

# The ABS Capacity Development Initiative

- Bio-Cultural Protocols -

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## **Biocultural Community Protocol - Functions**

- Link between customary and codified legal systems and understandings of rights and responsibilities
- Support to dialogue and constructive collaboration between different rights-holders and duty-bearers
- Instrument for communities to take ownership over legal provisions and decision-making processes
- Guidance for clarity and procedural certainty to external actor e.g. governments, researchers, companies

## **Biocultural Community Protocols - Characteristics**

- Determined by a self-defined community with a close connection to a specific territory or area that is the foundation of their identity, culture, language, and ways of life
- Documented, developed, and used in a participatory manner by that community and, where appropriate, with the support of trusted and long-standing organizations

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- Intended to promote appropriate recognition of and support for community-specific customary ways of life and stewardship of their territory or area
- Based upon values, standards, procedures, rights, and responsibilities set out in customary, national, and international laws and policies

## **Biocultural Community Protocols - Elements**

- Definition of community and governance structure
- Description of values related to the use of resources
- Obligations regarding use of resources based on customary practices
- Problems faced by community
- Aspiration of community
- Rights and obligations in national and international law
- Particular elements, e.g. FPIC, benefit-sharing
- Various technical elements, e.g. spatial mapping, contacts

## Function as Interface between Legal Systems

### 1. Substantive rights

- Customary laws as non-codified norms
- Codification for legal and constitutional recognition
- Human, environmental, and intellectual property rights
  - UN DRIP, Nagoya Protocol on ABS, *WIPO IGC*
  - Panama 2000: Ley 20, Régimen especial de derechos colectivos de los pueblos indígenas
  - Peru 2002: Ley 27811, Régimen de Protección de los Conocimientos Colectivos de los Pueblos Indígenas Vinculados a los Recursos Biológicos (2002)
  - Guyana 2006: Amerindian Act

## **Function as Interface between Legal Systems**

### **2. Procedural rights and procedures**

- Public participation as laid down in Aarhus Convention and many environmental laws
- Recognition of traditional community procedures
- Environmental Impact Assessment (EIA) & Strategic Environmental Assessment (SEA)
- Nagoya Protocol Art. 12 3. on community protocols, minimum requirements for MAT, model contract clauses

## **Declaration on the Rights of Indigenous Peoples, Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.



## **Article 5 Fair and Equitable Benefit-Sharing**

2. Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

## **Article 5 Fair and Equitable Benefit-Sharing**

5. Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

## Declaration on the Rights of Indigenous Peoples, Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

## **Article 7 Access to Traditional Knowledge Associated with Genetic Resources**

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

## **Article 12 Traditional Knowledge Associated with Genetic Resources**

1. In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.

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3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:
  - (a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;
  - (b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and
  - (c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

## Kruger National Park, South Africa



- Over 300 Kukula healers

### Outcomes:

- Entered into negotiations with local cosmetic company
- Gained access to PA
- Given land from traditional authority
- Code of conduct on harvesting based on of customary laws
- Sharing of TK among community

## **Alto San Juan, Chocó, Columbia**



- 30 afro-descendant communities

### **Elements & Aspirations:**

- Secure legally granted territorial rights
- Involvement of and recognition by local governments
- Protections against illegal mining and logging activities



## **Examples from Latin America**

Mayan communities, Guatemala	Oxlajuj Ajpop
Alto San Juan community in Chocó, Colombia	ASOCASAN Community Council & Instituto de Investigaciones Ambientales del Pacífico
Quechua communities, Peru	Asociación ANDES
Chipaya and Tapacari communities, Bolivia	AGRUCO
Mapuche communities in Lafkence, Chile	Kume Felen
Kuna Yala communities, Panama	Fundación para la Promoción del Conocimiento Indígena

## Resources on Biocultural Community Protocols

Protecting Traditional Knowledge: A Framework Based on Customary Laws and Bio-cultural Heritage. In: Endogenous Development and Bio-Cultural Diversity. (Swiderska 2007)

Biocultural Community Protocols: A Community Approach to Ensuring the Integrity of Environmental Law and Policy ([Bavikatte and Jonas, 2009](#))

Biocultural Community Protocols and Conservation Pluralism ([Jonas et al., 2010](#))

Biocultural Community Protocols for Livestock Keepers ([Köhler-Rollefson, 2010](#))

more at: <http://www.community-protocols.org>

## Resources on Biocultural Community Protocols

- Community Biocultural Protocols: Building Mechanisms for ABS Among the Communities of the Potato Park Based on Quechua Customary Norms ([Asociación ANDES et al., 2011](#))
- Indigenous Peoples' Innovation - Intellectual Property Pathways to Development (Drahos & Frankel 2012)
- Biocultural Community Protocols: A Toolkit for Community Facilitators (Shrumm & Jonas 2012)
- Biodiversity and culture: exploring community protocols, rights and consent (Swiderska et al. 2012)
- Protocolo Comunitario Biocultural para El Territorio del Consejo Comunitario Mayor del Alto San Juan (ASOCOSAN, PNUMA, IIAP & NJ. 2012)

**Thank you**

**.....more on ABS and the  
ABS Capacity Development Initiative**

**<http://www.abs-initiative.info>**