



THE ABS
CAPACITY
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RENFORCEMENT
DES CAPACITES
POUR L'APA

Webinar series: Indigenous Peoples and Local Communities' involvement in ABS implementation

NOTES

All presentations made during the webinar series are available on this link:

<https://naturaljustice.org/webinar-presentations-community-involvement-in-access-and-benefit-sharing/>.

The video recordings of the presentations are also available on this link:

<https://www.youtube.com/channel/UCBH2fwJvWtTeUNacZ-c51uw/videos>

Webinar Facilitator: Lena Fey from the ABS Capacity Development Initiative

Webinar 1 | Practical advice for facilitating the development of ABS- related community protocols

07 October 2020

This session aimed to promote a common understanding of community protocols and their role and value in Access and Benefit Sharing (ABS) implementation. It was an opportunity to share practical advice on facilitating community protocol processes, including guiding principles of a good process, considerations for initiating such a process, definition of the "community" that develops the protocol, key steps and the role of stakeholders.

Presentations :

- Opening remarks, by: Hartmut Meyer, *Team Leader at the ABS Capacity Development Initiative*
And Barbara Lassen, *Francophone Hub Director of Natural Justice*
- [Reminder on the Nagoya Protocol on Access and Benefit Sharing \(ABS\), community rights and community protocols](#), by Jazy Rasolojaona, *Programme Manager, Natural Justice*

- [Example 1: Rooibos community protocol in South Africa](#), by Sobantu Mzwakali, *Senior Programme Officer, South Africa Office, Natural Justice*
- [Example 2: Endorois community protocol in Kenya](#), by Maryama Farah, *Programme Officer, Kenya Office, Natural Justice*
- [Key lessons learned and recommendations on good process for community protocols facilitation](#), by Barbara Lassen, *Hub Director, Francophone Office, Natural Justice*

Key points of the discussions with the participants:

- The duration of the BCP process varies from one community protocol to another. Some community groups are more "organised" than others in terms of decision-making structures or to respond to specific questions. The number of people to be included in the community protocol process and the size of the geographic area also influence the duration. If it is a larger area, continuous round trips are often required to ensure connections with the community. The process may take longer when the community has several objectives in developing its community protocol. It is usually important to establish from the outset what the community's priorities are that need to be addressed through the community protocol, in order to have a better idea on the steps to be taken for its development. This can speed up the process.
- Community protocol processes are/should be motivated by concrete objectives. They can be initiated in response to a request for access to a specific resource, but sometimes it is only an entry point. In the development of their protocol, communities can address all the resources in their territories. This may also include other resources apart from biological/genetic resources; such as community land, mines, water, etc. Community protocols are often more valuable to communities when they incorporate a holistic view of the communities' way of life.
- During the development of a community protocol, legal advice and assistance is given to the community. The aim is to identify the rights they have under national and international law, which will subsequently be included in the community protocol. The articulation of these national and international rights with the customary laws of the communities is, however, an exercise that may take time. The facilitator must also answer the community questions around their rights.
- It is often advisable to let the process be completed before communities begin to engage constructively in the use of their community protocol. However, there are cases where communities are sufficiently advanced in the discussions on their community protocol and use it to engage in discussions/dialogues with external actors - even if it is not entirely complete.
- It is possible to adopt a flexible approach to combine a community protocol with a local convention if it already exists at the community level. Such a local convention often already defines certain rules on the social life of communities or rules on their

environment. The elements of the community protocol will, therefore, complement its content. The approach to be followed for this kind of exercise should be included in the guide on community protocols that Natural Justice is developing.

- It is important that regulators and ABS focal points contribute to the process. The principles remain that the process should be community-led and that the community should support it. Regulators should not prevent the process from including many actors - as far as necessary and possible.
- Regarding the idea of a "standard" community protocol: each community protocol is different in the way it is developed and in its content. It is recommended that one does not try to develop and use a standard community protocol, but to develop a protocol that is adapted to the situation and context of each community. However, it is possible to develop specific guidelines that provide guidance for facilitating the development of the community protocol and that can be used by facilitators to outline the principles to be followed when developing community protocols.
- Concerning the integration of objectives related to biodiversity conservation and sustainable use in community protocols: In the case of the Mariarano community protocol in Madagascar, community protocols are often a space where communities reaffirm (even to their members) the values of biodiversity and their roles in its conservation and sustainable use. Some community protocols, such as the Endorois community protocol in Kenya, integrate principles and rules of conservation and resource use in the community' territories. These rules have then been combined with the land use plan of the said territory. Other experiences also show that community protocols can be used as a space to call for recognition and respect for their customary system of natural resource management or to inform external actors on how conservation measures should be implemented. Nevertheless, further study should be done on the role that community protocols play in the interface between ABS and conservation.

Webinar 2 | **Using community protocols for ABS implementation** **12 October 2020**

This session provided an overview of possibilities to support Indigenous peoples and local communities to use their community protocols for different purposes in the context of ABS. This included, for instance, the use of community protocols for benefit sharing negotiations, implementation of value chains, conflict resolution, affirming the rights on specific resources and advocacy strategies. It also provided an opportunity for government representatives, community representatives and users to share practical experiences of developing and using a community protocol in the case of the buchu plant in South Africa.

Presentation:

- [Possibilities of using community protocols for ABS implementation and development of national framework on ABS](#), by Jazzy Rasolojaona

- Panel discussion on experiences of communities and users – Case of buchu, a plant in South Africa used in medicinal and related products

<p>Lesle Jansen (moderator), <i>Natural Justice</i></p> <p>Stanley Peterson, <i>Member of Khoi San National Council</i></p> <p>April Harvey, <i>Buchu industry</i></p> <p>Ntambudzeni Nephumembe, <i>Department of Environment, Forestry and Fisheries (DEFF) South Africa</i></p>
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Key points of the discussions with the participants:

- Community protocols have been, or can be, used in different ways and for different purposes in the implementation of ABS. The objectives set by communities for its use are generally those that motivated them to develop their protocol. How the community protocol will be used should, therefore, be addressed during the development of the protocol itself, well before its publication once developed. This allows communities to orient the content of their protocol according to the objectives of its use.
- Community protocols in the context of shared resources: it may happen that several neighbouring communities are concerned by the same request for access to the same shared resource in their respective territories. These communities can be encouraged to organise themselves through a common system in order to negotiate together with external parties and ensure that all the communities involved can access the benefits. There is a case in Cameroon where different communities do not share the same cultures or values but have access to the same resources. They, therefore, had to agree to develop a single community protocol, without losing sight of the diversity of lifestyles, to meet their common objectives in terms of access and benefit sharing.
- In a situation where communities with different lifestyles are involved in developing a community protocol, it should be flexible enough to take into account the complexity of such diversity. The Rooibos community protocol has enabled 40 different communities, organised differently and with distinct lifestyles, to agree on their organisation regarding the sharing of traditional knowledge associated with Rooibos.
- In the case of the Khoi and the San, they are in the process of developing three community protocols, some of which may be cross-border. The national system can support community protocols through the way regulations are conceptualised at national and local level and the way community protocols are registered at the national clearinghouse level. Support from regulators and national government is necessary and essential to ensure the applicability of the community protocols at

national level. In South Africa, for example, community protocols are recognised in national legislation by different government departments.

Key points of the panel discussions:

Intervention by a government representative:

- Buchu is an indigenous species that has long been used by communities in South Africa. It is now used at a commercial level and is regulated by national legislation. In order for industry to access this resource, it must enter into agreements with indigenous peoples who have traditional knowledge of the plant and must obtain prior, informed consent.
- The development of community protocols is essential to support the effective implementation of the law in South Africa and the Department of Environment, Forestry and Fisheries (DEFF) supports the implementation of the community protocol within the framework of regulatory law. In South Africa, community protocols have been useful, for example in the case of Rooibos, as they have enabled industry to determine with whom it should enter into negotiations and from which communities it should obtain consent, essential to access to resources.
- The community protocol can also help to deal with potential and existing conflicts. It can provide information on the different avenues for conflict resolution according to community practices and the law, whether conflicts within the community or between the community and external actors.

Intervention by a community representative:

- The community protocol has helped to define the different links that indigenous peoples have with buchu, as their traditions, rules and systems of knowledge and governance are described, explaining how their consent can be obtained.
- Representatives of the Khoi and San communities who already have experience with the Rooibos community protocols visited the communities involved in the development of buchu. After the exchanges, they hope that, as communities, they will also benefit from a community protocol that defines the value of resources and associated traditional knowledge for their development. The exchange also prompted the government to carry out further awareness-raising activities on community protocols among the communities.

From the industry's point of view:

- Community protocols allow traditional knowledge holders to formulate their own organised structure that can contribute to self-governance processes and also help the industry to identify other communities for inclusion in negotiations, particularly in the context of concluding and negotiating ABS agreements.
- From the industry's point of view, involving as many stakeholders as possible in the development of the community protocol could be beneficial, even if only in a

consultation. This could allow communities to know in advance the expectations of the industry that is going to negotiate with them and thus to feed into the discussions on the content of their community protocol. All this while keeping the principle that the process remains that of the communities.

- Community protocols provide a much more solid basis for beneficial discussions on how communities can be engaged and according to what procedures.
- In terms of time and cost for drawing up cross-border community protocols, it is advisable to start with national interests and consolidate a national community protocol or a comparable instrument, and then also try to organise a community protocol or an appropriate tool at regional level. Consolidate from the national level and build a regional tool that can organise the communities.

Webinar 3

Political guidelines for the recognition of Community protocols in national political and legal frameworks

19 October 2020

This session shared information about existing forms of formal recognition of community protocols, customary laws and community procedures. It provided a discussion space on the advantages and limitations of these different possibilities. The session also allowed to provide guidance on how to ensure that communities receive long-term technical, legal and possibly financial support for the implementation and/or revision of their community protocols (e.g. institutional aspects, awareness raising and capacity development/transfer).

Interactive presentations :

- [Recognizing community protocols: what are the possibilities?](#) by Jazzy Rasolojaona, with the contribution of Lolona Ramamonjisoa (Madagascar ABS Focal Point), Bienvenue Bossou (CESAREN NGO in Benin), Wilson Njing Shei (Technical Advisor on ABS at GIZ COMIFAC)
- [Endorois Management Plan,](#) by Maryama Farah, Natural Justice.
- [Sustainability of community protocol processes - long-term support,](#) by Barbara Lassen, Natural Justice.

Key points of the discussions with the participants

- Support to communities in the development of community protocols should be included in the government budget.
- Additional studies at the national level are needed on how community protocols could be combined with other local conventions or tools that may already be used by communities.

- Community protocol processes require partnership. This can, among other things, allow the costs of the process to be shared. In South Africa, there are two departments that support the process, DEFF and the Department of Science and Innovation, to ensure that the aspirations of communities are reflected and taken into account when dealing with ABS issues. These two departments provide support and mobilise funds to support these community protocol processes. By learning from the lessons of the Rooibos case, government can play a significant role in the process of developing, recognising and using community protocols. This can be done, for example, by ensuring that communities remain responsible for the development of community protocols. The government should also provide an appropriate framework within which communities can best be supported in the implementation and enforcement of community protocols. In Namibia and Zimbabwe, for example, the focal points are all working to centralise a framework that can assist in the implementation and enforcement of community protocols.
- For industry, the community protocols are useful tools providing transparency and clarity - they should be supported by a legal framework that keeps matters simple so that they can be developed and applied in a sustainable way.
- In the context of a specific ABS case, communities and their partners may have to decide whether a full community protocol process is possible or whether a different tool might be better suited, depending for example on the time available, the heterogeneity of the communities involved and the expected benefits to be shared.

Note: The Natural Justice and ABS Capacity Development Initiative is developing a practical and policy guide for facilitators and policy makers on the development, use and recognition of community protocols in the context of ABS.

For any questions or comments or recommendations on the content of this note, please contact Natural Justice (info@naturaljustice.org) or the ABS Initiative (abs-initiative@giz.de).