

Traditional Knowledge & Customary Sustainable Use of Biodiversity



**E-Learning Series on International Frameworks that
Support Indigenous Peoples, Local Communities, and
Their Territories and Areas**

TABLE OF CONTENTS

INTRODUCTION	3
Module Overview	3
Objectives	3
Key Concepts & Terms	3
Who Is This E-learning Module Directed Towards?	4
COMMUNITIES, TRADITIONAL KNOWLEDGE & CUSTOMARY SUSTAINABLE USE OF BIODIVERSITY	4
What Are ‘Traditional Knowledge’ & ‘Customary Sustainable Use of Biodiversity’?	4
How Are Traditional Knowledge & Customary Sustainable Use Recognized in International Law?	5
How Does This International Framework Apply to Communities?	5
Community Experiences	6
Guiding Questions for Discussion	7
THE EMERGENCE OF TRADITIONAL KNOWLEDGE & CUSTOMARY SUSTAINABLE USE IN INTERNATIONAL LAW	7
Why Were Articles 8(j) & 10(c) Included in the Convention on Biological Diversity?	7
What Has Happened since the Convention Was Adopted in 1992?	8
How Does the Convention on Biological Diversity Apply to My Country?	10
Guiding Questions for Self-Assessment	10
INTERNATIONAL RIGHTS & RESPONSIBILITIES	11
What Are the Binding Provisions of the Convention on Biological Diversity?	11
What Are the Key Instruments Under the Convention on Biological Diversity?	12
What Are the Key Provisions of Other International Frameworks?	14
What Other Guidance Exists Outside of the United Nations?	16
Guiding Questions for Self-Assessment	16
WHAT DOES THIS INTERNATIONAL FRAMEWORK MEAN FOR MY COMMUNITY?	17
Key Opportunities	17
Key Challenges	18
TAKING ACTION	19
How Can I Connect With Others Working On These Issues?	19
Discussing Our Community’s Views, Priorities & Strategies	20
Communicating Our Views to Others	20
Ideas for Advocacy & Action	21
SUMMARY.....	21
ADDITIONAL RESOURCES	22
Other Relevant E-modules	22
Bibliography & Further Reading	22
Acknowledgments	23
Contact & Request for Feedback	23

INTRODUCTION

Module Overview

This module aims to provide an introduction to how communities' traditional knowledge and customary sustainable uses of biodiversity are recognized and supported in international law. It explores the implications of a range of rights and responsibilities and how communities may be able to realize them in practice.

This module is part of a toolkit for community facilitators on biocultural community protocols. The complete toolkit, including additional e-learning modules, is available at: www.community-protocols.org.

Objectives

1. To gain an understanding of the concepts and international recognition of traditional knowledge and customary sustainable uses of biodiversity;
2. To identify specific provisions in relevant legal frameworks, including the rights and responsibilities of multiple stakeholders;
3. To highlight the opportunities and challenges that can arise from the current international framework for traditional knowledge and customary sustainable use; and
4. To explore how communities can utilize these provisions in support of their local priorities and plans.

Key Concepts & Terms

Biological diversity (commonly known as biodiversity)

- Biodiversity includes the diversity of genes, species, and ecosystems that comprise the natural world. Scientists estimate that there could be 100 million species on the planet, ranging from microbes and fungus to redwood trees and blue whales. Only about 2 million species have been identified so far.

Traditional knowledge, innovations and practices (also referred to collectively as traditional knowledge)

- Traditional knowledge is the intimate knowledge and understanding of a particular resource or broader landscape or seascape resulting from generations of direct interaction, observation, and learning-by-doing. It is generally linked to a particular language with certain words and concepts that cannot be translated into other languages.
- Traditional innovations are products or processes of research and application developed by communities through ongoing interactions with a particular location and resources. Examples include crop varieties, livestock breeds, and handicrafts.
- Traditional practices are patterns of behaviour and self-management that can be considered the products of traditional knowledge and innovations.

Use of biodiversity

- Humans depend directly upon biodiversity and use it in many ways for basic survival as well as for social-cultural, religious, and economic purposes. These uses may be unsustainable or sustainable,

depending on factors such as the intensity and duration of use and the resilience of the ecosystem or species being used.

Customary sustainable use of biodiversity

- Many Indigenous peoples and local communities have close and profound connections with particular territories, areas, or resources, often over many generations or centuries. Their identities, livelihoods, cultures, and languages are tied to those particular places and the biodiversity within them. 'Customary sustainable use of biodiversity' means that communities' traditional knowledge, innovations, and practices enable them to interact with and use biodiversity in sustainable ways.

Who Is This E-learning Module Directed Towards?

This e-learning module may be useful if your community has any of the following:

- A close relationship with a particular territory, area, or resource;
- Traditional knowledge, innovations, and practices that contribute to the conservation and sustainable use of biodiversity;
- Interest in maintaining, further developing, or revitalizing traditional knowledge and customary sustainable uses of biodiversity;
- Questions or concerns about how external actors such as government agencies, researchers, and the private sector engage with your community, particularly regarding traditional knowledge; and/or
- Community-determined priorities and plans that relate to traditional knowledge and customary sustainable uses of biodiversity.



COMMUNITIES, TRADITIONAL KNOWLEDGE & CUSTOMARY SUSTAINABLE USE OF BIODIVERSITY

What Are 'Traditional Knowledge' & 'Customary Sustainable Use of Biodiversity'?

Traditional knowledge, innovations, and practices (often referred together as 'traditional knowledge') are developed and nurtured over many generations. They are underpinned by spiritual beliefs and customary laws that reinforce communities' identities, cultures, and ways of life. They enable communities to live within the natural limits of specific territories, areas, or resources upon which they depend for livelihoods and wellbeing. They are also integral to Indigenous languages, spiritual beliefs, and culturally appropriate education, health, and nutrition.

These are essentially culture-based systems of self-governance to ensure that biodiversity and communities alike are healthy and thriving. Also known as ‘customary sustainable use of biodiversity’, these systems are based on practices such as zoning, selective harvesting, rotational or shifting cultivation, and migratory grazing. Through traditional knowledge and constant monitoring, communities determine the intensity and frequency of their use based on factors such as species’ reproductive cycles, population abundance, and seasonal weather patterns.

How Are Traditional Knowledge & Customary Sustainable Use Recognized in International Law?

There are several international agreements that address traditional knowledge and customary sustainable uses of biodiversity (see *International Rights & Responsibilities* section). The focus of this e-module is the most prominent agreement, the Convention on Biological Diversity.

The United Nations [Convention on Biological Diversity](#) (CBD) is a binding international treaty that was adopted in 1992 at the Rio Earth Summit. Currently, 193 governments have ratified or acceded to the Convention, which means that they are Parties to it. The Convention contains a Preamble and 42 Articles that set out what the Parties agree on and are obliged to do within their own countries.

From the outset of the Convention, the Preamble recognizes “the close and traditional dependence” of many Indigenous peoples and local communities on biological resources. Thereafter, two Articles in particular grant important rights to Indigenous peoples and local communities:

- *Article 8(j)* on traditional knowledge, innovations and practices; and
- *Article 10(c)* on customary sustainable uses of biodiversity.

Three additional Articles are also important to communities:

- *Article 15* on access to genetic resources;
- *Article 17(2)* on exchange of information, including of Indigenous and traditional knowledge; and
- *Article 18(4)* on technical and scientific cooperation for the development and use of Indigenous and traditional technologies.

This e-module focuses on Articles 8(j) and 10(c) in particular. A separate e-module, available at www.community-protocols.org, explores the topic of access and benefit sharing.

Resource: [Negotiating Diversity: A Field Guide to the Convention on Biological Diversity](#) (2002)

This helpful guide by Paul Oldham contains detailed information about the text of the Convention and how its negotiations work. It focuses specifically on provisions and processes related to Indigenous peoples and local communities.

How Does This International Framework Apply to Communities?

Articles 8(j) and 10(c) are considered two of the most important provisions in binding international environmental law for Indigenous peoples and local communities. They apply in particular to communities who contribute to the conservation and sustainable use of biodiversity through traditional knowledge and cultural practices.

They legally oblige Parties to the CBD to respect, protect, and promote traditional knowledge, innovations, and practices. They also oblige Parties to protect and encourage customary uses of biological resources in accordance with traditional cultural practices. Articles 8(j) and 10(c) thus provide relatively supportive legal protection that can be adapted and used in a number of different ways at the local and national levels to strengthen community initiatives.

There are also some potential drawbacks to these provisions (see the section *What Does this International Framework Mean for My Community?*).

Community Experiences

In 2002 and 2004, the Parties to the CBD requested practical information about and examples of sustainable use of biodiversity by Indigenous peoples and local communities. They also asked for advice on how best to implement Article 10(c). In response, Indigenous peoples, local communities, and supporting organizations (with coordination by the Forest Peoples Programme) began a [project to document traditional practices and customary sustainable uses of biodiversity](#) in Bangladesh, Cameroon, Guyana, Suriname, and Thailand. They also developed recommendations for effective implementation of Article 10(c) at the national and local levels (see Box 3 on page 18).



Figure 1: Baka learn how to use touch-screen GPS computers marked with symbols that they can press to record an important site or resource.

Credit: OKANI

In the Dja Biosphere Reserve in Cameroon, for example, the Baka mapped their territory using handheld computers. A unique software programme that combines Global Positioning System (GPS) with easy-to-understand symbols enabled the Baka to identify resources and associated knowledge and practices. They also documented customary resource use practices and their roles within Baka culture and society, including hunting, fishing, and gathering of forest fruits and vegetables. The mapping and documentation showed a strong and close relationship between the Baka people and the forest and its resources. They have since established dialogue with government protected area agencies and conservation organizations to gain recognition of customary rights and territories that overlap with two national parks.

Resources: Case Studies on Customary Sustainable Use of Biodiversity by Indigenous Peoples and Local Communities

[Synthesis Paper](#) (2011)

“Examples, challenges, community initiatives, and recommendations relating to CBD Article 10(c)”

[Bangladesh Case Study](#) (2008)

“Resuscitating the Sundarbans: Customary Use of Biodiversity & Traditional Cultural Practices in Bangladesh”

[Cameroon Case Study](#) (2006)

“Protecting and encouraging customary use of biological resources by the Baka in the west of the Dja Biosphere Reserve”

[Guyana Case Study](#) (2006)

“Our territory, our custom: Customary use of biological resources and related traditional practices within Wapichan Territory in Guyana”

Suriname Case Study (2006)	“Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono”
Thailand Case Study (2006)	“Indigenous knowledge, customary use of natural resources and sustainable biodiversity management of the Hmong and Karen Communities”

Guiding Questions for Discussion

The following questions are intended as guides only for broader discussion within your community about the issues raised so far in the e-module:

- *What natural resources or species are particularly important to your community? What role do they play in your identity and cultural traditions?*
- *What customary laws, values, or social norms influence your relationship with these resources?*
- *How do you determine who uses the resources? How do you determine how, when, and for what purposes they are used?*



THE EMERGENCE OF TRADITIONAL KNOWLEDGE & CUSTOMARY SUSTAINABLE USE IN INTERNATIONAL LAW

Why Were Articles 8(j) & 10(c) Included in the Convention on Biological Diversity?

In the 1960s, 70s, and 80s, scientists gained more and more understanding of biodiversity. They identified thousands of new species, observed fascinating animal behaviour, and learned about ecosystem dynamics. They also began to better understand how humans use and interact with biodiversity. Researchers interested in both natural and social sciences studied Indigenous peoples' and local communities' ways of life to learn more about the cultural and spiritual importance of biodiversity and how people can live sustainably and within natural limits.



Figure 2: Rattan raft plying the Papar River in Sabah, Malaysia.

This growing awareness of the links between people and biodiversity was also rooted in the growing global movement of Indigenous peoples' rights. Information and communication technologies helped people connect, share ideas, and plan joint strategies. Indigenous peoples and local communities participated eagerly in decision-making processes that affected their livelihoods, ranging from infrastructure development to the establishment of protected areas.

These simultaneous processes eventually led to explicit international recognition of the role of Indigenous peoples and local communities in the conservation and sustainable use of biodiversity. Articles 8(j) and 10(c) were negotiated and included in the Convention on Biological Diversity and thus became an integral part of communities' binding international rights.

What Has Happened since the Convention was Adopted in 1992?

Traditional knowledge and customary use are both cross-cutting issues in the CBD. They are considered to be relevant to all aspects of the Convention and efforts are made to incorporate them into all Programmes of Work.

Establishment of Dedicated Mechanisms in the CBD

In 1998, the 4th Conference of the Parties to the CBD established the Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions (commonly referred to as WG8(j) or "the Working Group on Article 8(j)"). In 2000, the 5th Conference of the Parties endorsed the Programme of Work on the Implementation of Article 8(j) and Related Provisions of the CBD (commonly known as the "Programme of Work on Article 8(j)"; see Box 1).

As of 2012, the Working Group on Article 8(j) has had seven meetings. They are usually held every 2 years in Montréal, Canada, and are open to the participation of Indigenous peoples, local communities, and non-governmental organizations. The Working Group and Programme of Work on Article 8(j) work hand-in-hand with Conferences of the Parties to the CBD to ensure that traditional knowledge and customary sustainable use are supported across the work of the Convention (see Figure 3).

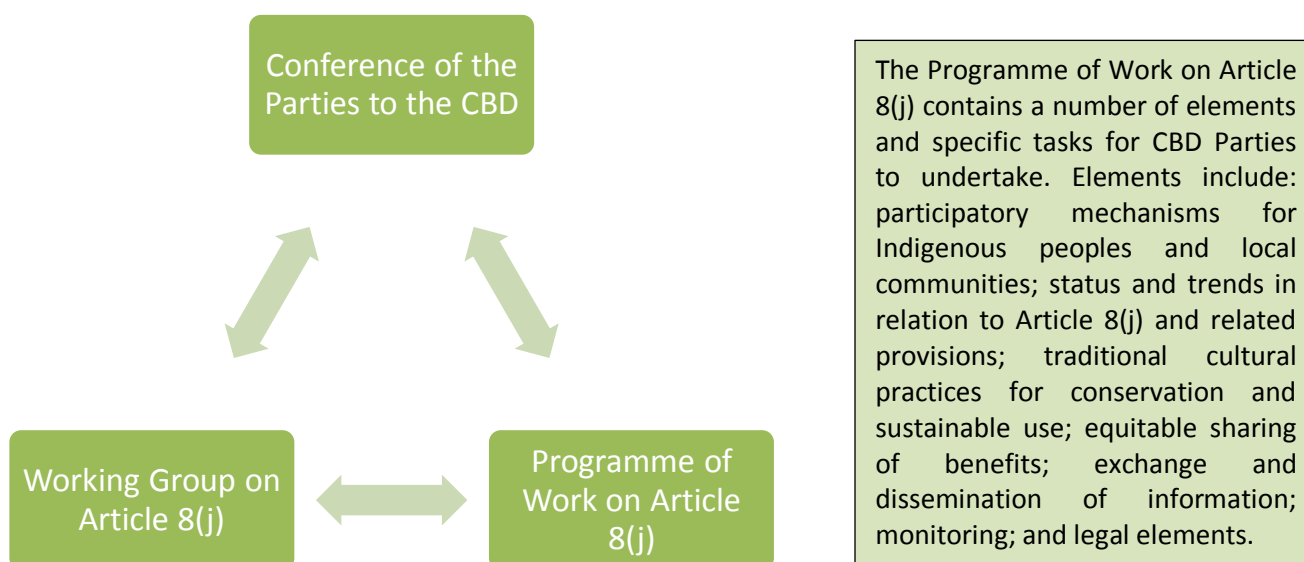


Figure 3: Interrelationships between CBD mechanisms that consider Articles 8(j) and 10(c).

Box 1: Elements of the Programme of Work on Article 8(j).

Outcomes of Negotiations of the Working Group on Article 8(j)

The Working Group on Article 8(j) has been relatively productive. Each meeting considers a number of reports and submissions, as well as recommendations from other international processes. Most notably, negotiations have resulted in the adoption of two key instruments by the Parties to the CBD (see *International Rights & Responsibilities* for more details):

1. *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities* (commonly referred to as the "[Akwé: Kon Guidelines](#)") in 2004; and
2. *Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities* (commonly referred to as the "[Code of Ethical Conduct](#)") in 2010.

New Focus on Customary Sustainable Use

In 2010, the 10th Conference of the Parties decided to include sustainable use with a focus on customary sustainable use as a new major component of the revised Programme of Work on Article 8(j). The Working Group on Article 8(j) was requested to:

- Develop guidance on sustainable use and related incentive measures for Indigenous peoples and local communities, building on the [Addis Ababa Principles and Guidelines](#);
- Integrate Article 10, with a focus on 10(c), into all aspects of the CBD; and
- Consider ways to increase the engagement of communities and governments alike in the local and national implementation of Article 10 and the ecosystem approach.

Resource: [Report of the Meeting on Article 10 with A Focus on Article 10\(c\) As A Major Component of the Programme of Work on Article 8\(j\) and Related Provisions of the Convention](#) (2011)

From 31 May to 3 June, 2011, an expert meeting was held on Article 10 with a focus on 10(c). The experts provided recommendations and guidance on a range of topics, including customary sustainable use and diverse local economies, legislation and land and resource rights, and development of a plan of action and toolbox. Two recommendations in particular called for the development of instruments and policies that support traditional institutions and community protocols consistent with customary laws, and the creation and support of participatory community management and development plans based on customary sustainable use, traditional knowledge, and community protocols.

At the 7th Meeting of the Working Group on Article 8(j) in November 2011, Parties agreed to develop a Plan of Action on customary sustainable use based on a list of indicative tasks (see Annex of the [draft recommendation on Article 10](#)). This will be further developed at the 8th Meeting of the Working Group in 2013 and forwarded to 12th Conference of the Parties for potential adoption in 2014. It is very important for Indigenous peoples, local communities, and supporting organizations to participate in these meetings and express their views and priorities.

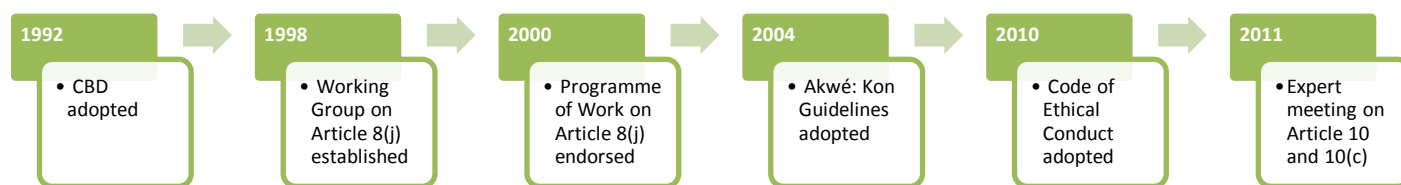


Figure 4: Timeline of key outcomes and events relating to Articles 8(j) and 10(c).

How Does the Convention on Biological Diversity Apply to My Country?

To find out if your country is obliged to uphold CBD provisions, please search the [list of Parties to the CBD](#). You could also contact your [National Focal Point](#) for further information about how your government is implementing the CBD.

Your country may have specific laws or policies that recognize the international rights in Articles 8(j) and 10(c) at the national or sub-national level. Examples may include those related to Indigenous peoples' rights, general biodiversity, bio-prospecting and access and benefit sharing, protected areas, forests, and marine and freshwater. These laws and policies are very important to be aware of and to actively use in support of your community's livelihoods and local initiatives.

There may also be related laws or policies within your country that could undermine these rights, depending on how they are written and interpreted within the local political context. One example is intellectual property law. This is due to often stark differences between the nature of knowledge, property, and ownership in Western law and Indigenous customary laws and worldviews.

Guiding Questions for Self-Assessment

1. *When was the Working Group on Article 8(j) established?*
 - a. 1992
 - b. 1998
 - c. 2004
2. *What will be further developed at the 8th Meeting of the Working Group on Article 8(j) in 2013?*
 - a. *Plan of Action on traditional knowledge, innovations, and practices*
 - b. *Plan of Action on customary laws and community protocols*
 - c. *Plan of Action on customary sustainable use*
3. *Who is best-placed to provide more information about my country's obligations under the CBD?*
 - a. *CBD National Focal Point*
 - b. *CBD National Biodiversity Committee*
 - c. *CBD National Council on Biodiversity*

Answers: 1(b); 2(c); 3(a)



INTERNATIONAL RIGHTS & RESPONSIBILITIES

There are a number of rights and responsibilities in international law that relate to traditional knowledge and customary sustainable use of biodiversity. This e-module focuses primarily on provisions under the CBD with a selection of other highlights. Most provisions simultaneously grant rights to Indigenous peoples and local communities and place corresponding responsibilities upon contracting Parties or signatories.

When reviewing the sections below, consider how the provisions relate to each other and how they could be referenced in different ways. Rights recognized under one international instrument (for example, the United Nations Declaration on the Rights of Indigenous Peoples) can be raised in other decision-making processes such as the Working Group on Article 8(j). The more communities are aware of supportive provisions, the more they can remind governments of existing commitments and obligations, and the more the international rights framework will be advanced.

Resource: [Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities](#) (1996)

This seminal book by Dr. Darrell Posey and Graham Dutfield discusses the concept of traditional resource rights, which they developed with others in the 1990s as an integrated rights-based response to global trends towards patenting of life. Traditional resource rights are a bundle of basic rights that include human and cultural rights, the right to self-determination, and land and territorial rights. They recognize the right of Indigenous peoples and local communities to control the use of plant, animal, and other resources, as well as associated traditional knowledge, innovations, and practices.

What Are the Binding Provisions of the Convention on Biological Diversity?

Preamble

In the Preamble of the CBD, Parties recognize “the close and traditional dependence” of many Indigenous peoples and local communities on biological resources. They recognize the desire to equitably share benefits of the use of traditional knowledge relevant to the conservation and sustainable use of biodiversity. They also note that the *in-situ* conservation of ecosystems and natural habitats is the fundamental requirement for biodiversity conservation.

Article 8(j) on traditional knowledge, innovations, and practices

Article 8(j) states: “Each contracting Party shall, as far as possible and as appropriate... [s]ubject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

Article 8(j) essentially contains three obligations that Parties must fulfill within their own countries, including through appropriate national legislation. First, Parties are obliged to recognize traditional knowledge, innovations, and practices as comparable (if not superior) to scientific knowledge,

technological innovations, and ‘modern’ resource use practices. Second, they are obliged to promote the wider application of traditional knowledge, innovations, and practices in order to sustain cultural diversity and knowledge therein. This must be done with the approval and involvement of the relevant Indigenous peoples and local communities, for example, through negotiation and partnership. “Approval and involvement” could be interpreted today as “free, prior and informed consent”. Third, Parties are obliged to encourage the sharing of any benefits that arise from the commercial or non-commercial use of traditional knowledge, innovations, and practices in a fair and equitable way.

Notably, Article 8(j) only applies to communities whose traditional lifestyles are relevant for the conservation and sustainable use of biodiversity. The word “preserve” also shows the outdated language of the CBD; it is now widely understood that communities’ traditions and ways of life are constantly changing and cannot be preserved in a static state.

Article 10(c) on customary sustainable uses of biodiversity

Article 10(c) states: *“Each Contracting Party shall, as far as possible and as appropriate... [p]rotect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.”*

Parties are obliged to protect and encourage communities’ customary use and traditional cultural practices as far as possible within their own countries. In order to do so, Parties should ensure necessary conditions such as security of tenure over traditional territories, control over and use of traditional resources, and respect for communities’ heritage, languages, and cultures. In practice, this should also include respect for customary laws and cultural and spiritual values.

Much like Article 8(j), Article 10(c) only applies to communities whose traditional cultural practices are “compatible” with conservation and sustainable use.

What Are the Key Instruments Under the Convention on Biological Diversity?

In addition to provisions of the Convention itself, four voluntary instruments adopted by the Parties to the CBD are particularly relevant to traditional knowledge and customary sustainable use of biodiversity. They are described below in general terms with links to the full texts.

1. ***Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*** (commonly referred to as [“Akwé: Kon Guidelines”](#))

Negotiated by the Working Group on Article 8(j) and adopted by Decision VII/16 in 2004, the Akwé: Kon Guidelines advise on how to incorporate communities’ cultural, environmental (including biodiversity-related), and social considerations into new or existing impact assessment procedures. They provide guidance on how to take into account traditional knowledge, innovations, and practices and promote the use of appropriate technologies. They also advise on how to support the full and effective participation of Indigenous peoples and local communities in screening, scoping, and development planning exercises. Overall, the Guidelines are intended to ensure appropriate development and reduce the rate of biodiversity loss.

2. **Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity** (commonly referred to as "[Addis Ababa Principles and Guidelines](#)")

Adopted by Decision VII/12 in 2004, the Addis Ababa Principles and Guidelines consist of 14 practical principles and operational guidelines. While the entire instrument is of relevance, two principles in particular relate to Indigenous peoples and local communities.

- *Principle 4* calls for adaptive management based on traditional and local knowledge, among other things.
- *Principle 12* states that benefits should be equitably distributed in accordance with the needs of Indigenous peoples and local communities and their contributions to the conservation and sustainable use of biodiversity.

3. **The Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities** (commonly referred to as "[Code of Ethical Conduct](#)")

Negotiated by the Working Group on Article 8(j) and adopted by Decision X/42 in 2010, the Code of Ethical Conduct establishes a new paradigm for researchers and others working with Indigenous peoples and local communities and their territories. It includes 10 general ethical principles, namely:

- Respect for existing mutually agreed settlements or agreements (*Paragraph 7*);
- Acknowledgement of concerns or claims to cultural and intellectual property related to traditional knowledge and the conservation and sustainable use of biodiversity before activities or interactions begin (*Paragraph 8*);
- Non-discriminatory ethics and guidelines for all activities and interactions, including affirmative action (*Paragraph 9*);
- Full disclosure (in advance) of the nature, scope and purposes of any proposed activities or interactions (*Paragraph 10*).
- Any activities or interactions that do occur should be carried out with the prior informed consent of Indigenous peoples and local communities (*Paragraph 11*);
- Respect for traditional knowledge, cultures, sacred sites and avoidance of imposition of external concepts, standards, and value judgments (*Paragraph 12*);
- Respect for the right to safeguard their cultural and intellectual heritage (tangible and intangible) and understanding of the balance of collective and individual rights and obligations (*Paragraph 13*);
- Fair and equitable sharing of benefits in accordance with community-level procedures (*Paragraph 14*);
- Proposed activities and interactions should protect and enhance relationships between affected Indigenous peoples and local communities and the environment in order to promote the objectives of the CBD (*Paragraph 15*); and
- Adopt the precautionary approach and include local criteria and indicators and the full involvement of Indigenous peoples and local communities in the prediction and assessment of potential harms to biodiversity (*Paragraph 16*).

The Code of Ethical Conduct also contains nine specific considerations, including (among others) recognition of sacred and culturally significant sites, access to traditional resources, recognition of customary institutions and social structures, and supporting communities' research initiatives.

Finally, the Code of Ethical Conduct sets out seven methods, namely: negotiations in good faith; subsidiarity and decision-making; partnership and cooperation; gender considerations; full and effective participation and participatory approach; confidentiality; and reciprocity.

4. [Aichi Biodiversity Targets](#)

Adopted by Decision X/2 in 2010, the Aichi Biodiversity Targets complement the 2011-2020 Strategic Plan for Biodiversity. There are 20 Targets set out under five Strategic Goals.

- *Strategic Goal B* (including Targets 5-10) focuses on reducing direct pressures on biodiversity and promoting sustainable use of biodiversity and all natural habitats.
- *Target 18* states that by 2020, traditional knowledge, innovations, and practices and customary use of biodiversity are to be respected and fully integrated into the implementation of the Convention at all levels. This is to be done with the full and effective participation of Indigenous peoples and local communities.

Table 1: COP Decisions directly relevant to Article 8(j) and related provisions.

Relevant Decision	Topic
Decision X/40	Mechanisms to promote the effective participation of indigenous and local communities in the work of the Convention
Decision X/41	Elements of sui generis systems for the protection of traditional knowledge
Decision X/42	The Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities
Decision X/43	Multi-year programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity
Decision IX/13	Article 8(j) and related provisions
Decision VIII/5	Article 8(j) and related provisions
Decision VII/16	Article 8(j) and related provisions (Akwé: Kon Guidelines adopted)
Decision VI/10	Article 8(j) and related provisions
Decision V/16	Article 8(j) and related provisions (Programme of Work on Article 8(j) endorsed)
Decision IV/9	Implementation of Article 8(j) and related provisions (Working Group on Article 8(j) and Related Provisions established)
Decision III/14	Implementation of Article 8 (j)

What Are the Key Provisions of Other International Frameworks?

In addition to the CBD, a number of other international frameworks contain provisions directly related to traditional knowledge and customary sustainable use. Each of these instruments differs in the legally binding versus voluntary nature and in which governments have ratified, signed, or agreed to it. Additional e-modules and links are noted for each framework.

World Intellectual Property Organization: [Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore](#)

The Intergovernmental Committee has the mandate to develop a legally binding international instrument to ensure the effective protection of traditional knowledge, traditional cultural expressions

and folklore, and genetic resources. Negotiations have been underway since 2001. The 21st Session is scheduled for April 2012.

- For more information, see the e-module on Intellectual Property Rights (forthcoming).

Food and Agriculture Organization of the United Nations: [International Treaty on Plant Genetic Resources for Food and Agriculture](#) (2001)

The legally binding International Treaty contains three key Articles relating to traditional knowledge and customary sustainable use, with particular focus on Farmers' Rights. Farmers' Rights consist of the customary rights of farmers to save, use, exchange, and sell farm-saved seed and propagating material. Also included are their rights to be recognized, rewarded, and supported for their contribution to the global pool of genetic resources and to the development of commercial varieties of plants. Finally, farmers have the right to participate in decision making on issues related to crop genetic resources.

- [Article 5.1](#) states that Parties shall promote and support farmers and local communities in the on-farm management and conservation of plant genetic resources for food and agriculture, including wild crop relatives and wild plants for food production.
- [Article 6](#) calls on Parties to promote the sustainable use of plant genetic resources for food and agriculture through measures such as fair agricultural policies, plant breeding efforts, and use of diverse and locally adapted crops, varieties, and species.
- [Article 9](#) recognizes the “enormous contribution” of local and Indigenous communities and farmers to the conservation and development of plant genetic resources and food and agriculture production around the world. It states that the responsibility for realizing Farmers' Rights rests with national governments, which can be done through measures such as protecting traditional knowledge relevant to plant genetic resources, ensuring the right to equitable sharing of benefits arising from the use of plant genetic resources, and ensuring the right to participate in decision-making at the national level on matters related to the conservation and sustainable use of plant genetic resources.

Resources: Farmers' Rights and Sustainable Use of Plant Genetic Resources for Food and Agriculture

[Farmers' Rights website](#)

[Training module](#) on conservation and sustainable use under the International Treaty

- For more information, see the e-module on Farmers' Rights (forthcoming).

[United Nations Declaration on the Rights of Indigenous Peoples](#) (2007)

The UN Declaration on the Rights of Indigenous Peoples is voluntary but considered the most progressive and directly relevant instrument for Indigenous peoples. It was adopted by the UN General Assembly with only four member states in opposition (Australia, Canada, New Zealand, and the United States of America), all of which have since reversed their positions and endorsed it. Eleven member states abstained (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa, and Ukraine).

- [Article 31](#) states that Indigenous peoples have the right to maintain, protect, and develop their own cultural heritage, traditional knowledge, and cultural expressions and have the right to protect and develop their own intellectual property accordingly. This includes, for example, their own genetic, scientific resources and knowledge of plants and animals.
- For more information, see the e-module on UNDRIP.

[International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples \(1989\)](#)

Commonly referred to as ILO No. 169, this is a binding Convention with relatively progressive provisions. However, very few countries have ratified it. Please view the [list of ratifications](#) to see if your country is one of them.

- *Article 27(1)* states that education programmes and services shall be developed and implemented in cooperation with Indigenous peoples and local communities to address their particular needs. Such programmes and services shall also incorporate their histories, knowledge and technologies, value systems, and social, economic, and cultural aspirations.
- For more information, see the e-module on International Human Rights Frameworks (forthcoming).

What Other Guidance Exists Outside of the United Nations?

Some research groups, universities, and businesses have specific guidelines related to traditional knowledge and customary sustainable use of biodiversity. One example that your community may find useful, particularly in relation to academic researchers, is listed below.

International Society of Ethnobiology: [Code of Ethics](#)

Acknowledging that research undertaken without consent can result in biological and cultural harms, the Code of Ethics sets out 17 principles (see Box 2) and 12 practical guidelines for supporting Indigenous peoples' rights and the inextricable linkages between cultural, linguistic, and biological diversity.

- Prior rights and responsibilities
- Self-determination
- Traditional guardianship
- Active participation and protection
- Full disclosure and confidentiality
- Educated prior informed consent
- Respect, precaution and diligence
- Reciprocity, mutual benefit and equitable sharing
- Supporting indigenous research
- Remedial action
- Acknowledgment and due credit

Box 2: Select principles of the Code of Ethics of the International Society of Ethnobiology.

Guiding Questions for Self-Assessment

1. *What are the two most important provisions in the Convention on Biological Diversity for Indigenous peoples and local communities?*

- a. *Article 8(j) on traditional languages and Article 10(c) on customary laws*
- b. *Article 8(j) on traditional resource rights and Article 10(c) on customary institutions for biodiversity*
- c. *Article 8(j) on traditional knowledge, innovations, and practices and Article 10(c) on customary sustainable use of biodiversity*

2. *Which two voluntary instruments were negotiated by the Working Group on Article 8(j)?*

- a. *Addis Ababa Principles and Guidelines and Tkarhwaí:ri Code of Ethical Conduct*
- b. *Akwé: Kon Guidelines and Tkarhwaí:ri Code of Ethical Conduct*
- c. *Addis Ababa Principles and Guidelines and International Society of Ethnobiology Code of Ethics*

3. Which of the following international instruments is not legally binding?
- UN Declaration on the Rights of Indigenous Peoples
 - ILO Convention No. 169 Concerning Indigenous and Tribal Peoples
 - International Treaty on Plant Genetic Resources for Food and Agriculture

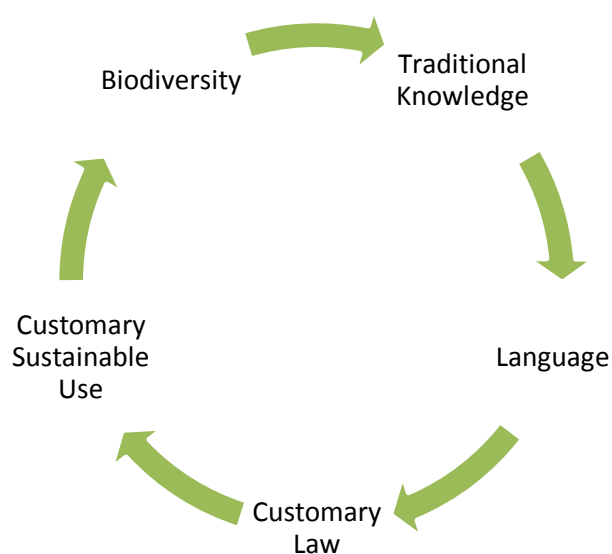
Answers: 1(c); 2(b); 3(a)

WHAT DOES THIS INTERNATIONAL FRAMEWORK MEAN FOR MY COMMUNITY?

Key Opportunities

In the Preamble of the CBD, Parties recognize “the close and traditional dependence” of many Indigenous peoples and local communities on biological resources. This sets the stage for two of the most progressive provisions related to the links between communities and biodiversity.

Articles 8(j) and 10(c) are relatively specific and supportive rights for Indigenous peoples and local communities who contribute to the conservation and sustainable use of biodiversity. Parties to the CBD are obliged to respect, protect, and promote traditional knowledge, innovations, and practices. They are also obliged to protect and encourage customary uses of biological resources in accordance with traditional cultural practices. Traditional knowledge, innovations, and practices and customary sustainable use are thus at the heart of international biodiversity law.



Further reinforced by numerous other international frameworks such as those outlined above, it is clear that Indigenous peoples’ and local communities’ traditional knowledge and customary sustainable use of biodiversity are well-supported in international law.

Communities can use these rights in a number of different ways at the local and national levels. In particular, they could be used to advocate for recognition of more fundamental rights such as to customary territories and self-determination. International law clearly establishes that traditional knowledge and customary sustainable uses of biodiversity are mutually dependent upon each other and upon communities’ broader cultures and worldviews; these in turn are dependent upon a

Figure 5: Inter-linkages between communities' ways of life and biodiversity.

secure, ongoing relationship with their territories and resources (see Figure 5). In order to protect and promote traditional knowledge and cultural practices, governments also need to ensure other fundamental demands are fulfilled. Thus, Articles 8(j) and 10(c) can be used to advocate for recognition of communities' broader ways of life and a raft of fundamental rights that are directly linked to traditional knowledge and customary sustainable use of biodiversity.

Through their experiences with the customary sustainable use project (see section *Community Experiences* on page 6), a number of community partners set out recommendations to improve implementation of Article 10(c) at the national and local levels (see Box 3). These recommendations can be taken up by Indigenous peoples, local communities, and supporting civil society organizations in collaboration with government agencies and other stakeholders.

1. Take measures to recognize and respect indigenous peoples' rights to their lands and resources.
2. Recognize the role of customary law and traditional institutions and freedom to use customary laws related to biodiversity use, rather than rules or laws imposed by others.
3. Recognize the right of indigenous and local communities to fully and effectively participate in natural resource management and decision-making.
4. Take concrete actions to acknowledge the value of customary practices and traditional knowledge in relation to biodiversity conservation and sustainable use, for example by reviewing and reforming national policies and laws to make them compatible with and supportive of, the protection of customary use and traditional knowledge.
5. Ensure that FPIC becomes a well-understood and generally applied principle in all matters affecting indigenous peoples' lands and territories.
6. Address all cases where protected areas have adversely affected indigenous peoples' customary sustainable use.
7. Educational policies and programmes should be culturally appropriate and should promote the use and revitalization of indigenous languages and traditional knowledge.
8. Use the United Nations Declaration on the Rights on Indigenous Peoples and related human rights instruments as the basis for the full and effective implementation of Article 10(c) of the Convention. These provide a framework for respecting the fundamental human rights of indigenous peoples, as well as providing a legal and environmental basis for protecting and encouraging customary sustainable use.

Box 3: Community recommendations to improve implementation of CBD Article 10(c).

Source: Synthesis paper on examples, challenges, community initiatives, and recommendations relating to CBD Article 10(c), Forest Peoples Programme et al., 2011.

Key Challenges

“Indigenous and local communities embodying traditional lifestyles” and “traditional cultural practices that are compatible with conservation”

Notably, Articles 8(j) and 10(c) only apply to communities whose traditional lifestyles are relevant for the conservation and sustainable use of biodiversity. Thus by default, they do not apply to other traditional lifestyles or cultural practices that are not recognized by governments as contributing to conservation and sustainable use. This has the potential to conflict with other established human rights such as to self-determination and freedom of cultural expression. Many Indigenous peoples and local communities actively conserve and sustainably use resources, whether intentionally or not. However,

limiting the right to only ‘relevant’ or ‘compatible’ communities excludes those who used to or aspire to conserve and sustainably use resources but are unable to do so currently because of external pressures such as appropriation of lands and resources, displacement into marginal areas, discriminatory policies, and cultural and economic assimilation. Furthermore, communities who currently ‘qualify’ for the rights under Articles 8(j) and 10(c) may have to adapt to new socio-economic situations due to external forces. In the process, they may have a more negative impact on biodiversity, if only for a short time while they adapt to the new context. Do such communities no longer qualify for these rights – or is it the responsibility of their governments to ensure that their traditional knowledge and practices are sustained as part of viable ways of life in current-day economies?

Failure to Recognize “Indigenous Peoples”, and Other Outdated Terms

The CBD has used the term “indigenous and local communities” since it was adopted in 1992. It is now considered outdated. The International Indigenous Forum on Biodiversity (the Indigenous caucus within the CBD) has repeatedly called for recognition of the full term “indigenous peoples”. Some groups have argued that failure to do so is discriminatory and in violation of human rights frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples.

The word “preserve” in Article 8(j) also shows the outdated language of the CBD. It is now widely understood that communities’ traditions and ways of life are constantly changing and cannot be preserved in a static state.

Lack of Clarity about Intellectual Property

An Intergovernmental Committee of the World Intellectual Property Organization is currently negotiating a binding international agreement on intellectual property and genetic resources, traditional knowledge, and folklore. There are many unresolved issues concerning intellectual property and traditional knowledge within the CBD. Parties to the CBD generally cede to the Intergovernmental Committee’s protracted negotiations rather than attempt to address them within the context of the Convention.



TAKING ACTION

How Can I Connect With Others Working On These Issues?

The CBD website hosts the [Traditional Knowledge Information Portal](#). The Portal has been developed to promote awareness and enhance access of Indigenous peoples and local communities to information related to traditional knowledge, innovations, and practices and customary sustainable uses of biodiversity. Other useful sources of information and opportunities for networking include the following:

- Subscribe to the [Traditional Knowledge Bulletin](#) of the United Nations University.
- Contact the [International Indigenous Forum on Biodiversity](#), the Indigenous caucus in the CBD.
- Contact members of the [Network on Customary Use](#).
- If you are interested in participating in CBD meetings or have any questions about Articles 8(j) and 10(c), contact the CBD Secretariat Programme Officer for traditional knowledge, Mr. John Scott (john.scott@cbd.int).

Discussing Our Community's Views, Priorities & Strategies

Despite the challenges discussed above, Articles 8(j) and 10(c) are still regarded as highly supportive provisions for Indigenous peoples, local communities, and biocultural diversity. It is ultimately up to communities, civil society, and other supporters to advocate for the highest standards and principles in international law to be upheld in their own countries.

If the issues outlined in this e-module are of relevance to your community, you may wish to further discuss certain views, priorities, and strategies for engaging with different external actors. For example, it may be helpful to consider how your community would decide to respond to the following scenarios:

- If you are approached by a PhD student from Europe who wants to conduct academic research on your customary uses of biodiversity;
- If you are approached by a botanist from a company that conducts research on commercial applications of traditional medicinal knowledge;
- If a government official or businessperson informs your community of a new development that will affect the resources and ecosystems upon which your livelihoods depend; or
- If a non-profit organization invites your community to participate in a meeting with government officials to discuss implementation of the national biodiversity law.

In each of these situations, it would be useful to understand the various international provisions outlined in this e-module that relate to traditional knowledge and customary sustainable use of biodiversity. In addition to country-specific rights, your community may also have customary laws or values that determine how outsiders should engage with you and according to what terms and conditions. You could draw on these different laws to set out in your community protocol your rights, the responsibilities of external actors, and minimum guidelines and principles that they should adhere to when engaging with your community.

Communicating Our Views to Others

If you have been approached by any outsiders, ask them for their organization's procedures or guidelines for conducting research, impact assessments, or other forms of engagement with communities. These should complement any specific guidance you may provide in your community protocol or other community-defined procedures or customary laws.

You could utilize various tools to document and communicate your knowledge and customary uses of biodiversity. Examples include radio, audio/video, and photography.

Resource: [Digitizing Traditional Culture: WIPO Training Program for Indigenous Communities](#)

WIPO's pilot program on digitizing traditional culture

Ideas for Advocacy & Action

- Write submissions for and participate in international negotiations. Particularly important meetings to attend are of the Working Group on Article 8(j), United Nations Permanent Forum on Indigenous Issues ([PFI](#)), and the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ([WIPO IGC](#)).
- Meet with relevant government agencies to discuss how traditional knowledge and customary sustainable use contribute to biodiversity conservation.
- Meet with your CBD [National Focal Point](#) and find out how to participate in processes such as revising the National Biodiversity Strategy and Action Plan.
- Help youth in your community interview elders about the importance of traditional knowledge and customary use practices and how they relate to the environment and livelihoods.
- Prepare a brochure, poster, or calendar of important events in the migration or cultivation cycle to share with your community.



SUMMARY

This e-module provided an introduction to the concepts of traditional knowledge and customary sustainable use of biodiversity and how they are recognized and supported in international law. It identified specific provisions in a range of international environmental and human rights frameworks, highlighting the rights and responsibilities of multiple stakeholders, including communities, governments, researchers, and the private sector.

The module explored some of the opportunities and challenges in this international framework and offered suggestions for how communities may be able to realize their rights in practice. It also posed guiding questions for further discussion within communities to help clarify how they would respond to different situations with different external actors.

Overall, it is clear that international law contains many supportive provisions for traditional knowledge and customary sustainable use of biodiversity. Although legal responsibility rests with national governments, it is often up to communities and supporting organizations to ensure that the provisions are respected and upheld in practice.



ADDITIONAL RESOURCES

Other Relevant E-modules

There are a number of other international frameworks that relate to traditional knowledge and customary sustainable use of biodiversity. If you are interested in learning more, please visit www.community-protocols.org for the following additional e-modules (some forthcoming):

- UNDRIP
- Other International HR Instruments, including ILO 169
- Access and Benefit Sharing
- Intellectual Property Rights
- Farmers' Rights
- Impact Assessments
- Cultural Heritage

Bibliography & Further Reading

[Negotiating Diversity: A Field Guide to the Convention on Biological Diversity](#)

Paul Oldham, 2002

[Handbook of the Convention on Biological Diversity](#)

Secretariat of the Convention on Biological Diversity, 3rd Edition, 2005

[Background note on Traditional Knowledge and Biological Diversity](#)

CBD workshop on TK and Biological Diversity in Spain, 1997

[Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biodiversity](#)

UNEP/CBD/WG8J/3/4

3rd meeting of WG8(j), 2003

[Report of the Meeting on Article 10 with A Focus on Article 10\(c\) As A Major Component of the Programme of Work on Article 8\(j\) and Related Provisions of the Convention](#)

UNEP/CBD/WG8J/7/INF/5

7th meeting of WG8(j), 2011

[Draft Recommendation Submitted by the Chair: Article 10, with a Focus on Article 10\(c\), as a Major Component of the Programme of Work on Article 8\(j\) and Related Provisions](#)

UNEP/CBD/WG8J/7/L.6

7th meeting of WG8(j), 2011

[Case Studies and Synthesis Paper: Customary Sustainable Use of Biodiversity by Indigenous Peoples and Local Communities: Examples, challenges, community initiatives, and recommendations relating to CBD Article 10\(c\)](#)

Forest Peoples Programme, 2006-2011

[Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities](#)

Darrell A. Posey and Graham Dutfield (International Development Research Centre), 1996

[Intellectual Property and Traditional Cultural Expressions/Folklore](#)

WIPO Booklet No. 1

[Intellectual Property and Traditional Knowledge](#)

WIPO Booklet No. 2

Acknowledgments

This e-learning module was developed for the Regional Initiatives on Biocultural Community Protocols by Natural Justice: Lawyers for Communities and the Environment. We are grateful for the financial support of the CD Trust and Shuttleworth Foundation. All images and illustrations are courtesy of Natural Justice unless otherwise stated.

Contact & Request for Feedback

This e-learning module is part of a toolkit for community facilitators on biocultural community protocols. The complete toolkit, including additional e-learning modules, is available at: www.community-protocols.org.

We welcome any and all feedback on the content and use of the e-learning modules and toolkit. If you have suggestions for improvement, would like more information, or would like to request a hard copy of the toolkit, please contact Holly Shrumm (holly@naturaljustice.org).

Natural Justice: Lawyers for Communities and the Environment
63 Hout Street, Mercantile Building
Cape Town, South Africa
8000

Websites: www.naturaljustice.org, www.community-protocols.org

Blog: www.natural-justice.blogspot.com

Facebook: www.facebook.com/naturaljustice