), and also form the base of community forestry enterprises in the ASEAN region. As NTFPs are often not the main subjects of laws and regulations, policies on NTFPs tend to overlap or conflict each other. The extent of the impact of these policies, and the specific overlap or conflict from each other are yet to be fully ascertained. There is limited work done on this aspect, however. Communities across Southeast Asia continuously experience that policies are often unfavorable and are endangering their local livelihood, traditions, and sustainable resource management practices.

At present, there is a growing market for NTFPs especially in medicinal plants and with the rising popularity of green and healthy products and lifestyles, there is a likelihood to exploit NTFPs without

sustainability in mind. Moreover, interest on NTFP-based livelihoods are increasing due to programs supporting it as low-emission livelihoods to address climate change or as climate-resilient livelihood. Other programs also link NTFP livelihoods to the protection and promotion of culture and indigenous knowledge, systems and practices.

There has been attempts to meet the growing importance of forest, forest products including NTFPs with new forest policy instruments (**Myanmar, Cambodia, Indonesia**) or specific policy framework on NTFPs (**Philippines**), but how these are responsive to the needs of forest communities are yet to be seen. With this in mind, NTFP-EP Asia undertook an assessment of policies on the harvest, utilization, trade, transport and management of non-timber forest products in Southeast Asia.

The study was undertaken primarily through desk research and analysis of gathered literature and documentation on policies and programs on NTFPs in Southeast Asia. The research initially covered four ASEAN countries: **Cambodia, Indonesia, Malaysia** and the **Philippines**. This assessment forms part of NTFP-EP's contribution and role in policy support and knowledge sharing on NTFPs and Micro-Small Medium Enterprises (MSMEs), Social Forestry, and enhancement of civil society engagement under the ASEAN-Swiss Partnership for Social Forestry & Climate Change (ASFCC).

With the ASEAN Economic Community opening new opportunities, the benefits of integration must be fully maximized by forest enterprises, however, a study by NTFP-EP found that the current policy environment in ASEAN for community forestry enterprises often hampers their growth rather than promote or support them. The need to tackle the enhancement of the policy and regulatory environment is one of the goals of the Strategic Action Plan (SAP) for Small and Medium Enterprises (SMEs). Under this goal, less costly and faster registration processes would facilitate and increase startups are starting points. NTFP-EP also envisions that implementation of the SAP can facilitate the easy entry of community forestry enterprises into long-term markets, and facilitate their competitiveness, business viability and survival.¹

¹ ASFN and NTFP-EP (2016). Supporting Community Forestry Enterprises (CFEs) with the ASEAN Strategic Action Plan (SAP) for Small and Medium Enterprises (SMEs).

KEY FINDINGS

Sarawak forest

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The definition and classification of NTFPs vary per country. However, there can be unity in the treatment of NTFPs as an important subsector in forestry. The definition and classification of NTFPs found in the four countries that are subjects of the assessment are as follows:

Table 1: NTFP definition across four countries

COUNTRY	DEFINITION	CLASSIFICATION
Cambodia	“all forest resources that are not timber, including products from non-timber plants, wildlife, their processed products, and services from the forest.”	14 Classifications of NTFPs are as follows: (1) Lower class wood, poles, and other non-timber used in traditional construction; (2) Fuel wood; (3) Bamboo, palm tree, rattan, liana; (4) Medicinal plant/wood; (5) Aromatic plant/wood; (6) Resin/gum; (7) Wax; (8) Material-producing dye or chemical substance; (9) Edible plants; (10) Ornamental plants; (11) Wood for carving; (12) Non-timber products for crafts; (13) Wildlife products; and (14) Forest services. (900 species)
Indonesia	Both vegetable and animal forest products along with their derivative and cultivated products except wood originating from the forest ecosystem	Plant based NTFPs have been grouped into resin, essential oils, vegetable fats, tannin, dyes and latex, medicinal and ornamental plants, palm and bamboo, alkaloid and others. Animal based NTFPs have been categorized into prey or hunted animals, trapped animals and animal by-products (i.e. bird’s nest, honey and silk). These NTFPs include food, fodder, fuel, medicinal products and materials for crafts, buildings and other uses. There are about 575 plant species that are utilized as NTFPs in Indonesia (Mirjam, Ros-Tonen, and Wiersum, 2003) and 557 NTFPs listed under the forestry regulation on NTFPs. ²

² Peraturan Menteri Kehutanan Nomor : P.35/ Menhut-II/2007 tentang Hasil Hutan Bukan Kayu

COUNTRY	DEFINITION	CLASSIFICATION
Malaysia	<p>Sarawak: Forest produce as guano, peat, rock, seashell and surface soil; trees and all parts and produce; plants, grass, climbers, creepers; tusks, horns, silk cocoon, honey, wax and edible bird nests; timber, firewood, charcoal, bark, wild rubber and cordwood.</p> <p>Sabah: Forest produce as timber, firewood, charcoal, rubber, wood oil, bark, extracts of bark, copal, damar and atap, silk, cocoons, honey, wax and carbon stored in trees or plants</p>	
Philippines	<p>Biological materials and derivatives other than timber which are extracted from forests for human use</p> <p>Ordinary minor forest products in law</p>	<p>(1) Food/beverages and spices; (2) Pharmaceuticals, cosmetics and medicinal; (3) Industrial chemicals and biochemical fibers and structural materials; (4) Live plants and ornamentals; (5) Animals; (6) Animal products/by-products</p>

Table 2: Major NTFPs in the four countries

COUNTRY	MAIN NTFPs
Cambodia	Resin, rattan and bamboo, mushrooms, medicinal plants and incense
Indonesia	Rattan, bamboo, resins, tengkawang seed, sandalwood oil, cayeput oil, honey, shellac, fruits and medicinal plants
Malaysia	Rattan, bamboo, medicinal plants, wild fruits, vegetables, palms, resin, tannin, barks and wood-oil
Philippines	Rattan, bamboo, fibers, vines, palms, exudates, essential oils, dyes, wild food plants, medicinal plants, honey and butterflies

Source: FAO

At present, the growing economic importance of the NTFP subsector is not reflected in policy. Few national forest policies specifically mention NTFPs, except for **Indonesia** with its national plan. Overall,

there is lack of specific agenda to promote development, management or sustainable utilization of this subsector, except to spell out rules on permitting, export, and fees.

NTFP regulations across the four countries is fragmented into numerous regulations, mostly stand-alone and do not overlay each other. The lack of specific policies has made this subsector lag in terms of programs, financing and investments, but this subsector has directly benefited from the support given to social forestry programs. Social forestry and community forestry enterprises (CFEs) are complementary, with social forestry opening up many opportunities for CFEs. Access and tenure rights to land and natural resources have improved with the development and enforcement of social forestry and agrarian laws, but issues on permits and transport documents still persist. These documents are often difficult to secure and unnecessarily costly for community groups.

The following sections contain highlights of the four country studies across six themes:

I. Community access to NTFPs for harvest, utilization, production and management

Across the four countries, there is a prevailing rule of state ownership of forest resources including NTFPs, but rules for access and use rights of indigenous communities and local communities are in place. In the four countries, except in some states in **Malaysia**, communities can assert their ownership and management rights by applying for community or ancestral domain titles, or formalize their access, use and management rights within social forestry schemes. In these schemes, rights of communities to access, harvest, utilize and manage NTFPs are subsumed and recognized with the exercise of community rights guided by stipulated conditions.

Despite inherent weaknesses in policies, it is **Cambodia's** set of forestry laws and regulations that provide the most guidance in terms of community access to NTFPs, with the term "indigenous peoples and local communities" mentioned in the forest policies. The **Cambodian Land Law** defines who are indigenous peoples¹ and provides for their rights to land and immovable property (which includes immovable property by nature such as a resin tree). On the other hand, under the **Forestry Law of 2002**, the State ensures customary user rights of forest products and by-products for local communities (Article 2) and together with the **Law on Protected Areas and Regulations on Community Forestry**, these laid down the basic regulations on the use, harvest, transport, and to some extent, commercialization of NTFPs by local communities living near the forests and protected areas. When forest areas are awarded to concessions, the law is clear on the non-restriction and interference by the State and concessions on the exercise of customary rights. However, the operational meaning of customary user rights and traditional use on NTFPs

are not defined. The ambiguity is said to be a breeding ground for bribery, informal fees and disincentives to conducting community enterprises legally.

In **Cambodia**, community can formalize access and management rights by applying for community forestry (15 years) and forming community protected area (PA) where rights of communities to access, harvest, and manage NTFPs are recognized and protected. However, duration of community forests at 15 years with possibility of extension is too short to start up and develop community enterprises, economically benefit communities, and contribute to the overall goal of sustainable forest management. In contrast to private concessions with duration of 30 years, there is an obvious bias in favor of concessions. In **Indonesia**, other regulations that provide access to communities to forest for NTFP harvest and trade includes Memorandum of Understanding (MOUs) which provide traditional zones within protected areas and co-cultural zonation within forested multi-use lands. Moreover, in **Indonesia**, forest partnerships between communities and companies within production forest enables communities to access NTFPs for harvest, utilization and trade and is a tool to address land conflicts.

In practice, **Indonesia** has the most comprehensive programs for supporting communities in NTFP development. In **Indonesia**, laws and policies covering social forestry, including those in protected areas, agrarian land reform, traditional zones and forestry partnerships, are geared towards providing access for communities to develop NTFPs. Requirements are in place such as community management plan, annual work plan with periodic assessment and inventory.

River fish hunting by a young punan adiu using traditional tools

Photo: Natasya Muliandari, NTFP-EP Indonesia



These are potential safeguards against unsustainable NTFP practices. Similar requirements are also in place in the **Philippines**. The most significant change in **Indonesia's** forest sector is the overarching paradigm shift taken by President Jokowi's administration through its Ministry of Environment and Forestry, a shift from corporate approach to a more community approach with the main aim of improving equity in land and natural resources. The hope is to increase the mere 7% equity of forest areas legally held by communities in 2015 to a 33% stake after 2015. There are five types of social forestry schemes which are Village Forests (Hutan Desa, HD), Communal Forest (Hutan Kemasyarakatan, HKm), Adat Forest (Hutan Adat, HA), Community Plantation Forest (Hutan Tanaman Rakyat, HTR), and Forest Partnerships (Kemitraan Kehutanan).

In **Peninsular Malaysia**, NTFPs are covered by the provisions that govern the management of permanent reserved forests (PRFs) and state land forests through license, minor license, use permit and removal pass. In practice, these legal requirements are loosely enforced on indigenous communities. In Sarawak, there is no specific or detailed policy or legislation governing utilization and management of NTFPs in Sarawak, but indigenous peoples are allowed to access NTFPs for own use and exchange with authorization from the Forestry Department. However, this provision is not strictly enforced or impossible to enforce especially on plant species.

Almაცა hauling
Photo: SPABP



In the **Philippines**, state ownership of forest land and resources is the overarching framework. However, principles of agrarian reform, stewardship, and the rights of the indigenous people to their ancestral lands and domains are enshrined in the 1987 Constitution. The rights of indigenous peoples (IPs) to forest resources include sustainable traditional resource rights, community intellectual property rights and right to practice their indigenous knowledge systems and practices (IKSPs). There is an **Indigenous Peoples Rights Act (IPRA)** which recognizes not only access, use and management rights but also ownership rights to forest resources including NTFPs. However, recognition of their ownership and use rights are not embedded with forestry rules and regulations. There are regulations which interfaced these rights within the over-all forest management and regulatory framework, but implementation has always been challenging.

Overall, community access to NTFPs in forest areas are provided, if not, it can be deduced from policies. There are mechanisms such as social forestry agreements, MOUs, forest partnership with concessions and eco-cultural zonation, which ensure or at least facilitate access rights for local communities and indigenous peoples. However, these policies and programs are operating on the premise of humanitarian considerations and supporting subsistence living. Community needs a permit if it goes beyond customary user rights, traditional use and subsistence, where each stage is not fully defined, creating uncertainty between being legal and illegal or in the case of Sarawak, commercial utilization of NTFPs within communal forests is legally prohibited.

II. NTFP transport and trade

Regulations on transport and trade of forest products are in place, and system of registration for small enterprises, including NTFP based enterprises, are existing. Generally, local communities may harvest beyond their own subsistence but they are required to apply for a permit to harvest and transport. Most community enterprises operate as supplier of raw materials and products, but this is slowly changing as they learn to do value addition.

The policy framework for business operations for micro, small and medium enterprises are also present in all countries. However, systems within this framework are still not easily accessible to indigenous peoples and local communities unless assisted by the government and NGOs.

In **Cambodia**, NTFP enterprises can form small business associations and register their constitutions as small enterprises with the Department of Domestic Trade (DTD) of the Ministry of Commerce. The DTD has a format for application and required supporting documents. The agency also provides sample constitutions and application forms upon request. There is also a law on the **Administration of Factories and Handicrafts** that requires a person who is starting a business making handicrafts to inform the local authorities and register his/her business at the provincial or municipal Department of Industry and Handicrafts where his/her business is located.

In **Indonesia**, regulations on transport and commercialization of forest products are in place. **Article 25 of Forest Law** states that all activities related to permanent forest estates and forestry products and by-products (timber and NTFPs) shall require permitsⁱⁱ for transport. Further, **Article 69** states that this is to be done within one month after harvest. Moreover, a small-scale NTFP production needs only a registered sign board for the NTFP business to obtain the industrial business permit.

In contrast to wood, palm oil and other commodities, there is little innovation or investment into the development of new NTFP products (Ref Statistik Lingkungan Hidup dan Kehutanan, 2017). The **Indonesia National Strategy for the Development of NTFPs** provides a proposal of developing NTFPs from planning to post harvest. The national strategy on the development of NTFPs has identified that there are some medium NTFP industries but most NTFP trade is conducted at a small scale, village level or informally. Restrictions on NTFP trade such as the national ban on the export of certain raw NTFPs such as rattan or illipe may have provided the resources and impetus needed to develop the local industry. However, there has been no thorough study conducted on its impact.

In the **Philippines**, the issues on transport and trade is tied to stringent government regulations, bureaucratic and high transaction costs, though this is slowly being addressed. If harvesting and transport is coming from ancestral domains, the permitting requirements include certification by the National Commission of Indigenous Peoples (NCIP) that Free, Prior and Informed Consent (FPIC) was secured. Hence, there is the case of a community enterprise seeking consent from themselves and their own community members and the FPIC application is lodged at government office (NCIP) far away. FPIC costs which includes per diem of NCIP staff, transportation and food costs for the community assemblies are expensive for community enterprises. Harvesting and trading from community forestry areas are guided by community resource management plans, and the presence of duly approved plan is a requirement for the release of an NTFP permit.



CF member of Chheb Lech, Preah Vihear harvesting talipot palm
Photo: NTFP-EP Cambodia

III. Recognition and protection of indigenous knowledge, systems and practices on NTFP use and management

Recognition and protection of indigenous knowledge, systems and practices on NTFP use and management are building blocks of enterprise development in forest communities. Their knowledge and skills on NTFPs embedded within their systems and practices are valuable business assets. The extent of recognition of Indigenous Knowledge, Systems, and Practices in general and on NTFP harvesting and development, in particular, greatly varies across the four countries. **Philippines, Cambodia, Indonesia** and **Malaysia**, in this order, have the most responsive policies under this theme. Regulations recognize indigenous community's ownership rights to their forest (**Indonesia, Philippines**). However, upon approval, the function of the forest (i.e. protected, or production forest) is in accordance to the state's gazette and not according to traditional use (**Indonesia**). In the **Philippines**, sustainable traditional resource rights of IPs and recognition of their IKSPs are promoted while in **Indonesia**, there is a similar draft law for IP rights.

In **Cambodia**, there is a **National Policy on the Development of Indigenous People (2009)**, along with the **Land Law (2001)** and **System of Indigenous Land Titling**. These policies recognize the rights of indigenous peoples to traditional lands, culture and traditions. However, in practice it is challenging to implement.

In **Indonesia**, indigenous communities have long lived and thrived on NTFPs through their traditional knowledge and local wisdom in relation to the forest and natural landscapes. Hence, the **Recognition and Protection of the Rights of Indigenous People (PPHMHA)³ Bill** submitted to the House of Representatives in 2013, once passed, would have a positive impact on NTFP development. The bill is crucial as it covers two areas important to the recognition and self-determination of the indigenous peoples in **Indonesia** and subsequently the recognition of their local wisdom and traditional knowledge. However, pending this law, the current Indonesian Constitution indicates that the state recognizes and respects Adat law of communities' society (Kesatuan Masyarakat Hukum Adat) along with their traditional customary rights, as long as these remain in existence and are in accordance with societal development and the principle of **Indonesia**, and shall be regulated by law. In effect, cultural identity and rights of adat communities are respected in accordance with current developments in society.

Moreover, **Indonesia** has a law acknowledging and protecting local wisdom to manage their natural resources and environment. This law provides legal recognition to indigenous practitioners and their practice specifically ensuring equitable profit sharing of any gains from local wisdom. It also ensures that these practices are sustainable for the environment. Note, however, that these are general policies which may be invoked, but there is no description in policies on indigenous knowledge, systems and practice and in relation to NTFP use and management.

The Forest Rights regulation also recognizes indigenous traditional knowledge and practices on natural resources by legalizing ownership of Adat Forest for indigenous communities, officially recognizing and protecting local wisdom, and providing support to enable local communities to protect local wisdom through the management and conservation of natural resources, amongst others. However, there are issues and no clear guideline in relation to implementation of IP recognition.

Furthermore, these are all in policy and despite the recognition and protection afforded by law, there is no monitoring of implementation and an accessible feedback mechanism for Adat communities.

In **Malaysia**, the **National Policy on Biological Resources (2016-2025)** provides the direction and framework for conservation and sustainable use of biodiversity which includes NTFPs and the involvement of indigenous communities. This policy also acknowledges the intricate relationship between biodiversity and traditional knowledge in reference to the utilization of plant-based medicines as well as increasing the sustainability of such utilization. In general, weaknesses remain on the recognition of indigenous rights on their land and access to forest resources. In Sarawak, dispute over Native Customary Rights remains a huge barrier towards the involvement of indigenous communities in utilizing, managing and developing the potential of NTFPs.

In the **Philippines**, IP rights receive the highest protection from the Constitution and the law, but implementation has always been mired with lack of awareness and misinformation of these rights. The most important among them to this theme is recognition and interfacing of the IPs' sustainable traditional resource rights under the IPRA with forest regulations. The second one is asserting community intellectual property rights over their practices and products, and the third is FPIC compliance by outsiders.

³ Rancangan undang-undang Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat

IV. NTFP value addition and processing

Value addition, processing of products derived from NTFPs, and innovations derived therefrom are regulated and protected under various laws beyond forestry such as food and drug safety laws, trade laws, access and benefit sharing, and intellectual property rights (IPR) laws, to name some. If research and development on NTFPs moves towards biotechnology, the **Access to Biological Resources and Benefit-sharing Act 2017 of Malaysia**, the **2001 Wildlife Resources Conservation and Protection Act**, and the **2005 Bioprospecting Guidelines** in the **Philippines** and similar laws in **Indonesia** and **Cambodia** will apply. In said instances, benefits arising from the access to and use of NTFP resources and communities' associated traditional knowledge must be shared fairly and equitably.

Creating more awareness on the link between IPR and the biotechnology involving NTFPs is important as most of the ASEAN countries are establishing or strengthening their national policy frameworks to implement the **Nagoya Protocol on Access and Benefit Sharing**. Establishing more predictable conditions for access to genetic resources and associated traditional knowledge from NTFPs will encourage academe, scientists, private companies to advancing research towards new discoveries and supporting the commercialization of NTFPs. In the **Philippines**, an anti-inflammatory drug derived from rattan bark is undergoing clinical trials. It was developed by a government scientist with the Ayta community in Bataan, **Philippines**. One of the benefits agreed between the scientist and community is a 10% community share from product sales.

In **Cambodia**, NTFPs have used Cambodian Trademark and Geographical Indication as protection instruments. There are also additional require-

ments if there is value addition. NTFPs processed as handicrafts has to comply with the **Law on the Administration of Factories and Handicraft**. The law requires that any business involving creation of handicrafts, furniture, and musical instruments has to register his/her business to the ministry within seven (7) days or else will be fined (Article 23, Law on the Administration of Factories and Handicraft).

In **Malaysia**, some enabling policies are present. The **National Forestry Policy 1978** (Revised 1992 and currently under fresh review) aims to 'increase the output of non-timber forest produce through scientific and sustainable management practices to support local and related industries demands'. In addition, the **Sabah Forest Policy (2018)** aims to optimize utilization of NTFPs by identifying forest species with potential commercial value, to develop technology for commercializing NTFPs, and to explore potential market for NTFP. However, despite the expressed intention to exploit the potential of NTFPs (both **Peninsula Malaysia** and **Sabah**), there is no dedicated infrastructural support to further enhance their potentials. There is also no policy expressing equitable development in favor of community enterprises. In addition, there are potential risks from states' ambitious commercialization plans, if states do not give equal weight to resource management to ensure sustainability of the trade.

In the **Philippines**, there is legislation for the mandatory use of certain products, some of which are NTFPs. The **Tropical Fabrics Law⁴** prescribes the use of natural fibers produced, spun, woven or knitted and finished in the country for official uniforms of government officials and employees. Under the law, the tropical fabrics are defined as those containing natural fibers produced, spun, woven or knitted and finished in the **Philippines**. In the same manner, Executive Order 879, the **Philippine Bamboo Industry Act⁵** directed the use bamboo for at least twenty five (25%) percent of the desk and other furniture requirements of public elementary and secondary schools and prioritizing the use of bamboo in furniture, fixtures and other construction requirements of government facilities.



Woman IP member of Ratanakiri weaving rattan handicraft
Photo: NTFP-EP
Cambodia

4 <https://www.officialgazette.gov.ph/2004/02/10/republic-act-no-9242/>

5 <https://www.officialgazette.gov.ph/2010/05/14/executive-order-no-879-s-2010/>

V. NTFP Financing

Financing for NTFPs are mainly from government and NGOs. There is increasing and accessible capital from microfinance that can be availed of by MSMEs, and this has been observed in **Cambodia**. But note that indiscriminate tax and non-tax revenues (i.e. permit, and licensing fees) can be too demanding for the communities and is a disincentive to community enterprises.

Except in **Indonesia**, there are very limited financing programs specific for NTFPs. This limited financing program are still not solely for NTFPs. In **Cambodia**, financing for enterprises can be through support for CF. There is a national forest development budget to support the development process of community forestry. The community can ask Forestry Administration (FA) for financial support or Community Forestry Management Committee (CFMC) can seek direct financial source from charity people, national and international organizations. The downside, however, is that these CFMCs are not enterprise oriented.

In **Indonesia**, social forestry schemes were some of the recipients of the USD7 billion People's Business Credit (Kredit Usaha Rakyat, KUR) in 2017. KUR is a government financial mechanism to assist MSMEs to obtain business working capital or investment. Moreover, Public Service Agency, Centre for Forest Development Financing (BLU Pusat P2H) provides loans, profit sharing and Syariah schemes to local communities under the social forestry program to support NTFP development, forestry activities and ecosystem restoration. In 2017, it provided USD13.8 million in facilities. There are also credit unions and smaller village saving schemes initiated and managed by local and adat communities in **Indonesia** where capital is available to invest in NTFP collection, production and trade.

In the **Philippines**, DENR has programs providing grants to communities for forestry-related and biodiversity-friendly enterprises, but these are limited and augmented by support from NGOs.

VI. Investments and partnerships for NTFP development and micro, small and medium enterprises (MSMEs)

With the exception of **Indonesia**, there is not much significant investment on NTFPs supported by forestry departments. In the **Philippines**, there is significant investment in bamboo as laid down in **Philippine Bamboo Industry Development Plan**, but such is a special case treated differently by the government from policies and programs.

Across the four countries, it is common that trade and industry (including handicrafts and creative economy) sectors have programs supporting businesses, such as online registration of business, presence of Entrepreneurship Promotion Center, shared facilities and expanding financial services support. There are policies on SME tax incentives in the **Philippines** and **Cambodia**. In **Indonesia**, Social Forestry Community Business Groups have also been established to provide grassroots support to the enterprise development.

Processing of Roselle tea in Cuyambay, Tanay, Rizal
Photo: Erwin Mascarinas/
NTFP-EP Philippines



BARRIERS TO DEVELOPMENT OF COMMUNITY FORESTRY ENTERPRISES

Overall, primary barriers for the development of community forest enterprises are issues on community access to NTFPs for harvest, utilization, production, management, and trade. The issue emanates from highly regulatory policy frameworks, with clear rules on commercial extraction of timber and access for private business organizations and limited conditions allowing for community access and use rights. Most of the community access rules are designed for traditional and customary use which is limited or interpreted to be only for subsistence.

This lack of clear policy framework for communities' access and use rights serves as disincentives, and hinder the development of community forestry enterprises. In some countries, the ambiguity in policy framework is a breeding ground for bribery, informal fees and disincentives to conducting business legally, limiting further expansion of the community enterprise. In instances where there is provision for resource use rights, availment of rights is cumbersome and often conditional to further agreements. This is true especially when these community resource rights overlap with more powerful actors such as concessions, government projects and prior rights of non-IPs.

With the access and use rights issues, community forest enterprises are already starting at a disadvantage. In addition, transport documents are often difficult to secure and unnecessarily costly for community groups. They will not be able to legally progress to trading and cannot participate any investment and partnerships for NTFP development and micro, small, and medium enterprises (MSMEs).

Programs of social forestry and agrarian reform provide opportunity to secure access and use rights of communities but these are in nature of lease agreements. In some cases, contract duration is shorter for communities (15 years on CF) as compared to 30 years for concessions in **Cambodia**. Moreover, there is focus on the legalization of the social forestry scheme, but equal attention is needed to support local communities to sustainably manage, use, and conserve the forest including the determination of a sustainable forest-based livelihood.

There is lack of data on NTFPs in the formal statistics. Collection of data is limited to very few major NTFPs. In the meantime, forest products are being extracted and the lack of official data indicates that the exploitation is not registered and regulated. This in turn could result in over-exploitation of the resource and even loss of government's revenue, and potential benefits for the next generation.

It was also observed that policies and programs have yet to address low awareness of communities in terms of sustainability practices for using forest resources for enterprises, as well as the lack of capacity building geared toward sustainable resource management. If not addressed, these could lead to resource depletion of NTFPs.



Rattan weavers
Photo: NTFP-EP
Malaysia

These barriers are elaborated per country in the table below:

Table 3: Barriers to development of NTFP-based community forestry enterprises

COUNTRY	BARRIERS
Cambodia	<ul style="list-style-type: none"> • Current policy framework is supportive of improving livelihoods of forest-dependent communities but unclear on how. It also did not include support for commercialization of NTFPs and local capacity development. • There is no explicit grant under the national policies on IPs and in the Forestry Law that stipulates equity and safeguards in favour of communities. (e.g. no provisions that areas traditionally inhabited and maintained by IPs should be considered as primary beneficiaries). • Lack of operational definition of customary user rights and traditional use on NTFPs. No specific measure on what is considered as exceeding customary user rights in terms of weight, number etc. • Lack of monitoring provisions for other forest user (e.g. private companies) coupled with low accountability of non-state actors, especially concessions, negatively impact communities' rights to NTFPs. • Determination of who are IPs and statement of their rights to possess and use land as their collective ownership rights are in the Land Law. However, this law is silent on the extent of the community's right to forestry resources within the indigenous community land. • There is no policy on supporting research and market innovation for NTFPs. • Indigenous communities have to establish themselves as a legal identity first before they can apply for exclusive and permanent rights and commonly includes rights to sell the property (including NTFPs). The system of getting legal recognition is bureaucratic and almost impossible for the communities to obtain without external assistance. • On NTFP financing, the premium on forest products and by-products becomes part of the National Forestry Development Fund, which can only be spent for the specific items which excludes NTFP development.
Indonesia	<ul style="list-style-type: none"> • The social forestry scheme, with the exception of Hutan Adat, is leasehold of state forest rather than ownership of land by local communities. • Much of the social forestry schemes especially for Hutan Desa (village forest) are designated on protected forest (PA). The laws for utilization and harvesting of NTFPs are stringent within PAs (i.e. no use of machinery and building roads or any other infrastructure). In view of the above, there is transference of the role of conservation from state to local communities seemingly without the economic incentives. Furthermore, without continued support to see the value in conservation and find an actual economic incentive, the social forestry scheme may prove unsustainable. • The Agrarian Reform Program (TORA) enables the cultivation of NTFPs, but it will also convert 4.1 million hectares of Forest Area. • Forest in Other Purpose Areas (APLs) particularly for NTFP collection and utilization need to be legalized or formalized (i.e. eco cultural zones or traditional zones). • Permits for the collection and utilization of NTFPs can be sold, creating room for rent seekers and corrupt practices.

<p>Indonesia</p>	<ul style="list-style-type: none"> • Trade of processed NTFPs requires registration at the National Agency of Food and Drug Control (Badan Pengawasan Obat dan Makanan, BPOM). However, the process is difficult and tedious as there needs to be a baseline to determine the norm, standards, procedures and criteria for the said NTFP before and during circulation. BPOM reports to the President's office. • No specifically designated law on recognizing and protecting the rights of adat communities in Indonesia. Adat communities in Indonesia need to validate themselves as indigenous through their history, cultural practices, and way of life with official recognition through local regulation. Hence, the law does not provide them with rights to self-determination. • In order to avoid both tax and non-tax revenues, community-based enterprises often tend to be informal institutions that are not registered. Informal institutions often cannot apply for government financial aid and other incentives and benefits offered to the forest or rural development sector.
<p>Malaysia</p>	<ul style="list-style-type: none"> • NTFPs are lumped together under other forest products. It is unclear if the relevant authorities at the districts and states level actually record and quantify the extraction, let alone collect any fees or royalties. • Lack of recognition of IP rights to their land and access to forest resources, as well as disputes over Native Customary Rights (Sarawak), remain to be the biggest barriers towards the involvement of indigenous communities in the utilization, management and development of the potential of NTFPs. • Sabah Forest Policy (2018) on NTFPs is silent on community participation in terms of utilization and management. On the other hand, under Class III (Domestic forest), it discourages commercial utilization which could hinder potential community-driven economic development. • Lack of enforcement despite legal protection through various licensing and permit systems, resulting in competition with outsiders who often do not practice sustainable collection. • In Sarawak, commercial utilization of NTFPs within communal forests is legally prohibited. However, there is no specific or detailed policy or legislation governing utilization and management of NTFPs. • Potential risks from states' ambitious commercialization plans if states do not honor the principle of equitable sharing. • Despite the expressed intention to exploit the potential of NTFPs (in both Peninsular Malaysia and Sabah), there is no dedicated infrastructural support to further enhance the potentials.
<p>Philippines</p>	<ul style="list-style-type: none"> • The few policies governing NTFPs only cover specific ones such as resins and rattan, leaving others merely documented but not monitored, regulated and supported by government. A comprehensive policy framework for NTFPs is a policy gap identified by all relevant sectors. • Community enterprises grapple with bureaucratic and expensive permitting process. For those under the social forestry program, permit requires an approved management plan, and capacity and resources of the community to develop/update their management plan can be quite limited. • Lack of interfacing between the forestry regulations and the Indigenous Peoples' Rights Act (IPRA) in terms of operationalizing management plans, provisions on IP ownership of forest resources, sustainable traditional resource rights of IP and community intellectual property rights.

OPPORTUNITIES FOR THE DEVELOPMENT OF NTFP-BASED COMMUNITY FORESTRY ENTERPRISES

Across the four countries, the policies supporting social forestry provided opportunities for formalizing community access to forest resources. Capacity building and learning exchanges around social forestry generated proof of concept on the effectivity of social forestry schemes as enabling environment for community forest enterprises.

Climate change and forest-related programs such as REDD+ and Forest Landscape Restoration (FLR) are present in the four countries and have raised awareness on importance of securing community-based forest livelihoods. In REDD+ it is treated as non-carbon benefits and management strategy to reduce degradation and in FLR. The emphasis on people-centered function of landscape, and the addressing of needs for sustainable livelihoods while restoring degraded landscapes, generate support for community-based forest enterprises. REDD+ and FLR are viewed as viable approaches to reach Sustainable Development Goals, Bonn Challenge, New York Declaration, and Paris Agreement.

The observed shift from corporate approach to a more community approach such as social forestry and system of indigenous community land titling has been expanding in all countries except **Malaysia**. **Indonesia's** target is at 7% to 35% of community-managed areas and in 2019, a total of 10.24 million hectares of customary land have been identified. In order to accelerate the recognition of indigenous peoples and indigenous territories by local government, the Ministry of Home Affairs issued Permendagri No.52/2014 on Recognition of Customary Law Communities.⁶

The shift is not only on social forestry but also includes uptake for other effective area-based conservation measures (OECM) such as Indigenous Community Conserved Areas (ICCAs). ICCAs are areas managed by communities with the primary purpose of biodiversity conservation linked with customs and traditional knowledge, while the other aspects such as forest governance and livelihoods are considered supportive measures.

A similar opportunity is in the Customary Land Titling of **Cambodia**. There is also increasing recognition of traditional zones in Protected Areas (**Indonesia**, **Cambodia** and **Philippines**, and in limited extent, in Sabah). There is the Indigenous Community Conserved Areas (ICCAs). MOUs are signed with concession holders for access to use and trade NTFPs, and other schemes (e.g. Eco Cultural Zonation). In the **Philippines**, enhanced guidelines and procedures in the preparation/updating of community resource management plans have been launched. This will make it easier for communities to update management plans which is a requirement for permits.

In **Malaysia**, there are opportunities with new policies such as the National Policy on Biological Resources (2016-2025), which acknowledges the intricate relationship between biodiversity and traditional knowledge in reference to the utilization

Rattan weaver showing a sample of bukui she made
Photo: NTFP-EP
Malaysia



⁶ Peraturan Menteri Dalam Negeri Republik Indonesia Peraturan Menteri Dalam Negeri Nomor 52 Tahun 2014, tentang Pedoman Pengakuan dan Perlindungan Masyarakat Hukum Adat

of plant-based medicines, as well as increasing the sustainability of such utilization. Clearer opportunities are emerging at the sub-national level under the 2018 Sabah Forest Policy. It clearly noted the need to identify NTFPs with commercial value and is expected to provide a clearer management framework in the near future. Under this policy, Thrust 4 on Economic Well-being, has as one of its objectives, to explore alternative revenue sources from NTFPs.

Moreover, certain policies such as moratorium on logging concessionaires (**Indonesia** and **Philippines, Cambodia**) created a downward trend in the production and export of timber, providing an opportunity to see the wider economic benefits that forests can provide including NTFPs. Other moratorium, such as the national ban on the export of certain raw NTFPs (i.e. rattan or illipe in **Indonesia**) may have provided the resources and impetus needed to develop the local industry. However, there has been no thorough study conducted on its impact.

There are movements towards streamlining regulation to facilitate government transactions as well as ease of availing technical and financing support for MSMEs in all four countries. **Cambodia's** SME and financing sectors are expanding, with increasing microfinancing available. There is also more awareness and support from government agencies beyond the forest sector, an example is in **Indonesia** where the Creative Economy Agency (Badan Ekonomi Kreatif/BEKRAF) provide funds, trainings, synchronization and collaboration, communications, and other aspects for the development of the creative economy including

crafts from NTFPs. The National Handicraft Council (Dewan Kerajinan Nasional/DEKRANAS) also provides technical support to local artisans, many of whom depend on NTFPs. There are also NTFPs gaining popularity for their drug value and due to government programs supporting drug development from plants classified as NTFPs.

In the **Philippines**, the new laws promulgated by the government could serve as great potential support for community forest enterprises. The 2019 Philippine Innovation Act seeks to provide MSMEs greater access to finance, market and technology, as well as comprehensive support program from incorporation to internationalization. Under the law, a National Innovation Council to be chaired by the President, will be created to develop the country's innovation goals, priorities and long-term national strategy. There is also one billion pesos innovation fund to be established to strengthen entrepreneurship and enterprises engaged in developing innovative solutions that benefit the poorest of the poor. Meanwhile, the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 provides measures to fastrack permitting processes for harvesting, transport and trade of NTFPs.

Finally, the biggest opportunity for community forestry enterprises is the increasing appreciation towards community-based products, deforestation-free, green and sustainable commodities. Driven socially conscious manufacturers and customers and increased purchasing power of customers. This market trend is likely to stay and expected to expand more.



Woman IP member of Ratanakiri weaving rattan handicraft
Photo: NTFP-EP
Cambodia

RECOMMENDATIONS

1. Continue to support and encourage social forestry schemes, but with development of community forestry enterprises embedded as a component of sustainable forest management.

For countries like **Malaysia**, the absence of policy on community or social forestry provides for an opportunity to incorporate NTFPs into a comprehensive social forestry program with the participation of indigenous communities who are the custodians of traditional knowledge on the utilities of NTFPs. Embedding enterprise development into social forestry entails that community resource management plans include sustainable harvesting protocols and recognition of indigenous knowledge systems related to NTFPs. Regulation for the collection of NTFPs can be developed within community management plans to ensure there is no overharvesting and damage to the forest. This will be a good measure in the meantime that specific regulation for the utilization of NTFPs are being developed.

As social forestry has limited rights, it is recommended that social forestry scheme is a stepping stone to forest ownership and management or co-management by local and indigenous communities.

2. Encourage forestry departments to provide clarity on the extent of traditional/customary users rights and sustainable traditional resource rights (in the case of the Philippines).

Provide clear conditions, developed in consultation with IPs and local communities, on when commercialization applies. This should be in measurable standards understandable to all, such as in terms of volume and frequency. This also includes clear conditions when forest charges and taxation come in for the communities. Finally, if these community rights overlap with other rights such as forest concessions, include a local community plan developed by the concessionaire, showing how the concessions will comply with the recognition of rights of IP and local communities.

3. Simplified policies and monitoring protocols are needed to ensure that community forestry enterprises reach the market and is competitive.

Simplify regulations especially the technical requirements (i.e. conducting NTFP inventory or inventory mapping through participation of community or using community protocols). Explore the deregulation of permitting for certain forest products upon careful study.

Institute measure/s that define the timeline for the steps of the work, preparation, and submission of reports. Install provision for sanctions. Set standard costings for every step in the permitting process (including FPIC process).

This includes review of the tax system that covers community forestry enterprises, ensuring that these are suited to the level of community enterprises and does not act as a disincentive for startup enterprises. It also includes addressing inequitable sharing of benefits, irregular transport regulations, steep forest charges, and presence of bribes.

4. Strengthen the network of agencies, organizations and people involved and promoting NTFPs supported by better data collection and management.

Engagement with the authorities to raise awareness is key for the development of a robust policy environment to support the management and regulatory framework of NTFPs. Research and development on NTFP species and new NTFP finished products need to be explored and initiated, including biotechnology.

Management strategies would require sound assessment of the status of the resources. Therefore, data segregation should be incorporated into existing data collection systems to facilitate long-term management plan.

Available financial support and the measures of acquiring the loans or grants need to be developed and disseminated to NTFP community based enterprises and MSMEs. Financing strategies should be developed at the national level.

5. Encourage government to be aggressive in promoting NTFPs for handicrafts, cosmetics, industrial, and pharmaceuticals uses. Support research and development on NTFPs by communities and government scientists and researchers.



Support NTFP product development and marketing, including government support for forest-dependent communities (financial capital, research and development of marketing technologies).

NTFPs are economic assets in community-managed areas and they thrive more on natural forests managed by forest-dependent communities. Hence, continued favorable policies and expanding areas under social forestry, conservation, and private partnership schemes will clearly include gains for the communities and ecosystems. This also includes looking at regulating exploitation of NTFPs by outsiders from the community. Develop policies recognizing the link of key NTFPs with the cultural life of IPs and restricting access to these NTFPs from outside the community.

CF members of Changkranroy circling around a big tree as they do their patrolling work
Photo: NTFP-EP Cambodia

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- i. Article 23 , Land Law “An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use. Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law”
- ii. 1) Permit to set annual harvesting quotas for forest products & by-products; 2) Permit to harvest of forest products & by-products; 3) Permit for transport quotas of forest products & by-products; 4) Permit to transport of forest products & by-products; 5) Permit for use of forests; 6) Prakas to establish a forestry industry, sawmill, or forest products & by-products processing facility; 7) Permit to enter forest for the coupe preparation; 8) Permit to establish a stock place to sell, distribute forest products & by-products; 9) Permit to establish all types of kilns that use forest products & by-products as raw material; 10) Export quota for forest products & by-products; 11) Export and Import Permits for forest products & by-products; 12) Other types of permits that may be required according to provisions of this law

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