



## Experiences and Lessons Learned from the Development and Implementation of Community Protocols and Procedures

### Contribution to the first Assessment and Review of the Effectiveness of the Nagoya Protocol

## Introduction

This is a submission in response to the notification SCBD/SPS/DC/VN/BG/JR/86908 regarding Contribution to the first Assessment and Review of the Effectiveness of the Nagoya Protocol. Specifically, it responds to the invitation for:

*(b) Indigenous peoples and local communities and relevant organisations to provide information on customary laws and the development of community protocols and procedures 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.*

The document is a joint submission by **Natural Justice** and the **ABS Capacity Development Initiative**, with contributions from **ONG CESAREN** (Cercle de Sauvegarde des Ressources Naturelles, Benin). It provides examples of, and lessons learned from, several community protocol processes, and one case of a PIC process without a community protocol, that these institutions supported in Africa in the context of ABS since the adoption of the Nagoya Protocol. A number of partner organisations were involved in the individual processes, and are mentioned in the examples below.

This document includes:

1. Lessons learned from the development of community protocols in an ABS context
2. Advantages, challenges and open questions
3. Examples of community protocols from Kenya, South Africa, Namibia, Benin and Madagascar
4. An example of an ABS processes without community protocols from Cameroon

In the “Draft glossary of relevant key terms and concepts to be used within the context of Article 8(j) and related provisions” (UNEP/CBD/WG8J/9/2/Add.1), community protocols are defined as follows:

*Community protocols cover a broad array of documents generated by communities to set out how they expect other stakeholders to engage with them. They may reference customary as well as national or international laws to affirm their rights to be approached according to a certain set of standards. Articulating information, relevant factors, and details of customary laws and traditional authorities helps other stakeholders to better understand the community’s values and customary laws. Community protocols provide communities an opportunity to focus on their development.*

Community protocols are being developed and used in a variety of contexts, including but not limited to ABS. Indeed, since these are documents reflecting the priorities of the community, they often deal with more than one issue. This document presents examples of community protocols which contain elements focused on ABS issues. Some were developed primarily with an ABS focus, some include ABS alongside other issues, such as biotrade or land issues. The examples also include ABS cases that deal primarily with access to Genetic Resources, not associated Traditional Knowledge – we still feel that these examples bring valuable lessons and are therefore relevant to this call for contributions.

## 1. Lessons learned from experiences with the development of community protocols in an ABS context

### Entry point and focus

Identifying a **clear objective and focus** of the community protocol at the onset is vital for a sustained and successful process. Focussing the community protocol process on a specific goal, such as the protection of traditional knowledge and the definition of community procedures for PIC and MAT, is important to maintain momentum and avoid unrealistic expectations.

This doesn't mean, however, that the community discussions should be constrained from the outside. A key strength of community protocols is that they seek to **capture a holistic set of community values, practices and aspirations**. The main challenges and aspirations of the community regarding their land and resources, traditional knowledge and customary governance should be discussed. Genetic resources and traditional knowledge should not be discussed solely in an ABS context, but in terms of their importance for the community more broadly.

Ideally, a community protocol in an ABS context should be developed **in response to a specific opportunity or identified challenge** regarding the GR and/or aTK of the community. This could be a new application for access by a user, the desire to improve an existing ABS value chain, or the defence against a specific threat of misappropriation of the community's TK. While there are advantages to have community protocols in place before a user applies for access, it is difficult to trigger and sustain a community-led process if there is no concrete aspiration or threat on the horizon.

It is possible to develop a community protocol to prepare the community to negotiate potential ABS agreements in the future, provided that the protocol also includes **existing activities or challenges** of the community. In any case, it has proven valuable to broaden the discussion to the **valorisation and protection of the community's resources and knowledge more generally**, not only through the specific access to TK associated with GR by international users. This ensures an added value of the community protocol for the community in the short term. For example, if a community is already a provider of plant material for biotrade value chains, then existing challenges associated with this activity have to be included – for instance procedures and demands regarding collecting permits, price negotiations etc. Or if the community is concerned with the protection and valorisation of their traditional knowledge in a national context, then provisions for PIC and MAT should be complemented with procedures for the development of products for the national market.

## Process

A key feature of community protocols is that their **process should be designed and developed by the community**. Not only the content of the protocol, but its process as well should reflect the values, governance structures and decision-making practices of the community. This also means that every community protocol process will be different, according to the community, the issues at hand, and the time and resources available.

An essential part of a good community protocol process, however, is the **input of the broadest sample of community members**. As much as possible within the local culture and situation, the protocol should strive to include the full spectrum of perspectives, especially those of women, youth, the elderly and others who are often excluded from decision-making processes.

It is also crucial to involve the **customary or other community decision-making institutions** in the process. In places where community groups, such as associations, have been created to manage natural resources, these groups can of course play a key role. However, this should be balanced with the participation of customary structures, traditional leadership and – especially important in the ABS context – traditional knowledge holders.

A **comprehensive discussion about governance structures** should feature strongly in the protocol process. Culture plays a critical role in the protocol process and should help define the approach and tools. The protocol process should not be used as a means to create divisions or to advance the political power of certain groups within the community. Above all, it should instil a sense of unity and common vision.

Ensuring community ownership requires a **balance of direct engagement through large-scale meetings and the more sustained involvement of community members able to represent community values and concerns**. These representatives can be directly selected by the larger community as part of the community protocol process, they can be drawn from customary leadership, and/or be members of an established representative body. Essentially, these representatives have to be considered as legitimate by the community and able to understand and articulate the inputs of the larger community.

Ensuring **clarity about who and what constitutes the community** is also integral to the protocol process. Above all, the community must define itself and determine how to address external issues. Various examples have also shown that the definition of “community” may vary, depending on the objective of the community protocol – in some cases protocols were developed by groups with a specific role, such as traditional healers; in others several distinct communities came together to face a common threat.

There is no set rule or formula for how long it takes to develop a community protocol. The **timeframe** for the whole process of documenting, developing, using and reflecting upon a protocol will vary widely depending on the local context. As far as possible, the timeframe should be determined by the local situation and by the community’s priorities and capacities. Although practical considerations such as available funds and human resources must be taken into account, timeframes should not be determined primarily by external interests or donor requirements.

**The process is as important as the product:** robust community protocol processes strengthen community confidence through their focus on identifying traditional values and practices that have and continue to positively ground and guide decisions. Encouraging communities to articulate these values and practices, and their significance, underscores their positive aspects and can reaffirm their value against the pressure to adopt external practices. Through these strengths of empowerment and self-discovery, the process can even be

valuable in grounding and strengthening community members or representatives in engaging with external actors before a BCP has been drafted and released.

## **Outside support and community empowerment**

**NGOs, CBOs and other support organisations** can have an important role in facilitating community processes, providing technical input, and assisting the community with the drafting of their protocol. However, one of the key outcomes of a community protocol process should be the **legal empowerment of the community**. This means that supporting organisations should not simply take over tasks such as drafting the protocol document, but rather work with community members to enable them to develop their protocol and later use it in their interactions with outside actors.

As **facilitators**, supporting organisations can ensure the contribution of a broad, representative group of community members. A degree of detachment from direct community dynamics and ability to observe them can be an asset in targeting a broader segment of the community. At the same time, the supporting organisation should have meaningful experiences and connections with the community. The trust derived from these connections enables community members to feel comfortable in sharing their values, practices, aspirations and concerns. It also increases the likelihood that the organisation can identify and be guided by representative community leadership.

Access and Benefit Sharing is a relatively new and complex framework. A certain amount of **information and training** will therefore be necessary regarding the functioning of bioprospecting and ABS, focusing on the role and rights of communities.

Relating community values and customary law to the larger legal framework is an important element of a meaningful community protocol. **Legal support** is therefore important in two areas: direct legal empowerment and legal assistance in drafting and using BCPs.

- **Legal empowerment** in a community protocol process includes support in identifying relevant legal instruments, including local, national and international laws and policies that affirm community rights, translating them into easily understood language, and training community members in the use of these instruments.
- **Legal assistance** can include support specifically in the drafting of community protocol sections that outline these laws. At a later stage, legal assistance might be needed in the use of the community protocol, including the negotiation of ABS agreements. In this context, it becomes important to link the community with national legal counsel, including expertise in contract law.

The importance of trust and continuity of process on one hand, and the need for specific technical and legal support on the other, might make it difficult for one single supporting organisation to facilitate the process. It may require combining local facilitation with punctual input and knowledge transfer from organisations or experts knowledgeable in ABS issues, or who bring in the legal expertise.

## **Role of government**

A core feature of a BCP is that it is a **document developed by the community itself**, according to its own priorities and processes. As governments start recognizing community protocols as a basis for PIC processes and benefit sharing, it is important that this **local**

**ownership and flexibility** is maintained to avoid “blueprint” models that do not correspond to local realities.

At the same time, experience has shown that **informing and involving key government institutions early on is essential to ensure buy-in, and facilitate official recognition**. This includes the **Competent National Authorities**, but also relevant **local and sub-national authorities**. The latter is key, especially where decentralisation is increasingly devolving authority over natural resource management to lower-level administrative bodies. However, in many cases these decentralised bodies still lack the sufficient information or capacity regarding emerging ABS frameworks. Supporting organisations and CNAs can both play a role in informing these bodies and raising their awareness of the rights and roles of IPLCs regarding access to GR and aTK.

Government bodies can and should also play a role in **supporting the community with the implementation of their community protocol**, specifically by ensuring the respect of PIC procedures, and fair process for the negotiation of MAT.

### **Links to national ABS frameworks and legal recognition of Community Protocols**

In developing **national frameworks** to implement the Nagoya Protocol, a number of countries are including the **recognition of community protocols, or references to communities’ customary laws and procedures**. This is the case for the recently enacted ABS frameworks cited in the following examples in Benin, Namibia and Madagascar.

Explicit inclusion in national ABS frameworks is of course the most straightforward way for legal recognition of community protocols. However, even in countries where this is not the case, or where ABS frameworks are still being developed, there are ways to give community protocols official recognition and status. In several cases, **local or sub-national authorities** have recognized community protocols by, for example, signing official letters of recognition. In some countries, it is possible to register customary laws as official by-laws, which can be a way to give protocols a legal status.

In several of the examples mentioned below, ABS frameworks were being discussed and drafted at the same time as the pilot community protocols. This has allowed the **two processes – national and local – to inform each other** and has contributed to clarifying the role of community protocols and customary laws, as well as procedures for PIC, in national ABS systems. The discussions to develop a community protocol, if they are fed back regularly to the national policy level, can contribute important information on the customary laws and decision-making systems of IPLCs, and on good process for PIC and MAT.

However, it must also be noted that community protocols **cannot replace clear and effective procedures** for obtaining the PIC of communities **at the national level**. The community protocol clarifies the decision-making, governance structures and procedures at the level of the community, and makes the link to the rights of the community under national and international law. It therefore serves as an interface between the community and national procedures for Access and Benefit Sharing.

Further, for communities to be able to clearly determine their rights and procedures regarding access to their traditional knowledge, a **national framework for TK protection** should be in place – a part of an ABS law or as a stand-alone legislation. Without such protection, communities cannot have the certainty that their customary rights and rules on TK will be respected once the TK is accessed.

Finally, the implementation of ABS is made much more meaningful for communities if it takes a **broad and strategic view**: by including biological as well as genetic resources and by

linking ABS with biotrade and with options for local and national valorisation. From a community perspective, the distinctions of what constitutes utilisation in the narrow sense of the Nagoya Protocol, and the separation of aTK from the use of the resources that it is associated with, can be very artificial. A narrow restriction of community rights to TK associated with GR, utilised abroad, can exclude communities from a large share of potential benefits. Countries in Africa have been aware of this challenge and are developing various measures to involve communities in benefit sharing not only on aTK, but also, at the minimum, Genetic Resources provided by them.

## 2. Advantages of community protocols, challenges and open questions

The experiences with community protocols and customary law, in the context of ABS and beyond, show that the approach brings a number of **advantages**:

- The protocols are developed from the community perspective. This means that the community can develop their own perspective on issues such as the valorisation and protection of their resources and traditional knowledge, rather than simply responding to a framework imposed from the outside.
- They define rules for access to GR and aTK, for the granting of PIC and for benefit sharing through a community dialogue. This can help to avoid risks such as intra-community conflict or elite capture that arise when PIC processes only involve individuals or a sub-set of community members.
- They are an interface between customary laws and community governance structures on one side, and national frameworks on the other. They document and/or formulate community laws and put these in relation with the larger legal framework.
- This also leads to greater transparency of community procedures, and therefore greater certainty for users of GR and aTK.
- They help to define “the community” in the specific context – be it the inhabitants of a certain territory, several communities who provide the same resource or share common knowledge, or a smaller group with specific knowledge or cultural ties to an area.
- The community protocol process includes a key element of legal empowerment, where the community is informed about, and discusses their rights under national and international law, and builds their capacity in applying these laws.
- The discussion process also triggers a community dialogue on cultural values, rights and obligations regarding the community’s natural resources and traditional knowledge. This has positive impacts on the conservation of these resources and the revitalisation of the community’s knowledge.

Of course these processes are not without challenges – some are inherent to the community protocol approach, some are common to all truly participatory community processes. Since ABS frameworks are still being developed, and the first post-Nagoya ABS agreements with communities are only now emerging, a number of **open questions** also remain, which will have to be further explored:

## **Timeframe of the community protocol process**

As mentioned above, the process of developing the protocol will depend on the context, including factors such as the size and geographical spread of the community, the presence of organised community institutions or not, and the complexity of the issues at hand. An in-depth, community-led process can take time. This is especially true if the process seeks to not only produce a document (the community protocol) but also empower the community to use this protocol to defend their rights and enter into dialogue and negotiations. It is tempting for supporting organisations to streamline the process by taking over functions such as drafting the protocol, but this always comes at the cost of true ownership of the results.

This is a challenge when, for example, a user wants to obtain access to the community's GR and/or aTK in a timely fashion. The realities of operating in the market, or of time-bound research projects, will often put a user under time constraints.

One possible way of approaching this dilemma is to include dialogue between the community and the user earlier in the process, i.e. not to necessarily wait until the community protocol is completely finalised. If the community has been well informed and has had the time to debate on key issues of decision-making for granting their PIC and negotiating MAT, then it may be possible to take these steps already in parallel with the community protocol development process.

## **Shared resources and/or TK**

This challenge is not limited to community protocols, but concerns the negotiation of PIC and MAT on shared GR and/or aTK in general. Many resources are not confined to the territory of one community, and a significant amount of aTK is also shared between different groups. So far, pilot ABS value chains are often built with a first provider community, or a group of communities, for pragmatic reasons. However, further down the line, especially when benefits are being shared, it might become necessary to involve a larger group of communities, who would also like to become providers of a resource, or who share the same TK. It is of course possible to extend a community protocol beyond one community, as examples have shown; it should therefore also be feasible to include "new" communities down the line, as long as there is agreement on rules for decision-making and benefit sharing. How exactly this can be tackled remains to be explored.

## **Need for outside support and funding**

As mentioned above, community protocol processes will usually involve some level of outside facilitation and input, for example on ABS and the legal framework. In some cases, local organisations who are already working with the community, in partnership with the CNA or decentralised government structures, might be able to provide this support. Where this is not possible, outside expertise might be needed. In any case, organising a range of community meetings will involve costs. This raises the question of who will finance these processes if there isn't any project funding involved, as has been the case for most of the pilot community protocols so far. Can there be funding made available through government budgets? Can the user finance part of the process? What implications would this have regarding power dynamics and the necessary neutrality of the organisations facilitating the process?

### 3. Community protocols in the context of ABS: examples from Africa

#### 3.1. Kenya: the Endorois community protocol

##### **The community and context**

The Endorois Community had been living in Lake Bogoria for almost 300 years and regarded Mochongoi Forest and Lake Bogoria as sacred ground due to the use of these locations for key cultural and religious ceremonies. In 1973, the Government of Kenya forcibly evicted the community to create the Lake Bogoria Game Reserve without any prior consultation, thereby challenging their customary rights. Subsequently, the Endorois were not involved or consulted in the management and operation in the reserve; did not receive any share in the benefits emanating from the reserve; nor were they even compensated for the grazing land for their livestock that they had lost in the reserve. In fact, community members were arrested if they trespassed the reserve for cultural and religious purposes or to graze their livestock, which forced them into poverty as well as threatened their spiritual and cultural survival emanating with their ties to their ancestral land.

In 2010, the African Commission on Human and People's Rights made a determination which recognized the rights of the Endorois community over their ancestral land, and thereby allowed them unrestricted access to the reserve to graze their cattle as well as pursue their cultural and religious practices. It emanates from these rights that they should get a share in any benefits arising from indigenous knowledge and resources originating from these ancestral lands.

In 2015, the Kenyan Wildlife Service (KWS) set out to review the integrated management plan and develop a new ecosystem management plan for the Lake Bogoria National Reserve. The project aimed, among other objectives, to involve the Endorois and to integrate aspects of Access and Benefit Sharing within the management plan.

In 2007, Novozymes, a Danish based company and KWS had entered into a five years partnership on biodiversity research and development. This involved the collection, identification and characterization of micro-organisms from Kenya's national parks, and subsequent commercial use of microbial diversity. This agreement stemmed from pre-CBD collections that Novozyme received that led to the development of a commercial product called Pulpzyme. KWS was a party to the agreement because it acted as the national focal point for ABS matters in wildlife-protected areas. More recently, further proposals to exploit the use of microbial enzymes from Lake Bogoria were submitted by a number of foreign research institutions. These requests for access necessitate a negotiation with the community, as stakeholders to the reserve, on the formulae of sharing of these resources.

##### **The national ABS framework**

The Kenyan ABS Regulations, 2006, do not elaborate to any larger extent on the rights and the role of local communities in ABS issues. However, they do declare that communities act as signatories of the PIC and the material transfer agreement, which equals the MAT under the Nagoya Protocol.

The Constitution of Kenya, 2010, requests the State to "protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the



communities“. The State is also obliged to “ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits”, which includes genetic resources.

The Wildlife Conservation and Management Act, 2013, reacts to these constitutional provisions and details the procedures for any bio-prospecting activity that involves Kenyan wildlife. The Kenya Wildlife Service is requested to ensure that the interest of communities are respected and that these communities are involved in the bio-prospecting activities when their traditional use of, or their knowledge about, the wildlife resource has initiated or is involved in the planned bio-prospecting activities. The community will be Party to the respective ABS documents and contracts.

Kenya’s Protection of Traditional Knowledge and Traditional Cultural Expressions Act, which was adopted in 2016, complements these provisions. The Act includes criteria for the protection of TK and specifies the rights of its holders, which underline the references to community rights in the ABS framework. Among others, the Act recognises communities’ right to prior informed consent, their rights to govern the use of its TK under their own rules, as well as their right to benefit sharing including on, but not limited to, TK associated with genetic resources based on MAT.

The scope of the different Kenyan laws addressing ABS is not always clearly delineated, which leads to uncertainties with regard to their applicability and the regulatory competence of the institutions involved. However, all in all it is clear that the development of a community protocol can draw on the support of a favourable legal framework,

### **Objectives and content of the community protocol**

The main objective of the community protocol is to clarify the decision-making process of the Endorois for Prior Informed Consent, in the context of upcoming ABS agreements and beyond. The protocol will serve as a preparatory step for the development of the Integrated Management Plan of the Lake Bogoria National Reserve, which will integrate issues of Access and Benefit Sharing.

### **Process**

KWS approached Natural Justice to support the Endorois community by providing technical advice for the development of their community protocol to guide all interactions with outsiders who sought to access their resources or indigenous knowledge.

A first series of preparatory meetings with the Endorois Welfare Council (EWC) and the Kenya Wildlife Service, deliberated the approach and objectives of the community protocol process.

The EWC then organised a series of community-level meetings. Natural Justice participated in the first of these meetings, to introduce the community protocol approach and the ABS framework. The subsequent meetings in 10 further locations were conducted independently by the EWC. These meetings aimed to clarify concepts and expectations around ABS, and to document community rules, procedures and practice in relation to the traditional knowledge, territories and natural resources.

The outcomes of these community meetings are currently being consolidated into a draft community protocol. A meeting of the EWC with key community representatives is planned to further develop the protocol, as well as a multi-stakeholder meeting involving, among others the KWS and authorities at County level.

## 3.2. South Africa: The National Khoi and San Council

### **The community and context**

The National Khoisan Council (NKC) is comprised of 30 Khoi-San leaders representing five historical Khoi and San groups in South Africa. The NKC is the government-appointed body responsible for representing Khoi and San interests in the process towards formal recognition of their traditional leadership structures. It is also the body negotiating, in partnership with the San council, benefit sharing agreements for the Khoi and San communities.

### **The national ABS framework**

The Constitution of South Africa recognises customary law and the institution, status and role of traditional leadership. The South African ABS framework provides a particularly enabling environment for ABS agreements involving IPLCs in that it:

- clearly defines and protects the rights of TK holders through the Intellectual Property Laws Amendment Act, 2013 (Traditional Knowledge Bill), the National Environmental Management: Biodiversity Act of 2004 (NEMBA) and the Bioprospecting, Access and Benefit Sharing (BABS) Regulation, 2008 (including amendments);
- covers not only genetic resources but Indigenous Biological Resources overall;
- through the NEMBA and BABS, confers rights to communities both over IBR and aTK; and
- includes obligations not only for international users of IBR, but also for users in South Africa

This comprehensive approach gives IPLCs involved in ABS agreements an amount of legal certainty over their rights, and enables the strategic valorisation of biological resources and associated traditional knowledge, linking ABS to biotrade.

### **Objectives and content of the community protocol**

The protocol set out to define the priorities of the Khoi and San community under the auspices of their national structure the National Khoi and San council. This community is not formally recognized as a cultural community living in South Africa. In the absence thereof, the protocol set out to define who they are, how they are organized, what their key priorities are and how they will be organized to achieve it.

The content of the protocol identified the following priorities:

- Constitutional Recognition
- Recognition of indigenous language
- Land rights
- Intellectual Property & ABS
- Women & Youth
- Healing
- Economic Development

## **Process and outcomes**

In partnership with Natural Justice, the NKC began its community protocol process in 2013. The development of the community protocol is an enormous undertaking, given the fragmentation of the communities, their geographical dispersion and the resources that are required to facilitate meaningful, culturally sensitive community-based participation. The process is still on-going. However, based on this partnership and community protocol consultations the NKC was able to organize itself sufficiently to negotiate several benefit sharing agreements for the access to and use of their TK and genetic resources.

In a landmark intellectual property case, the NKC and the South African San Council (SASC) were able to successfully assert their status as the knowledge holders in relation to Rooibos and Honeybush, despite the efforts of a French multinational to trademark the terms “South African Rooibos” and “Rooibos.” In January 2014, Nestlé South Africa entered into a benefit-sharing agreement with the NKC and SASC concerning the development and commercialisation of a tea product based on Rooibos. Nestlé makes bi-annual payments to the Bioprospecting Trust Fund managed by Department of Environmental Affairs. The Khoi and San share those benefits equally.

On 19 August 2013, Cape Kingdom, a private pharmaceutical company based in Paarl, South Africa, entered into a benefit-sharing agreement with the SASC and the NKC, in order to acquire, process, market and sell products derived from the Buchu plant. Buchu is traditionally used by the Khoi and San for its medicinal properties.

The community protocol process has provided a framework to assist the NKC with the understanding and then engagement with ABS on its own terms. The NKC is also using the process to discuss, amongst the community, the process of sharing and utilising any benefits derived from the ABS agreements.

The process achieved the recognition of the Khoi and San as the TK holders to high-value indigenous plant species in SA such as Rooibos, Buchu, Honeybush, Hoodia, and Devils Claw. It also started to establish a form of recognition of the Khoi and San as a cultural community which needs to be included for consultation in developmental matters.

### **Next step: development of a dedicated Rooibos Community Protocol**

During the process of negotiating further benefit sharing agreements on the traditional knowledge associated with Rooibos, it became important to develop a PIC process and decision-making specific to this resource. This protocol will directly involve the local Khoisan communities who still naturally harvest the resource, and national level community consultations are planned to develop the protocol.

### **3.3. Namibia: the Khwe community inside Bwabwata National Park**

#### **The community and context**

The Khwe community is one of the San historical communities living inside Bwabwata National Park. They range around over 6000 people. They are by history a hunter gatherer community with a deep and historical connection with the resources and wildlife inside the Park. The Park has a history of being affected by apartheid laws and being proclaimed a national park. This

is also a community who is not formally recognized as a cultural community within the Namibian traditional authority framework. The community's livelihoods are intimately tied to the resources within the Park, which has led to challenges of access. Further, the intergenerational transfer of traditional knowledge is not occurring as it should, due to restricted access to their customary resources located inside the Park.

There is, however, a community-based natural resource management model for benefit sharing and engagement between the Park and its residents through the local Kyaramacan Association (KA). The Khwe community forms the majority of this resident population. Through KA the community is involved in a very successful benefit sharing model of income sourced through hunting and tourism concessions.

### **The national ABS framework**

The Namibian "Access to Biological and Genetic Resources and Associated Traditional Knowledge Bill" (2017) defines community protocols as "a broad range of practices and procedures, both written and unwritten, developed by local communities in relation to their genetic resources and associated traditional knowledge which cover a range of matters, including how local communities expect external actors to engage with them". It foresees the development of regulations on community protocols.

The bill also includes the protection of TK, including through the recognition of customary laws in this context, by stating that "the State must recognise and protect the community intellectual property rights as they are enshrined and protected under the norms, practices and customary law found in, and recognised by, the concerned local communities, whether such law is written or not."

Even before the ABS Bill, Namibia had followed a proactive approach to the valorisation of biological resources and aTK ("pipeline approach"), which addresses the entire value chain and strongly emphasises the participation of the community level to create economic opportunities in a sustainable manner. Moreover, the Communal Conservancy Act, 1996, and the Forestry Act, 2000, include provisions for the sharing of benefits with local communities.

### **Objectives and content of the community protocol**

The community protocol was developed by the community to describe

- their identity as a community living inside the Park
- their vision and priorities
- their organization and decision-making structures, including procedures for PIC
- their intimate connection with the local resources and wildlife, including their traditional knowledge associated with these resources
- the barriers and challenges to living inside the Park

The community protocol also includes a community biodiversity register which identifies the traditional knowledge of the community, and a community map.

## Process

The community decided to develop their biocultural community protocol in 2014. Each stage of this process was accompanied by a team of supporting organisations including IRDNC, Natural Justice and staff from the Ministry of Environment and Tourism.

- During a first meeting, the community protocol process was discussed, and custodians were elected to spearhead the process.
- A second meeting planned the first steps of the process, followed by consultation visits to the villages.
- A training was organised to explain the relevant legal instruments such as the Nagoya Protocol, UNDRIP and others
- A first draft of the community protocol was produced, was validated through visits to the villages, and was then reviewed and verified
- In 2016, the protocol was officially launched, and subsequently presented to the Director of Environmental Affairs

### 3.4. Benin: the community protocol of the sacred forest Gbevozoun

#### The community and context

The community "Degbe Aguininnou", living in the village of Agbonan in the municipality of Bonou, are the custodians of the sacred forest Gbevozoun. This forest covers an area of 133 ha and houses the deity "Gbevo", the protecting deity of the community and cornerstone of all its cultural ceremonies.

The sacred forest is very rich in biodiversity and represents a natural and cultural heritage of great value. Through its ecological, religious, socio-economic and cultural functions, it plays a central role in the life of the community and the conservation of the natural resources on their land. Among other things, it houses a wide variety of medicinal plants used by the local community. The custodian community includes many traditional healers and other actors involved in the use of medicinal plants and associated traditional knowledge.

Although sacred forests in Benin did in the past not have the status of legal or official protection by the state, they were able to maintain the integrity of their resources. They represent a successful model of traditional management and conservation of biodiversity. The principle of this mode of conservation is based on the respect for traditional local beliefs, the strength of traditional authority, the power of dignitaries and religious leaders of the community. In 2012, Benin passed an Interministerial Order (No.0121) integrating Sacred Forests into the national system of protected areas.

#### National ABS framework

The National Guidelines for Access and Benefit Sharing (2016) define Biocultural Community Protocols as "tools that establish a set of fundamental principles for the participation of Local Communities in the ABS process and describe how to acquire or use traditional knowledge and genetic resources that are held by local communities. These protocols set out procedures that uphold customary rights and emphasize the obligation of reciprocity, involving all parties

concerned.” Article 8 specifies that “The positive cultural rules of local communities or biocultural community protocols have to be respected”.

The National Guidelines were being drafted at the same time as the development of the community protocol of the community of Degbe Aguininnou. The two processes therefore informed each other and the development of this pilot community protocol supported the inclusion of references to community protocols and community rules in the Guidelines.

### **Objectives and content of the community protocol**

The main objective of the elaboration of the community protocol is to contribute to the sustainable management of the sacred forest "Gbêvozoun" by affirming and recognizing the rights of the community of "DEGBE AGUINNINNOU" and their history of management of the sacred forest.

The protocol includes community directives and measures aiming at preserving the community's culture and environment, and to guarantee economic and social benefits from any interventions on their natural resources – in particular the genetic resources of the sacred forest and associated traditional knowledge.

The contents of the Degbe Aguininnou community protocol include:

- A description of the community, its identity, origin and characteristics
- The natural resources of the community, including a description and mapping of the sacred forest, a community biodiversity registry, natural resource management practices and challenges
- Socio-cultural information including festivals, rituals, and sacred sites related to the sacred forest
- The institutional system including social structures of natural resource management, internal decision-making systems and their relation with external systems
- Legal information including customary rules and procedures for natural resource management, laws and government policies and engagement with external actors
- Economic information including the economic potential of the sacred forest, its genetic resources and associated traditional knowledge, opportunities for biotrade and bioprospecting
- Rights and demands of the community, including
  - the legal recognition of the sacred forest and its management structures
  - the granting of land for a botanical garden
  - the respect of community clauses regarding the full participation of the community in the assessment of interventions in their sacred forest, or impacting their sacred forest or their other natural resources
  - consideration and respect for community rules for granting access to the genetic resources and associated traditional knowledge of the community (FPIC) and for the negotiation of MAT, as spelled out in Standard Community Contractual Clauses
  - relationship with the National Competent Authorities for ABS and the FAO ITPGRFA

## Process and outcomes

The process for this community protocol was facilitated by the national NGO CESAREN (Cercle pour la Sauvegarde des Ressources Naturelles), with punctual support from Natural Justice. The drafting of the community protocol is still in progress and includes the following steps:

- Community consultations on community priorities and the potential development of a protocol
- Community identification of catalysts (facilitators), collection and writing team and other key positions / functions
- Series of community meetings and workshops to gather initial information and create a space for discussion
- Information gathering and initial drafting of the protocol.
- Community meetings to introduce the protocol and identify gaps
- Revision of the protocol based on new information
- Finalization of the protocol, adoption or formal approval by the community, publication
- Presentation of the protocol to external parties as a basis for constructive dialogue

In parallel with this community process, information and capacity-building activities are being carried out at the national level for the benefit of the actors likely to facilitate the recognition and the integration of community protocols into the legal framework of Benin: Members of the national ABS committee, policy makers, the scientific community and Civil Society Organizations.

As this pilot protocol informed the development of the national ABS framework, it contributed to the recognition and definition of community protocols in Benin's National ABS Guidelines. It also achieved an official commitment of the municipal and traditional authorities through letters of recognition and support by the mayor of the commune of Bonou and the King of Bonou.

The community developed a community biodiversity registry, and a community PIC document to serve as a model for a memorandum of understanding between the community and users of GR and aTK.

The documentation of aTK led to the identification of 40 traditional medicinal recipes from the genetic resources in the sacred forest and the associated traditional knowledge of traditional healers of the community. Three recipes were selected by IREMPT, a national research institution, for further utilisation as soon as the ABS regulatory framework is in place. A further five GR and aTK were identified as presenting opportunities or interests for the development of new medicines.

Further, a local ABS Environment and Development Fund was established at community level and endowed with initial financing to ensure the sustainability of activities promoting value chains at the community level.

A community mapping of the sacred forest led to a better understanding of the boundaries and zoning of the forest and community lands, and the municipality donated 2ha of land to the community for a botanical garden of plants threatened with extinction.

### 3.5. Madagascar: the Mariarano community protocol

#### The community and context

Seven neighboring local communities in the communes of Mariarano and Betsako in the Boeny region have come together to develop this community protocol. This area is known for its distinctive biodiversity, and is popular with many natural ingredients suppliers and researchers. The involved communities are all providers of *Cinnamosma fragrans*, one of the most frequently collected aromatic plants in the area, used in essential oils and herbal medicine in Madagascar and abroad. So far, the communities are providers of the raw plant material for national and international biotrade value chains.

#### National ABS framework

The customary community structure of Fokolonona is recognized in the constitution and several sectoral laws and policies. The GELOSE policy of resource management transfer to the local level gives the “Communautés Locales de Base” (local associations created to this effect) the right to manage and use resources based on a renewable contract with the government.

Decree N ° 2017 - 066 of 31/01/2017 regulating access and benefit-sharing arising from the use of genetic resources calls for the respect of customary law and opens the possibility of basing consent on community protocols. It prescribes that “for local natural resource managers and holders of associated traditional knowledge where appropriate, consent is formalized as a convention. This convention is established in accordance with the rules of customary law, traditional values and practices prescribed in the locality and must not be contrary to the law and the regulations in force. In the hypothesis that traditional values and practices are already documented by a tool developed by the communities, this tool must be consulted and integrated into the convention.”

#### Objectives and content of the community protocol

Through their community protocol, the communities want to clarify their own decision-making process on access to and use of biological and genetic resources over which they have customary or legal rights. The objective is also to ensure that biotrade operators and researchers act responsibly and ethically in relation to access permits and the equitable sharing of benefits from the utilisation of the resource. In addition, the protocol also establishes the vision of local communities to protect the traditional knowledge they hold.

The community protocol contains the following elements:

- Local decision-making structures inside and between the seven communities
- Processes that commercial operators, researchers and others have to follow to access the community’s genetic resources and traditional knowledge
- Traditional rules and values of the communities
- Modalities for benefit sharing and conditions for the buying of plant material
- Processes for conflict resolution
- Commitments by the community to conserve their natural resources, specifically the *Cinnamosma fragrans* plant
- The rights of the local communities to their natural resources under the law



## Process

The process was facilitated and supported by the GIZ Programme in Madagascar “Programme d'Appui à la Gestion de l'Environnement” (PAGE) and by Natural Justice. It consisted of the following steps:

- A pre-study conducted by GIZ to establish the context regarding the communities and natural resources
- A first community meeting in each of the 7 identified areas bringing together the members of local natural resource management associations and other community members. This meeting discussed the existing resources, interaction with external institutions in relation to natural resources and associated traditional knowledge, key challenges encountered, and expectations
- A multi-actor workshop to launch the community protocol process: this workshop included representatives of the local communities, from relevant administrative bodies, biotrade operators and researchers. It introduced the ABS context and proposed the development of the BCP. During a separate, internal meeting, the community members agreed on next steps and how to conduct the process
- Community visits to introduce the BCP process more broadly at local level
- A workshop with community representatives which decided on the main elements of the protocol, set up a drafting committee and developed the methodology for data collection and drafting of the protocol
- Collection of data at local level on the communities, the resource, decision-making structures, customary rules and values
- Local consultations through community meetings to consult on the main elements of the protocol
- Drafting workshop and legal training with representatives of the communities
- Local consultations and validation of the content of the protocol
- Revision of the protocol text and consultations with other actors (including relevant administrative bodies)
- A formalisation workshop in which the protocol was presented, and the regional authorities signed a letter of recognition

The regional forestry administration, which is in charge of permitting and monitoring the use of plant resources, was informed at every stage of the process.

### 3.6. Madagascar: two pilot community protocols implementing the Nagoya Protocol and the ITPGRFA

#### The communities and context

The two pilot community protocols were initiated by a project on the mutually supportive implementation of the Nagoya Protocol and the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). The project is financed by DFID under the Darwin Initiative and jointly implemented by Bioiversity International and the ABS Capacity Development Initiative in collaboration with the Secretariats of the CBD and the ITPRGFA as well as the focal points of the Nagoya Protocol and the ITPRGFA. Natural Justice supported the facilitation of the two community protocols.

Under the project, one purpose of developing the community protocols is to inform the development of Madagascar's interim regulations implementing the Nagoya Protocol and the ITPGRFA, which were supported in parallel. In that regard, the project also addresses the

question of how the provisions of the ITPGRFA regarding access to and exchange of seeds, but also farmers rights, can be addressed in community protocols to promote the mutually supportive implementation of the Nagoya Protocol and the ITPGRFA.

Two rural communities are developing their protocol under this project:

- The community of Antavolobe, Alaotra Mangoro Region, in North East Madagascar
- The community of Analavory, Itasy Region, in the central part of Madagascar

### **Objectives and content of the community protocols**

The objective of both protocols is to clarify the local process of access, exchange and benefit sharing of the use of in situ managed genetic resources. The protocols aim to:

- Provide information on how the communities manage their genetic resources and associated traditional knowledge, including in-situ resources for food and agriculture
- Clarify the decision-making mechanism and conditions of the communities to provide genetic resources found on their territory
- Clarify the organization of communities on access to, and use of, plant genetic resources for food and agriculture within and outside of the Multilateral System of the ITPGRFA

The content of the Analavory and Antavolobe Community Protocols include:

- Information on the conservation and sustainable use of genetic resources by the communities
- Challenges of the management of genetic and biological resources
- Guidance for access to and utilisation of farmer-managed genetic resources and associated traditional knowledge
- Guidance for the exchange of plant genetic resources for food and agriculture with external actors
- Sharing of benefits from the utilisation of genetic resources
- Protection and sharing of traditional knowledge
- Traditional norms and values of the community
- Management of possible conflicts and grievances
- Calls on all stakeholders to promote and respect the rights and interests of local and agricultural communities

### **Process**

The processes to develop the two community protocols were slightly different due to the local context of each, but essentially consisted of the following steps:

- A joint launching workshop with representatives of both communities and other relevant stakeholders such as research institutions, biotrade operators, government officials and technical cooperation organisations
- An initial study by the supporting organisations to establish the context
- A second multi-stakeholder workshop to introduce ABS, the Nagoya Protocol and the ITPGRFA, and further details on community protocols
- An information and consultation workshop with community representatives
- Village-level meetings for dissemination and collection of information

- A workshop with community representatives to develop the objectives and elements of the community protocol
- Local consultations on the content of the community protocol
- Drafting of the protocol
- Validation meetings with community representatives, and with local authorities

The project will support the communities in the implementation of their community protocol. This will involve capacity development and support for the exchange of genetic resources for food and agriculture, in collaboration with national and regional research organisations.

In addition to the community protocols, the local communities of Analavory and Antavolobe have established community seed banks, as well as an investment plan in which they are defining activities to collaborate proactively with users, research institutions and breeders.

## 4. Example for an ABS processes without community protocols

The ABS Initiative was also involved in ABS processes where no community protocol was established for varying reasons. These reasons included, amongst others, a lack of knowledge about community protocols when negotiations for access to GR and/or aTK were initiated, lack of funding, tight schedule by the commercial user, and/or a lack of local capacities to accompany the process. Also, some communities showed no interest in establishing a community protocol, e.g. for the reason that the decision finding process in a given community is already clearly established through customary laws. In this chapter, one example of such processes and the respective lessons learnt are being described.

### 4.1. Cameroon: the *Echinops* ABS case

#### The community and context

The Kingdom of Magha-Bamumbu in the South-West Region of Cameroon is located in a mountainous region dominated by grassy slopes. The main source of income is agriculture. The local community in this case is a village of approximately 2,000 inhabitants and is located on high altitude of up to 2,000 metres. The traditional authority is held by His Majesty Lekunze Nembo Andreas, King of Bamumbu. The governmental authority is held by the mayor of Wabane.

During a stay in Cameroon, an employee of V. Mane Fils, one of the world's leading flavour and fragrance companies from France, tasted a food with a very particular odour. He found out that the supplement is *Echinops giganteus*, an herbaceous perennial plant from the genus of globe thistles, and assumed a potential as a fragrance.

#### Process

Mane contracted the French NGO Man and Nature to establish contact with a possible provider of *Echinops* in Cameroon. Mane and Nature selected the Cameroonian NGO Environment and Rural Development Foundation (ERUDEF) to manage the local process and to identify a local community providing access to *Echinops*. Based on the results of a survey,

ERUDEF identified the Kingdom of Magha-Bamumbu as provider community for the *Echinops* roots. In the absence of a national ABS regulatory framework in Cameroon, the NGO negotiated a Pre-PIC with a traditional chief of the third degree of the Magha community, giving the consent of the community for Mane to access the roots of *Echinops* and to conduct the necessary research. With financial support from the company, a cooperative for harvesting and drying of the roots was founded.

The first results were promising and Mane thus entered into the negotiations of a contract (MAT) to export up to 1000 kg of dried roots for in-depth analysis of the essential oils contained in the roots. Only at this point did the traditional chief of first degree enter the negotiations, expressing concerns that he was not properly consulted beforehand. In this situation, it was not clear whether the negotiations could be continued and the cooperative could begin its work. This triggered intense discussions over roles and responsibilities within the community, which in turn almost made the private sector representative lose interest in the resource. Through diplomacy and mediation, the process was put back on track and finally, even in the absence of an ABS regulatory framework, the MAT for research and subsequently for commercialisation were signed. Core monetary benefits include 25% of net profits directly attributed to the essential oil of *Echinops* to be transferred to the harvesters (including several women), the cooperative, the mayor, and the village development fund managed by the King who keeps the community informed about the accrued amounts. Core non-monetary benefits include a cultivation manual for *Echinops*, the support of local development projects and possibly scholarships for local students, in particular women.

### **Lessons learned**

While the process without a community protocol advanced quickly in the beginning, there were significant drawbacks at later stages of the process. Engaging with community representatives that have no clear mandate for decision making and e.g. signing contracts can create conflict in the community and even halt the entire process at a certain point. Especially when financial resources are involved, roles and responsibilities of the stakeholders need to be clearly defined and widely accepted. Community protocols can play a vital role in defining these roles and responsibilities as well as the decision making process and thus contribute to more straightforward negotiations with communities that speak with one voice.