

“Protection of Collective Bio-Cultural Heritage and ‘Reverse’ ABS”

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Organised by: IIED, ANDES and FIELD

Chair: Maria Berlekom, SwedBio

Protection of Collective Bio-Cultural Heritage, Krystyna Swiderska (IIED): Discussions on the protection of traditional knowledge have often emphasised the need for consistency with existing IP standards, rather than recognising the need to respond to a very different context. IIED and partners are working with indigenous communities in Peru, Panama, Kenya, India and China to assist the protection of their rights over traditional knowledge in accordance with their customary laws and practices. We are a mix of indigenous and non-indigenous researchers, but we are using an indigenous vision to guide the research with Kuna, Embera, Wounaan, Quechua, Mijikenda, Maasai, Yanadi, Lepchas, Adhivasi and other communities. We aim to assist communities to develop local responses based on their customary laws, and to improve understanding amongst policy makers of how customary laws should be respected. We are applying the Code of Ethics of the International Society of Ethnobiology, which identifies 15 principles, including: Prior & Inalienable Rights over land, Natural Resources and TK; Self-determination; Active Participation; Full Disclosure; PIC and the right to Veto any study or activity; Confidentiality; Respect (eg. of spiritual values); Compensation and Equity; and Restitution (see www.iied.org).

The concept of ‘Collective Bio-Cultural Heritage’ is our guiding framework. Having emerged from a community context, this concept reflects the holistic worldview of indigenous communities. It is defined as the: “Knowledge, innovations and practices of indigenous peoples and local communities which are collectively held and inextricably linked to traditional resources and territories; including the diversity of genes, varieties, species and ecosystems; cultural and spiritual values; and customary laws shaped within the socio-ecological context of communities”. This concept recognizes that the maintenance and preservation of TK relevant for biodiversity conservation and sustainable use is critically dependent on the continued stewardship by indigenous and local communities of their traditional territories and bio-genetic resources. Hence, effective protection of TK also requires protection of rights of communities to their lands, biodiversity, cultural and spiritual values and customary laws, including restitution of rights over heritage taken away. As the late Darrell Posey explained: “Protection of traditional knowledge will only be adequate if it is conserved, maintained and enhanced in situ, as part of the lands, territories and cultures of indigenous and local communities” (Traditional Resource Rights, 1996).

‘Reverse’ ABS and Bio-Cultural Heritage Registers, Alejandro Argumedo (ANDES): The concept of Collective Bio-Cultural Heritage originally emerged from the work of ANDES, an indigenous-managed NGO in the Peruvian Andes, following years of work with Quechua communities in a centre of origin of potato diversity. Here, potato diversity and mountain landscapes are central to nutrition, health and cultural and spiritual life. ANDES has established a ‘Potato Park’ as an Indigenous Bio-Cultural Heritage Area based on collective land tenure of six communities and managed by customary laws and institutions. This effectively provides a sui generis system for positive protection of TK. It also facilitated the first ever agreement between indigenous communities and a gene bank, the International Potato Centre, for Repatriation and Reciprocal exchange of traditional potato varieties. In this way, communities will gain access to varieties they have lost, rather than just providing others with access to their resources, thus reversing the ABS paradigm. An Inter-Community Agreement for Equitable Sharing of Benefits arising from the agreement with CIP is being developed, based on

customary laws and practices, to ensure the benefits flowing back to the community strengthen CBCH.

Andes is also developing a Register of Collective Biocultural Heritage aimed at protecting and promoting Quechua indigenous knowledge systems. This local register is an Internet-based multimedia database, developed by combining open source software (developed at Andes using XLM language MPEG protocols, which allows for customary laws to be integrated in the software structure), and traditional Andean Khipu information management system.

Taking a holistic and 'Reverse' ABS approach in the International Regime, Linda Siegele (FIELD): The terms of reference for an international regime on ABS are set out in COP Decision VII/19D. An international ABS regime must implement CBD Articles 15 and 8(j). Ironically, CBD Article 10(c), which speaks directly to the protection and encouragement of the customary use of biological resources in accordance with traditional cultural practices is left out of the mix. Article 15 requires that access to genetic resources be allowed only on mutually agreed terms. There can be no access to genetic resources without prior informed consent. In addition the fair and equitable sharing of the benefits arising from the use of genetic resources must also be based on mutually agreed terms. Nevertheless, Article 15 also limits the ability of those possessing traditional knowledge to exercise full stewardship over natural resources. This is done by vesting in national governments the authority to determine access to genetic resources. National governments also have the prerogative of waiving the prior informed consent requirement. It is also ironic that Article 8(j), which deals specifically with the conservation of biological resources in their natural surroundings, should form part of a regime which contemplates the removal of genetic resources from their place of origin. Article 8(j) requires parties to the CBD to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles; promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices; and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

The starting point for future negotiations of an international regime on ABS is the Annex to the COP 8 decision on ABS. The Annex has references to traditional knowledge in the objectives, scope and benefit-sharing sections as well as a separate section on traditional knowledge. Although heavily bracketed, in support of the preservation of traditional knowledge, the Annex includes references to *sui generis* models or systems, the protection of indigenous and local community rights, and the requirement for prior informed consent of indigenous and local communities. These draft provisions are more specific and more far-reaching than those of the CBD. The Potato Park Agreement, which operates within a 'reverse' ABS paradigm, enshrines the management of genetic resources by indigenous and local communities who have been doing so successfully for millennia. It could serve as a model for future agreements penned under an international ABS regime, because it provides a mechanism by which prior informed consent and mutually agreed terms could be arranged while ensuring that the traditional knowledge of local and indigenous communities is respected, preserved and maintained.