

Abstracts

1. Community protocols and free, prior informed consent: overview and lessons learnt

Krystyna Swiderska with Angela Milligan, Kanchi Kohli, Holly Shrumm, Harry Jonas, Wim Hiemstra and María Julia Oliva

In this overview article to the issue, the guest editors begin by setting the scene, explaining how loss of biological and cultural diversity is threatening the livelihoods and biocultural heritage of indigenous peoples and local communities (ILCs). They explore the role of community protocols (CPs) and free, prior informed consent (FPIC) in helping ILCs to defend their heritage and assert their rights over resources and traditional knowledge. They emphasise the importance of community-level participatory processes in the development of CPs and FPIC, and highlight the dangers of using these tools in a top-down, mechanistic way. They then consider recent changes in international law that have given CPs and FPIC official support. Next, they turn to this special

issue of *PLA* itself, introducing the process used to develop it, its objectives and structure. They identify key lessons and conclusions on how to effectively support FPIC/PIC and CPs to maximise positive impacts for biodiversity and livelihoods, drawing on the articles in the issue.

2. FPIC and beyond: safeguards for power-equalising research that protects biodiversity, rights and culture

Michel Pimbert

Too often, research programmes are imposed on rural people, adding to their already overwhelming burdens, causing harm and violating rights. It is vital to ensure that non-researcher citizens have an opportunity to assess, on their own terms and in their own time, the desirability and relevance of engaging in research activities before giving consent. However, there is a need to go beyond FPIC in research involving indigenous and local communities. FPIC needs to be part of a wider set of tactics and safeguards to enable local and indigenous communities

to defend their rights and determine their own destinies. Situating FPIC and community protocols within the broader research and development cycle, this article emphasises the need to incorporate participation at key stages throughout the cycle. It stresses that the development of community protocols should be grounded in respect for local knowledge, since the sidelining of local knowledge in favour of standardisation induced by western science will result in ABS regimes that are extractive and unfair.

3. Whose access and whose benefit? The Nagoya Protocol and customary rights in India

Sagari R. Ramdas

This article discusses the limitations of the Nagoya Protocol from the perspective of communities in India. As it promotes access to genetic resources for commercial use, the Protocol is grounded in the exclusive intellectual property rights framework. Yet in the worldview of Adivasi and pastoralist communities, natural and genetic resources and traditional knowledge form the basis of existence and are sustained through collectivism and spirituality for future generations, and cannot be reduced to a commodity. Although the provisions on prior informed consent (PIC) and community protocols provide space for communities to assert their own worldview, they are subject to domestic law. This is a severe limitation as none of India's ABS-related laws and institutions require PIC or community protocols. Instead, Adivasis and pastoralists are using indigenous rights laws to defend their customary rights.

4. The spirit of FPIC: lessons from government-community relations in Canada and the Philippines

Abbi Buxton

The 'spirit of FPIC' is to enable communities to have power over decision-making, so that decisions reflect their

knowledge, values, practices and norms. But how can this be put into practice? Commercial companies often look to governments and national legislation to provide guidance and help. The nature of the relationship between government and local indigenous groups and local communities then becomes crucial. The case studies in this paper look at this relationship in the context of large-scale mining projects, reflecting on how decision-making structures and processes can be designed to enable real community participation and influence and thereby reflect the 'spirit of FPIC'. The Philippines case shows clearly that a legal right to FPIC is not sufficient and can in fact have negative impacts where the government feels the need to engineer consent in order to comply with the law. By contrast, the creation of new bodies for participation in Canada has seen a process of empowerment of civil society and local indigenous groups. To implement the 'spirit of FPIC', institutions need to be flexible and recognise the importance of bottom-up design of the structures, processes and values for achieving FPIC.

5. Indigenous benefit-sharing in resource development: the Australian Native Title experience

David Ritter

This article describes the processes of indigenous representation, negotiation and agreement-making over mining and development that is mandated under the Australian Native Title Act (NTA) of 1993. It evaluates the lessons and learning from two decades of experience for similar processes such as FPIC. The NTA succeeded in giving indigenous people a seat at the bargaining table when a resource developer wanted to mine or explore on land under claim. As a consequence, indigenous communities received large benefits and numerous sites of traditional significance were probably saved from destruction. However, the

NTA did not establish a true right to veto, which would have given traditional land holders the power to decide whether or not to participate in the resource economy on a case-by-case basis. It therefore mainly provided a way of bringing traditional indigenous land rights within Australia's resource economy in an orderly way. Empowerment and strengthening of customary rules and responsibilities were limited by the predefined processes provided for under the Act. The lack of sufficient resources and expert advice also limited indigenous peoples' ability to use the rights under the Act to their advantage.

6. Changing the system from within: participatory plant breeding and ABS in China

Jingsong Li, Janice Jiggins and Yiching Song

China's first participatory plant breeding (PPB) programme was initiated in Guangxi, southwest China. It aims to address declining genetic diversity in farmers' fields and to improve livelihoods. As well as developing improved crop varieties for farmers, the programme is facilitating the negotiation of local agreements by which farming communities can benefit from sharing their genetic resources and related traditional knowledge with breeding institutes. This work has strengthened the legitimacy of farmers' rights to benefit-sharing, and is feeding into on-going policy discussions on how to implement the ABS provisions of the Convention on Biodiversity and the Nagoya Protocol. In a context where farmers face significant legal barriers to securing their rights and benefits, this experience shows how a local-level experimental project, involving formal breeding institutes, can start to change attitudes, practices and policy debates, paving the way for changes in policy and law.

7. Decolonising action-research: the Potato Park biocultural protocol for benefit-sharing

Alejandro Argumedo

For decades, indigenous peoples have been calling for a holistic and more sensitive approach to their culture – one that values and nurtures their traditional knowledge systems and biocultural diversity. This article describes an innovative participatory action-research approach with five Quechua communities in Peru, where the communities worked with researchers to develop the Andean Potato Park's biocultural protocol for equitable benefit-sharing. The BCP includes not only benefits derived from access to genetic resources and traditional knowledge, but also all benefits that come from activities related to the direct and indirect use of biocultural resources. The process of participating in the development of a research methodology and focus became not only a process of empowerment for the communities and their institutions, but also enabled them to participate in decision-making, particularly in defining the content of the BCP. As well as discussing this participatory process, the article briefly outlines the provisions of the BCP, and reflects on how the methodology could be improved in the future.

8. The Bushbuckridge BCP: traditional healers organise for ABS in South Africa

Rodney Sibuye, Marie-Tinka Uys, Gino Cocchiaro and Johan Lorenzen

With a history of uncompensated bio-prospecting, the Kukula traditional health practitioners of Bushbuckridge, South Africa are faced with both marginalisation and an emerging ecological crisis from the overharvesting of medicinal plants. But they have staked their claim to rights through the development of a biocultural community protocol (BCP), to secure access to medicinal plants for healthcare, prevent overharvesting and gain benefits from commercial use. The BCP shows

clearly the challenges faced by health practitioners from external agents – such as businesses and government – and calls for the community's rights over its land, resources and knowledge to be respected. With support from Natural Justice, the process was initiated by a small group of healers, which discussed concerns about the illegal harvesting of medicinal plants, collected information and facilitated further discussions. As a result of the participatory process to develop the protocol, a healers' association was established with almost 300 members, bringing together dispersed communities and two different cultures and language groups, with a representative committee for negotiating with others. The healers have also gained some access to medicinal plants in a protected area which was previously completely sealed off.

9. Biocultural community protocols: tools for securing the assets of livestock keepers

Ilse Köhler-Rollefson, Abdul Raziq Kakar, Evelyn Mathias, Hanwant Singh Rathore and Jacob Wanyama

The role of communities in animal genetic resource conservation still remains largely invisible to scientists and bureaucrats. Livestock keepers in Pakistan, India and Kenya have developed community protocols to improve the visibility of the role of livestock keepers in conserving genetic resources, addressing problems of access to grazing land and conserving threatened breeds, as well as asserting customary rights in order to secure benefits from commercial use. This article examines three different experiences – the Pashtoon, Raika and Samburu BCPs – and the extent to which these were community-driven processes. It looks at whether and how communities have been able to make use of the protocols in the struggle to have their rights recognised. It concludes that BCPs are extremely useful for making visible the connection between

communities and their breeds and important for securing the assets of livestock keepers in the long term.

10. Sacred groves versus gold mines: biocultural community protocols in Ghana

Bernard Guri Yangmaadome, Daniel Banuoko Faabelangne, Emmanuel Kanchebe Derbile, Wim Hiemstra and Bas Verschuuren

This article relates the events leading up to protests by Tanchara traditional leaders in Ghana against gold mining on the community's land, which was threatening their sacred groves and water supplies. A local NGO facilitated a community organisational process which revitalised the community's traditional authorities and role in biodiversity conservation. The traditional leaders were empowered to take action to protect their resources. Building on this work, the community developed a biocultural community protocol (BCP) as a tool to seek legal protection for its traditional knowledge and natural resources against the threat of gold mining. The article draws out lessons for others in developing and using BCPs to assert and defend community rights over natural resources. It demonstrates the importance of an in-depth, long-term participatory process for developing BCPs.

11. Defending our territory: the community protocol of Alto San Juan, Colombia

Tatiana López Piedrahita and Carlos Heiler Mosquera

The Alto San Juan biocultural community protocol (BCP) in Colombia seeks to ensure that the collective territorial rights of Afro-Pacific communities (ASOCASAN) in the region are not violated by illegal mining and forestry, and that cultural practices and the development model that help to conserve biodiversity are recognised and respected by others. It also sets out guidelines for dialogue with

external actors wishing to implement development projects and research on the territory. The ancestral territory of the 30 afro-descendant communities is recognised by law but not in practice, and the BCP aims to ensure that these customary rights are recognised in municipal planning processes and national policies. The protocol was developed through a participatory process involving workshops and field interviews facilitated by the Pacific Institute of Environmental Research, with methodology approved by the ASOCASAN council. The article shows how a key challenge was to get the local government to recognise the legitimacy of the protocol, since it is a new tool. Involving local authorities in the development of community protocols is important for this recognition, and also to ensure follow-up projects once the protocol has been developed.

12. Creating the Ulu Papar biocultural community protocol: process and product in the framing of a community agreement

Theresia John, Patricia John, Louis Bugiad and Agnes Lee Agama

Following conflicts in a protected area and in the shadow of a threatening development project, the people of Ulu Papar (from the Dusun indigenous group) in Borneo came together to create a biocultural community protocol, articulating the interests, rights and responsibilities of the community in the preservation, management and utilisation of their territories and culture. This article describes the process to develop the protocol, which built on a prior participatory research process to document the use of key resources for community livelihoods. The protocol was developed through a series of workshops, trainings and discussions, in a process facilitated by community members. A travelling roadshow was used to reach as many remote villages as possible and

engage people in the discussion to shape the content of the protocol. The challenge now is to build on these participatory processes and form constructive relationships with outside actors and government agencies.

13. Accessible technologies and FPIC: independent monitoring with forest communities in Cameroon

Jerome Lewis and Téodyl Nkuintchua

This article looks at the partnership between communities and a community-based monitoring project on illegal logging and advocacy in Cameroon. Here both FPIC and BCPs were used to strengthen ownership of the project, following an evaluation which showed weak appropriation of the monitoring technology by participating communities. The first step was to hold extensive consultations with each community so that they could either refuse or give consent to the project, using an FPIC form and checklist to check the understanding of the information given about the project at each stage. If granted, community protocols were then developed to provide the basis for organising activities throughout the project – setting out who would participate in data collection and mapping, how they would participate and their roles and responsibilities. The process of elaborating FPIC forms and community protocols was important because it enabled most of the challenges and difficulties of implementation by the community to be identified at this stage. The use of accessible technologies and GPS icons designed with community participation, enabled communities to take control of a successful and empowering project.

14. Biocultural community protocols and ethical biotrade: exploring participatory approaches in Peru

María Julia Oliva, Johanna von Braun and Gabriela Salinas Lanao

This article describes a 'biocultural dialogue' – a more focused BCP adapted to

the context of ethical biotrade. It was developed by a local indigenous forestry organisation, AFIMAD, and a company engaged in sourcing biodiversity ethically, Candela Peru. Developing a BCP was seen as a way to support the indigenous communities in advancing their social, cultural and environmental expectations of their commercial relationships. The development of the BCP involved an internal reflection process with representatives from the community. They considered how protocols could help them to better respond to commercial proposals concerning forest resources, increase the government's recognition of their rights as indigenous communities, and communicate their views to other institutions and organisations. Beyond the document itself, which is still being discussed by the wider community, the process helped AFIMAD reflect on its goals and values, as well as its economic activities, and reaffirmed its significance within the communities. As a result, it was able to communicate in subsequent dialogue with Candela Peru much more assertively on issues such as sustainable resource use, negotiation processes, the kind of relationship they wanted, and the sharing of benefits. The communities and Candela Peru are now better placed to understand and address each other's needs and concerns in the context of their current and future work.

15. How to implement free, prior informed consent (FPIC)

Jerome Lewis

Negotiating FPIC is a process. Before explicit consent can be negotiated, information on planned activities and their potential impact needs to be provided to those affected, and action has to be taken to verify that this information has been understood. If people refuse to grant consent, this decision must be respected. FPIC focuses on harmonising and equalising relationships between groups of

different power and means. This article outlines the elements of FPIC and what they imply for the process of negotiating FPIC in practice. It discusses the eight key stages of an FPIC process, noting the requirements for each stage and the potential pitfalls. It then considers the advantages of FPIC processes for communities and for external actors, as well as the challenges faced in implementing such processes.

16. Understanding and facilitating a biocultural community protocol process

Holly Shrumm and Harry Jonas

This article looks at how to facilitate a community protocol process in practice. It discusses how to determine what a 'community' is, and the importance of understanding its culture and internal dynamics, as well as how it makes important decisions. It emphasises the importance of the participation of all parts of the community, especially those who are often excluded from decision-making, such as women and youth. It then looks at how to facilitate a CP process, including seeking agreement from the community about the process, identifying potential 'community catalysts', managing the expectations of the community and the importance of flexible timeframes.

17. Using stakeholder and power analysis and BCPs in multi-stakeholder processes

Herman Brouwer, Wim Hiemstra and Pilly Martin

Multi-stakeholder processes (MSPs) advocates often argue that, because of the interdependence of stakeholders in solving complex issues, MSPs create trust-based relations that enable the empowered and active participation of all stakeholders. However, the distribution of power, capacity and resources is generally imbalanced. Power differences are embedded in the social fabric of society and can be reproduced, or even reinforced, in an MSP. Even if participants are willing

to engage in dialogue on an equal basis, there are still differences in the level of experience, access to resources and information. Failure to recognise power dynamics can prevent the joint learning and innovative solutions which one would expect as outcomes of a good MSP, and the result will not reflect the interests and needs of less powerful stakeholders, often those representing the grassroots. The authors discuss how local action researchers are supporting communities to analyse power in MSPs so that they can learn how to engage effectively with and influence processes that involve more powerful actors. They outline some of the tools which can be used in this analysis, using an example from Lamu, Kenya.