

Community Bio-Cultural Protocols – what, why and how?

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Present: Alejandro Argumedo (Asociacion ANDES, Peru), Harry Jonas (Natural Justice), Holly Shrumm (Natural Justice), Gleb Raygorodetsky (The Christensen Fund), Bas Verschuuren (Compas), Heraclio Herrera (Centro de Asistencia Legal, Panama), Yiching Song (Centre for Chinese Agricultural Policy), Ruchi Pant (Ecoserve, India) and Krystyna Swiderska (IIED)

This note seeks to promote understanding of the nature and purpose of Community Bio-Cultural Protocols, drawing on experience to date, recognising that this is an emerging and evolving area of practice.

Why focus on Community Bio-Cultural Protocols?

The rights of indigenous and local communities over their bio-cultural resources are increasingly threatened. ‘Community Protocols’ have gained recognition in the negotiations of the CBD’s ABS Regime/Protocol, following a proposal by the African Group (ABS WG 8, November 2009). The draft ABS protocol includes an obligation to support their development by indigenous and local communities (ILCs) for access and benefit-sharing relating to TK associated with genetic resources¹. Community protocols are seen as a means to ensure/facilitate the Prior Informed Consent (PIC) of ILCs. But they also provide a tool for communities to establish their own rules for access and benefit sharing to their bio-cultural resources (in accordance with their needs, cultural values etc) and to assert their customary rights over these resources. Community protocols also have potential for ensuring PIC and asserting community needs and rights in the context of REDD and many other pressures facing community natural resources and land rights, from both conservation and development processes.

However, there is a danger that community protocols will merely become tools to facilitate access to community resources without really serving the needs of communities. Experience shows that such protocols can bring meaningful benefits when developed through a community-led process that does not just address external access, but articulates community values and development priorities, and focuses on bio-cultural heritage as a whole (not just TK) – ie. ‘Bio-Cultural Protocols’. For example, BCPs have been useful for equitable benefit-sharing and strengthening collective bio-cultural systems amongst communities in the Potato Park, Peru; and for securing the resource rights of healers in a UNESCO Biosphere Reserve in Bushbuckridge, South Africa. The Declaration on the Rights of Indigenous Peoples (UNDRIPs) provides the basis for promoting an endogenous approach to BCPs based on FPIC and self-determination, while UNESCO conventions emphasise that culture is dynamic and evolving, underlining the need to respect the right to self-determination.

¹ Report of ABS Working Group 9, Cali Colombia. UNEP/CBD/WG-ABS/9/3, April 2010

A common understanding/framework for Community BCPs

Goals/nature: Working ‘understanding’: *A community-led process to articulate customary laws, values and rights relating to collective bio-cultural heritage² in order to secure their recognition externally and strengthen CBCH internally, for community needs.*

This emphasises the importance of a bottom-up *process* based on endogenous development to develop BCPs, rather than BCPs just being a protocol on paper, or being standardised or consultant driven. In this sense, the process is the output. BCPs should facilitate space for negotiation amongst ILCs about their own development needs, and be open to diverse manifestations. They should have:

- intrinsic elements: that seek to strengthen collective bio-cultural heritage for community subsistence/livelihoods and customary use;
- extrinsic links: that seek a supportive relationship with external laws/ society, eg. inter-cultural practice to implement the UNDRIPs;

Community Protocols provide a tool to articulate community customary laws and by-laws to promote their recognition in formal law, backed by reference to supportive national and international law. They can also assist communities to enter into contracts/agreements with external actors on equal terms, and based on their own values, laws and needs, rather than being subjugated by the commercial norms of more powerful western actors. Similarly, by setting out the values and development priorities of ILCs they can help government agencies, conservation agencies etc. to work collaboratively towards the communities’ goals and aspirations.

Process/ approach:

- Communities should take the lead in determining the process for developing their BCPs, but the process may need some external support/facilitation. A well facilitated process is needed that communities feel ownership over
- The process should link different communities for collaboration and negotiation with external actors, and strengthen ‘internal’ collaboration
- In China, where the state is very strong, BCPs should include a top-down as well as bottom up element, to link the two systems

Caution! What BCPs should not be:

- BCPs should not be a standardised model but a bottom-up process
- BCPs should not just respond to external policy demands or possible bioprospecting, but address the real needs and priorities of communities
- There is a risk that BCPs, once developed, could be misused by external actors to justify exploitative ends, or to facilitate/legitimise the legal transfer of land/resources (as in the case of forests in PPNG)
- BCPs are just one of a number of tools for promoting community empowerment and self-governance
- They should not ‘freeze’ community development but enable continued adaptation and resilience

² Collective bio-cultural heritage includes the inter-linked knowledge, bio-genetic resources, landscapes, cultural and spiritual values and customary laws of ILCs. It is dynamic and evolving, and thus includes new knowledge, innovations, practices and values developed on the basis of this heritage.

- They should not 'freeze' oral customary laws by documenting them, but only document underlying customary principles or values and derivatives

Some Resources

IIED, ANDES et al. Protecting community rights over traditional knowledge: Key Findings and Recommendations 2005-2009. <http://www.iied.org/pubs/display.php?o=G02583>

Natural Justice 2009. Bio-cultural community protocols: A community approach to ensuring the integrity of environmental law and policy. UNEP. <http://www.naturaljustice.org.za>

Natural Justice. Using Bio-cultural community protocols to promote a rights-based approach to conservation and customary use of community natural resources. <http://naturaljustice.org.za>

Natural Justice. Bio-cultural protocols: A community response to ABS <http://naturaljustice.org.za>

[The Bushbuckridge Healers' Path to Justice](http://unesdoc.unesco.org/images/0018/001865/186519E.pdf) - UNESCO, A World of Science (see pg 18-20)
<http://unesdoc.unesco.org/images/0018/001865/186519E.pdf>