Community Protocols

Community protocols are an emerging concept in environmental law and policy. The term encompasses a broad range of practices and procedures, both written and unwritten, developed by indigenous peoples and their communities and other local communities (ILCs) in relation to their traditional knowledge (TK), territories, and natural and other resources. These practices and procedures cover a range of matters, including how ILCs expect external actors to engage with them.

The documentation, development and use of community protocols have a range of potential benefits, including:

- conservation and sustainable use of biodiversity in both protected areas and beyond;
- protection of TK;
- regulating access to the traditional territories, natural and other resources and TK of ILCs;
- acting as an interface between customary law and formal legal and policy frameworks;
- education, capacity building and improved participation; and
- clarification of expectations and improved relationships between ILCs and external actors.

Common underlying principles

Community protocols share some common themes or underlying principles which guide their documentation, development and use. These principles draw on some of the values, practices and procedures of ILCs, which are reflected in their community protocols. The principles also draw on broader concepts and values reflected in hard and soft international legal instruments, such as the Tkarihwaié:ri Code, which provides a list of general ethical principles for engagement with ILCs.

These common underlying principles may be useful in the documentation and development of new community protocols. They may also be useful for the development of guiding principles in policy areas relevant to community protocols, including, biodiversity conservation and sustainable use, natural resource management, and planning and development.

More information

For more information on community protocols visit:
www.unep.org/communityprotocols/index.asp

UNEP

UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)
Division of Environmental Law and Conventions (DELC).

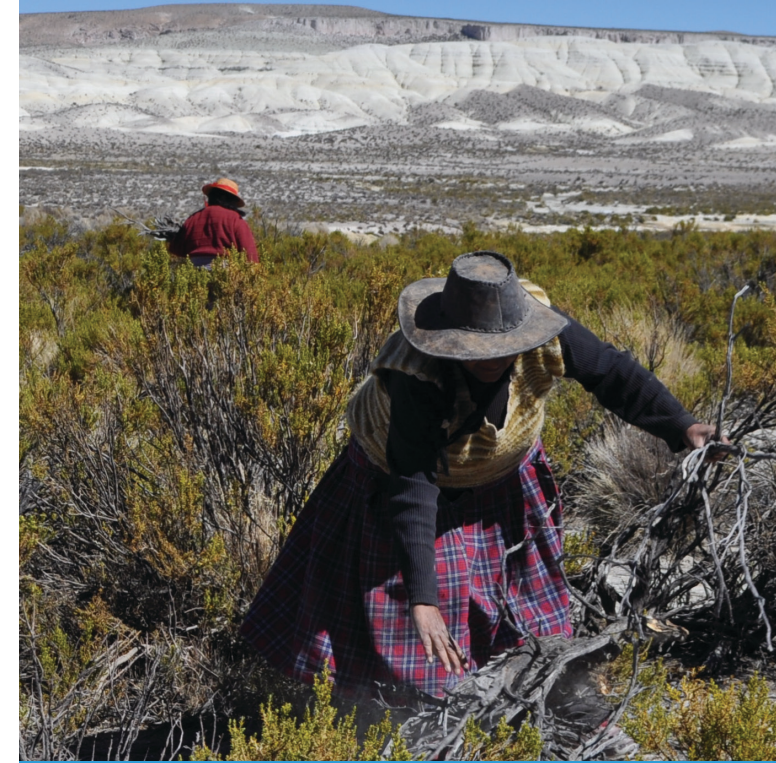UN Complex at Gigiri, PO Box 30552 (00100), Nairobi, Kenya

www.unep.org

NSW EDO
DEFENDING THE ENVIRONMENT
ADVANCING THE LAW

Level 5, 263 Clarence Street, Sydney, NSW, 2000, Australia

www.edonsw.org.au

Community Protocols:
Common Underlying Principles

UNEP

NSW EDO
DEFENDING THE ENVIRONMENT
ADVANCING THE LAW

GOBIERNO DE ESPAÑA — MINISTERIO DE AGRICULTURA, ALIMENTACIÓN Y MEDIO AMBIENTE

GOBIERNO DE ESPAÑA — MINISTERIO DE ASUNTOS EXTERIORES Y DE COOPERACIÓN

The principles are, on the one hand, complex, inter-related, and can be labelled and described in many different ways. On the other hand, the principles reflect some well-recognised principles which already guide many legal, policy, and social frameworks, such as respect, cultural sensitivity and procedural justice. The following list of principles are one possible starting point for beginning to understand and work with community protocols. The principles will inevitably be refined and developed over time, as community protocols and the knowledge around them continue to evolve.

1. Authenticity, diversity, and locality

Community protocols are authentic: they are developed by ILCs at the community level, driven by communities themselves, and reflect their local systems and values.

Community protocols are unique to each ILC. They reflect the cultural, legal and political diversity of ILCs and their responses to issues or problems.

Community protocols seek to resolve disputes according to the customary laws and processes of the affected ILC. This is an application of what has been termed the principle of locality.

2. Respect and recognition

Through the development and use of community protocols, ILCs are seeking respect for, or recognition of, amongst other things, their:

- substantive (including rights to natural resources and traditional territories) and procedural rights;
- knowledge, innovations and practices;
- customary laws, processes and ways of life; and
- culture and values.

Respect for ILCs is recognised in hard and soft law instruments and principles of international law. For example, the Tkarihwaié:ri Code aims to promote respect, preservation and maintenance of TK, innovations and practices relevant for the conservation and sustainable use of biodiversity (Article 1).

Respect is an important part of the development and implementation of community protocols, as this process often involves collaboration with external actors to provide advice and assistance. It is essential that such collaborations proceed on the basis of respect and related principles, including honesty, integrity, transparency, and social and cultural sensitivity to local processes and timeframes. The overriding objective should be to identify and articulate empowering outcomes that can be effectively implemented.

3. Full and effective participation

Full and effective participation in the development and implementation of community protocols involves including the broader community in decision making in a way that is accessible and sensitive to local processes. Full and effective participation also reflects the principle of procedural justice, which has been linked to processes such as prior informed consent. Full and effective participation leads to empowerment.

4. Collective custodianship

Community protocols reflect the collective custodianship of knowledge held by ILCs. Resources are often collectively held, and shared within ILCs. The principle of collective custodianship is also relevant for dispute resolution processes. Many issues affecting ILCs are dealt with collectively, rather than individually. For example, the principle of communitarianism and rules of consultation and consensus are used by some ILCs to guide the resolution of issues.

5. Reciprocity and distributive justice

A common understanding of the meaning of reciprocity is that what is received must be paid back in fair or equal measure which is a customary practice of ILCs. Community protocols encourage reciprocity by promoting, among other things, mutually beneficial outcomes and the fair and equitable sharing of benefits. The principle of reciprocity applies to sharing both within the community, and between the community and a group or individual outside the community.

Reciprocity is linked to principles of distributive justice and justice in exchange. Distributive justice theory deals with the allocation of finite resources in a just way. It is practical, providing guidance for choices in relation to the distribution of goods. For example, the principles of distributive justice can be applied in decision-making processes to seek greater balance, or justice, in the distribution of economic benefits and burdens. Justice in exchange is a related principle which regulates the fairness of giving and receiving goods.

6. Flexibility and responsiveness

Community protocols are flexible, and can be amended to adapt to an ILC's needs over time. The flexibility of community protocols reflects the customary systems of which they form a part.

7. Equilibrium

The principle of equilibrium in relation to community protocols refers to the balancing of interests between ILCs, external actors and the environment. Community protocols recognise the link between customary sustainable use requirements of ILCs and conservation of the local environment which they depend upon and maintain through TK and traditional practices.

Equilibrium is linked to the holistic worldview which is a key feature of the belief systems of many ILCs. Under a holistic worldview, ILCs view the world and its systems as an interconnected whole.

8. Duality

Community protocols can assist in identifying links between customary law and national, regional and international legal and policy frameworks. Duality refers to the use of complementary systems. For example, Western science and law can be used alongside traditional systems. This ability to act as an interface between customary and formal systems is one of the key benefits of community protocols and is relevant to a range of policy areas.