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OPEN-ENDED AD HOC INTERGOVERNMENTAL
COMMITTEE FOR THE NAGOYA PROTOCOL ON
ACCESS TO GENETIC RESOURCES AND THE
FAIR AND EQUITABLE SHARING OF BENEFITS
ARISING FROM THEIR UTILIZATION

Second meeting
New Delhi, India, 2-6 July 2012

**USING BIOCULTURAL COMMUNITY PROTOCOLS TO IMPLEMENT MULTILATERAL
ENVIRONMENTAL AGREEMENTS AND THE UNITED NATIONS DECLARATION ON THE
RIGHTS OF INDIGENOUS PEOPLES AT THE LOCAL LEVEL FOR SUSTAINABLE
DEVELOPMENT**

Note by the Executive Secretary

1. The Executive Secretary is pleased to circulate herewith, for the information of participants in the second meeting of the Open-ended Ad-hoc Intergovernmental Committee for the Nagoya Protocol, the report of the Workshop of the International Society of Ethnobiology (ISE) on Global Coalition for Biocultural Diversity organized by the International Institute for Environment and Development (IISD), Asociación ANDES and Natural Justice. The workshop was held on 24 May 2012 during the 13th ISE Congress in Montpellier, France.
2. The report “Using Biocultural Community Protocols to Implement Multilateral Environmental Agreements and the United Nations Declaration on the Rights of Indigenous Peoples at the Local Level for Sustainable Development” is being circulated herewith in the form and languages in which it was made available to the Secretariat.

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“Using Biocultural Community Protocols to Implement MEAs and UNDRIP at the Local Level for Sustainable Development”

Workshop of the ISE Global Coalition for Biocultural Diversity¹

Organised by IIED, Asociacion ANDES and Natural Justice

**Thursday 24th May 2012,
13th ISE Congress, Montpellier, France**

Objectives

The Nagoya Protocol on Access to Genetic Resources and Benefit-Sharing (ABS) requires countries to “endeavour to support” the development of community protocols for ABS by indigenous and local communities (art 12). This informal dialogue on community protocols brought together representatives from the Secretariat of the Convention on Biological Diversity (CBD), the African Group, indigenous organisations, NGOs, researchers and donors. It explored the role of community protocols in implementing Multilateral Environmental Agreements (MEAs), indigenous peoples’ rights, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and sustainable development. It sought to improve understanding and dialogue amongst the different actors, and to identify ways to strengthen support for community protocols as a way to revitalise the implementation of MEAs at local level. It also sought to share practical lessons for developing and using community protocols.

What is the role of community protocols in implementing the Nagoya Protocol, the CBD and UNDRIP? How can support for community protocols be increased?

Krystyna Swiderska (IIED) introduced the workshop. Community protocols are not a new invention – they exist as part of indigenous peoples’ customary laws. They have been supported in the past through various initiatives of indigenous organisations and NGOs – eg. for defending community rights and strengthening local institutions for natural resource management. We need to recognise and build on these previous initiatives. What is new is their recognition in international law – in the Nagoya Protocol to the CBD.

Alejandro Argumedo (ANDES, Peru), presented insights on the Potato Park’s Biocultural Protocol and how it implements the Nagoya Protocol at local level. There is a huge diversity of community protocols because there is a huge diversity of indigenous peoples. Community protocols refer to particular ways of life and how communities deal with particular resources. There are no set steps for developing community protocols - but certain guiding principles are important:

- *Respect* is a cornerstone of indigenous protocols – through a sense of respect, the principle of self-determination is realised. This includes recognising that there are already groups for conducting research and granting consent within communities.
- *Integrity and authenticity*: what you communicate in a protocol is authentic.

¹ The International Society for Ethnobiology’s Global Coalition for Biocultural Diversity is a loose and open group of ISE members and non-members which aims to advance the protection of indigenous peoples’ rights.

- *Confidentiality and sacriety*: certain things are not communicated with outsiders – these rules must be respected.
- *Attribution*: ensuring that community members get due recognition.
- *Reciprocity*: the benefits may not necessarily be monetary; they should be in accordance with local principles and norms.
- *Responsibility*: of communities to continue cultural practices and goals – so community protocols need to be agreed amongst communities.

The Potato Park's BCP is an inter-community agreement for sharing the benefits derived from an agreement with the International Potato Centre and from various economic collectives, amongst the 6 communities. Quechua communities in the Potato Park do not wake up in the morning with the intention of implementing the Nagoya Protocol. But their inter-community agreement and related practices which are based on customary laws contribute to the Nagoya Protocol and the CBD, and are implementing a number of provisions at local level (Nagoya Protocol articles 1, 5.2 & 5.5, 7 & 6.3, 8, 9, 12, 18, 19, 20, 21, 22, 23 – see table below). These customary laws emphasise values of biodiversity conservation and social equity, which have been strengthened through the process to develop the agreement and the agreement itself. The agreement has also put in place inter-community structures for overseeing its implementation and making decisions on access and benefit-sharing.

| NAGOYA PROTOCOL | INTER-COMMUNITY AGREEMENT AND POTATO PARK |
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| Objective of the Protocol (Art.1) | Contribution to the conservation and sustainable use of GR. Fair and equitable sharing of the direct and indirect benefits derived from the biocultural resources of the Potato Park. Transfer of technology. |
| Fair and Equitable Benefit-Sharing (Art. 5.2 and 5.5) | Example of framework for benefit sharing. Criteria developed to ensure that the monetary and non-monetary benefits derived from the Potato Park activities were distributed in a manner agreed upon by all communities. Creation of Intercommunity Fund, Cultural Affirmation Fund and the Fund for Reinvestment for Sustainability. |
| Development of legal, administrative or policy measures (several articles) | Ordinances passed by the regional government of Cusco against biopiracy and GMO. Development of intercommunity decision making processes and structure. |
| Access to Genetic Resources. Prior informed consent of ILCs with the right to grant access (Art. 6.2) | Black box rules apply to the Potato Park collection in Svalbaard. Inter-community decision making system for PIC. |
| PIC to access to TK associated with GR (Art 7) and PIC to access GR (Art.6.3) | Intercommunity governance structure for decision-making has been strengthened. Stronger position to grant and negotiate PIC |
| Food Security (Art.8) | Assurance of survival and livelihood of communities. Access to adequate food and natural resources, free from adverse substances, and acceptable within the communities' culture. |

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| Contribution to conservation and sustainable use (Art. 9) | Integrated in-situ-ex-situ model of conservation. 1345 varieties of potato in 2011. Restoration of local habitats and ecosystems, ensuring cultural survival, promotion of local rights and sustainable use of GR. |
| Taking into consideration ILCs customary laws (Art. 12.1) Development by ILCs of Community Protocols, MAT and Model Contract (Art.12.3) | Key feature. The research, consultation and negotiation processes that resulted in the agreement were based on customary law. The principles of reciprocity, duality and equilibrium are the pillars of the agreement and the decision-making structure. |
| Information to potential users about their obligations Art.12.2 | Provides example of a practical application of a benefit sharing agreement and a methodology to develop future agreement based on customary laws. |
| Customary use and exchange of GR amongst ILCs Art. 12.4 | Free flow of resources among communities and their members. |
| Monitoring the utilization of GR Art. 17 | Collection under the FAO multilateral system |
| Dispute Resolution (Art. 6.3.g, 7, and 18) | Intercommunity conflict resolution mechanism based on family, tradition and the community's General Assembly. |
| Model Contractual Clauses, best practices, guidelines (Art. 19 and 20) | Provides examples of best practice. The experience and methodology could be used in similar schemes to define benefit-sharing agreements. Clarifies the definition and representation of the beneficiaries of collective rights. |
| Awareness Raising (Art. 21) | The development of the inter-community agreement has shown that supporting community protocols can be a powerful tool for raising awareness of these issues amongst ILCs. |
| Capacity (Art.22) | Contribution to the construction of an Indigenous Governance Model and to the definition of sui generis system for the protection of TK and the role of customary law. Stronger capacity to negotiate MAT, develop and implement measures, legal and institutional development. |
| Technology Transfer (Art.23) | 2004 Repatriation Agreement with the International Potato Center renewed. First community organization to make agricultural genetic resources available under the multilateral benefit sharing mechanism of the ITPGFA. Submission of potato varieties to the Svalbard Global Seed Vault in response to concerns about the long term in situ conservation of the varieties in the context of climate change in the Peruvian Andes |

Maui Solomon (Hokotehi Moriori Trust, New Zealand) presented Wai 262, the largest and most complex legal claim by Maori people, which arose out of an incident involving the humble kumara (sweet potato). Wai 262 set out claims to indigenous flora and fauna and associated cultural and intellectual property rights. These rights are recognised in the treaty with Maori indigenous peoples of 1840, but have been breached by the government since then. The Maori did not claim exclusive rights but some propriety relationships. The claim has taken 10 years of court hearings, and the government said there would be problems in dealing knowledge in the

public domain. However, following tribunal rulings, the claim has influenced legislation eg. on conservation and intellectual property. It will take another 10 years or so to translate the rulings into legal reforms – but the claim has brought a significant step forward in the recognition of customary laws and community protocols by formal law.

Discussion: Donors do not want to receive reports containing sacred knowledge – in developing protocols, communities do not have to give anything up. In the cases presented, community protocols have come out of long-term processes of 10 or 20 years. Community protocols are not just about short principles and modalities for engaging with others, but also bring in new elements – the recognition of community legal rights and ways of life.

Viviana Figueroa (Secretariat of the Convention on Biological Diversity) presented on the Nagoya Protocol and the role of community protocols in ABS. An international Protocol on ABS is needed because the CBD provisions were not fully implemented, and there are cases of misappropriation of genetic resources and associated traditional knowledge. The Nagoya Protocol addresses the need for legal certainty and transparency: the concern to ensure benefit-sharing once genetic resources have left the provider country; and the need for clear procedures for accessing genetic resources. Traditional knowledge related to biological resources can be an important source of information for identifying new uses of genetic resources.

The CBD article 15 addresses only genetic resources, while 8(j) addresses only traditional knowledge. The Nagoya Protocol introduces traditional knowledge (TK) related to genetic resources, linking the two. During the negotiation of the Nagoya Protocol, indigenous peoples used UNDRIP as the legal framework to interface with Parties and the recognition of community protocols was fundamental to this effort. Under the Nagoya Protocol, access to genetic resources based on Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT) may be decided by the state or by communities (depending on the national legal framework). Access to TK is decided by communities. Who should sign ABS agreements on behalf of communities? Community protocols can promote legal certainty and clarity between users and providers. They can allow communities to agree and communicate who decides and who signs. The Nagoya Protocol is not yet ratified by 50 countries², so discussions take place in an Inter-governmental Committee (ICNP)³, including on compliance issues. Community protocols on ABS are important for ensuring compliance with the Nagoya Protocol, and all countries are required to support them, regardless of domestic laws.

Pierre du Plessis (CRIA SA-DC, Namibia, and African negotiator of the Nagoya Protocol) presented on biocultural community protocols for ABS in Africa and how to strengthen support for BCPs. The African Group introduced the reference to community protocols into the Nagoya Protocol text. But Africa is very diverse, some countries have centralised governance systems, others decentralised. There is great variety in the extent to which countries recognise traditional authorities – some do, but others don't recognise tribes and chiefs at all. National borders established under colonial rule have arbitrarily grouped diverse communities together into multi-ethnic states and at the same time divided other communities between two or more states, complicating the interfaces between traditional practices and national governments. Most African ABS focal points support state assistance to and supervision of indigenous peoples and local communities in PIC and MAT negotiations “to protect them from exploitation by users and

² 5 Parties have ratified the Protocol (Jordan, Rwanda, Seychelles, Gabon and Mexico); and 92 Parties have signed it. Entry into force is 90 days after the 50th ratification.

³ The ICNP is preparing for the entry into force of the Protocol and the first COP-MOP. The second ICNP is on 2-6 July 2012, in New Delhi, India

safeguard national interests". Can BCPs empower communities enough to overcome this perceived need/threat? If so, how much support will it take? Should communities develop a community protocol just because one day they may be approached for ABS?

There is wide consensus on the important role that local communities and traditional lifestyles play in biodiversity conservation– as recognised in CBD art. 10(c). If the 'P' in BCP is understood as *Processes* rather than protocols, community protocols can help define and encode 'customary use' and 'traditional lifestyles' – which is valuable because TK is eroding. They can prevent internal conflict by encoding rules of engagement and entry. They can change community perspectives on what is valuable (eg. TK) and what is not, through their development. More formal protocols can be developed when the community is ready for them – there needs to be sufficient consensus in the community. The process is valuable even if a protocol is not the final outcome.

African Union Commission guidelines for ABS implementation are being developed which say that it is important to recognise and respect community level processes; empower local resource managers; and channel benefits to local level (to create incentives). A big question is how to make BCPs bottom-up - ie. independent of outside facilitators? BCPs are not cost effective as a defensive tactic in an ABS context (as communities may never be approached). But they are very valuable as an empowerment tool – and there is a high probability of good conservation outcomes if they are seen as an on-going process.

Discussion: The cost implications of pre-emptive ABS protocols are not worth it – but protocols are needed to confront immediate threats – eg. there are few communities in Africa which are not facing some kind of development threat. Should protocols be developed at small community level or at wide community level between neighbouring peoples? BCPs have to bridge the scales of indigenous governance and cultural relationships, and the scales of development threats. But it's a very expensive process to get many people together on a wide scale. Biological/ecosystem factors also bring in issues of scale.

Brendan Tobin presented on community protocols, customary laws, and human rights. Can community protocols be an instrument that indigenous people can take up and utilise? They are not something new – the concept which emerged from the practice of indigenous peoples in many parts of the world has been developed into proposals for people-wide protocols by Inuits, Jiveros etc. Based on their experience with negotiations on ABS/TK in 1994/5, the Aguaruna of Peru, for example, have proposed that a national sui generis law on TK should be complemented by a network of protocols amongst communities to establish the process for engaging with them.

Customary law has formed a vital part of legal systems for centuries – it was the main legal system in Medieval Europe, and forms the basis of common law which is the cornerstone of British law today. Cultural rights to a way of life are recognised in the UN International Covenant on Civil and Political Rights (ICCPR, 1976) and the International Covenant and Economic, Social and Cultural Rights (ICESCR, 1976) – and a way of life must include customary law. National law may extend the jurisdiction of customary law. There is a need to shift towards the recognition of customary law as a fundamental component of our legal systems - in Pacific island countries, traditional tenure regulates over 80% of land rights and significant marine areas – and to build capacity for its enforcement among judicial authorities.

International law now clearly defines indigenous rights. ILO 169 recognises land rights (art 15-

19); requires consultation prior to granting rights to exploit resources (art 15); and recognises rights to institutional structures and customary law (art 8). UNDRIP recognises the right to self-determination (art 3), to land, territories and resources traditionally occupied or used (arts 26 & 27); rights to cultural heritage and intellectual property (art 31); and a number of articles require due respect/recognition of customary law. The Nagoya Protocol Art 12 requires customary laws to be taken into consideration, by provider and user countries. WIPO's draft elements on TK recognise that legal protection for TK may be secured through customary law.

The CBD Akwé: Kon guidelines define customary laws. Customary laws are primarily uncodified, conservative and oral. Considered binding by those subject to it, they may be stipulated. Positive law is stipulating and changes faster than customary law. BCPs may be developed by a group of rights-holders (eg. traditional healers), people-wide, or transfrontier (eg. San, Inuit). Courts tend only to recognise customary laws when there is no conflict with formal law. In the past it was the role of natural law to resolve conflicts between customary laws and positive laws. Now human rights law is playing some of that role. There is a need to identify best practices for creating functional interfaces between national and customary legal regimes and authorities.

Discussion: Including human rights law (eg. UNDRIP) in BCPs is a way of challenging external threats – BCPs can be used as a process to strengthen local governance and rights. How to ensure support for the development of BCPs for ABS (as required by the Nagoya Protocol) by CBD Parties and donors when communities need them? This is important because biodiversity is conserved by local people (eg. they are the eyes on the ground to catch poachers) and benefit-sharing with local people is a key way to incentivise sustainable use.

How to develop and use BCPs? What are BCPs useful for?

Alejandro Argumedo explained that community protocols exist in customary law; community rules and processes have always been there for management of biodiversity. But they coincided with national law. Through history, customary laws have appropriated elements of statutory law, because there are some things that customary laws can't regulate – and together these make up 'indigenous law'. Community protocols could be top down impositions of ABS models or an opportunity to strengthen customary laws so that communities can get involved in ABS processes. Community protocols can advance legal pluralism in developing countries by including customary laws; and they can become part of the Peruvian legal system and legitimise customary laws. So they are also useful to strengthen community governance. The Potato Park BCP included articles from human rights law, the right to food, the FAO International Treaty and the CBD. As the government has ratified these conventions, the BCP is helping the government to implement them at local level. But there is no way for indigenous peoples and local communities to challenge others for grievances and breeches related to BCPs. By-laws include statutory law and customary laws – the Potato Park are revising their by-laws to see how to include elements of UNDRIP, eg. art. 32 – so that they can refer directly to these to take defensive action.

Harry Jonas (Natural Justice) explained that community protocols can help communities to defend their rights and responsibilities by bringing together elements from the various international and national laws that concern them, but which are otherwise operating separately.

Krystyna Swiderska (IIED) presented lessons from a global review of BCPs and PIC in “Biodiversity and culture: community protocols, rights and consent”, published in June (<http://pubs.iied.org/14618IIED.html>). It reviewed 14 experiences, including 8 BCPs developed in different contexts: genetic resources and ABS, mining, protected areas, and forestry partnerships. Community protocols may be described as charters of rules and responsibilities which set out community rights to natural resources and land, as recognised in customary, national and international laws. BCPs and related participatory processes often have certain common elements: exploring customary resource use, reviving traditional knowledge, exploring national and international laws that support rights, and strengthening customary laws and decision-making institutions.

The review shows that BCPs have been useful for:

- Defending biocultural rights: eg. the Tanchara BCP in Ghana resulted in mining being postponed until 2013 to protect sacred groves.
- Negotiating access to biocultural resources: eg. the Kukula traditional health practitioners in Buskuckridge, South Africa, gained some access to medicinal plants in a protected area from which they had been excluded.
- Strengthening community capacity for ABS negotiation and PIC: eg. the Potato Park and Bushbuckridge BCPs have established inter-community representative structures.
- Improving the management and conservation of biocultural resources (eg. traditional crops in Ghana and Peru; medicinal plants in Bushbuckridge, South Africa)
- Helping to establish equitable and long-term partnerships with companies (eg. Ethical Biotrade) and with NGOs (eg. to monitor illegal logging in Cameroon).
- Improving recognition of the importance of livestock keepers’ way of life in Pakistan, India and Kenya.

The more participatory the process to develop BCPs, the greater their impact in terms of both improving biodiversity management internally and defending rights externally. Where community facilitators have been trained to lead and facilitate the process, impacts on community capacity have been greatest. Therefore, it is important that the Nagoya Protocol requirements to support the development of community protocols and take measures for PIC are not implemented through top-down procedures which limit participation (eg. by imposing time limits). Support from a local organisation is often needed to develop BCPs and promote impact once developed. Involving local authorities in the development of BCPs can promote their recognition. A key challenge is to promote the legal recognition of BCPs: currently no ABS law requires support for BCPs (although they are in two draft ABS laws), and non-ABS BCPs are not legally recognised.

Examples of developing and using BCPs

Alejandro Argumedo (ANDES, Peru) presented the methodology for developing the Potato Park BCP for benefit-sharing amongst six communities, based on customary laws. ANDES is an indigenous NGO which works under the concept of ‘creative chaos’. Local experts are elected by the community and become part of ANDES staff. Collaborative design of the methodology with the communities, including FPIC, took more than 3 months. In that way, the methodology was oriented towards meeting community needs. The identification of customary laws for benefit-sharing in the park was informed by a literature review of Quechua customary laws conducted by ANDES. The local experts were trained to take a lead in conducting the research on customary norms through thematic working groups, study groups and participant observation. Three customary laws related to access and benefit-sharing were identified: Reciprocity: equal exchange and the obligation to reciprocate (in society and with nature); Duality: everything has

two opposite complementary parts – eg. men and women, rights and obligations; and Equilibrium: harmony and fairness in nature and in society. The latter means the fair distribution of profits in relation to needs, capabilities, responsibilities, contributions and efforts. An initial draft protocol was produced based on Quechua customary laws and was revised through broad consultations and negotiation throughout the park, on each of the proposed articles. Community participation was expanded further for final consultation and validation of the agreement. The BCP was discussed in community assemblies and adopted by a large majority vote.

Ilse Koehler-Rollefson, LPP (League for Pastoral People and Endogenous Livestock Development) presented experiences of livestock keepers in using BCPs to address external threats/challenges. There is no recognition of livestock keepers' role in food security and biodiversity conservation in policies – they are seen as 'backwards'. Livestock keepers are suffering a loss of pastures (due to land grabbing, population pressure); are socially marginalised; often have weak linkages to the market; and have no access to services. Livestock diversity is very high in pastoralist areas. Every pastoralist group has developed its own breed. Traditional breeds are very disease-resistant, hardy and fertile.

At the World Food Summit in 2002, the term 'Livestock Keepers' Rights' was born then and further clarified at meetings of the LIFE Network in Asia and Africa (2007). Livestock Keepers' Rights recognise the role of livestock keepers as creators of breeds and custodians of AGRs; the inter-dependency of traditional breeds and their ecosystems; traditional breeds as collective property, products of indigenous knowledge and cultural expression; and their right to make breeding decisions, participate in policy making on AGRs, get support for training and provision of services, be involved in setting research priorities and PIC, and to information about all issues concerning their breeds.

Pastoralist breeds require no external inputs (feed, medicine), are drought-resistant and easy to manage, use local vegetation, and have no carbon footprint. Their ability to roam far from water sources prevents overgrazing. Their food products have health benefits – higher nutritional value partly because they eat a very wide range of vegetation. The value of indigenous breeds is expected to grow because of climate change adaptation, genes for disease resistance, fertility problems of modern breeds, and consumer demand for healthy food. But these assets are threatened by shrinking grazing lands, disintegration of traditional institutions and knowledge, and lack of respect by outsiders.

BCPs provide a promising tool for claiming status as "indigenous and local community"; and documenting the role of a community in conserving AGRs, to enhance visibility and awareness. Can they provide a legal tool for access to grazing resources? The Raika BCP (2009) was initiated by Natural Justice but built on almost 20 years of work with the community locally; BCPs were also developed by the Banni Maldhari of Gujarat and the Bargur Hill cattle Breeders of Tamil Nadu. In India, input from NJ was very limited. In Kenya, the Samburu developed a BCP for their Red Maasai sheep breed which has been of interest to scientists for years due to its worm resistance. This process was informed by a Raika leader. Community-to-community learning is very important to get communities themselves to take control of the process. Pashtoon pastoralists of Pakistan have also developed a BCP, and Jaisalmer camel breeders in India are doing the same. The FAO is taking an interest and supports the development of BCPs by livestock keepers and has put in some funding. The National Bureau of Animal Genetic Resources in India is being lobbied to accept them. Those working on AGRs want to create an alternative process to the Nagoya Protocol since AGRs have also been exchanged. While patents are increasing in the livestock sector, so far they have not had much of an impact at the level of

the livestock keeper, only on the industrial livestock sector. BCPs will be useful for claiming Livestock Keepers Rights if commercial use or patents affects them in future.

Holly Shrumm (Natural Justice) presented a new website on BCPs and a toolkit for BCPs. Biocultural community protocols can be used to support indigenous peoples and local communities to secure their territories, areas, and resources and associated rights and responsibilities. This portal is administered by Natural Justice and contains comprehensive resources on community protocols, including: background and context; legal reviews and e-learning modules on key legal frameworks; key publications such as reports, articles, books, magazines and journals; short films, slideshows and photo stories; networking opportunities; and links to existing community protocols from Africa, Asia-Pacific and the Americas. The BCP toolkit was developed through the *Regional Initiatives on Biocultural Community Protocols* with guidance and input from other key partners from around the world. It is comprised of four parts:

- Part I: understanding and using the toolkit
- Part II: documenting and developing a biocultural community protocol
- Part III: using a biocultural community protocol
- Part IV: reflecting, reporting and revising

The toolkit is directed primarily towards facilitators from the communities themselves or from supporting organisations with whom they have long-standing relationships. It is available at: www.community-protocols.org/toolkit. It is intended for use alongside supplementary resources on the community protocols portal (www.community-protocols.org).

Discussion: Are community protocols useful, and if so, what for?

- In Mexico, BCPs could be used to develop an alternative to the recently adopted national seed law, which threatens farmer seed systems.
- BCPs are not only useful to communities – companies involved in Biotrade and ABS also want to use BCPs as the basis for engaging with indigenous peoples and local communities.
- BCPs could help to bridge the gap between local ABS concepts and international ABS systems, eg. different concepts of ownership - collective and exclusive.
- They could also help to address tensions between how the law defines communities and how communities define themselves.
- There is still a strong divide between indigenous peoples and scientists – eg. many PhDs in ethnobiology don't provide any benefits to local people. The ISE Code of Ethics could be used to guide the development of community research protocols. The CBD Code of Ethical Conduct is also useful to guide BCPs for research.
- Communities in Bolivia have asked a PhD researcher for help to develop BCPs because they need a policy to regulate the many things that are happening around them – including research. But this is not considered academic enough to be the subject of a PhD.
- BCPs can give communities a voice. They can act as a link between customary laws and formal laws but should not replace customary laws.
- In ABS, a BCP will be useful if recognised in national law. If not recognised, it will work only in a cohesive community - but if some people in the community contest it, it will not work. Where the process to develop a BCP is more extensive and participatory, the BCP will be more binding on the community.
- For nomadic people in Iran, BCPs are useful for communities to strengthen their efforts to take control of their territory.

Summary/Conclusions

Community protocols can be used by communities to set out requirements and processes for ABS and ethical research; to defend their customary rights to biodiversity resources against development threats; and to promote sustainable and equitable management of resources. The process to develop protocols is important and valuable in itself, and can lead to good conservation outcomes, even if it does not result in a protocol. BCPs must be something that comes from the community (ie. bottom-up).

BCPs for ABS can enhance legal certainty and clarity for both users and providers, protect communities from exploitation, and channel benefits to local level to incentivise conservation. In implementing the Nagoya Protocol, governments and donors should ensure that communities that are approached for ABS receive support for developing BCPs. BCPs may not be cost effective as a pre-emptive strategy for ABS, but can be useful to address other threats or needs relating to community biodiversity resources. Even where ABS is not the main objective, BCPs have contributed to implementing the Nagoya Protocol by establishing local representative structures for ensuring PIC, strengthening capacity for PIC and MAT, and taking customary laws into account.

BCPs are an important tool for strengthening community governance and conservation of biodiversity and traditional knowledge – and hence for enhancing capacity for adaptation to climate change and resilience. A number of cases show that BCPs have improved conservation of biodiversity by communities – eg. traditional crops and medicinal plants – particularly where the process to develop protocols has been participatory and extensive. Conservation values are strengthened through the process; and the more participatory the process, the more binding the outcome.

BCPs also have a role to play in implementing sustainable development at local level by linking environmental conservation, economic development and social equity objectives. The Potato Park's BCP ensures that economic revenues from the park are shared equitably amongst the six communities, based on contribution to sustaining biocultural diversity and on need, and that they are used in accordance with conservation and equity principles. And by strengthening local institutions for resource management internally, BCPs can make communities better organised, and so better able to defend their biocultural resources against external threats.