

Using Bio-cultural Community Protocols to Promote a Rights-based Approach to the Conservation and Customary Use of Communities' Natural Resources

What is a rights-based approach to conservation?

Governments and conservation agencies are increasingly recognizing that conservation must be pursued alongside the protection of communities' customary use of natural resources. Laws that aim to protect biodiversity must be implemented in ways that support the rights of communities who use natural resources to sustain their ways of life. A rights-based approach to conservation recognizes that communities are not merely “stakeholders” whose views governmental and conservation agencies *may* take into account. Communities have rights and entitlements under law that others are obliged to respect.

Communities' rights

a) International and National Law

Article 8(j) of the United Nations Convention on Biological Diversity recognizes the interrelationship between the natural environment, sustainable development and the well-being of indigenous peoples and local communities. It also commits parties to respect, preserve and maintain the knowledge, innovations and practices of communities relevant for the conservation of biodiversity. Article 10(c) of the same convention requires countries to protect and encourage the customary uses of biodiversity in accordance with traditional cultural practices.

National governments are obliged to enact and implement laws that support these principles, and many have. Some governments have also enacted national laws that provide communities with a range of substantive and procedural rights that support community-based management of natural resources.

b) Substantive and procedural rights

Communities around the world have substantive and procedural rights. For example, communities are likely to be protected by laws that support their substantive rights to the protection of the environment and their ways of life and traditional knowledge. When government agencies want to implement environmental laws and policies, communities often have procedural rights as well. These may include rights to the following: information about any proposed activities on their land; withhold their consent to any activities until they are satisfied with the social and environmental integrity of such plans; participate in the development of conservation plans; engage in community-based monitoring and evaluation of any projects; and seek judicial review (access to justice) if their substantive or procedural rights are infringed.

In spite of this legal framework, communities' rights are often denied at the local level because of a lack of capacity or knowledge at the administrative level, structural inequalities, bureaucratic indifference, and corruption. Most importantly, injustices are perpetrated because communities themselves are unaware of their rights, unable to affirm them at the local level and/or unable to hold officials accountable to the standards and procedures enshrined in law.

c) “No Rights, No REDD”

There is no clearer call for a rights-based approach to the environment than in the debate surrounding a UN programme that aims to address climate change by using forests to store carbon, known as Reducing Emissions from Deforestation and Forest Degradation (REDD). Indigenous peoples and local communities that are actively conserving forests want to ensure that the REDD programme does not lead to further restrictions on their use of forests or exclude them from a share of the benefits. Their slogan, “No Rights, No REDD”, is a direct call to governments to respect their substantive and procedural rights when considering the implementation of a REDD project on their lands.

A Global Movement

Communities are increasingly working with NGOs around the world to affirm their rights to conserve and sustainably use natural resources. South American examples include:

- The Quecha people and Asociación para la Naturaleza y el Desarrollo Sostenible (ANDES) have established a potato park in Peru;
- Groups of piangueras in southwest Colombia are working with the Corporacion de Asesorias para el Desarrollo (ASDES) to hold *conversatorios* with local authorities to protect the mangroves that support local livelihoods; and
- The Iscoceños worked with the support of Capitanía de Alto y Bajo (CABI) to establish and manage the Kaa-lyá del Gran Chaco National Park in Bolivia.

Although the above examples are about diverse communities from distinct regions, they all share a common characteristic: in each case, the communities learned about their rights and worked collectively on how they wanted to affirm these rights to conserve and sustainably use their natural resources.

Natural Justice is also working with communities in Africa and Asia to assist them to negotiate with government and conservation agencies towards the customary conservation and sustainable use of natural resources. Specifically, Natural Justice is helping communities to develop bio-cultural community protocols as a way to articulate their rights and values to various stakeholders.

Bio-cultural Community Protocols

Bio-cultural community protocols were developed in the context of the negotiations towards the International Regime on Access and Benefit Sharing under the Convention on Biological Diversity. In the negotiations, community protocols were strongly advocated by representatives of indigenous peoples and local communities and African countries as a way to secure communities' rights over their traditional knowledge. They are now a part of the negotiation document of the International Regime on ABS under the head of Protection of TK and are likely to become an integral part of the legally binding International Regime. In many ways, this is a landmark affirmation of indigenous peoples and local communities' rights in international law.

A bio-cultural community protocol, which can be developed by one or more communities, asserts their rights under domestic and international laws related to their identity, land and customary laws and practices. It also illustrates their biological, cultural and spiritual resources and values that contribute to the conservation and sustainable use of biodiversity. Other elements often include community declarations in response to specific issues such as research or extractive industries, and include reference to community-defined requirements regarding free, prior and informed consent,

use of traditional knowledge, and sharing of benefits arising from such agreements.

A bio-cultural community protocol is essentially a statement of community intentions to self-determine its future and clarifies how they want to engage with specific stakeholders. In doing so, communities help enable government agencies or conservation agencies, for example, to work collaboratively towards the community's goals and priorities. Thus, protocols provide communities with an opportunity to focus on their endogenous development aspirations through existing legal frameworks such as REDD or the protection of biodiversity.

a) The Process of Developing a Protocol

The process of developing a bio-cultural community protocol will be different for every community, though all communities that Natural Justice has worked with to date have generally engaged with overarching questions such as:

- What are the community's/ies' spiritual, cultural and ecological norms, values and traditional knowledge that ensure the conservation and sustainable use of biological diversity?
- How do they share knowledge within and between communities?
- What is the communities' endogenous development plan?
- What are their local challenges?
- How can national laws be used to ensure the protection and promotion of their bio-cultural ways of life?
- Which agencies are mandated by law to assist the communities to work towards their endogenous development plans and what are the community's corresponding rights and responsibilities?

The development of a protocol enables a community process of reflection about the links between their customary conservation and sustainable use of natural resources and their knowledge, culture, spirituality, and customary norms and values. This process subsequently facilitates a community-wide discussion about their endogenous development plans, or *planes de vida*, and assessment of common challenges. With input from community-based organizations and NGOs with legal expertise, communities are also able to assess the level of support from international and national laws for their continued customary management and use of natural resources. Drawing on specific laws, communities can determine how they want to engage with various stakeholders such as government departments, conservation agencies and researchers.

b) Using a Community Protocol

Although each protocol is distinct due to the unique biological and cultural diversity of the communities that develop them, the protocols that Natural Justice has assisted communities with tend to cover similar issues and themes, including:

- A self-definition of the group and its leadership and decision-making processes;
- How the community promotes *in situ* conservation of either indigenous plants or indigenous breeds of livestock and/or wildlife, along with details of those natural resources;
- The links between culture, spirituality, customary laws, and ways of life;
- How they interact with nearby communities regarding the management of natural resources and sharing of traditional knowledge;
- What constitutes free, prior and informed consent to access their lands or traditional knowledge;
- Details of their local challenges;

- Their aspirations and endogenous development plans;
- Their rights according to national and international law; and
- A call to various stakeholders to respect their customary laws and community protocol and a statement of the various types of assistance that may be required by the community.

c) An Example Community Protocol

Samburu livestock keepers from Kenya developed a bio-cultural community protocol in 2009. They said the following about the reasons for developing a community protocol:

'We are the Samburu, pastoralists living across a number of districts in Kenya. We are keepers of indigenous and exotic breeds of livestock and our lives are interlinked with and wholly dependent on our animals. Our way of life also allows us to live alongside wildlife, promoting the conservation of our breeds and other living resources in our environment. Yet we feel that our way of life and our indigenous breeds have been consistently undervalued. The government-promoted breeding programs that sought to replace or improve our breeds have left us particularly vulnerable to the recurring droughts which are causing our people acute suffering.

This is our community protocol. It is an articulation of the integral role of our breeds in Samburu culture and their importance to the world. It seeks to establish the significance of our way of life and the value of our indigenous breeds, and that as the keepers of important livestock populations, we have a right to maintain our way of life. It clarifies for others on what terms we will permit activities to be undertaken on our land or regarding our indigenous breeds and traditional knowledge.'

By detailing their right to be involved in the decision-making and development of projects that affect their lands and by setting out their values and customary procedures that govern the management of natural resources, communities such as the Samburu have established a firm foundation upon which to discuss the future conservation and customary use of their natural resources. Protocols help communities to minimize the power asymmetries that often characterize government-community relations and promote a more participatory approach to the future management of the environment.

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Contact us

Natural Justice hopes that this document facilitates discussion about practical rights-based approaches to conservation and customary use of natural resources. For more information, visit the Natural Justice website: <http://naturaljustice.org.za/> and contact Harry Jonas at Natural Justice: harry@naturaljustice.org.za or Carlos del Campo at Global Diversity Foundation, Mesoamerican Programme: carlos@globaldiversityfund.net.