



# Community Protocols and Access and Benefit Sharing

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**Abstract:** The Nagoya Protocol on Access and Benefit Sharing (ABS) under the auspices of the Convention on Biological Diversity represents a further milestone on the path towards the self-determination of Indigenous peoples and local communities in international law. It underscores the emergence of biocultural rights as the rights of Indigenous peoples and local communities over all aspects of their ways of life that are relevant to the conservation and sustainable use of biodiversity, including respect for the diversity of their ecosystem management practices, customary laws, and traditional authorities. It also highlights the role of multilateral environmental agreements as important terrains of struggle for Indigenous peoples' and local communities' rights. Yet despite an increase in the number and scope of rights enshrined at the international and national levels, States' obligations vis-à-vis communities are often unfulfilled at the local level. For example, potential pitfalls of ABS in the absence of good process can include exacerbating issues of legal disaggregation, definitions of community, and conflict between customary and positive law. Rights-based approaches such as community protocols, which are now referenced in the Nagoya Protocol, can help enable communities to address these challenges proactively and to decide for themselves whether or not to engage with ABS, as well as other legal and policy frameworks, in ways commensurate with their values, local endogenous development aspirations, customary laws, and traditional institutions.

**Key words:** Nagoya Protocol, Access and Benefit Sharing, Convention on Biological Diversity, community protocols, biocultural rights

## Introduction

At 1:30 am on October 30, 2010, the Conference of the Parties to the Convention on Biological Diversity (CBD) adopted the Nagoya Protocol on Access and Benefit Sharing (Nagoya Protocol). The Nagoya Protocol is a significant achievement for developing countries in asserting sovereignty over their biodiversity and traditional knowledge. For Indigenous peoples and local communities<sup>2</sup>, it represents a high-water mark in international jurisprudence, clearly establishing a number of important biocultural rights. Yet, whether the Nagoya Protocol will deliver the environmental and (non-)monetary benefits for which it was designed will depend on the ways in which communities engage with the framework at the local level. Towards that end, we provide an analysis of the Nagoya Protocol and highlight a number of potential pitfalls inherent in access and benefit sharing (ABS) with reference to the Hoodia benefit sharing agreement. After

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exploring the challenges communities face with the implementation of international environmental law in general, as well as the importance of social mobilization and legal empowerment in that context, we describe a community-led instrument embedded in the Nagoya Protocol that may assist communities to engage with ABS according to their values and on their own terms, namely, community protocols.

### **The Nagoya Protocol and the Emergence of Biocultural Rights**

In his seminal work, “Indigenous Peoples in International Law,” James Anaya, the United Nations (UN) Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, argues against a positivist understanding of international law. Moving away from the classical sources of international law prescribed by Article 38 of the Statute of the International Court of Justice<sup>3</sup>, Anaya states that international law is a normative system that aspires towards common values. Any analysis of international law, according to Anaya, must move beyond an examination of treaties and customary international law to an analysis of processes and trajectories. Based on such an analysis, Anaya concludes that international law is developing – albeit imperfectly and grudgingly - in ways that supports Indigenous peoples’ demands (Anaya 2004).

At the core of these demands of Indigenous peoples and local communities is the demand for self-determination. As Anaya notes, self-determination in this context is not always a claim for separate statehood, but is grounded in international human rights. In this sense, self-determination has certain core values, including non-discrimination, protection of cultural integrity, rights over lands and natural resources, social welfare for economic well-being, and self-government (Anaya 2004). In the six years since the publication of that work, under the auspices of the CBD, the Ad Hoc Open-ended Working Group on Access and Benefit Sharing has “elaborated and negotiated” an international regime on ABS (CBD Decision VII/19.D). Using Anaya’s approach, we provide an analysis of the Nagoya Protocol from the perspective of Indigenous peoples and local communities. By approaching the Protocol not as an end in itself, but as a normative tendency, we ask, “How does the Nagoya Protocol affirm the self-determination of Indigenous peoples and local communities?”

The trajectory towards increased support for Indigenous peoples and local communities self-governance of their natural resources and traditional knowledge begins with Articles 8(j) and 10(c) of the CBD. The CBD makes

the normative assertion that there is an intelligible link between the traditional ways of life of Indigenous peoples and local communities and the conservation and sustainable use of biodiversity. Accordingly, the CBD requires State Parties to protect the knowledge, innovations and practices of communities whose ways of life lead to the conservation and sustainable use of biodiversity (Article 8(j)) and to support the customary uses of natural resources (Article 10(c)). The CBD's various instruments and provisions<sup>4</sup>, coupled with provisions from multiple other UN treaties and bodies and other international organizations<sup>5</sup> are being increasingly recognized as providing rights to communities to self-govern their territories, natural resources and traditional knowledge. This set of emerging rights, with the distinction of being linked to the conservation discourse surrounding multilateral environmental agreements, are arguably an integral dimension of third generation rights<sup>6</sup>. The leverage of these rights is uniquely tied to the current environmental crisis and the alternatives presented by the values that are unique to the traditional ways of life of many Indigenous peoples and local communities. It is the exceptional nature of these rights that mark them as 'biocultural rights'.

Biocultural rights, we suggest, are rights of Indigenous peoples and local communities over all aspects of their ways of life that are relevant to the conservation and sustainable use of biodiversity. These aspects include rights relating to, among other things, their knowledge, innovations and practices, natural resources, lands and waters, traditional occupations, and customary laws and systems of governance. Effectively, these are rights to self-determination, but specifically self-determination oriented towards stewardship of Indigenous peoples' and local communities' traditional lands and waters.

The Nagoya Protocol draws on certain biocultural elements of the CBD and codifies them in legally binding obligations that States must enact. The Protocol establishes the following four pivotal biocultural rights that significantly affirm the self-determination of Indigenous peoples and local communities:

- The right over their genetic resources;
- The right over their traditional knowledge;
- The right to self-governance through respect for their customary laws and community protocols; and
- The right to benefit from the utilization of their traditional knowledge and genetic resources by third parties.

The first two rights are enshrined in Articles 5.1.bis and 5bis of the Nagoya Protocol. These articles require the prior informed consent of communities before any access to their resources and knowledge. While there are qualifiers in both articles that say “in accordance with domestic law”, these qualifiers are a result of the significant whittling down of the (much more restrictive) CBD Article 8(j) requirement of “subject to national law”. The Nagoya Protocol makes a paradigm shift by clarifying that the role of the State is to facilitate the rights of Indigenous peoples and local communities and that the State does not have the discretion of whether or not to recognize these biocultural rights. Article 5.1.bis is particularly significant for establishing a new right not included in the CBD, requiring States to uphold rights of communities over their genetic resources when communities have such “established rights”.

The third right, enshrined in Article 9, requires States to take into consideration customary laws and community protocols in implementing their obligations under the Protocol with respect to traditional knowledge associated with genetic resources. In doing so, the Nagoya Protocol reaches a new apogee in recognizing community rights to self-determination. For the first time in international treaty law, the 193 States that adopted the Protocol are explicitly required to recognize community systems of governance and, thus, legal pluralism.

Fourth, Articles 4.1.bis and 4.4 establish the rights of Indigenous peoples and local communities to fair and equitable sharing of benefits arising from the utilization of their genetic resources and traditional knowledge by third parties. While Article 8(j) of the CBD establishes the right of communities to share in the benefits arising from the utilization of their traditional knowledge, the right of communities to benefit sharing arising specifically from third party utilization of their genetic resources is a major step forward in the Nagoya Protocol.

While none of these rights are absolutely unqualified and do allow for limited State involvement, they should be seen as substantial gains for Indigenous peoples and local communities. This is especially true if we understand them, as Anaya points out, as a normative direction in which international law is heading. In this light, the Nagoya Protocol is a major milestone on the path towards self-determination of Indigenous peoples and local communities in international law. It highlights the previously unacknowledged emergence of biocultural rights and highlights the role of multilateral environmental agreements as some of the most important

terrains of struggle for Indigenous peoples and local communities in which there is much to gain. With the global urgency to stem the environmental crisis coupled with a growing environmental movement, Indigenous peoples and local communities have prudently employed their identity as trustees of the earth to gain support for their claims of self-determination from States in the form of biocultural rights.

### **ABS: The Dangers of Commodification, Objectification and Subordination**

Ensuring that communities' rights are enshrined in international and national laws is of paramount importance to ensuring respect and support for biocultural diversity at the local level (Maffi and Woodley 2010). As such, communities and their representatives are compelled to engage with the negotiations of multilateral environmental agreements and their protocols, as well as soft law instruments. 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 (Nelson 2010). For example, Linda Siegele et al. (2009) detail a plethora of rights relating to communities across a range of hard and soft law instruments. Their exhaustive review, including multilateral environmental agreements, human rights instruments, UN agencies' policy documents, and International Union for Conservation of Nature (IUCN) resolutions, 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" (Siegele, Roe, Giuliani, and Winer 2009:69). 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 intended to reduce emissions from deforestation and forest degradation (REDD) (Cotula and Mayers 2009:23). They underscore the fact that despite a growing international recognition of communities' rights to self-determine their futures and manage their natural resources,<sup>7</sup> international rights are far from a panacea against local disempowerment or the denial of procedural and substantive justice.

In efforts to secure their rights over natural resources and traditional knowledge and protect their ways of life, the International Indigenous Forum on Biodiversity and their supporters have fought for the above four biocultural rights in the Nagoya Protocol. However, whether the Nagoya Protocol will help or hinder communities at the local level will only

emerge over time (Ling 2010). For communities to secure their biocultural rights through the Nagoya Protocol, the gains made through successful international advocacy must be capitalized on by improved exercise of rights at the local level.

The many potential pitfalls that ABS entails for Indigenous peoples and local communities can be illustrated by the Hoodia benefit sharing agreement<sup>8</sup>. Much has been written about the original benefit sharing agreement (for example, Wynberg 2004; Vermeulen 2007, 2008; Bavikatte, Jonas and von Braun 2009), signed between the South African San Council and the Council for Scientific and Industrial Research (CSIR) in 2003. The agreement, which was considered visionary at its time, related to traditional knowledge of the San, Indigenous peoples of Southern Africa, about hunger suppressing properties of a desert succulent called Hoodia. The overarching challenge the San communities had was engaging with a totally novel legal framework in a short amount of time. This structure has manifested itself in a number of ways and led to a variety of impacts.

First, ABS forces communities to be defined. "The San" are in fact many communities living in very different socio-economic contexts and their cultural heritage and traditional knowledge is non-uniform. For example, some of the Khwe communities living in and around the Okavango Panhandle in Angola, Namibia and Northern Botswana live in rural areas, as compared to the Khomani San, many of whom live in urban and semi-urban environments in South Africa's Northern Cape, 2,000 kilometers away. To assert their ownership of the knowledge relating to Hoodia, the San decided to project a 'pan-San' identity, forging a notion of who or how they 'are' for the sake of the benefit sharing agreement. The pressure of impending deadlines and financial windfalls limited the process of self-identification when it arguably should have been undertaken at a more appropriate pace to enable effective participation of the wider community. As much as possible, the self-identification process should also have been decoupled from the benefit sharing agreement itself to ensure that both are rooted in the community's broader endogenous development plans and priorities. In addition, the knowledge about Hoodia's properties is shared between the San and the Nama, a community indigenous to what is now Namibia. Yet the Nama were not included in the original benefit sharing agreement, a decision that fostered inter-community mistrust and resentment.<sup>9</sup> As traditional knowledge is often shared unequally within communities and in many cases across communities and borders (variously

defined), fundamental questions are raised about the nature of “ownership” of knowledge and concomitantly what constitutes prior informed consent from the “community”. Time and widespread participation is critical to ensure that the views of individuals within or across communities are taken into account when considering whether and/or how to engage a potential bioprospector.

Second, and linked to the above point, is the fact that prior to the Hoodia issue arising, San communities had neither considered ABS nor mandated a particular body to manage and protect their traditional knowledge. The advent of an ABS agreement compelled San communities to be represented by an elected group to negotiate the agreement on their behalf. This led to the creation of a new body called the South African San Council, which, among other things, exacerbated existing tensions between “traditional” and “modernist” people in the South African San communities, especially the Khomani, and led to questions about the body’s representativeness and transparency. Saskia Vermeulen’s research highlights the fact that while many people know of the Hoodia agreement, they lack any in-depth understanding about ABS in general and the agreement in particular. She also points out that the timing and structure of the negotiations intensified knowledge and power asymmetries in the communities (Vermeulen 2007).

Third, the San Council negotiating team members themselves had a significant task, having to rapidly grasp a number of challenging concepts and specific intellectual property rights-related aspects of commercial agreements such as milestone payments and royalties. These were huge demands for the community members selected for the task. As non-lawyers with no prior knowledge about ABS working within a limited negotiations timeframe, they were severely disadvantaged in terms of making independent assessments of the most appropriate terms of the agreement and types of benefits for their communities. The net result is that they relied to a large extent on external expert advice. A strong reliance on external experts by communities in future benefit sharing agreements raises questions of how “informed” consent and the subsequently negotiated mutually agreed terms can be.

Fourth, in 2006, San from Botswana, Namibia and South Africa met to assess the governance challenges presented by the Hoodia agreement. The resulting Molopo Declaration states, among other things:

- All structures should respect San values, including respect for culture and consensus decision making;

- San structures must strive to make sure the majority of funds are used to benefit San communities;
- Administrative costs of all funds should be kept to a bare minimum, around 20% of total funds, depending on the level of income;
- Corruption in any form is totally unacceptable. Good management of funds, transparency and accountability will be required;
- Priorities will be different in Namibia, Botswana and South Africa. San Councils must strive to accommodate differences in the three countries; and
- Projects that are environmentally sustainable and economically viable will be prioritized.

The San have faced many institutional and community capacity challenges while attempting to fulfil the aspirations of the Molopo Declaration. For example, attempting to manage the funds has been difficult. As in the case of the San Council, a new institution (the Hoodia Trust) was established to manage the funds. It suffered from questions of legitimacy and there continues to be a widespread lack of understanding of its role. Compounding this issue is the fact that Hoodia Trustees and San Council members have few financial management capabilities, members of both bodies lack experience with conducting public office, and terms of reference for the bodies' members, codes of conduct, and dispute resolution mechanisms either do not exist or are not applied. Because the South African San Council is established as a Voluntary Association under South African law, it is not required to submit audited accounts to any governmental agencies. The result is that representatives are accountable only to their constituencies, who in turn are limited in their ability to either demand or fully comprehend financial accounts. These factors are intensified by the fact that many of the Council members are otherwise unemployed, increasing the likelihood of mismanagement of funds. Transparency, accountability, representativeness, cultural legitimacy, and authority of the 'Hoodia governance' system remain in question.

Fifth, expectations were raised that the community would benefit financially. However, the original Hoodia benefit sharing agreement amounted to little,<sup>10</sup> with Unilever pulling out of a commercial license in late 2008. While it is difficult to measure how this has affected the community, the disappointment and lack of understanding about the latest developments is palpable when discussing it with community members. Finally, the agreement led to no increase in the conservation or customary

uses of Hoodia. In fact, the opposite happened, with widespread reports of unsustainable harvesting of wild Hoodia across the region by a variety of different stakeholders at the height of the 'Hoodia boom' in 2007-2008.

In sum, the Hoodia benefit sharing agreement simultaneously represents a moral victory for the San community for recognition of their rights relating to traditional knowledge and a process that has arguably further undermined their traditional values and knowledge and resource governance systems. The deal asserted their rights to provide prior informed consent for the use of their traditional knowledge, but the nature of the negotiation, the terms of the agreement, and the governance reforms that they have undertaken have, among other things: weakened the San's traditional forms of authority; increased the community's reliance on external expert opinion; led to largely misunderstood and at times corrupt new forms of governance; raised and dashed hopes of new found wealth; exacerbated power and information asymmetries in and across San communities; and initially fostered mistrust between the San and Nama communities.<sup>11</sup> As stated above, the Hoodia agreement was considered groundbreaking at the time. The experience since then, however, highlights certain lessons that other communities and NGOs are advised to consider when evaluating ABS as a legal and policy framework through which to protect their traditional knowledge and to support their ways of life. By increasing the participation among and across communities and spending more time evaluating the pros and cons of ABS, and thus avoiding the pitfalls of "commodification, objectification and subordination" (Vermeulen 2008:234), communities are likely to make more informed decisions about whether to either decide to spurn the framework or negotiate for more appropriate economic, cultural, social, and/or environmental benefits. Before turning to evaluate a reflexive and proactive tool that can assist communities with the above challenges, we explore the inherent difficulties communities face when engaging any positive legal framework.

### **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 (Maffi and Woodley 2010). 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" (Maffi and Woodley 2010:5). The multiplicity of interrelated knowledge, innovations,

practices, values, and customary laws<sup>12</sup> are embedded within mutually supporting relationships between land, natural resource use, culture, and spirituality (Descola 1992). This connectivity underpins communities' dynamic worldviews and understandings of the laws of nature (Davidson-Hunt and Berkes 2003; Alexander, Hardinson and Arhen 2009).

Within this context, communities face a number of interrelated 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, namely, legal disaggregation, the dynamic interplay between external definitions of a community and intra- and inter-community self-definitions, and the potential conflicts between customary and positive law.

First, 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 (Watson, Alessa and Glaspell 2003), 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.<sup>13</sup> The result is that communities' lives are disaggregated in law and policy, which effectively fragments and reduces their claims to self-determination into specific issue-related sites of struggle.

The second overarching challenge relates to how the law affects the 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 (Agrawal and Gibson 1999). 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 (Bosch 2003). However, this challenge can be overcome by using the law as the basis for adding a new dimension to local constructions of community that progresses the right to self-determination. For example, in Bushbuckridge, South Africa, a group of traditional healers spread across a large number of villages and from two different language groups came together to define themselves as

a community of knowledge-holders in the context of new rights provided under South African ABS law.<sup>14</sup> Although this type of law tends to place a disproportionate emphasis on the sharing of traditional knowledge as the means by which to characterize a community, the Bushbuckridge Traditional Health Practitioners are using its provisions to create and occupy a new legal space, within which they are asserting their rights to traditional knowledge and customary practices in line with their own terms, values and priorities.<sup>15</sup> 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 (Cotula and Mathieu 2008).

As a third and cross-cutting challenge inherent to engaging with legal frameworks, positive law (both international and State) may conflict with the customary laws that govern communities' sustainable use of natural resources (Cotula and Mathieu 2008). 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 (Tobin and Taylor 2009).<sup>16</sup> Furthermore, the implementation of positive law tends to overpower and contravene customary law. A system that denies legal pluralism<sup>17</sup> has direct impacts on communities' lives, for example, by undermining the cultural practices and institutions that underpin sustainable ecosystem management (Sheleef 2000). While recognition of communities' customary laws and traditional authority over resources is progressing in some jurisdictions (Van Cott 2000), the challenge of legal pluralism goes beyond the mere co-existence of legal regimes, wherein customary law is 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" (Tobin 2009:111).<sup>18</sup>

These three challenges, among others, highlight the fact that the implementation of international and national environmental laws such as ABS 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 stakeholders<sup>19</sup> 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 either spurn these inherently limited frameworks (something which is a virtual impossibility, considering the ubiquitous nature of State law) or 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.<sup>20</sup>

### **Legal Empowerment and Endogenous Development**

Participatory legal empowerment will further enable Indigenous peoples and local and mobile communities to understand a variety of laws, including those relating to customary uses of natural resources, ABS, REDD, and protected areas and Indigenous and community conserved areas. Legal empowerment is defined as “the use of legal tools to tackle power asymmetries and help disadvantaged groups have greater control over decisions and processes that affect their lives” (Cotula and Mathieu 2008:15). Evidence suggests that non-lawyers are equally equipped to use the law (and sometimes more adept at doing so) to solve local challenges when they are empowered in a legal context (Maru 2006). Legal empowerment of the poor<sup>21</sup> is based on the twin principles that law should not remain a monopoly of trained professionals and that in many instances, forms of alternative dispute resolution are more attuned to local realities than formal legal processes. Ideally, the act of using the law becomes as empowering as the outcome of the process itself (Maru 2006). By organizing themselves around rights and duties, communities initiate adaptive dialogue processes both internally and vis-à-vis outsiders. Building internal resilience to external influences and responding proactively and according to local values and priorities are both critical to a community’s well-being (Subramanian and Pisupati 2009). A court victory handed to a community, for example, can be supremely useful, but a process that is

driven by the community is tangibly more powerful.<sup>22</sup> As such, effective legal empowerment is a combination of social mobilization and legal action (Cotula 2007) that acts as a positive feedback loop towards both aims.

The law is sometimes described as ‘a sword and a shield’.<sup>23</sup> Negotiating in the shadow of the law<sup>24</sup> is an important strategy for communities who might otherwise not have the opportunity to engage with conservation policy and practice (Cotula and Mathieu 2008). However, law is about more than just establishing due process. When used imaginatively, laws can be the platform for creating an enabling legal and political environment by negotiating “space to place new steps of change” (Angelou 1993:line 92) and opening avenues of discussion between disparate groups towards previously unimagined relationships (Rozzi, Massardo, Anderson, Heidinger, and Silander 2006). In this sense, legal empowerment can enable communities to break free from the typical patronizing dichotomy of either being ‘spoken at’ or ‘spoken for’.

A recent compilation of case studies highlights the diversity of rights-based approaches that communities and supporting organizations are experimenting with (Campese, Sunderland, Greiber, and Oviedo 2009). A dominant theme that emerges is the multifaceted attempts by a variety of communities to use the law to conserve their biocultural diversity. It highlights the critical need for the further development and sharing of communities’ methods and approaches to using rights and engaging with the law on their terms, according to their values, and in ways commensurate with their customary laws – in other words, endogenously. Endogenous development is a community process of defining and working towards future plans according to local values and priorities (ETC Foundation and COMPAS 2007). In contrast with other theories of development that emphasize varying degrees of external input, it draws on a body of experience that suggests that communities are more likely to remain cohesive and sustain their traditions, cultures, spirituality, and natural resources when they develop their future collectively and base their plans on the resources available within the community. Endogenous development does not reject the notion of external agencies providing assistance, but stresses that any interventions must be undertaken only after the free, prior and informed consent of the community is given and when the activities are developed, driven, monitored, and evaluated by the community (ETC Foundation and COMPAS 2007). Endogenous development theory supports the proposition that the more endogenous the legal education and rights-based approach,

the more likely the process is to be genuinely empowering. Community protocols are one endogenous rights-based approach that communities are using to draw on a variety of biocultural rights to affirm their right to self-determination, including within the context of ABS.

### **Biocultural Community Protocols and ABS**

Biocultural community protocols or “community protocols”, as described in the Nagoya Protocol, are a response to the challenges and opportunities set out above. Although each is adapted to its local context, a biocultural community protocol is a community-led instrument that promotes participatory advocacy for the recognition of and support for ways of life that are based on the customary sustainable use of biodiversity, according to standards and procedures set out in customary, national, and international laws and policies (Jonas, Bavikatte and Shrumm 2010). In this sense, biocultural community protocols are community-specific declarations of the right to diversity and claims to legal pluralism.<sup>25</sup> Their value and integrity lie in the process that communities undertake to develop them, in what they represent to the community, and in their future uses and impacts.

The process of developing and using a community protocol is an opportunity for communities to reflect on their ways of life, values, customary laws, and priorities and to engage with a variety of supporting legal frameworks and rights. A biocultural approach to the law empowers communities to challenge the fragmentary nature of State law and to instead engage with it from a more nuanced and integrated perspective and assess how certain laws may assist or hinder their plans for the future. A wide variety of community members are involved by integrating legal empowerment processes with endogenous development and communication methodologies such as group discussions, written documentation, various types of mapping and illustrations, participatory video and photography, performing arts, and locally appropriate monitoring and evaluation (Taylor 2008; Hoole and Berkes 2009; Tobias 2000; Lunch and Lunch 2006; Davies and Dart 2005; Schreckenber, Camargo, Withnall, Corrigan, Franks, Roe, Scherl, and Richardson 2010). Community protocols vary in how they are documented, shared, and utilized and have been highlighted as something meaningful and affirmative that a community can be proud of (Köhler-Rollefson 2010). The approach is intended to mobilize and empower communities to use international and national laws to support the local manifestation of the right to self-determination.

Community protocols assist communities to establish a firm foundation upon which to develop the future management of their natural resources by setting out their values and customary procedures that govern the management of their natural resources. They also provide a vehicle for articulating their 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 systems and community conserved areas (Ryan, Broderick, Sneddon, and Andrews 2010), *sui generis* laws, sacred natural sites (Wild and McLeod 2008), and globally important agricultural heritage systems. In this regard, community protocols enable communities to bridge the gap between the customary management of their biocultural heritage and the external management of their resources, as 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 and biodiversity. By enabling a community to be proactive in relation to agencies and frameworks to which they have normally been reactive, protocols have the potential to shift the dynamic of conservation initiatives from merely attempting to ‘ensure’ communities’ participation to becoming inclusive, locally appropriate processes driven by legally empowered communities. These points are highlighted by the experience of the Traditional Health Practitioners of Bushbuckridge, South Africa.

### **Biocultural Community Protocol of the Traditional Health Practitioners of Bushbuckridge<sup>26</sup>**

The Kruger to Canyons Biosphere Region (K2C) is part of UNESCO’s World Network of Biosphere Reserves. Bridging the Limpopo and Mpumalanga provinces in northeast South Africa, the K2C spans more than 4 million hectares and contains two national parks, namely, the Kruger National Park and Blyde River Canyon Nature Reserve. The biosphere reserve is not only extremely biodiverse but also culturally diverse. Its buffer and transition zones are home to about 1.6 million people from different ethnic

backgrounds and language groups. Yet despite the area's conservation value, many of the local communities are economically poor and live in semi-rural areas.

Traditional healers provide primary healthcare for many people in the region. They also play an important cultural role by promoting traditional values and acting as the custodians of the complex knowledge of plants growing in the biosphere region. In their capacity as holders of traditional knowledge, they acquired new rights under the South African Biodiversity Act (2004) and the Bioprospecting Access and Benefit-Sharing Regulations (2008). In spite of this, few health practitioners knew of their rights. In March, 2009, the Biosphere Committee<sup>27</sup> began supporting a group of healers based at the Vukuzenzele Medicinal Plants Nursery in Bushbuckridge who wished to host a series of meetings with other groups of healers to discuss these issues. Over the next five months, they held regular meetings to share views and learn more about South African law on the conservation of medicinal plants and the protection of traditional knowledge.

On the basis of a number of shared concerns, more than 80 healers decided to form a governance structure under the name of Bushbuckridge Traditional Healers, with an Executive Committee to assist them in presenting their views to stakeholders. As mentioned above, the Bushbuckridge Traditional Healers come from two separate language groups, the Sepedi and Tsonga, yet see themselves as a single group because of their specialist knowledge and reliance on the same medicinal plants. They then worked with the Biosphere Committee and Natural Justice,<sup>28</sup> an NGO of lawyers who advise communities on environmental issues, to develop their own biocultural community protocol. This protocol was first presented to the local authorities and other stakeholders in the K2C in September, 2009.

In their seven-page protocol,<sup>29</sup> the traditional healers outline the contribution they make to the health of their communities. They explain that, although they share common knowledge of the main types of illnesses in the community, each has a specific way of treating those illnesses. Their specialization in different ailments means that they also refer patients to one another. Since their patients are poor, the healers often provide healthcare regardless of whether the patient can pay. "Our ancestors prohibit us from pressuring people for money," they explain, "so we rely on goodwill and reciprocity" (Biocultural Community Protocol of the Traditional Health Practitioner of Bushbuckridge:2).

In the protocol, the healers explain their communities' affinity with the surrounding biodiversity. "We believe that only harvested leaves or bark that are taken in ways that ensure the survival of the plant or tree will heal the patient", they say. "This means that we take only strips of bark, selected leaves or stems of plants and always cover the roots of trees or plants after we have collected what we require. Also, we have rules linked to the seasons in which we can collect various plants, with severe consequences such as jeopardizing rains if they are transgressed. Because we harvest for immediate use, we never collect large-scale amounts of any particular resource. We protect biodiversity in other ways, such as guarding against veld fires and discouraging poaching of plants by muti hunters" (Biocultural Community Protocol of the Traditional Health Practitioner of Bushbuckridge:3).

The healers describe the threats posed to their livelihood by limited access to, or loss of, local biodiversity. "The numbers of plants are falling due to overharvesting by herbalists or muti hunters who collect large quantities using unsustainable methods" they state. "The Mariepskop conservation area is important to us because of the great diversity of plants it sustains but difficult for us to access because we have, until recently, been unsure of the regulations relating to collecting medicinal plants and face logistical and cost-related barriers to travelling to those areas. We are excluded from the Bushbuckridge Nature Reserve, which is closer to us than Mariepskop but remains totally inaccessible." They add that "private land is off-bounds to us" (Biocultural Community Protocol of the Traditional Health Practitioner of Bushbuckridge:4).

Turning to the issue of their traditional knowledge, they say, "We have been visited by scores of researchers who generally provide us with few details of who they are working for and what our knowledge will be used for. We have not yet entered into any benefit-sharing agreements regarding our knowledge or material transfer agreements for the plants they have accessed. This has made us jaded about sharing information with researchers, whom we now distrust. We want our consent to be sought before our knowledge or plants are taken and to be acknowledged as the holders of the knowledge and benefit from any commercialization" (Biocultural Community Protocol of the Traditional Health Practitioner of Bushbuckridge:4).

Based on their understanding of the law, the healers then decided that the conditions they posed for transferring their traditional knowledge would depend largely on the user. This means that students wishing to become healers will be expected to make arrangements with the local

healers to set up a mentorship and can expect to pay a fee. Healers from other areas and academic researchers will be directed to the Executive Committee formed by the healers for due consideration of their proposal. "We know our rights", the healers affirm, and "will require to see the letter from the Department of Water and Environmental Affairs stating that [researchers] can conduct the research" (Biocultural Community Protocol of the Traditional Health Practitioner of Bushbuckridge:5). Commercial bioprospectors will also be expected to apply to the Executive Committee as the first step in negotiations with the company towards a benefit sharing agreement, monetary or otherwise.

In the protocol, the healers propose working with traditional authorities to regulate access to communal lands by muti hunters to tackle the problem of over-harvesting. They also ask for better access to conservation areas. "Now we are clear about the procedures for accessing plants from Mariepskop," they say, "we want to be recognized by the Department of Agriculture, Forest and Fisheries (DAFF) as both contributing to, and benefiting from, the region's biodiversity" (Biocultural Community Protocol of the Traditional Health Practitioner of Bushbuckridge:2). They also propose working with DAFF to establish a system that facilitates their access to the resources under its management. They call on the department to "explore the establishment of a medicinal plants conservation and development area on Mariepskop to increase the in situ cultivation of the most important medicinal plants" (Biocultural Community Protocol of the Traditional Health Practitioner of Bushbuckridge:2).

Concluding their protocol, the healers appeal to the Biosphere Committee for assistance in evaluating how they could replicate successful community-run medicinal plant nurseries in the area. They also ask the Mpumalanga Tourism and Parks Agency to set aside some land for the purpose. Similarly, the Department of Health and Social Development is invited "to speed up" (Biocultural Community Protocol of the Traditional Health Practitioner of Bushbuckridge:6) its registration process for healers so that they can carry cards certifying them as traditional health practitioners.

The Bushbuckridge Traditional Healers' ongoing experiences illustrate a number of points about the nature of biocultural community protocols as a community-based response to the many challenges of engaging with legal frameworks explored above. As highlighted in the first part of this article, the Bushbuckridge Traditional Healers have international and national rights that were otherwise unknown to them at the local level. The

endogenous process of developing the protocol served as an opportunity for the community to think through a number of interrelated issues and to learn about new legal and policy frameworks according to their own timeframe and in their own context. The process was not driven by outsiders. Learning about the laws that support their ways of life helped the traditional healers develop intra- and inter-community awareness and mobilize towards a forward-looking strategy. By articulating their worldviews, concerns and suggested ways forward in the form of a protocol, they have reconstituted the terms of the debate about their local challenges, broadening it to include the inter-linkages between conservation, the medicinal plants trade, local prejudice, and shared traditional knowledge. In this sense, biocultural community protocols enable communities to communicate both a focused response to activities in and around their communities 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 traditional healers, their protocol serves as an interface for constructive dialogue about their values and ways of life with government officials and the private sector in a manner that embodies both the resilience and vulnerabilities of their endemic ways of life. In doing so, they are reclaiming the law to make a strong moral and legal claim to their right to biocultural diversity.

### **Community Protocols: Useful but no Panacea**

As a result of the Traditional Health Practitioners' community protocol, the healers are involved in two new initiatives. First, steps towards establishing a medicinal plants conservation area are being undertaken through a UNESCO-sponsored feasibility study relating to medicinal plants. The study has two objectives. The first is to assess how to develop a carbon offset program whereby tourists who come to the K2C pay a certain amount of money to offset the carbon they generate to get there. That fund would be used to plant medicinal plants that are identified by the healers as under threat, providing conservation and sustainable use value to the healers. The second objective is to identify medicinal plants under threat and identify areas where nurseries and conservation zones of these medicinal plants can be established. The study is being conducted in partnership with the K2C management committee and the healers' association.

The second initiative relates more directly to bioprospecting. The traditional healers decided to pool their individually distinct knowledge under the auspices of the Association. In this case, the healers engaged in a

participatory and non-time bound process towards defining themselves as a group with shared interests in protecting their local biological resources and traditional knowledge. As per above, they then defined the terms and conditions upon which they would share their knowledge and made that known through their community protocol. A local company responded to their terms, as opposed to it being the other way round as is the case with most instances of bioprospecting. Subsequently, the healers resolved to enter into a non-disclosure agreement with a local company for bioprospecting. The healers speak of this endogenous response to new challenges as having been empowering.

Standing back from the above account, community protocols are not a panacea. Over 2010, Natural Justice and partners held a number of consultations focusing on biocultural community protocols in India, Sri Lanka and South Africa. Various challenges and potential weaknesses were raised, including that the process of developing a protocol could be abused by certain parties either from outside or from within the community (Jonas and Shrumm 2010). This is closely linked to the potential of such processes to further entrench or perpetuate existing power asymmetries at the local level such as the exclusion of women and youth from decision-making mechanisms (Köhler-Rollefson 2010). The fact that biocultural community protocols may become another top-down imposition by the development industry was raised, with one of the meeting's participants describing the approach as a potential "monster" (Jonas and Shrumm 2010:15). Ensuring community-based monitoring and evaluation of the approach was also heavily underscored. With the inclusion of community protocols in the Nagoya Protocol on ABS, all 193 State Parties are now obliged to "support, as appropriate, the development by indigenous and local communities, including women within these communities, of ... [c]ommunity 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" (Nagoya Protocol, Article 9(3)(a)). With increased emphasis on community protocols, the potential for the above concerns to become a reality have increased exponentially. The growing challenge to assist communities to determine whether and how to develop community protocols should be addressed by inter-community lesson-sharing, good practice guidelines, and rigorously tested methodologies and resources.<sup>30</sup>

### **Conclusion: Towards ABS+**

As the world clamours to address unprecedented levels of biodiversity loss and increasingly unpredictable impacts of climate change, communities – who have contributed least to the underlying causes of such change – are being disproportionately affected by both the environmental changes and the measures being implemented to address those changes (United Nations Department of Economic and Social Affairs 2009). In this context, Indigenous peoples and local communities' struggle for biocultural rights is a countervailing measure, intended to enshrine their right to self-determination within their territories, including respect for their diversity of ecosystem management practices, customary laws and traditional authority. Communities who are intent on conserving and promoting their biological and cultural diversity thus face the challenging and dynamic interplay between increasing the breadth and strength of biocultural rights at the international and national level and developing improved methods at the local level to secure those rights.

Under the auspices of the UN Framework Convention on Climate Change, an instrument relating to the UN-REDD Programme is currently being negotiated. In those negotiations, Indigenous peoples and local communities are voicing their concerns that REDD may be implemented in ways incommensurate with their rights to self-determine their futures and to the customary uses of their natural resources. NGOs are also raising serious questions regarding perceived flaws in REDD's environmental integrity, including about the definition of what constitutes a forest and what practices are included in the term 'sustainable management of forests'. The result is that communities and NGOs are either shunning the proposed REDD mechanism or calling for safeguards to ensure that REDD projects also contribute to environmental and social justice. The latter, broader conception of REDD is referred to as REDD+. Proponents of REDD+ argue that it is not sufficient for an individual REDD project to lead only to climate change mitigation. Any REDD project should also comply with human rights standards and support local biodiversity. In other words, a REDD+ project must respect the biocultural rights of Indigenous peoples and local communities, including their right to free, prior and informed consent, and must have ecological integrity.

This paper makes a similar argument for ABS. The Hoodia case highlights an instance where a community's right to enter into a benefit sharing agreement was upheld, yet the results of the Hoodia agreement

have yet to improve the San's economic, social, cultural or environmental contexts, perhaps even undermining them. We stand at a new vantage point, looking beyond the Nagoya Protocol towards an era of biocultural rights. The question of whether the Nagoya Protocol and its national level implementation will move beyond merely facilitating the transfer of traditional knowledge to supporting communities' biocultural rights to self-govern their natural resources and associated traditional knowledge can only be answered at the local level, one territory and one community at a time. We have argued that communities' ability to purposefully exercise their rights to protect their knowledge, innovations and practices and to support their customary uses of natural resources will hinge on how well they are able to understand the legal framework in the broader context of their rights and obligations at various levels, to foresee the practical ramifications of engaging with ABS, and to overcome the power asymmetries inherent in their interactions with external stakeholders such as state agencies and private interests. Community protocols are embedded in the Nagoya Protocol as a community-led instrument that provides a potentially useful framework with which communities can appraise whether ABS will help or hinder their local endogenous development aspirations and engage a variety of stakeholders towards "protecting" or "promoting" (CBD Article 8(j)) their territories, knowledge, innovation and practices. It is hoped that community protocols will help communities to ensure that ABS - where they engage with the framework - is in fact ABS+.

### **Additional Resources**

For more information see: [www.naturaljustice.org](http://www.naturaljustice.org)

### **Endnotes**

- <sup>1</sup> For their contributions to the theory and practice of biocultural community protocols, Natural Justice thanks the communities with whom we have worked for placing their trust in a young NGO. For their ideas, inspiration, and support, we also gratefully acknowledge, among others, Alejandro Argumedo (Asociación ANDES), Barbara Lassen and Andreas Drews (The ABS Capacity Development Initiative for Africa), Govindaswamy Hariramamurthi and Professor Balakrishnan Nair (Foundation for the Revitalization of Local Health Traditions), Wim Hiemstra (COMPAS), Ilse Köhler-Rollefson (League for Pastoral Peoples and Endogenous Livestock Development and LIFE Network), Florina Lopez Miro and Heraclio Herrera (Kuna Tribe, Panama), Balakrishna Pisupati (United Nations Environment Programme), Suneetha Subramanian (United Nations University), Krystyna Swiderska (International Institute for Environment and Development), and Brendan Tobin (Irish Centre for Human Rights).
- <sup>2</sup> It should be noted that the CBD and negotiations under its auspices refer

to “indigenous and local communities”, rather than to Indigenous *peoples* and local communities. This runs contrary to the UN Declaration on the Rights of Indigenous Peoples and has been criticized by Indigenous organizations such as the International Indigenous Forum on Biodiversity. In this article, we use the term “Indigenous peoples”.

<sup>3</sup> This article is generally considered the most authoritative account of the sources of international law.

<sup>4</sup> For example, the Programme of Work on Protected Areas, ABS, Tkarihwaï:ri Code of Ethical Conduct on the Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity, Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, and Akwe:Kon Voluntary Guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.

<sup>5</sup> For example, the UN Convention to Combat Desertification, UN Framework Convention on Climate Change (including under the programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries), UN Forum on Forests, Food and Agriculture Organization (including the International Treaty on Plant Genetic Resources for Food and Agriculture), UN Educational, Scientific and Cultural Organization (including cultural conventions and Biosphere Reserves), International Union for Conservation of Nature (including World Conservation Congress resolutions and World Parks Congress recommendations), UN Permanent Forum on Indigenous Issues, International Convention on the Elimination of All Forms of Racial Discrimination, International Labour Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, UN Declaration on the Rights of Indigenous Peoples, Expert Mechanism on the Rights of Indigenous Peoples, Agenda 21, and the World Intellectual Property Organization.

<sup>6</sup> While civil and political rights are considered first generation, social, economic and cultural rights are considered second generation. Third generation rights go beyond both of these to include group and collective rights and rights to a healthy environment, to intergenerational equity and sustainability, to natural resources, and to participate in cultural heritage.

<sup>7</sup> For example, see Morel, C., 2010. “Communication 276 / 2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group 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>.

<sup>8</sup> The following brief analysis does not intend to critique the decisions taken at the time of the agreement, but aims to draw on the authors’ experience of how the story has unfolded to highlight the inherent challenges that ABS poses to communities.

<sup>9</sup> A benefit sharing agreement has since been signed between the San and the Nama.

<sup>10</sup> The Hoodia Trust had received 587,305 South African Rands by the end of 2008, circa 58,000 US Dollars.

<sup>11</sup> This has been addressed by the recent San-Nama Benefit Sharing Agreement.

- <sup>12</sup> 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-traditio>.
- <sup>13</sup> In South Africa, for example, the Department of Environmental Affairs has a mandate to manage the country’s biodiversity, but it shares responsibility to protect communities’ associated traditional knowledge with the Department of Science and Technology.
- <sup>14</sup> Bioprospecting, Access and Benefit Sharing Rules, 2008. *Government Gazette* No. 30739, February 8, 2008. Department of Environmental Affairs and Tourism, Pretoria, South Africa.
- <sup>15</sup> This example is elaborated below.
- <sup>16</sup> 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 Tsose, 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.
- <sup>17</sup> This type of system could be referred to as legal monoculture.
- <sup>18</sup> This is arguably a huge challenge and most States are a long way from incorporating Indigenous worldviews into legal and policy frameworks.
- <sup>19</sup> Examples include government agencies, conservation and development NGOs, private sector companies, and researchers.
- <sup>20</sup> This is also supported by anecdotal evidence by public interest lawyers such as Fatima Hassan (former senior attorney, AIDS Law Project, South Africa) who argues that even when ordinary people do use the law and engage 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.
- <sup>21</sup> This is a reference to the United Nations Development Programme, 2010. “Initiative on Legal Empowerment of the Poor”. Last accessed August 4, 2010, at: <http://www.undp.org/legalempowerment/>.
- <sup>22</sup> “The most valuable, useful and transformative legal challenges are those that include communities and that mobilize and educate people so that communities use the law to give effect to their own voices and their own issues.” Hassan, F. (draft in progress). *10 Year History of Treatment Action Campaign*. Treatment Action Campaign: Cape Town, South Africa.
- <sup>23</sup> The phrase is used to describe the perceived nature of laws’ ability to ‘attack’ criminality and ‘defend’ against injustice.
- <sup>24</sup> ‘Negotiating in the shadow of the law’ references the way the existence of laws that

provide rights and obligations can change the dynamic of a meeting of parties, especially in the context of power asymmetries. In this context, rights and obligations can help the weaker party overcome an initially disadvantaged position.

- <sup>25</sup> A forthcoming paper by the authors focuses on the notion of the “right to diversity” as a way to define the body of rights required to support a community’s biocultural diversity.
- <sup>26</sup> This section is adapted from A. Persic & H. Jonas, 2010. “The Bushbuckridge healers’ path to justice”, pages 18-21 in *A World of Science*, 8:1.
- <sup>27</sup> The Biosphere Committee is the body responsible for the K2C’s overall management.
- <sup>28</sup> [www.naturaljustice.org](http://www.naturaljustice.org)
- <sup>29</sup> The Biocultural Community Protocol of the Traditional Health Practitioners of Bushbuckridge is available from Rodney Sibuyi, CEO of the Executive Committee, PO Box 1270, Thulamahashe 1365, Mpumalanga, South Africa, and from [www.naturaljustice.org](http://www.naturaljustice.org)
- <sup>30</sup> Natural Justice is working with partners such as the COMPAS Network, LIFE Network, Global Diversity Foundation, ABS Capacity Development Initiative, UNEP-DELIC, UN University, and others in Africa, Asia-Pacific, and Latin America to develop the approach.

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