

NATURAL JUSTICE

2009 ANNUAL REPORT

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“When on thin ice, your safety is in your speed.”

2009 has been a year of constant movement, a site of struggle between opportunity and preparedness. 2008 ended with the news that Unilever had pulled out of a deal to commercialize Hoodia, thus denying the Hoodia Trust any income for the foreseeable future. We began 2009 by hosting a meeting of San community leaders, Hoodia farmers and government stakeholders to discuss next steps. That meeting concluded with a Hoodia roadmap and the agreement that Natural Justice would explore with San community members a more focused biocultural approach to the protection and management of their biological and cultural heritage.

Natural Justice's thinking about a biocultural approach to supporting communities ways of life had been evolving over our work with San communities in 2008. It had become apparent that the access and benefit sharing (ABS) deal – hailed as a great victory for the San community – was in fact a double-edged sword. On the one hand, the San has asserted their rights to their traditional knowledge and had entered into a benefit sharing agreement that would provide communities in South Africa, Botswana and Namibia much-needed financial resources. On the other hand, our work with the South African San Council and the Working Group of Indigenous Minorities in Southern Africa, as well as our friendships with San community members, clearly highlighted that the ABS deal was doing little to support the San in their day-to-day lives. Beyond that, it was apparent that the agreement and related governance reforms were undermining traditional leadership structures and contributing to intra- and inter-community conflict.

2008 had been a journey towards understanding that the integrity of the process that leads to an ABS agreement is a greater determinant of its social and environmental outcomes than the terms of the agreement itself. Some authors had argued that the San agreement was weak because of the low level of remuneration the San received. They had a point, but missed the more important issue of how an ABS agreement is a dynamic that can either be used to improve the relationships in and among communities, between communities and external actors, and support sustainable local livelihoods, or to introduce negative elements into various aspects of local communities' lives.

We spent the first half of 2009 pursuing all avenues with key San individuals, the San's organizations, and various individuals and NGOs who work with the San to introduce a more holistic, value-driven approach to their management of traditional knowledge. However, it was to no avail. By mid-2009, we realized that the San community (writ large) was not ready for the ideas and approaches that we argued could improve the situation. Our time with people in and around Upington was elemental. Those experiences led to our most critical thinking about the different ways of doing environmental law and their dramatically different effects on local communities. The people we spent time with helped us see beyond ABS's international rhetoric and towards a biocultural paradigm and we thank our friends for those insights. Drawing on those ideas, in our first major publication, “Biocultural Community Protocols: A Community Approach to Ensuring the Integrity of Environmental Law and Policy”, we wrote:

“We agree with many of the increasingly nuanced approaches to ABS and understand the importance of learning from past agreements whose initial lustre has faded. [...] However, put simply, we argue that a good ABS agreement is one that is negotiated by an empowered community according to its bio-cultural values and customary laws on FPIC [free prior and informed consent] relating to the sharing of its traditional knowledge or genetic resources, and that the terms of the agreement lead to tangible benefits to the community in line with Article 8(j) of the CBD. While community protocols are not a panacea, we feel that for many communities, engaging with the process of developing a

community protocol will improve their ability to make the decisions necessary to lead to 'good' ABS agreements and to avoid socially and/or environmentally harmful alternatives."

Our attention had turned from outcome to process. Our subsequent work with the traditional health practitioners of Buckbuckridge (Kruger to Canyons Biosphere Region, South Africa), the Samburu community (Samburu District, Kenya), the Raika community and Gunis (Rajasthan, India), and Vaidyas of the Malayali Hills (Tamil Nadu, India), marked the culmination of our critique of the law and the beginning of a search for practical approaches to help communities to reinterpret the law according to their local realities, values, and spiritual understanding. We focused on how communities could use a variety of laws and policies to support internal processes in line with the key principles of endogenous development. Those experiences have been formative. We now understand that the development and use of biocultural community protocols can assist communities to better understand and engage with external stakeholders according to their rights, as enshrined in various legal and policy frameworks. Yet the more work we have undertaken with communities to develop biocultural community protocols, the more questions have been raised about their every aspect. 2010 will be a year of active search for examples of other community protocols and protocol-like tools and deep engagement with partners and funders to further explore the potential of the approach in Africa, Asia and Latin America.

As a parallel process, we are advising the African Group of countries in the negotiations of the Ad Hoc Open-ended Working Group on Access and Benefit Sharing towards an international regime on ABS. We advocated for the inclusion of "community protocols" into the text of the draft international regime and were supported by the International Indigenous Forum on Biodiversity in this position at the 8th meeting of the Working Group in November 2009. We will continue with this work through 2010 towards the culmination of the negotiations at the 10th Conference of the Parties (COP) to the Convention on Biological Diversity to be held in Nagoya, Japan. We also attended the 15th COP of the UN Framework Convention on Climate Change and see a strong role for Natural Justice in supporting communities' right to free, prior and informed consent within the programme to reduce emissions from deforestation and forest degradation (REDD). We are also very pleased to report an increase in our advisory work in South Africa and within the region.

Ending the year with a SEED award is gratifying and we look forward to using the prize monies to further our work in the K2C Biosphere Region and to improve our governance structures.

We extend a very special thanks to Dr. Johanna von Braun, a good friend and Post-doctoral Fellow at University of Cape Town's Intellectual Property Law and Policy Unit who has worked with us on many aspects of this year's work. She has been tireless in her enthusiasm and has contributed her skills gratis, on the basis of her keen interest in the issues Natural Justice is focusing on. Effectively extending the team of field staff from 2 to 3 has made a huge difference to our reach. Thanks also to GTZ for their flexibility in providing core funding to the organization, to UNEP for funding our work in India and our publication on biocultural community protocols, and to the International Development Law Organization for funding the book on the traditional knowledge commons.

We look ahead to 2010, a year in which we intend to deepen our partnerships with community-based organizations in Africa, Asia and Latin America and to continue to develop practical approaches for communities to use to support the protection and customary uses of their biocultural heritage.

Kabir Bavikatte and Harry Jonas

EXECUTIVE SUMMARY

This report consists of nine sections, covering all aspects of the organization's current operation and finances.

Sections 1-5 present the project work and publications Natural Justice has undertaken this year. It sets out the projects within a programmatic framework, namely:

- Community projects in Africa and Asia;
- the Traditional Knowledge Commons;
- International advocacy
- Technical and legal advice; and
- Publications.

Each sub-section provides an overview of the overall programme, including its future prospects, and is followed by a detailed account of the work we have undertaken.

Section 6 details our awards, Section 7 provides an overview of the organization's finances and Section 8 provides updates on the constituent elements of Natural Justice's governance structure and on the internship and fellowship programmes. Section 9 is an analysis of the organization's prospects for 2010-2012.

Please note that this report, which covers our financial year (ending 28 February, 2010), contains some information already included in the 2008-2009 report.

1. COMMUNITY PROJECTS

1.1. OVERVIEW

After the cessation of the San-Hoodia Project, Natural Justice worked in South Africa, Kenya and India to assist local communities to develop and use biocultural community protocols.

1.2. AFRICA

1.2.1. SOUTH AFRICA: SAN HOODIA

BACKGROUND: In November 2008, Unilever withdrew from a licensing agreement to commercialize Hoodia. This had the effect of denying the San any income from the Hoodia benefit sharing agreement in the short- to medium-term. Natural Justice co-hosted a meeting of Hoodia stakeholders from Namibia and South Africa in early 2009, with financial support from GTZ and the University of Central Lancashire. A full report of the meeting is available on our website.

WORK UNDERTAKEN: The Hoodia Stakeholders' meeting was held from 22-23 January 2008 at Khwa ttu (the San Cultural Centre), near Cape Town. Thirty-nine participants and observers attended the meeting, including representatives from the South African and Namibian San, Namibian Nama, Southern African Hoodia Growers' Association (SAHGA), Hoodia Growers' Association of Namibia (HOGAN), and the governments of South Africa and Namibia. The

meeting addressed the perceived lack of dialogue between the stakeholders on a number of shared concerns. It focused attention on the benefit sharing arrangements relating to the growing of Hoodia in South Africa and Namibia.

The meeting provided all stakeholders an opportunity to:

- hear each other's key concerns;
- discuss in bilateral meetings their common interests and explore divergent points of view;
- meet as country groups to forge national approaches;
- address areas of cross-border cooperation; and
- set out a roadmap for the future development of southern Africa's Hoodia industry, for all stakeholders to benefit mutually.

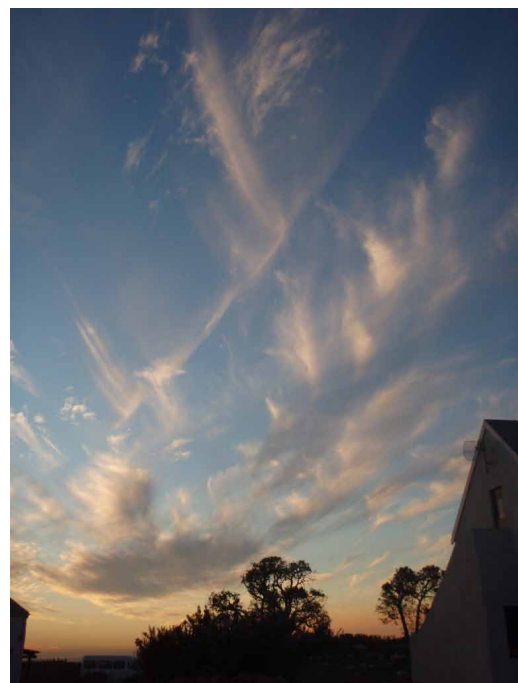
Participants agreed on a number of key issues, including needs for:

- a San-Nama agreement in Namibia;
- a negotiated agreement between the San-Nama and HOGHAN;
- a renegotiation of the San-SAHGA benefit sharing agreement;
- the rejuvenation of the Hoodia Trust Working Group;
- work toward a regional approach (to include Botswana); and
- engage specialists in marketing, testing and selling Hoodia.
- invite Phytotrade Africa to provide support to the Hoodia Working Group.

At the meeting, GTZ asked Natural Justice to reformulate the San-Hoodia Project to address the new circumstances. This was undertaken over February and a new project plan was submitted to GTZ. The project envisaged a number of consultations with San communities across the Kalahari to develop a bottom-up approach to setting out the values that should determine the uses of their traditional knowledge. Intra- and inter-community sharing of traditional knowledge was to form a major part of the focus of the work. The project was a non-starter because our main NGO partner was unable to begin work until the Namibian Interim Bioprospecting Committee provided the go-ahead, which it failed to do for over 9 months. In the intervening period, we agreed with GTZ to use the funds towards our work in developing the concept of biocultural community protocols (described below).

ANALYSIS AND LOOKING AHEAD: Our failure to work with San communities to help them to ensure that a) the biocultural foundations of their traditional knowledge is protected; and b) that any benefit sharing agreements are

based on the broader San communities' values sits badly with the organization. The San are a community that has had a number of short-term 'NGO interventions' and we had resolved to work with them over the long term. The failure of the CSIR-Phytopharm agreement and the inability to engage other local NGOs on the issues we felt most pressing led to the regrettable decision to look beyond the San to develop locally-relevant approaches to access and benefit sharing (ABS). Yet through the process, we saw firsthand the foundational issues that are central to "good ABS" (i.e. an ABS agreement that provides measurable social and cultural gains and leads to increased conservation and sustainable use of biodiversity), including land rights, good governance, cultural resilience, information, and transparent dealings by local NGOs and community advisors. It is through our early work with the San that we saw the necessity for any work on ABS to engage



communities in a more holistic manner and that led to the conceptualization of a biocultural community protocol. To not have been able to contribute to the community from which the ideas issued is disheartening. We realized that our efforts and resources were better spent elsewhere; the rest of the report sets out the areas in which we invested.

1.2.2. SOUTH AFRICA: BUSHBUCKRIDGE TRADITIONAL HEALTH PRACTITIONERS

BACKGROUND: In June 2009, Natural Justice met with the Kruger to Canyons Biosphere Committee to discuss a potential partnership towards assisting communities to use biocultural community protocols (“community protocol”) to protect their biological and cultural heritage and support local ways of life. We first met with the Biosphere Committee and the members of the Mpumalanga Tourism and Parks Authority (MTPA), who jointly conducted a feasibility study. Natural Justice subsequently met with a small number of traditional healers who complained of over-harvesting of their medicinal plants and potential misappropriation of their traditional knowledge.

WORK UNDERTAKEN: Over 5 months, culminating in August 2009, Natural Justice worked with the Bushbuckridge Traditional Health Practitioners (THPs) to develop a community protocol that sets out their biocultural values and references South African laws on bioprospecting. As part of this process, the healers formed the Bushbuckridge Traditional Health Practitioners Executive Committee, a group of 7 individuals that represents them in decisions related to ABS and related concerns. At the time of the formulation of the community protocol, the Executive Committee represented a group of about 80 THPs. Today, this group has been increased to about 200 THPs, and the protocol forms the very basis of the group’s collaboration. Unlike organizations that seek to integrate different healers among their members in exchange for membership fees, the Bushbuckridge THPs organized themselves according to their joint concerns, values and customary laws relating to biological resources and traditional knowledge. In their community protocol, the traditional healers call for support from the Biosphere Committee and local and national government for joint projects to protect their biodiversity, control their traditional knowledge and generate livelihoods.



Two important processes have been initiated by the development of the community protocol. First, they have been approached by representatives from South Africa’s Department of Science and Technology (DST) as part of the latter’s Farmer to Pharma (F2P) Program, which is an initiative to strengthen the country’s bio-economy, among other things by making better use of South Africa’s wealth in biological resources and associated traditional knowledge. A group of representatives from the programme came to visit the Bushbuckridge THPs and is now looking to establish an F2P pilot program in the region. The project’s proposed aim is to develop seedlings for home herbal gardens for primary health tool kits, which would be distributed within the local community. It could generate income for the THPs and revitalize the importance of traditional knowledge, while also addressing some of the region’s primary health concerns. The implementation of the project would take place in collaboration with Witwatersrand University’s rural campus in Bushbuckridge, relevant local government bodies and Natural Justice. The project has reached the proposal stage.

Second, the THPs are in discussions with the MTPA regarding a currently underused area for the establishment of a medicinal plant nursery. The area in question is part of the Bushbuckridge Nature Reserve, which is currently undergoing review due to its relatively insignificant contribution to biodiversity conservation. So far no decision has been made in this regard.

ANALYSIS: The Bushbuckridge biocultural community protocol was the first instance of working with South African communities to develop a community protocol and the feedback from the healers has been very useful. It was negotiated in a scenario where no clear local governance structure existed surrounding biological resources and traditional knowledge, and has contributed to its emergence. The community has helped highlight the idea that community protocols are potentially useful beyond a communications tool that bridges community and outside stakeholders, by also helping communities to organize around new and emerging legal and policy frameworks.

LOOKING AHEAD: Our collaboration with the Bushbuckridge THPs is continuing at a number of levels. First, we are supporting the above-mentioned DST project on home herbal gardens and the THPs initiative in lobbying the MTPA for a piece of land on which they could establish nurseries. Second, the CEO of the THP's Executive Committee, Rodney Sibuye, has been invited to a range of events where he was exposed to other stakeholders that may be of use to the future of the Committee. He will also participate in a meeting in Uganda organized by the Compas Network for Endogenous Development, where he will meet other THPs and learn about endogenous development possibilities for the community of healers that he represents. It is with initiatives such as these that we seek to continue supporting the community, acknowledging that the community protocol is not an end in itself, but has to be used to further the interests of the community while securing their role in conserving biodiversity and deriving sustainable livelihoods.

1.2.3. KENYA: SAMBURU PASTORALISTS

BACKGROUND: The Samburu are pastoralists who live across a number of districts of Kenya. They are keepers of indigenous and exotic breeds of livestock and their way of life is interlinked with and wholly dependent on their animals. Their desire to form their biocultural protocol was prompted by the Kenyan Government-promoted breeding programs that sought to replace or improve their local breeds. The program has resulted in heightened vulnerability to the recurring droughts. There has also been recent interest by Australian researchers in the disease- and drought-resistant characteristics of one of their indigenous breeds, the Red Maasai sheep.



Through two representatives of the community, Dr. Pat Lanyasunya and Dr. Jacob Wanyama, who have strong ties to the LIFE Network, Natural Justice was asked to assist the community in the preparation of a community protocol that would clearly set out the significance of the Samburu way of life, the value of their indigenous breeds, and the terms by which they would permit activities to be undertaken on their land or relating to their indigenous breeds and traditional knowledge.

WORK UNDERTAKEN: Natural Justice travelled to Samburu District in early September 2009 and spent 3 days with the Samburu Community of the Loisukutan, Natala, Loosuk, Ndikir, and other villages in Lorroki

and Kirisia Divisions. Consultations were held at the local school grounds with 8 of the Samburu Clans near the town of Maralal, approximately 350 km from Nairobi. The consultations were held with both male and female members of the community, organized by the community representatives. Also present at the consultations were a representative of the Kenyan Government, Ms. Ilse Köhler-Rollefson and Evelyn Mathias of the LIFE Network, Mrs. Dallibai, a pastoralist from the Raika Community in India, Pat Lanyasunya, David Lenemiria and Stephen Lemayian, Gino Cocchiaro from the International Development Law Organisation, and Natural Justice. Following the consultations, a draft of the community protocol was provided to Dr. Pat Lanyasunya and Dr. Jacob Wanyama, who then discussed the draft with the community, finalized the text in Samburu and organized for its publication.

ANALYSIS AND LOOKING AHEAD: It is too early to assess whether the community has derived benefits from this process. In the formation of the community protocol, Natural Justice was only able to spend 3 days with the community. We fear the process lacked sufficient community grounding as the time frame precluded full participation in the process. Drs. Wanyama and Pat Lanyasunya are continuing the process and Natural Justice is providing support where necessary. Looking ahead, we understand that the community, through their representatives, will be providing the community protocol to various parties, including the Kenyan Government.



1.2.4. FUTURE WORK IN AFRICA

Natural Justice is planning a two-year project with GTZ to develop rights-based approaches to the conservation and sustainable use of biodiversity and benefit sharing in Africa. With the support of the ABS Capacity Development Initiative for Africa, Natural Justice will host a meeting of African community representatives and legal experts to develop the programme. The workshop will be held in 2010.



1.3. ASIA

Natural Justice worked with three communities in India to assist in the development and use of biocultural community protocols.

1.3.1. INDIA: RAIKA PASTORALISTS

BACKGROUND: In May 2009, we began work with Lokhit Pashu-Palak Sansthan (LPPS), a community-based organization based in Rajasthan working with the Raika pastoralists. LPPS, with support from Natural Justice, helped the community develop a community protocol to support their claim to access the Kumbalgargh Forest.

WORK UNDERTAKEN: Natural Justice worked with a group of Raika pastoralists of Rajasthan, India, to help them develop a protocol to communicate the fullness of the Kumbalgargh forest's meaning to their lives and the implications of their exclusion to their livelihoods, traditional knowledge, and the surrounding biodiversity and genetic resources. Specifically, they set out 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. The Raika also 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. They draw on

their description of their ways of life to detail their rights under Indian law 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. 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.



ANALYSIS: The Raika biocultural community protocol was the first community protocol Natural Justice was involved in. The process illustrated a number of points about the nature of biocultural community protocols as a community-based response to the challenges of engaging with legal frameworks explored above. The endogenous process of developing the protocol served as an opportunity for the community to provide a biocultural critique of their exclusion from the Kumbalgargh Forest, which has far-reaching implications for local diversity. Learning about the laws that support their ways of life helped the Raika develop intra- and inter-community awareness and mobilization to define a forward-looking strategy. By articulating their worldview and providing supporting evidence in the form of a protocol, they have reconstituted the terms of the debate about their exclusion, broadening it to include the effects of the exclusion on their livestock, culture, traditional knowledge, and the health of the forest ecosystem itself, as well as their existing rights under customary, national, and international law. Through the process, we realized that community protocols enable communities to communicate both a focused response to activities on their territories and an integrated and value-laden response to the broader trend towards the legal disaggregation of their ways of life and reification of their traditional knowledge. For the Raika, a protocol serves as an interface for constructive

dialogue about their values and ways of life with government agents in a manner that embodies both the resilience and vulnerabilities of their biocultural diversity.

The Raika biocultural protocol led to other organizations in the sub-continent working with livestock keepers and pastoralists to begin to develop their own protocols. This led to the development of the biocultural protocols of the Lingayats of Bargur and the biocultural protocol of the Baloch Pashtoons of Pakistan. What was interesting was that both the Bargur Lingayat and Baloch Pashtoon protocols were developed by the local organizations themselves, with remote support from Natural Justice on legal aspects of the protocols.

LOOKING AHEAD: Natural Justice continues to work closely with LPPS. LPPS is planning a number of events relating to the use of the protocol and Natural Justice is supporting where required.

1.3.2. INDIA: TRADITIONAL HEALERS

BACKGROUND: During our work with LPPS, we were joined by two other organizations that visited us in Sadri, Rajasthan, to learn more about the process of developing a protocol. The first was the Jagaran Jan Vikas Samiti (JJVS), an organization working across Rajasthan, Gujarat and Madhya Pradesh that supports a network of traditional healers by providing low cost/free primary health care in rural areas based on locally grown medicinal plants and ensure conservation and sustainable use of medicinal plant biodiversity in the region. The second was the Bangalore-based Foundation for Revitalization of Local Health Traditions (FRLHT), whose mission is to enhance the quality of medical relief and healthcare in rural and urban India through revitalizing Indian medical heritage. FRLHT, which is recognized by the Indian government as a National Centre for Excellence for Medicinal Plants and Traditional Knowledge, also facilitates a network of organizations across India that work with traditional healers to ensure the revitalization of local health traditions and access to primary health care. Interested in the possibility of community protocols assisting to secure the rights of traditional healers under Indian and international law, both JJVS and FRLHT invited Natural Justice to facilitate the development of protocols with the healer organizations with which they work.

WORK UNDERTAKEN: In July 2009, Natural Justice returned to India to assist with the development of two community protocols, one with the Gunis (traditional healers) with whom JJVS works and another with the Vaidyas of the Malayali hills (vaidyas are traditional healers of the Malayali region who practice an ancient system of Siddha medicine).

ANALYSIS: The work with both communities was a learning process. Initially, we supported the idea that the process would be wholly driven locally, but we realized that communication between drivers of the process, community members and other relevant parties was mixed, leading to some confusion at varying levels. We also questioned how the protocols would be subsequently used by the communities. At the same time, both JJVS and FRLHT (who together have national scope) saw firsthand how a community protocol can be developed and supported the approach. This has potentially significant implications for the way in which communities engage in “protecting their traditional knowledge” in India.



LOOKING AHEAD: Subsequent to the above, the utility of biocultural protocols to secure the rights of traditional healers has been recognized by the AYUSH (Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy) Department of the Health Ministry of India. Natural Justice remains committed to working with JJVS and FRLHT.

1.3.3. PAKISTAN: LIVESTOCK KEEPERS

SAVES (Society of Animal, Veterinary and Environmental Scientists) based in Balochistan in Pakistan has been working with the Pashtoon camel pastoralists in the region for a number of years. Through the LIFE Network, Dr. Abdul Raziq, who originates from the Pashtoon community and is the president of SAVES, approached Natural Justice to provide legal support to the Baloch Pashtoons to develop their community protocol. The Baloch Pashtoons held a number of meetings and developed a protocol. The legal component was researched by Misha Rahman, one of Natural Justice's interns from Pakistan who is a final-year student at the Lahore University of Management Sciences. The process highlighted the potential and pitfalls of communities and their NGOs developing a protocol without much assistance.

1.3.4. MALAYSIA

Natural Justice has been invited by the Global Diversity Foundation's regional office in Sabah, Malaysia, to present on biocultural community protocols and help evaluate whether the approach might assist the communities with whom they work. Some of their challenges that could be in part addressed by a protocol include: challenging a proposed dam, increasing access to the Crocker Range Park, and gaining recognition of Indigenous peoples' and community conserved areas. The trip is planned for February-March 2010.



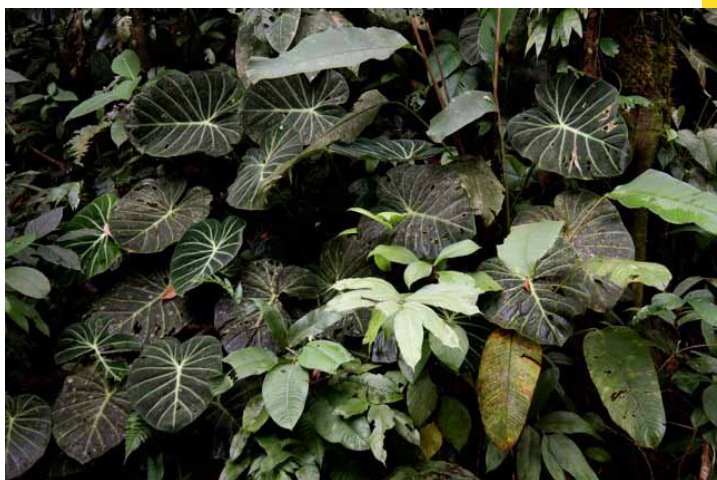
1.4. LATIN AMERICA

In anticipation of the 9th Meeting of the Ad Hoc Open-ended Working Group on ABS in Cali (Colombia) in March 2010, Natural Justice is arranging several meetings with organizations in Latin America who could be interested in future collaboration. Some of these meetings will be facilitated by Juan Mayr, former Minister of the Environment of Colombia, who is a Member of the board of the SEED Awards (see below).

Our plan for 2010/2011 is to develop a few pilot projects in collaboration with local partners. We are currently in

discussions about three initiatives:

- Collaboration with Instituto de Investigaciones Ambientales del Pacífico (IIAP) and their sister institution Oro Verde, who also won the SEED Gold Award in 2009. IIAP distinguishes itself through its distinctive institutional integration of both afro-descendent and Indigenous communities in the Institute. The communities are concerned about their traditional knowledge and the use of medicinal plants, the relationship of protected areas and communities and land right conflicts in community areas where gold mining has been sanctioned by the government.
- Collaboration with the Consejo Indígena Mesoamericano in Costa Rica, which works on concerns of Indigenous communities in Central America. Esther Camac, Executive Director of the Consejo, suggested two areas of collaboration. First, to develop of a community protocol among 7 villages of one ethnic community to streamline their approach on ABS in Costa Rica, and the development of a community protocol in a trans-frontier dispute on traditional knowledge between Honduras and Nicaragua in which one community is engaging with a potential user and the other community feels left out. The communication between Esther and Natural Justice is currently ongoing.
- Collaboration with COMPAS, network for endogenous development. COMPAS' Bolivian chapter expressed interest in working with Natural Justice in order to integrate some of our material into their training activities. The first part of our collaboration would be for COMPAS to translate some of Natural Justice's publications into Spanish. We are currently discussing this with them.



LOOKING AHEAD: Funding remains an obstacle on all of the above-mentioned work. In the long term, we will be seeking financial support for all regional activities from larger funders such as the Ford Foundation and Christensen Fund or through a partnership with COMPAS. UNEP, albeit not being able to provide funding itself, has expressed their commitment in helping through political support in gaining access to funding in the region.

2. TRADITIONAL KNOWLEDGE COMMONS

BACKGROUND: The Traditional Knowledge Commons (TKC) system seeks to address the complexities that arise under the proposed International Regime on Access and Benefit Sharing when considering non-commercial research agreements and traditional knowledge. The current prospects that Indigenous peoples and local communities face are the unregulated access to their knowledge, which leaves it open to abuse, or having to negotiate a separate ABS agreement for every non-commercial use of their traditional knowledge, which would greatly restrict the sharing of that knowledge and potentially drive up the transaction costs for providers and users.

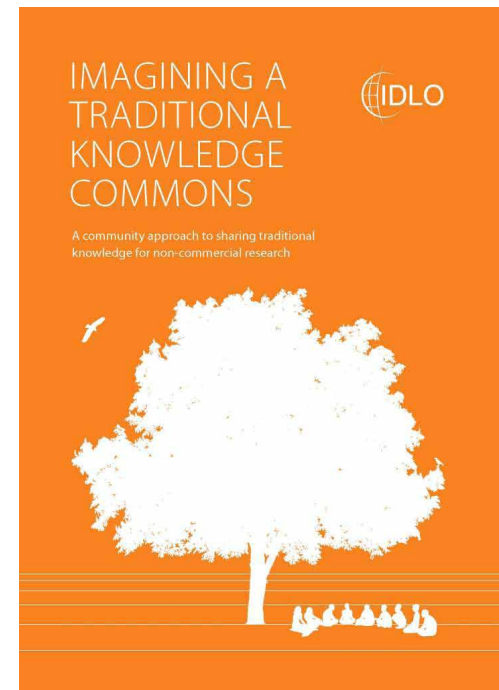
The TKC system proposed by Natural Justice seeks to address these issues by corresponding to a value system adapted by many communities in which the sharing of knowledge for specific use among peers is deeply integrated

into customary law, providing a safe middle ground where traditional knowledge can be promoted and circulated without having to place it either into the public domain or deny all access to it entirely. The system could therefore provide a platform for traditional knowledge sharing under share-alike and other conditions put forward by the communities themselves and protected by a set of user licenses through which communities could define what form benefits should take and require compliance with customary laws that govern the use of traditional knowledge.

WORK UNDERTAKEN: In September 2009, Natural Justice discussed the TKC at a Pan-African Meeting of approximately 60 representatives of Indigenous peoples and local communities, where it was considered as a possible *sui generis* enforcement mechanism that can be developed by Indigenous peoples and local communities themselves to facilitate the enforcement of rights when dealing with researchers.

In November 2009, in collaboration with the University of Cape Town's Intellectual Property Law and Policy Research Unit and the International Development Law Organization (IDLO), Natural Justice published a description of the system, titled "Imagining a Traditional Knowledge Commons". The monograph was presented and discussed at two side events at the Sixth Meeting of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity and the Eighth Meeting of the Ad Hoc Open-ended Working Group on Access and Benefit Sharing in Montreal, Canada.

On December 14th and 15th, 2009, Natural Justice, IDLO, and the University of Cape Town's Intellectual Property Law and Policy Research Unit co-hosted the Traditional Knowledge Commons Workshop in Cape Town, South Africa. The group of 22 attendees consisted of advocates of Indigenous peoples and local communities as well as experts in intellectual property law and ABS, who discussed the issues related to traditional knowledge and non-commercial research and how a TKC system could be integrated into the national and international legal frameworks of traditional knowledge protection. A report of the TKC Workshop was drafted by the organizers and provided to all participants of the workshop.



Following the input received since September 2009 and the further research conducted by Natural Justice, a more comprehensive and expanded version of the original publication is planned. This draft document, titled "Implementing a Traditional Knowledge Commons: Opportunities and Challenges", will be provided to and discussed with various representatives of Indigenous peoples and local communities and the non-commercial research sector at the Ninth Meeting of the Ad Hoc Open-ended Working Group on Access and Benefit Sharing in March 2010 in Cali, Colombia.

Natural Justice met with a representative of Research Information Systems in Delhi, India, in February 2010 to discuss the traditional knowledge commons and possible collaboration

in developing a pilot in India. Natural Justice also met with representatives of the South African Department of Science and Technology to discuss a proposal to develop a pilot in South Africa. A proposal has been provided to the Department for their consideration.

ANALYSIS AND LOOKING AHEAD: Since September 2009, Natural Justice has been able to complete a number of tasks and gain significant input on the proposed system. Whilst Indigenous peoples and local communities have to a large extent been supportive of the system, their remains concern how compliance with a possible TKC system would be monitored given the current lack of international compliance and monitoring mechanisms. The research sector has also been supportive as they are increasingly adopting ethical and best practice research guidelines for engaging with communities in order to distance themselves and their research from associations of biopiracy. Natural Justice will continue to seek input on the TKC in further consultations with communities and the research community, working towards the goal of refining the model and the possible development of a pilot study in South Africa.

3. INTERNATIONAL ADVOCACY

Natural Justice is engaging actively in negotiations under the Convention on Biological Diversity (CBD), the UN Framework Convention on Climate Change (UNFCCC) and the Food and Agriculture Organization of the UN (FAO), and watching the negotiations of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore under the auspices of the World Intellectual Property Organization (WIPO).

3.1. CONVENTION ON BIOLOGICAL DIVERSITY

The Raika biocultural protocol was presented at the 2009 Pan African Indigenous and Local Communities meeting organized by the ABS Initiative for Africa and the Indigenous Information Network in Nairobi in September 2009. Dallibai Raika, one of the Raika women leaders, presented on the Raika protocol to over 60 representatives of

African Indigenous peoples and local communities. At this Meeting, Rose Makhubela, a traditional healer from Bushbuckridge, South Africa, also presented on the Bushbuckridge Traditional Healers Biocultural Protocol that Natural Justice had helped facilitate.

The African community representatives present at the meeting adopted a formal resolution asking the African governments negotiating the International Protocol on ABS under the Convention on Biological Diversity to support the recognition of community protocols.

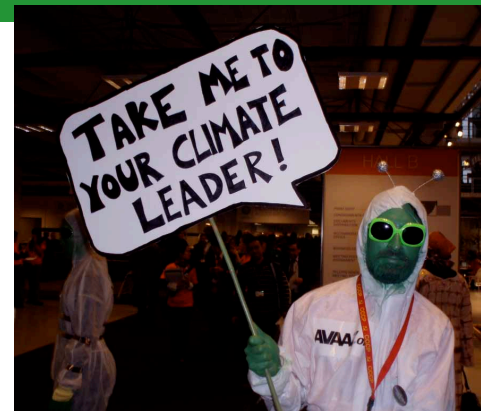
Dallibai Raika and Hanwant Singh Rathore (the Coordinator of LPPS) also presented the Raika Protocol at a side event organized by Natural Justice

in Montreal in November 2009 during the 8th Meeting of the Ad Hoc Open-ended Working Group on ABS. This meeting was an important forum for advocating biocultural community protocols and ensuring their inclusion in international law amongst the 194 countries present that were negotiating the international protocol on ABS.



3.2. UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

Natural Justice attended the 15th Conference of the Parties of the UNFCCC in Copenhagen. It is clear that some of the gains made by communities relating to the management of their natural resources under the CBD are being heavily contested under the UNFCCC. Specifically, Natural Justice plans to increase its involvement in a programme called Reducing Emissions from Deforestation and Forest Degradation.



3.3. FOOD AND AGRICULTURE ORGANIZATION

Natural Justice spoke on the importance of biocultural protocols to secure Livestock Keepers' Rights at a side event organized by the LIFE Network and the League of Pastoral Peoples in October 2009 at the 12th Meeting of the Commission on Genetic Resources for Food and Agriculture (CGRFA) in Rome. The role of biocultural protocols as community-developed legal instruments in a larger campaign to secure livestock keepers' rights is growing and the FAO has now begun to give them some consideration.

3.4. WORLD INTELLECTUAL PROPERTY ORGANIZATION

Natural Justice is closely watching the negotiations being undertaken under the auspices of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.



4. TECHNICAL & LEGAL ADVICE

Next to other fundraising activities, Natural Justice has increasingly started to apply for tenders/consulting activities in order to generate additional financial resources into the organization. While none of these projects or other related consulting activities will allow for the full financing of Natural Justice's work, it does provide the organization with a little flexibility for exploring new work outside of our currently funded projects.

4.1. INSTITUTIONAL ADVISORY

In early 2007, steps were taken under the initiative of GTZ and MTPA-DED to establish an international partnership

between the Kruger to Canyons (K2C) Biosphere in South Africa and the Rhön Biosphere in Germany. The K2C Blyde Hydro-Power Project is one of the outcomes of this initiative. The K2C Biosphere committee approached GTZ and MTPA for funding to draw up a study investigating the feasibility of integrating a hydro electric power station into the Blyderivierpoort Dam, located within the Blyde River Canyon Nature Reserve, which is nearly exclusively under land claim by surrounding communities. After confirming the financial viability of the project, a second analysis was needed to look at the legal and institutional requirements to enable the implementation of the project. Above all, a number of ownership and beneficiation issues needed to be resolved before the project could advance, analyzing different stakeholders' rights in any future revenues generated from the project. As a result, the Executive Committee issued a tender through MTPA for a legal analysis of rights and obligations in relation to a hydro electric power station in the dam. Natural Justice applied for the tender in collaboration with members of UCT's Marine and Environmental Law Unit. The tender was awarded to Natural Justice and the analysis was finalized to the satisfaction of MTPA.

In addition to the abovementioned initiatives with DST, DEA and MTPA, Natural Justice was awarded a consultancy for UNDP to implement two community-based research projects on how changes in national and international seed markets resulting from new property regimes surrounding seeds has affected the role of women in agricultural communities. Currently, Natural Justice is waiting for the finalisation of the contract after which the work will commence.

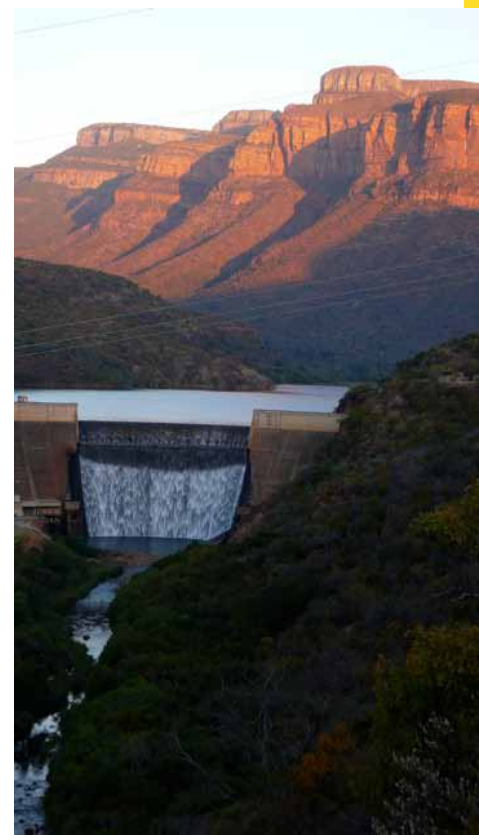
4.2. NATIONAL ADVISORY

Natural Justice continues to collaborate closely with the Department of Science and Technology (DST) and the Department of Environmental Affairs (DEA). Regarding DST, the work is in partnership with the unit on Indigenous Knowledge Systems and we are in the process of establishing a more formal relationship with them in the form of a Memorandum of Understanding. In the meantime, we provide the Department with support with respect to the Farmer to Pharma work in the Bushbuckridge area (see Section 1.2.2.), as well as legal advice for some of the government's scientific bodies, for example, the Medical Research Council, if they are to integrate traditional knowledge into some of their research. Finally, DST has expressed interest in our work on the TKC and is interested in establishing a pilot in collaboration with a national university (see Section 2).

Natural Justice' collaboration with the DEA was mostly a result of a tender the Department issued originally in January 2009 on the examination of bioprospecting permit application that had so far been submitted to the DEA, as well as the drafting of guidelines for the examination of permit applications. The tender was repeatedly withdrawn and republished and was finally awarded to both Natural Justice and UCT's Environmental Evaluation Unit, with a request to fuse the two individually submitted tenders. After substantial review and the integration of both tenders, the tender was submitted back to DEA. After a short while, however, DEA communicated that the tender had again been withdrawn and may be re-advertised in the near future. As this had been the third time the tender was withdrawn, each time requiring considerable effort for re-applying to a new and slightly adapted tender, we decided to not spend further time with this project and to concentrate our energies on other activities.

4.3. REGIONAL ADVISORY

2009 is the second year in a row in which Natural Justice has had a reporting contract with the ABS Capacity





Development Initiative for Africa (the Initiative). Natural Justice attends the various regional and multi-stakeholder capacity development workshops organized by the Initiative as a resource and to rapporteur.

Besides providing a much-needed source of income for Natural Justice, the reporting work also allowed us to build relationships with African governments, including the CBD and ABS focal points who attend the Initiative workshops and meetings. This has provided Natural Justice with a keen understanding of government processes and a network of government contacts, both of which we are using in our rights-based work with communities and CBOs.

4.4. INTERNATIONAL ADVISORY

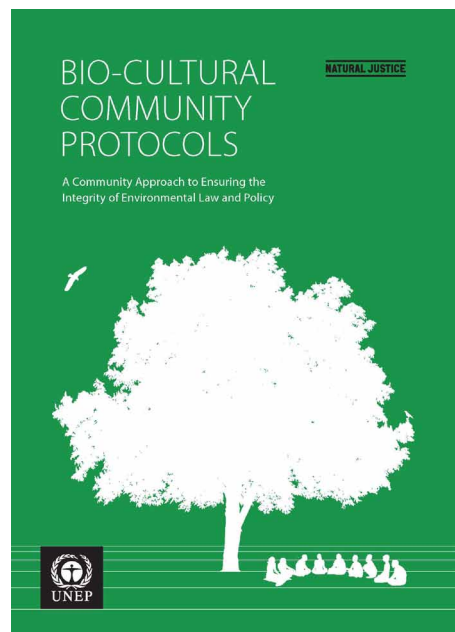
Natural Justice continues to advise the African Group in the Ad Hoc Open-ended Working Group on ABS, and has managed to ensure that the term “community protocols” is in the draft of the international protocol. Negotiations are likely to be finalized by the 10th Conference of the Parties to the CBD (October 2010, in Nagoya, Japan), throughout which Natural Justice will be directly involved. We then intend on being strategically involved in the incumbent Protocol’s implementation.

Natural Justice also provided consultancy services to the Earth Negotiations Bulletin to cover the Working Group on Liability and Redress to the Cartagena Protocol on Biosafety (D.F. Mexico) and Working Group 7 of the Ad Hoc Open-ended Working Group on Access and Benefit Sharing (Paris, France).

5. PUBLICATIONS

Natural Justice has produced a number of publications this year. A booklet on biocultural community protocols released in March was turned into a book entitled “Bio-cultural Community Protocols: A Community Approach to Ensuring the Integrity of Environmental Law and Policy”, which was launched at the 8th meeting of the Ad Hoc Open-ended Working Group on ABS in Montreal, Canada, in November 2009, together with “Imagining a Traditional Knowledge Commons”.

In addition, we have written two chapters for books on traditional knowledge and an article entitled “Shifting Sands of ABS Best Practice”, which is on the UN University-hosted Traditional Knowledge Portal. We have also revamped our website and blog our activities to provide a very up-to-date picture of our work.



6. AWARDS

In 2009, Natural Justice applied for the SEED Initiative Award and won one of five worldwide Gold Awards out of more than 1100 submissions received, the first ever in South Africa. The SEED Initiative is sponsored by IUCN, UNDP and UNEP and “identifies, profiles and supports promising, locally-driven, start-up enterprises working in partnership in developing countries to improve livelihoods, tackle poverty and marginalisation, and manage natural resources sustainably.” We will use the 25,000 USD in organizational support services to develop our governance structures, raise further awareness of Natural Justice’ work and establish contacts. An award ceremony and 3-day workshop with Helen Marquardt, Executive Director of the SEED initiative, on organizational growth and management is planned for 2010.

7. FINANCIAL ANALYSIS

Despite the global economic downturn and reduction in funding opportunities, Natural Justice has managed to finance its work across a range of areas. GTZ has provided the core funding for the organization, further highlighting how essential it has been to Natural Justice’s establishment. It also raises the need to diversify funding sources, something GTZ supports. We were provided funding for the Indian work and the community protocols book from UNEP Division of Environmental Laws and Conventions. We have been working on securing short-term funding for specific activities for which we require support, which has been necessary but is an unsustainable approach. An alternative strategy is to make long-term funding applications, which has been agreed upon as a priority for 2010.

The following table sets out the organization’s finances for our financial year (March 2009-February 2010):

Income	1 491 812
Grants Received:	787 298
GTZ	245 646
GTZ	18 718
GTZ	353 289
GTZ	13 170
IDLO	79 954
MTPA	40 000
Adelphi Research	36 522
Donations:	438 613
University of Central Lancashire	41 800
IDLO	126 359
GTZ	240 435
Liga Fuer Hirt	7 484
Liga Fuer Hirt	1 799
IDLO	20 736

UNEP Fund	140 034
Consultation Fees	115 000
Interest Earned	10 867
Expenditure	1 366 736
Personnel Costs	655 000
Administration Costs	168 742
Bank Charges	10 251
Depreciation	1 173
Project Travel	407 158
Information Development & Publication	124 412
Surplus/(deficit) for 2009	125 076

8. GOVERNANCE

8.1. TRUSTEES

There was no change at the board level, with Adele Wildschut and Hennie van Vuuren as trustees and Kabir Bavikatte and Harry Jonas also serving as members.

8.2. STAFF

Kabir Bavikatte and Harry Jonas remain as Co-Directors. Johanna von Braun has provided a significant amount of direct support to community and technical advisory work on a pro bono basis and we look forward to her joining the core team. Gino Cocchiari, IDLO, is also likely to join the core team in early 2010. Holly Shrumm has volunteered since September 2009, contributing to our websites, publications, training materials, and emerging work in Sabah.



8.3. INTERNATIONAL ADVISORY BOARD

Tomme Young and Brendan Tobin remain as international advisors. It is agreed that more needs to be made of this opportunity.

8.4. ASSOCIATES

Natural Justice currently has 5 Associates. It is recognized that the Associate concept requires an overhaul to maximize the potential of the arrangement. This is planned for 2010.

8.5. FELLOWS

Natural Justice developed a Fellowship Programme to support individuals in communities. We acknowledge that cash-poverty can limit the ability of otherwise community-focused individuals from acting upon their ideas. The Fellowship Programme is intended to support individuals to be able to develop their ideas into programmes for which we could then jointly fundraise.

Natural Justice's first Fellow was Annetta Bok, a Khomani San woman. Annetta is a strong leader in the community who, as a member of the Indigenous Peoples of Africa Coordinating Committee, has a strong understanding of international policy as it relates to local communities and their traditional knowledge and biodiversity. Annetta found it challenging to follow through on the programme she developed with Natural Justice for a variety of reasons that we discussed at a series of meetings. The Fellowship was suspended in early 2010. We continue to see merit in the programme and we will resume it when we meet the right candidate(s).

8.6. INTERNS

Natural Justice was joined by 5 interns (a Canadian, two Americans and two Pakistanis). We continue to strive to engage more local lawyers, something that has been difficult considering the core staff's travel schedule but is a priority for 2010.

9. ANALYSIS & PROSPECTS FOR 2010



Overall, Natural Justice has established the seeds of substantial community programmes in South Africa, regionally, and in India, as well as establishing a role for the organization as informing the process with innovative legal thought based on practical experience. While Natural Justice has been successful in creating opportunities for future work, we have created corresponding challenges. This section sets out the vision for each area of work over the year, with a final section on the challenges that will need to be overcome to better support communities in their future challenges.

CORE FOCUS: The focus until November 2010 is working to fully evaluate the strengths and weaknesses of biocultural community protocols within the context of the ABS regime. This means working with communities and their CBOs to develop protocols, and to fully evaluate the approach. At the same time, we are increasingly interested in the application of community protocols to lesser emphasized aspects of ABS such as animal and marine genetic resources, as well as communities' engagement with other international and national regimes dealing with natural resources such as Reducing Emissions through Deforestation and Forest Degradation in developing countries (REDD), the UN Convention to Combat Desertification, and payments for ecosystem services.

We realize from our work that we have put a heavy emphasis on the process that leads to the development of a protocol, and that is now well-founded. However, we have not yet fully explored the range of activities that should follow a protocol. This is linked to the fact that we have had experience of developing protocols, but have not yet worked on post-protocol processes. One recent suggestion from our partners in the Raika protocol is that communities redevelop the protocol every year, making the protocol a rights-based participatory management tool. These types of ideas command attention.



SOUTH AFRICA: Natural Justice plans to deepen its work in the K2C to include the Hydropower project's benefit sharing elements; the GEF-SGP proposal will focus on the K2C. We hope to be working closely with the Department of Environment and Tourism to implement the Bioprospecting Regulations and with the Department of Science and Technology to further define the interface between users and knowledge holders.

AFRICA: We have agreed funding from GTZ to work with up to 5 communities and their CBOs to develop BCPs over the next year. We plan to draw in a number of varied partners to the projects, including

IPACC, the Union for Ethical Biotrade, and to work with communities who have traditional knowledge relating to either plant, animal or marine resources.

INDIA: UNEP has funded the development of two protocols in India by November 2009. During that visit, Natural Justice will meet further with FRLHT to explore how we can develop a broad spectrum framework for protecting traditional knowledge using the biocultural approach. We are planning on using the K2C as a beginning to focusing on Biosphere Reserves and plan to work in the Indian Biosphere Reserve of Nilgiri. We are also proposing to UNEP that we assist with the implementation of the Biodiversity Act being supported by a GEF grant. Depending on how the work goes, and our work in Sabah, Malaysia, Natural Justice may require a permanent Asian presence within the year.

UNESCO BIOSPHERE RESERVES: Natural Justice believes the Biosphere Reserve framework is a useful framework. As above, we want to work closely with UNESCO to develop critical thinking on the links between biodiversity and cultural diversity. In that vein, we will contribute to an international Congress on the subject planned for mid-2010, to be held in Montreal.

ADVISORY: We will continue to work at the international level. We will advise the African Group in the 9th Ad Hoc Open-ended Working Group on ABS, through to the 10th Conference of the Parties to the CBD in October 2010. At the national level, we are deepening our involvement with the Department of Water and Environmental Affairs and the Department of Science and Technology. We will continue to explore how we can assist with the implementation of the Bioprospecting Regulations, *inter alia*. We will continue to work closely with the ABS Capacity Development Initiative for Africa, and through them hope to be able to develop training-of-trainer manuals for the African context, as well as increase the number of case studies and other materials.



RESEARCH AND INTERNSHIP PROGRAMMES: We hope to attract more local students for the internship programme in the forthcoming year and forge official links with the University of Cape Town. As part of this, one of the ideas Natural Justice wants to pursue is developing an online academic self-learning programme. The idea is to

draw on Natural Justice's collective academic backgrounds and experience to develop a highly progressive collection of articles, resources and materials (including questions for thought provocation) to develop interested individuals' critical thought on the law- development-environment nexus. Once established, we aim to work towards holding courses/summer schools at local institutions (Africa or India) to host students and practitioners to look at these issues as a precursor to a more permanent future institutional arrangement.



GOVERNANCE: Natural Justice will benefit greatly from our two new Executive Members, as well as our three international advisors. As the scope of our work increases, the collective wisdom of this group will become increasingly important to the sustainable development of the organization. The new associates, it is hoped, will open up new areas of work for the organization, simultaneously forging links with the existing programmes.

FUNDING: We continue to evaluate new sources of funding and now that we have a track record, we are in the course of making a number of proposals for core costs. Whilst GTZ has agreed on the new budget that provides funding for the K2C work and a number of African communities, we are actively looking to cover more of our African work from other sources. GEF-SGP may be one potential funder who is interested in funding K2C work and on Natural Justice becoming a partner, meaning that we provide them advice on certain environmental legal issues on an *ad hoc* basis. We will continue discussions with UNEP about how we can assist in implementing their 2010 priorities in both Africa and India.

CHALLENGES: If the main aim is doing quality work with communities and creating lasting change, the challenge is to not take on too many projects. Our haste to extend must be tempered by an acknowledgement that the

advances we have made thus far issue from a deep focus on a core issue, not from skipping from one issue and one community to another. Natural Justice will have to contemplate the immediacy of the term "sustainable development" if it is to continue to do good community work, contribute to critical legal thought and influence international law. We must remain alert to and internalize our own critique of market-based approaches as they relate to communities. We argue that to sacrifice core values for short-term gains is inherently counterproductive, and instead communities are advised to approach new challenges in ways that reaffirm their values. Thus far, our sheer focus has led us to begin to make a valid contribution. In these terms, Natural Justice is well-advised to meet the challenge of deepening the organization's involvement with communities and achieving impacts at the national and international levels by striving to retain the quiet to listen and stillness to think.



