

MEETING OF REPRESENTATIVES OF AFRICAN INDIGENOUS AND LOCAL COMMUNITIES AND COMMUNITY BASED ORGANIZATIONS ON BIO-CULTURAL COMMUNITY PROTOCOLS:

Dates: 2-3rd of September 2010

Place: Cape Town

Organizers: Hosted by **Natural Justice (Lawyers for Communities and the Environment)** and supported by the **ABS Capacity Development Initiative for Africa**

Background:

The history of bio-cultural community protocols in Africa began with the adoption of the African Model Law (The Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources) in June 1998 by the Council of Ministers of the OAU in Ouagadougou, Burkina Faso. The African Model Law sought to establish a common African position on regulation of Africa's biological resources and traditional knowledge within the continent and in the international negotiations under the Convention on Biological Diversity (CBD) and Trade Related Intellectual Property Rights (TRIPS).

One of the key objectives of the African Model Law is to secure the rights of African communities to their biological resources and traditional knowledge. The African Model Law states that one of its main objectives "*shall be to recognize, protect and support the inalienable rights of local communities including farming communities over their biological resources, knowledge and technologies*".

The African Model Law became a foundational document for African countries in the negotiations towards an international Protocol on Access and Benefit Sharing (ABS) under the CBD. The African countries that negotiate as a bloc known as the 'African Group' within the 'Working Group on ABS' have based their negotiating positions on the spirit of the African Model Law over the last five years.

In keeping with the ethos of the African Model Law to secure the inalienable rights of African communities to their biological resources and knowledge, the African Group had proposed that for the purposes of the Protocol on ABS, any access to the traditional knowledge of indigenous peoples and local communities (IPLCs) shall be in accordance with the 'community protocols' developed by these communities. This proposal by the African Group was backed by representatives of African ILCs and the International Indigenous Forum on Biodiversity and has met with wide approval of the other negotiating States as an effective means of securing the rights of IPLCs under the CBD and the potential international Protocol on ABS.

The emerging consensus amongst the Parties to the CBD on the recognition of community protocols as a way to secure IPLCs' rights over their traditional knowledge has far-reaching implications in international law and domestic law

making. Such recognition paves way for genuine legal pluralism where community protocols embodying customary norms and laws of IPLCs are recognised in international and national law.

Involvement of African ILCs and CBO networks:

In September 2009 at the Pan African IPLC Meeting, representatives of over 50 ILCs formally resolved to support ' bio-cultural community protocols' (BCPs) as an effective 'rights based approach' (RBA) to secure rights of IPLCs under Article 8j of the CBD. The African IPLC representatives also highlighted the need to collectively agree on the process and content of BCPs and the ways to build an African consensus towards the effective recognition and implementation of BCPs in national law and policy that impact IPLC rights to biological resources and associated traditional knowledge.

What are Biocultural Community Protocols (BCPs)?

1. BCPs are tools that facilitate culturally-rooted, participatory decision-making processes within communities with the aim of asserting rights over their communally managed lands and traditional knowledge.
2. BCPs are based on customary norms and laws of communities and set out clear terms and conditions to governments and the private and research sectors for accessing community resources and engaging with communities.
3. BCPs facilitate the conservation and sustainable use of biodiversity by ensuring that decisions regarding communally managed resources rest firmly with the communities that have served as stewards of these resources over many generations.

Over the last year discussions relating to BCPs have taken place with networks consisting of African ILCs and CBOs such as the Indigenous Information Network (IIN), Indigenous Peoples of Africa Coordinating Committee (IPACC), African Biodiversity Network (ABN), COMPAS Africa, LIFE Network Africa and the Indigenous and Community Conserved Areas (ICCA) Consortium. Besides providing valuable inputs on the structure and content of BCPs, these networks have also highlighted the usefulness of BCPs in providing a holistic approach to community rights that go beyond just rights to traditional knowledge.

African CBOs and ILC representatives have emphasized the usefulness of BCPs as a 'rights based approach' to free prior and informed consent (FPIC) of ILCs in international negotiations around a range of issues beyond ABS including REDD (Reducing Emissions from Deforestation and Forest Degradation), Protected Areas,

Livestock Keepers Rights etc. It was also noted that different legal regimes requiring different compliance mechanisms tend to fragment community concerns that relate to biodiversity and ways of life. In response BCPs could function as a pivotal community developed tool that establishes the terms of any engagement with the community. A community developed rights based tool of this nature could well become a key interface tool within any law or policy that requires the FPIC of communities.

Where to from here?

With the aforementioned emerging legal landscape in mind Natural Justice with the support of the ABS Capacity Development Initiative for Africa calls a meeting of African representatives of the ILC and CBO networks working towards securing community resource rights:

The objectives of this meeting include the following:

- 1) To review the existing rights-based approaches (RBAs) to biological resources and traditional knowledge that participants are currently engaged in, what is/not working
- 2) To evaluate the potential of bio-cultural community protocols (BCPs) to augment existing RBAs to securing the ways of life and FPIC of IPLCs with respect to any activities undertaken by the State or non-community actors that impact a community's resources and knowledge
- 3) To collectively discuss the viability and utility of establishing an African collective of representatives of existing ILC and CBO networks that will coordinate activities, share experiences, create linkages and develop capacity on the use of BCPs at community, national and regional levels

The expected outcomes of this meeting would be:

- 1) A collaborative report on RBAs to biological resources and traditional knowledge that participants are involved in and whether and how BCPs can augment these approaches
- 2) A critical analysis of the BCPs and their strategic value as an RBA to securing the rights of African ILCs to their resources and knowledge
- 3) A decision on relevance of the proposed African collective on BCPs to secure the rights of African ILCs under the CBD and other emerging biodiversity related international and national law and policy
- 4) If an affirmative decision is taken with regard to the setting up of an African collective, then an outline of a plan towards future coordination and collaboration amongst its members and an initial program of work relating to BCPs as a context specific, community RBA

Note: Some participants will be requested in advance to prepare 10-minute presentations about the work of their organizations that relate to community rights. These participants would be required to provide the organizers with a two-page summary of their presentation in advance that would be included in the information pack for the meeting.

Guiding questions for the summary and the presentation are:

- 1) Provide a brief description of the work of your organization that relates to community rights to biological resources and/or knowledge
- 2) What are the strengths and successes of this approach?
- 3) What are the challenges encountered and how are they being addressed?