

NATURAL JUSTICE

BACKGROUND

Further to the 10th Conference of the Parties to the CBD, Natural Justice is making this submission upon the request of the CBD Secretariat for contributions from Parties and stakeholders on the Programme of Work on Article 8(j) and related provisions. It is an integrated response to a number of decisions, namely:

1. X/41 Elements of sui generis systems for the protection of traditional knowledge

In decision X/41, the Conference of the Parties noted the elements of sui generis systems, as set out in UNEP/CBD/WG8J/6/5, as useful elements to consider when developing sui generis systems for the protection of traditional knowledge, and requested the Executive Secretary to update this document, in light of case-studies and experiences received, for consideration by the Working Group on Article 8(j) at its seventh meeting. To assist in the updating of the note, the following submissions are requested from Parties, indigenous and local communities and other relevant organizations:

- Information regarding elements of sui generis systems relevant to the protection of traditional knowledge they have adopted, including assessments of the effectiveness of such measures, whether they are local, sub-national, national or regional in focus (decision X/41, paragraph 4);
- Regional measures that have been taken to protect traditional knowledge, innovations and practices of indigenous and local communities relevant to biological diversity that is held across national boundaries, including sui generis systems that are being developed or have been developed and/or implemented, including evidence regarding the effectiveness of such measures (decision X/41, paragraph 5.);
- Views through case studies on how statutory laws and customary laws interact with regard to the protection of traditional knowledge, innovations and practices (decision X/41, paragraph 7).

- National laws, legislation, policies, programme and other relevant information regarding the protection of traditional knowledge (decision X/40, B, paragraph 3);
- X/43 Multi-Year Programme of Work on the Implementation of Article 8(j) and Related Provisions

2. Revised Multi-year Programme of Work - Tasks 7, 10 and 12

In decision X/43, the Conference of the Parties also decided to revise the programme of work and prioritise work on tasks 7, 10 and 12. The Executive Secretary is requested to compile and analyse information submitted on these tasks with a view to identifying minimum standards, best practices, gaps and lessons learned, which will identify further activities needed to fulfil these tasks. To that end, Parties,

Governments, indigenous and local communities and other relevant organizations are requested to submit information on:

- National approaches to facilitate tasks including 7, 10 and 12 tasks (decision X/43, paragraph 5(b) and the programme of work for Article 8(j) as adopted by decision V/16);

TASKS 7, 10 & 12

Task 7. Based on tasks 1, 2 and 4, the Working Group to develop guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure: (i) that indigenous and local communities obtain a fair and equitable share of benefits arising from the use and application of their knowledge, innovations and practices; (ii) that private and public institutions interested in using such knowledge, practices and innovations obtain the prior informed approval of the indigenous and local communities; (iii) advancement of the identification of the obligations of countries of origin, as well as Parties and Governments where such knowledge, innovations and practices and the associated genetic resources are used.

Task 10. The Ad Hoc Working Group to develop standards and guidelines for the reporting and prevention of unlawful appropriation of traditional knowledge and related genetic resources.

Task 12. The Working Group to develop guidelines that will assist Parties and Governments in the development of legislation or other mechanisms, as appropriate, to implement Article 8(j) and its related provisions (which could include sui generis systems), and definitions of relevant key terms and concepts in Article 8(j) and related provisions at international, regional and national levels, that recognize, safeguard and fully guarantee the rights of indigenous and local communities over their traditional knowledge, innovations and practices, within the context of the Convention.

3. Article 10

Also in decision 10/43, the Conference of the Parties decided on a new major component of work on article 10 with a focus on article 10(c), and requested the seventh meeting of the Working group to provide advice on how this component could be implemented and to develop a strategy for the integration of this component, as a cross-cutting issue into the Convention's various programmes of work and thematic areas. To assist the Working Group in its consideration of this issue, Parties, indigenous and local community organizations, NGOs and other relevant organizations are requested to submit information regarding:

- The implementation of Article 10 of the Convention (sustainable use of biodiversity), with a focus on Article 10(c) (customary sustainable use), (decision X/43, paragraph 6);

4. In-depth Dialogue on Ecosystem management, ecosystem services and protected areas

Taking into account the decision of the Conference of the Parties to have an in-depth dialogue on ecosystem management, ecosystem services and protected areas at the seventh meeting of the Working Group, and in order to assist the discussions, Parties, indigenous and local communities, NGOs and other relevant organizations are requested to submit information on:

- Ecosystem management, ecosystem services and protected areas;

5. Programme of Work on Forests

In addition to the above decisions, the substance of this submission is also relevant for the CBD's work on social and biodiversity safeguards for REDD+.

SUBMISSION

At the recent 10th COP to the CBD, indigenous peoples, local communities and NGOs successfully lobbied for the inclusion of reference to "community protocols", a community-led instrument that Natural Justice and other communities and NGOs have been developing. The Nagoya Protocol now states under the heading *Traditional Knowledge Associated with Genetic Resources*:

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

3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

(a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge..."

The recognition of community protocols in international law marks a turning point in the approach's development. Governments are now required to support the development of community protocols, with an emphasis on gender representation, and to take them into consideration in matters relating to traditional knowledge.

A biocultural community protocol is a community-led instrument that promotes participatory advocacy for the recognition and support for ways of life based on the customary and sustainable use of biodiversity, according to standards and procedures set out in customary, national, and international laws and policies.

Without overstating their potential, we feel they can help communities to use their rights towards the aims inherent in the above decisions, namely:

- To notify others of *sui generis* systems
- To enhance the interaction of customary and statutory laws
- To protect TK
- To support the bottom up implementation of the MYPOW on 8j
- To support community led-conservation and customary uses of natural resources under Article 10c of the Convention, and
- To enhance communities' involvement in ecosystem management, ecosystem services and protected areas.

Specifically, community protocols are a useful tool for communities in situations where there is a gap between the biocultural rights they are gaining at the international level, and the local realities of their daily interactions with national implementing agencies and other stakeholders.

1.1 Rights: The Gap Between Policy and Practice

Communities are securing increasingly important biocultural rights under international law¹ such as multilateral environmental agreements,² human rights

¹ Siegele, L., D. Roe, A. Giuliani, and N. Winer, 2009. "Conservation and Human Rights, Who Says

instruments,³ United Nations (UN) agencies' policy documents, and International Union for Conservation of Nature (IUCN) resolutions.

The concept of biocultural rights builds on traditional resource rights#

Posey, D., & G. Dutfield, *Beyond intellectual property : toward traditional resource rights for indigenous peoples and local communities*, IDRC, Canada, 1996.# to describe a subset of third-generation (solidarity) rights that support communities whose lives are inextricably linked with local ecosystems and whose ways of life involve the customary and sustainable uses of natural resources.

Yet the harsh paradox is that even when hard-fought negotiations result in communities' rights being enshrined in law, their local effects are often muted because of the complex socio-political contexts within which communities live.⁴ For example, Linda Siegele *et al.* (2009) detail a plethora of rights relating to communities across a range of hard and soft law instruments.⁵ Their exhaustive review illustrates the scale of communities' rights agreed at the international level. However, their telling conclusion is that "good policy is just a starting point – good practice is more difficult to achieve."⁶ Similarly, Lorenzo Cotula and James Mayers (2009) highlight the gap between what is "on paper" and what happens in practice in the context of local land tenure and projects on reducing emissions from deforestation and forest degradation (REDD)⁷. They underscore the fact that despite a growing international recognition of communities' rights to self-determine their futures and manage their natural resources,⁸ international rights

What?", pages 47-76 in Campese, J., T. Sunderland, T. Greiber, and G. Oviedo (eds.), 2009. *Rights-based Approaches: Exploring Issues and Opportunities for Conservation*. CIFOR and IUCN: Bogor, Indonesia.

² UN Convention on Biological Diversity and UN Framework Convention on Climate Change, for example.

³ UN Declaration on the Rights of Indigenous Peoples, for example.

⁴ For example, see Nelson, F., 2010. "Conservation and Citizenship: Democratizing Natural Resource Governance in Africa", 233-242 *Policy Matters* 17, IUCN, Malaysia.

⁵ Siegele, L., D. Roe, A. Giuliani, and N. Winer, 2009. "Conservation and Human Rights, Who Says What?", pages 47-76 in Campese, J., T. Sunderland, T. Greiber, and G. Oviedo (eds.), *Rights-based Approaches: Exploring Issues and Opportunities for Conservation*. CIFOR and IUCN: Bogor, Indonesia.

⁶ Siegele *et al.*, 2009, page 69.

⁷ Cotula, L., and J. Mayers, 2009. *Tenure in REDD – Start-point or afterthought?* Natural Resource Issues No. 15. International Institute for Environment and Development (IIED): London, UK, page 23.

⁸ For example, see Morel, C., 2010. "Communication 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group

are far from a panacea against local disempowerment or the denial of procedural and substantive justice. This manifests itself in communities routinely being denied substantive and procedural rights at the local level, leading to forms of social and environmental injustice that fuel the loss of biocultural diversity.⁹ There is widespread agreement among practitioners that enshrining rights at the international and national level must be augmented by improved use of rights at the local level.

In efforts to secure their rights over natural resources and traditional knowledge and protect their ways of life, communities continue the international struggle for the recognition of their rights across a number of legislative and policy frameworks.¹⁰ These include:

- CBD: access and benefit sharing (ABS) and programme of work on protected areas (PoWPA) – notably WG8j is crosscutting;
- UN Framework Convention on Climate Change (FCCC): REDD and climate adaptation;
- UN Convention to Combat Desertification (CCD): marginal lands issues;
- UN Committee on Genetic Resources for Food and Agriculture (CGRFA) under the Food and Agricultural Organization (FAO): farmers' rights and livestock keepers' rights;
- World Intellectual Property Organization (WIPO) Intergovernmental Committee: cultural heritage;
- IUCN World Parks congresses: Indigenous and community conserved areas.

However, international advocacy must be augmented by the improved exercise of rights at the local level. The “rights-based approaches”¹¹ movement is

International on behalf of Endorois Welfare Council v. Kenya”. *Housing and ESC Rights Law Quarterly*, 7(1). Last accessed July 14, 2010, at: <http://www.cohre.org>; and Morel, C., 2010. “Conservation and Indigenous Peoples’ Rights: Must One Necessarily Come at the Expense of the Other?”, p174-180 in *Policy Matters 17*, IUCN, Malaysia.

⁹ Maffi, L., and E. Woodley, 2010. *Biocultural Diversity Conservation: A Global Sourcebook*. Earthscan: UK.

¹⁰ For example, see the latest round of the Interregional Negotiating Group of the *Ad Hoc* Open-ended Working Group on Access and Benefit Sharing, held September 18-21, 2010, in Montreal. Last accessed September 22, 2010, at: <http://www.iisd.ca/biodiv/absing>.

¹¹ Campese et al., 2009.

searching for and working to develop approaches that integrate legal empowerment with endogenous processes, that allow communities to define and communicate self-determined future plans for the future of their biocultural heritage to others, and provide a means to advocate for respect of their ways of life.

1.2 Local Communities, Biocultural Diversity and the Law

Indigenous peoples' and local and mobile communities' diversity of worldviews, cultures, and ways of life are helping to conserve and sustainably use the world's biological diversity.¹² Biological diversity cannot be seen as separate from cultural and linguistic diversity, as "the diversity of life in all its manifestations ... are interrelated (and likely co-evolved) within a complex socio-ecological adaptive system."¹³ The multiplicity of interrelated knowledge, innovations, practices, values, and customary laws¹⁴ are embedded within mutually supporting relationships between land, natural resource use, culture, and spirituality.¹⁵ This connectivity underpins communities' dynamic worldviews and understandings of the laws of nature.¹⁶

¹² Maffi and Woodley, 2010.

¹³ Maffi, L., 2010. "What is Biocultural Diversity", pages 3-12 in Maffi and Woodley, 2010, page 5.

¹⁴ This is also referred to as 'collective biocultural heritage', which is the knowledge, innovations, and practices of Indigenous peoples and local and mobile communities that are "collectively held and inextricably linked to traditional resources and territories, local economies, the diversity of genes, varieties, species and ecosystems, cultural and spiritual values, and customary laws shaped within the socio-ecological context of communities." This definition was developed at a workshop of research and Indigenous partners of the project on Traditional Knowledge Protection and Customary Law that was held in Peru in May, 2005. See Swiderska, K., 2006. *Banishing the Biopirates: A New Approach to Protecting Traditional Knowledge*, Gatekeeper Series 129. IIED: London. Also see IIED, 2010. "Protecting community rights over traditional knowledge". Last accessed August 24, 2010, at: <http://www.iied.org/natural-resources/key-issues/biodiversity-and-conservation/protecting-community-rights-over-tradition>.

¹⁵ See, for example, Descola, P., 1992. "Society of Nature and the Nature of Society", pages 107-157 in Kuper, A. (ed.), *Conceptualizing Society*. European Association of Social Anthropologists, Routledge: London.

¹⁶ See, for example, Davidson-Hunt, I., and F. Berkes, 2003. "Learning as You Journey: Anishinaabe Perception of Social-ecological Environments and Adaptive

Within this context, communities face a number of inter-related challenges when engaging with positive (State) legal systems. Three in particular have ramifications for communities seeking to assert their rights to self-determination and well-being:

A. Laws compartmentalize the otherwise interdependent aspects of biocultural diversity by drawing legislative borders around them and addressing them as distinct segments. While communities manage integrated landscapes,¹⁷ the State tends to view each resource and associated traditional knowledge through a narrow lens, implementing corresponding laws through agencies that separately address, for example, biodiversity, forests, agriculture, and Indigenous knowledge systems.¹⁸ The result is that communities' lives are disaggregated in law and policy, which effectively fragments their claims to self-determination into specific issue-related sites of struggle.

B. Law affects the very nature of whom or what is defined as 'community'. In general, people have a variety of ways of establishing who is a member of a family or community and who is an outsider. Communities may define themselves in a number of different ways and in different contexts, based on multiple factors such as heritage, ethnicity, language, geographical proximity, and shared resources or knowledge.¹⁹ State law, however, is insensitive to local, adaptive conceptions of community and tends to impose an over-generalized and homogeneous classification as a static and rigidly defined entity. This contradicts local realities and can further divide and weaken local institutions and social structures.²⁰ However, this challenge can be overcome by using the

Learning". *Conservation Ecology*, 8(1): 5-26; and Alexander, M., P. Hardinson, and M. Arhen, 2009. *Study on Compliance in Relation to the Customary Law of Indigenous and Local Communities, National Law, Across Jurisdictions, and International Law, CBD Information Document prepared for the 7th Meeting of the Ad Hoc Open-ended working Group on Access and Benefit Sharing*. UNEP/CBD/WG-ABS/7/INF/5, page 9.

¹⁷ Watson, A., L. Alessa, and B. Glaspell, 2003. "The Relationship Between Traditional Ecological Knowledge, Evolving Cultures, and Wilderness Protection in the Circumpolar North". *Conservation Ecology*, 8(1): 2-15.

¹⁸ For example, in many countries, genetic resources are dealt with by separate departments from traditional knowledge.

¹⁹ Agrawal, A., and C. C. Gibson, 1999. "Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation". *World Development*, 27(4): 629-649.

²⁰ Bosch, D., 2003. "Land Conflict Management in South Africa: Lessons Learned from a Land Rights Approach". Last accessed August 4, 2010, at:

law as the basis for adding a new dimension to local constructions of community that progresses the right to self-determination. All communities are dynamic and issues of self-definition and fluid identity are neither new to traditional communities nor inherently destructive to their social structures. The critical determinant is whether they are able to engage adequately with legal and policy processes to avoid potential negative impacts of change and drive positive developments according to their own values and priorities.²¹

C. Positive law (both international and State) may conflict with the customary laws that govern communities' sustainable use of natural resources.²² For example, the understanding of 'property' under positive law is based on the private rights of a person (human or corporate) to appropriate and alienate physical and intellectual property. In contrast, communities' property systems tend to emphasize relational and collective values of resources.²³ Furthermore, the implementation of positive law tends to overpower and contravene customary law. A system that denies legal pluralism²⁴ has direct impacts on communities' lives, for example, by undermining the cultural practices and institutions that underpin sustainable ecosystem management.²⁵ While recognition of communities' customary laws and traditional authority over resources is progressing in some jurisdictions,²⁶ the challenge of legal pluralism goes beyond the mere co-existence of legal regimes, wherein customary law is

<http://www.fao.org/docrep/006/j0415t/j0415t0a.htm>.

²¹ Cotula, L., and P. Mathieu (eds.), 2008. *Legal Empowerment in Practice, Using Legal Tools to Secure Land Rights in Africa*. IIED: London, page 10.

²² Cotula and Mathieu, 2008, page 11.

²³ Tobin, B., and E. Taylor 2009. "Across the Great Divide: A Case Study of Complementarity and Conflict Between Customary Law and TK Protection Legislation in Peru". *Initiative for the Prevention of Biopiracy*, Year IV: 11, page 10. Such systems have been described as "...commonly characterized by collective ownership (where the community owns a resource, but individuals may acquire superior rights to or responsibilities for collective property), and communal ownership (where the property is indivisibly owned by the community)." See Tsosie, R., 2007. "Cultural challenges to biotechnology: Native American cultural resources and the concept of cultural harm". *Journal of Law, Medicine & Ethics*, 35: 396, cited in Tobin and Taylor, 2009, page 36.

²⁴ This type of system could be referred to as legal monoculture.

²⁵ Sheleef, L., 2000. *The Future of Tradition: Customary Law, Common Law and Legal Pluralism*. Frank Cass: London, England, and Portland, Oregon.

²⁶ Van Cott, D., 2000. "A Political Analysis of Legal Pluralism in Bolivia and Colombia". *Journal of Latin American Studies*, 32: 207-234.

applicable only to Indigenous peoples within their territories. Instead, meaningful legal pluralism requires “incorporation directly or indirectly of principles, measures and mechanisms drawn from customary law within national and international legal regimes for the protection of traditional knowledge.”²⁷

These three challenges, among others, highlight the fact that the imposition of international and national environmental laws, which are inherently fragmentary and based on static misperceptions of local realities, has the potential to undermine the interconnected and adaptive systems that underpin biocultural diversity. The implementation of such laws compounds these challenges by requiring communities to engage with disparate stakeholders²⁸ according to a variety of disconnected regulatory frameworks, many of which may conflict with their customary laws and traditional governance structures. Communities thus face a stark choice:

- to spurn these inherently limited frameworks (something which is a virtual impossibility considering the ubiquitous nature of State law); or
- to engage with them at the potential expense of becoming complicit in the disaggregation of their otherwise holistic ways of life and governance systems.

If the latter is chosen, the resultant challenge is for communities to draw upon and further develop appropriate means to effectively engage with State and international legal and policy frameworks, specifically in ways that accord with their biocultural heritage, support their integrated systems of ecosystem management, are commensurate with their customary laws, and recognize traditional forms of governance. In the absence of such approaches, the very act of using rights can be disempowering and disenfranchising.²⁹

²⁷ Tobin, B., 2009. “Setting Traditional Knowledge Protection to Rights: Placing Human Rights and Customary Law at the Center of Traditional Knowledge Governance”, pages 101-115 in Kamau, E., and G. Winer (eds.), *Genetic Resources, Traditional Knowledge and the Law. Solutions for Access and Benefit Sharing*. Earthscan: UK, page 111. This is arguably a huge challenge and most States are a long way from incorporating Indigenous worldviews into legal and policy frameworks.

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legal systems, the process is often both disempowering because of the asymmetrical “lawyer-client” relationship and dehumanizing because of the Kafkaesque nature of legal proceedings.

1.3 What are Biocultural Community Protocols and How Do They Respond to the Issues Above?

Biocultural community protocols³⁰ are gaining recognition as a locally-rooted rights-based approach that integrates legal empowerment with endogenous processes. Although each is adapted to its local context, *a biocultural community protocol is a community-led instrument that promotes participatory advocacy for the recognition and support for ways of life based on the customary and sustainable use of biodiversity, according to standards and procedures set out in customary, national, and international laws and policies.* They allow communities to define and communicate self-determined plans for the future of their biocultural heritage to others, and provide a means to advocate for respect of their ways of life. In this sense, biocultural community protocols are community-specific declarations on the right to diversity.³¹ Their value lies in the **process** that communities undertake to develop them, in **their diversity of forms**, and in their **future uses**.

A. Process: The development of a biocultural community protocol is embedded in a process of localized change by the communities themselves: from within. This process is called endogenous development. It is local people, with their own resources, values, worldviews, knowledge and organisations who drive endogenous development.³² This does not mean that communities are isolated from the outside world and the opportunities that may be available there. Outside agencies such as NGOs can strengthen, support, catalyze, or enhance endogenous development. Whereas participatory approaches have become broadly recognised, many of these approaches experience difficulties in overcoming an implicit materialistic and western bias. Endogenous development seeks to overcome this bias by making peoples' worldviews and livelihood strategies the starting point for development. Endogenous development begins with local livelihood strategies, values, institutions, and resources. As an endogenous process, the development of a community protocol provides communities a framework with which to learn about their rights in the context of their worldviews, lives, and customary laws. A biocultural approach to the law empowers communities to engage with it from a more holistic perspective.

³⁰ For a fuller description see Bavikatte, K., and H. Jonas (eds.), 2009. *Biocultural Community Protocols: A Community Approach to Ensuring the Integrity of Environmental Law and Policy*. Natural Justice and UNEP. For their application in the context of livestock keepers rights, see Köhler-Rollefson, I., 2010. *Biocultural Community Protocols for Livestock Keepers*. Lokhit Pashu-Palak Sanstan: Rajasthan, India.

³¹ Natural Justice and partners are working to develop this concept.

³² ETC COMPAS, 2007. *Learning Endogenous Development*, Practical Action, UK.

B. Form: Biocultural community protocols can vary in how they are documented and shared. Depending on the community and the stakeholders with whom they are engaging, community protocols could consist of, among other things, written documentation, 3-dimensional models or GPS/GIS maps, illustrations, videos, photographs, performing arts, or a combination of means.³³ The document itself has been highlighted as being meaningful to a community, as something about which to be proud.³⁴

C. Using the Protocol: Community protocols assist communities to establish a firm foundation for the future management of their natural resources by setting out their values and customary resource governance procedures. Protocols also provide a vehicle for articulating communities' procedural and substantive rights to, among other things, be involved in decision-making according to the principle of free, prior and informed consent, develop the specific elements of projects that affect their lands, and ensure that they are involved in the monitoring and evaluation of such projects. This provides clarity to the drivers of external interventions such as protected areas, ABS agreements, REDD projects, and payment for ecosystem services schemes, and can help communities gain recognition for, among other things, their territorial sovereignty, community-based natural resource management,³⁵ *sui generis* laws, sacred natural sites,³⁶ and globally important agricultural heritage systems. In this regard, biocultural community protocols assist communities to bridge the gap between the customary management of their biocultural heritage and the external management of their resources, the latter of which is mandated by positive legal frameworks. They also help communities to minimize the power asymmetries that often characterize government-community relations and promote a more participatory and endogenous approach to the future governance of their territories, natural resources, biodiversity, and traditional knowledge. They allow a community to be proactive within frameworks and in relation to agencies to who they have normally been reactive.

1.4 The Raika Biocultural Community Protocol

³³ On the value of mapping, see Taylor, J., 2008. "Naming the Land, San Countermapping in Namibia's West Caprivi". *Geoforum*, 39: 1766–1775.

³⁴ Köhler-Rollefson, 2010.

³⁵ Ryan, S., K. Broderick, Y. Sneddon, and K. Andrews, 2010. *Australia's NRM Governance System. Foundations and Principles for Meeting Future Challenges*. Australian Regional NRM Chairs: Canberra.

³⁶ Wild, R., and C. McLeod (eds.), 2008. *Sacred Natural Sites: Guidelines for Protected Area Managers*. IUCN: Gland, Switzerland.

In response to their exclusion from the Kumbalgarh Forest, the Raika pastoralists of Rajasthan, India, developed a protocol to communicate the fullness of the forest's meaning to their lives and the implications of their exclusion to their livelihoods, traditional knowledge, and the surrounding biodiversity and genetic resources.³⁷ Specifically, they set out:

- *Values*: their biocultural values and explain how they have developed and preserved unique breeds of livestock and the traditional knowledge associated with them, and how their pastoral lifestyle has co-evolved with the forest ecosystem that they have traditionally conserved and sustainably used;
- *Customary laws*: The Raika detail the customary decision-making process that underpins the provision of free, prior and informed consent to any actions that might impact their grazing rights, animal genetic resources, and associated traditional knowledge;
- *National laws*: They draw on their description of their ways of life to detail their rights under Indian law³⁸ and call upon the National Biodiversity Authority to recognize and ensure the *in situ* conservation of their local breeds and associated traditional knowledge, and ensure that their free, prior and informed consent is obtained according to customary law before any decisions are taken relating to their genetic resources or associated traditional knowledge; and
- *International laws*: They conclude by calling on the Secretariat of the Convention on Biological Diversity and the Food and Agriculture Organization of the United Nations to recognize the contributions of their knowledge, innovations, and practices to the conservation and sustainable use of plant and animal genetic diversity in Rajasthan.

Overall, the Raika's protocol is a holistic response to a singular and fragmentary act of government that was undertaken without recourse to the integrated reality of their biocultural heritage.

1.5 Asian Consultations on Biocultural Community Protocols

³⁷ The Raika Biocultural Protocol and other protocols are available at www.naturaljustice.org, 2010.

³⁸ Biological Diversity Act 2002, Biological Diversity Rules 2004, Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, and the National Policy for Farmers 2007.

Natural Justice and COMPAS (in collaboration with the UNDP-supported Community Knowledge Service) partnered to host two consultations in June and July 2010 in Bangalore, India, and Avissawella, Sri Lanka.³⁹ They provided an opportunity for community members, and representatives of community-based organisations (CBOs), NGOs, government agencies, and funders to discuss biocultural community protocols. The participants made a number of important points about the benefits of biocultural community protocols, many of which are covered above. They also highlighted a number of potential weaknesses and dangers, including:

- Community protocols are not a panacea;
- The process of developing a protocol could be abused by certain parties either from outside or from within the community;
- Such processes may further entrench or perpetuate existing power asymmetries at the local level such as the exclusion of women and youth in decision-making mechanisms;
- Biocultural community protocols may become another top-down imposition by the development industry; and
- There is a great need to ensure community-based monitoring and evaluation of the approach.⁴⁰

As a response to the consultations Natural Justice and partners are working to establish best practice in the development and use of biocultural community protocols through two regional initiatives, in Africa and Asia. Natural Justice will make available to the CBD Secretariat and Parties the outcomes of the work, which will be fed into the IGC on ABS, WG on 8j and related provisions, SBSTTA and COP 11.

³⁹ Jonas, H., and H. Shrumm, 2010. Exploring Biocultural Community Protocols in the Sri Lankan Context: A Report of an International Consultation and Training-of-Trainers Workshop on Biocultural Community Protocols in Avissawella, Sri Lanka. Natural Justice, 2010.

⁴⁰ Jonas and Shrumm, 2010, pages 14-16.