

# **Protecting Community Rights over Traditional Knowledge: Implications of Customary Laws and Practices**

***Research Planning Workshop, Cusco, Peru, 20-25 May 2005***

*Organised by IIED and Andes, with financial support from SwedBio*

*Royal Inka Hotel, Písaq*

## **Workshop Objectives**

The five day workshop brought together research partners from India, China, Kenya, Panama and Peru (see p.13) to develop a Common Research Framework to link the diverse case studies. This is critical if the project is to generate meaningful lessons for, and have an impact on, policies for protection of traditional knowledge. The project encompasses diverse local case studies, in terms of their cultural, socio-ecological and political contexts, and could easily diverge unless guided by a common framework.

The workshop focused on the following activities:

- Reviewing key terms and standards in international policies to identify gaps and opportunities for TK protection.
- Defining key terms and concepts to ensure a common understanding, and inform international policy processes based on locally relevant definitions.
- Learning about the methodology of Andes for research on customary law and their work to establish the Potato Park as a sui generis mechanism for TK protection.
- Field visits to the Potato Park and a barter market based on customary law.
- Developing a shared conceptual framework for research, and identifying common research themes.

## **Terms and Standards in International Policy – Gaps and Opportunities**

The workshop reviewed key terms and standards in a range of policy processes relevant for TK protection: WIPO and WTO; CBD and FAO; and Indigenous Rights Frameworks. The aim was to identify gaps or shortcomings which need to be addressed to provide appropriate protection of TK, as well as opportunities for TK protection in all processes (including those dealing with IPRs).

*WIPO's Inter-Governmental Committee (IGC) on Genetic Resources, Traditional Knowledge and Folklore – Key Gaps:*

- The IGC's draft Policy Objectives and Principles for Traditional Knowledge Protection (WIPO/GRTKF/IC/8/5) focus narrowly on the intellectual component of knowledge systems, without addressing the inextricable links between knowledge, biodiversity and genetic resources, landscapes, customary laws and spiritual values. For example, knowledge is embodied in thousands of traditional crop varieties. Similarly, TK and folklore are closely interlinked, for example, in rituals and artistic designs, yet WIPO deals with TK, folklore and GRs separately.
- Knowledge and biodiversity cannot be separated from the space they occupy. Landscapes provide the physical space for use, sharing and transmission of knowledge and resources. For example, communities need access to sacred forests to conduct rituals through which medicinal knowledge is acquired – cultivated medicinal plants, or plants on forest fringes or degraded lands, do not work (they don't have the same spiritual or bio-chemical value). Therefore, TK protection also needs to address

conservation of biodiversity, and tenure and access rights to land and sacred wilderness areas.

- The WIPO proposal places too much emphasis on decision-making by national authorities. It also recognises national sovereignty over natural resources (consistent with the CBD), rather than the rights of communities. National authorities cannot be competent to deal with the protection of TK and natural resources because they do not have a good understanding of local resource conditions and management systems.
- The proposal focuses on commercial and benefit-sharing aspects of 'misappropriation', when socio-cultural offence and safeguarding TK for future use by communities is often more important for TK holders.
- Even where PIC is granted, it is very difficult to safeguard and monitor TK and resources once they leave the community – communities are rarely informed about their use. Therefore the right to *not* grant PIC is important if communities feel they cannot maintain control over knowledge. PIC is in many cases just a tool to facilitate access to TK – it has emerged in the context of access to community resources and national sovereignty over NRs. A different framework is needed to protect TK.
- Although the WIPO proposal refers to customary law for certain elements of TK protection, it does not recognise the jurisdiction of customary law outside traditional territories where 'biopiracy' of TK and GRs occurs.

It was also noted that WIPO may not be an appropriate forum for developing standards for TK protection since it is an IPR promoting body, which means that TK protection is being addressed in what is essentially an IPR framework. In addition, its work is difficult to influence given the limited participation in the forum. However, WIPO is still an important process for the project to inform given that international standards have an influence on national policies.

#### *Opportunities in WIPO*

- WIPO's work on disclosure of origin of GRs and TK in patent applications and proof of compliance with ABS law is potentially important as a defensive mechanism for TK protection (though it is not yet clear whether this will be voluntary or mandatory).
- Some 'soft' IPRs – eg. copyrights, trademarks and geographical indicators - can be useful as *defensive* TK protection mechanisms. These can supplement non-IPR based *positive* protection mechanisms which recognise legal rights over TK (eg. sui generis laws).
- Definitions of key terms such as TK protection can be improved so that they better reflect local perspectives – eg. by placing more emphasis on ensuring the free flow and maintenance of TK and resources, than on protecting them from use. Similarly, new terms can be brought into discussions that better reflect local dynamics, such as 'Collective Bio-Cultural Heritage', which recognises the links between TK, biodiversity, landscapes, cultural values and customary law, and the need for holistic protection approaches.

#### *WTO and IPRs – Gaps and Opportunities*

- TRIPs poses a major threat to TK by requiring new national IPR laws which facilitate privatisation of GRs/TK. Under the Doha Development mandate, very little progress has been made in addressing the relationship between TRIPs and the CBD, and protection of TK. The deadline for concluding the Doha round has been extended to December 2005, but there is still no agreement even on the agenda for discussion.

Southern countries have put forward proposals for disclosure of origin of TK in patent applications. But many northern countries insist that other forums should deal with this issue, and that the CBD and TRIPs are not incompatible.

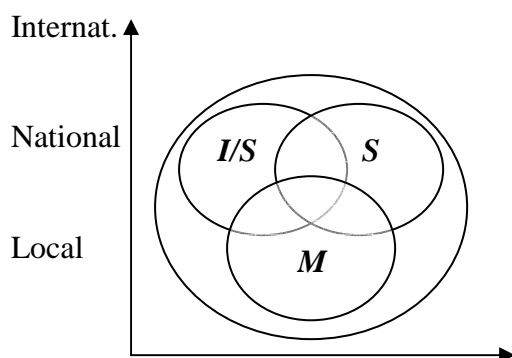
- The WTO is a very closed process and is therefore very difficult to influence (NGOs cannot even participate as observers). The best option may be to engage at CBD level, where a number of Southern countries pushing for reform of TRIPs. Opportunities might also be found at country level, by engaging with national authorities dealing with TRIPs. However, Southern countries may be using TK protection largely as a bargaining tool in the WTO, without genuinely seeking to protect the rights of communities.
- The TRIPs option of using *sui generis* alternatives to patents for plant variety protection, and lack of definition of key terms in TRIPs (eg. 'novelty'), also offer potential opportunities for developing appropriate protection systems.

In addition, bilateral Free Trade Agreements are a serious concern, providing a powerful tool for upgrading IPR requirements in the South ('TRIPs-Plus'), and negotiated behind closed doors with little or no public scrutiny.

#### *CBD and FAO – Gaps and Opportunities - the Potato Park experience*

The Potato Park - an initiative to establish a Community Conserved Area managed by six Quechua communities - is itself a *sui generis* model for TK protection. It is based on protection of three key components: *Intellectual* and *Spiritual*; *Material* (ie. biodiversity); and *Spatial* (ecosystems and landscapes), from local to national and international levels. It is a positive protection mechanism which seeks to maintain the agricultural character of the landscape, reduce poverty and sustain livelihoods, and ensure the historical continuation of culture, knowledge and collective indigenous rights to natural resources.

#### *The Potato Park model for TK protection*



The communities in the Potato Park have communal land title, and formal recognition as a Community Conserved Area is being sought to provide added legal protection. The CBD has recently recognised the need to support and provide legal backing for CCAs (COP7 Protected Areas Work Programme). *Sui generis* protection for this model at national and international level is also being sought, while fora such as WIPO and the WTO provide opportunities for additional defensive protection (eg. the Potato Park's registered trademark for traditional medicines and other products).

### *Reversing the ABS Paradigm*

Both the CBD and FAO Treaty on Plant Genetic Resources for Food and Agriculture are based on access and benefit-sharing (ABS) frameworks and Material Transfer Agreements, developed from the perspective of granting access to external GR users, companies etc. to the resources of southern countries and local communities. This framework should be turned on its head, to facilitate access by local communities to genetic resources held in gene banks etc.

In order to repatriate traditional potato varieties collected by the International Potato Centre from the Potato Park during the 1960s, Andes argued that traditional knowledge and natural resources cannot be separated, hence repatriation is needed to protect TK. The CBD Article 17.2 on repatriation or return of information of importance to indigenous and local communities and relevant for conservation was also used. Similarly, the FAO Treaty was very useful in gaining the repatriation agreement with CIP as it recognises farmers' rights to traditional knowledge and benefit-sharing. This was used as an argument for restitution of rights - CIP agreed not to patent potato varieties covered by the agreement.

### *CBD Working Groups Article 8(j) and ABS*

Although the CBD itself provides a narrow definition of traditional knowledge, which does not recognise spiritual, biological or landscape dimensions, the CBD Working Group on Article 8(j) has recognised the need to safeguard rights to traditional resources and lands, and to respect spiritual values and customary laws. It is a critical forum for the project to inform. Two key processes were identified as being particularly relevant for the project:

1. Development of 'Elements for sui generis systems for TK protection' by the 8(j) WG – the draft elements include the need to recognise customary law and rights.<sup>1</sup>
2. Development of an international regime for ABS and TK protection, a key opportunity to ensure local rights and realities are reflected<sup>2</sup>. The process is led by the Working Group on ABS, which emphasises national sovereignty, rather than the 8(j) WG which takes a more community based approach. Nevertheless, COP7 mandated *both* the WGs on ABS and 8(j) to develop the regime, and the mandate to the CBD came from the WSSD (which has a stronger livelihoods focus).

The work of the 8(j) WG has also recognised the need for appropriate incentive measures for maintaining TK, including secure rights to land and natural resources - see document on "Traditional Knowledge and Biodiversity", UNEP/CBD/TKBD/1/2, 1997. This document also examines the key terms of Article 8(j) and related provisions, and alternative approaches for TK protection (see <http://www.biodiv.org/doc/meetings/tk/wstkbd-01/official/wstkbd-01-02-en.pdf>)

### *Indigenous and Human Rights Frameworks*

A number of international agreements recognise indigenous peoples' rights to traditional lands and resources – eg. ILO Convention 169 and the UN Draft Declaration on Indigenous Peoples Rights. The concept of Traditional Resource Rights provides holistic rights-based approach for the protection of traditional knowledge, as part of traditional territories (this is the concept on which the Potato

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<sup>1</sup> See UNEP/CBD/COP/7/16, <http://www.biodiv.org/decisions/?id=7753&m=COP-07>

<sup>2</sup> See UNEP/CBD/WG-ABS/3/7 <http://www.biodiv.org/doc/meetings/abs/abswg-03/official/abswg-03-07-en.doc>

Park is based). These and other indigenous and human rights frameworks recognise the inextricable links between traditional knowledge and traditional resources and territories, cultural and spiritual values, customary laws and cultural expressions. However, those that are legally binding, such as ILO Convention 169, do not explicitly address traditional knowledge, while those that do are ‘soft-law’ (ie. not legally binding).

*Opportunities outside existing frameworks:*

In the absence of a comprehensive rights-based process for TK protection, possible approaches outside existing frameworks were suggested:

- Enhancing community sovereignty over NRs and TK, for example through strengthening customary laws and their recognition, and strengthening community based NRM systems.
- Establishing a community led process from local to regional level which articulates community rights outside existing international processes, and which national governments should respect so that community rights cannot be alienated.
- Developing a global Inter-Community Treaty for protection of TK based on common customary law principles.

**The Potato Park Activities**

The Potato Park communities were under feudal farming systems until the 1970s when new legislation enabled them to become land owners rather than labourers. The Andes study in the Potato Park provides a good example of how research on customary law can bring direct benefits for communities as well as lessons for policy. It is being used to develop local mechanisms for TK protection, as part of a wider process to strengthen livelihoods and community self-governance. The work is focusing on the development of an inter-community agreement for equitable sharing of benefits from the CIP agreement, and will also help to strengthen traditional resource governance systems, as part of establishing a Community Conserved Area. At the same time, the identification of customary laws will enable the park communities to take advantage of various development opportunities without losing their traditional customary values.

Related activities in the Potato Park, led by community technicians with support from Andes, include:

- An interpretation centre has been built which houses facilities for packaging medicinal plants, sold for local needs, with part of the profits fed back to a communal Potato Park fund.
- A computerised database register of traditional knowledge has been set up largely to promote TK for community use, but also as a tool for protection against biopiracy. It provides a visual tool for use by communities who are largely illiterate. Its structure reflects the binary Kipus system traditionally used by Quechua peoples to record information using knots on strings. Open source software and ‘copy-left’ technology are being explored to provide access between different TK databases.
- The centre also houses displays of native potatoes, and a landscape model of the Park, and the intention is to use it as a visitor centre/museum for agro-ecological tourism, together with hiking trails. Plans are also underway to market traditional organic potatoes as health foods (‘nutraceuticals’).

A key feature running throughout these activities is their *highly participatory* nature, which is evident in the community technicians' sense of pride in *their* park. Andes aims to phase out much of its support in two years' time.

### **Local Knowledge and Customary Law Systems**

Customary laws are flexible and evolving according to community needs. As one of the Potato Park technicians explained, each mountain in the park has a mountain god with a particular role (eg. for agricultural productivity, water, social relations). Traditional knowledge comes from the mountain gods, lakes and 'Pacha Mama' (Mother Earth) - "we follow their teachings". Knowledge, and rules about its use, are acquired by shamans through rituals. There is also mountain god where people are sent for punishment if they have committed some wrongdoing.

This highlights the close linkages between spiritual beliefs, traditional knowledge, customary laws and landscapes and natural resources. Customary law contributes to generating and sustaining knowledge by regulating practices, while beneficial practices or knowledge can become established customs, and some customs serve as norms or laws (eg. limiting over-use of natural resources, use of pesticides, hunting at certain times etc). Hence, at local level, the distinction between customary laws, knowledge, practices and beliefs is not always clear-cut, and these are in turn closely interlinked with landscapes and common property regimes.

### **Defining Key Terms and Concepts**

The workshop developed the following definitions of key terms, to provide a common understanding on which to base the case studies, and to inform international policy based on local realities. Rather than focusing narrowly on traditional knowledge, the main definition sets out the holistic concept of 'Collective Bio-Cultural Heritage', which recognises the interlinkages between knowledge, biological resources, landscapes, cultural beliefs and customary laws. The rest are sub-definitions to explain key terms used in the main definition of CBCH. The definition will be refined on the basis of the research.

Collective Bio-Cultural Heritage: *Knowledge, innovations and practices of indigenous peoples and local communities which are often held collectively 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.* These components of knowledge systems and their ongoing interaction are vital for the use, creation and transmission of traditional knowledge, and are often linked to knowledge of cosmic forces (as part of indigenous peoples 'cosmovision' or holistic worldview).

*Indigenous Peoples*: In accordance with ILO Convention 169, Indigenous and Tribal Peoples may be defined as:

- a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or

colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

*Local Communities:* People who depend directly on biodiversity and ecosystem goods and services for all or part of their livelihoods and who have developed or acquired traditional knowledge as a result of this dependence, including farmers, fisherfolk, pastoralists, forest dwellers and others.

*Traditional Resources:* Tangible or intangible assets of biological, spiritual, aesthetic, cultural and economic value.

*Traditional Territories:* Lands, forests and waters traditionally occupied, used or conserved by indigenous peoples and local communities.

*Heritage:* Transmitted from generation to generation, and pertains to a particular peoples (including past, current and future generations) or its territory.

*Customary Law:* Locally recognized principles, and more specific norms or rules, which are orally held and transmitted, and applied by community institutions to internally govern or guide all aspects of life.

*Collective:* Developed collectively and cumulatively, and held collectively by a community or peoples, as well as by individuals within them, for the common good. Recognition of collective rights does not imply loss of individual rights.

Based on the concept of Bio-Cultural Heritage, the following definition was developed for Traditional Knowledge Protection: “Full recognition and protection of rights of indigenous peoples and local communities to own and control their bio-cultural heritage, including to conserve it for livelihood security, and to restitution of heritage taken from them.”

It was suggested that a separate definition on farmers’ rights should also be developed. The distinction between ‘Traditional Knowledge’ and ‘Indigenous Knowledge’ was also noted – ‘TK’ is sometimes used by governments to suggest it is *national* TK, while IK is used by indigenous peoples to denote *their* knowledge.

### **Peru Study Methodology for research on customary law**

The research on customary law in the Potato Park will be used to elaborate an Inter-Community agreement for equitable sharing of benefits from the agreement with CIP. The agreement provides for return of traditional potato varieties, and for sharing of financial and other benefits from past and future use of collected varieties. The inter-community agreement will be included as an annex to the CIP agreement, which will enable the recognition of customary law in formal law, through a legal contract.

Quechua customary law principles are fairly well known and recorded in anthropological literature. The research is focusing on three key principles:

- *Reciprocity:* which means that what is received has to be given back in equal measure. It encompasses the principle of equity, and provides the basis for negotiation and exchange between humans, and also with mountain gods, animals etc.

- *Duality*: means that everything has an opposite which complements it (like ying and yang); behaviour cannot be individualistic, for example, in the union between man and woman; and other systems can be accepted or other paradigms used.
- *Equilibrium*: refers to balance and harmony, in both nature and society - eg. respect for the 'Pacha Mama', the upper world and mountain gods; and resolving conflicts to restore social harmony. It is also about complementarity (eg. between ecological niches). Equilibrium needs to be observed in applying customary laws, all of which are essentially derived from this principle.

Most people noted that these principles are very similar for the indigenous communities in their countries – in Panama, Kenya, India and China – even though they may be termed differently (eg. 'harmony' instead of 'equilibrium').

The research in the Potato Park is focusing on how these customary law principles apply to benefit-sharing. For example, what kind of norms exist in relation to the redistribution of wealth? When resources are stolen by outsiders, how do communities deal this and the return of stolen goods? Andes identifies key issues to be examined, and these are discussed with the community technicians who in turn 'translate' them into issues and questions that the communities can relate to. Study groups comprising community members are formed to conduct the research, facilitated by the technicians, who use tape recorded stories to describe a situation, which is then discussed. Meetings are held to coincide with existing social norms (eg. in the evenings when people normally gather). Andes researchers do not take part in the study groups – they only participate as observers in some of the meetings, and view video recordings of the meetings.

One of the challenges of the study is to see to what extent Quechua customary law principles are still alive in the social norms of the Potato Park communities, consciously or otherwise. Community bye-laws can capture the evolution of customary law for a particular issue.

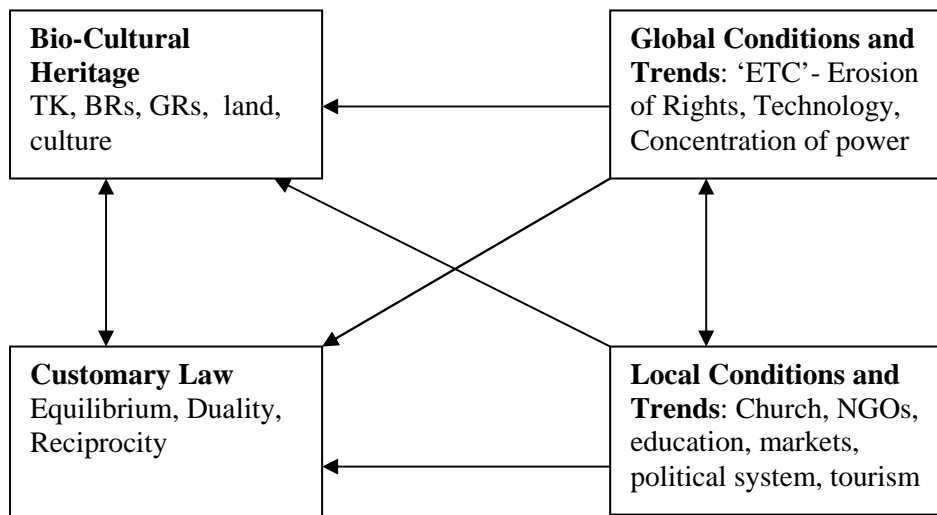
### **Conceptual Framework for research**

Andes has developed a conceptual framework to provide a broad map for the research on customary law. It identifies major 'drivers of change' or 'Conditions and Trends', including threats and opportunities, which affect Customary laws and Bio-Cultural Heritage of the Potato Park – both in terms of rights over resources and conservation of resources (see diagram below).

National Conditions and Trends are included together with Global, as they are basically the same due to globalisation pressures. Erosion of Rights includes WTO, privatisation, globalisation etc – for example, as a result of the FTA with the US, the Peruvian Constitution is being changed to allow faster privatisation of land. Technology refers to bio-technologies such as GMOs; Concentration of Power is occurring for example in food chains, and increasing presence of foreign companies.

Once each box has been filled in with details on the kind of customary law and Bio-Cultural Heritage in question, specific threats and opportunities can be identified using arrows, and appropriate responses to these arrows can be identified. Responses fall broadly into three types: local management systems and tools (eg. the Potato Park); legal mechanisms; and lobbying and networking.





During the workshop, the conceptual framework was applied to each study to identify key threats and opportunities, response mechanisms and related research needs/issues. There was considerable overlap in the global conditions and trends identified (eg. ETC), and in many of the local conditions and trends (eg. education, the church, markets) identified. In some cases, national conditions and trends were emphasised – for example development of national IPR laws in China. In India, some policies for TK protection and natural resources are in fact contributing to their misappropriation. For example, the Wildlife and Forest Acts have contributed to loss of tribal peoples’ land. The Yanadi tribals no longer have any land, but are mere agricultural labourers marginalized on the fringes of villages. The TK Digital Library appears to be facilitating access to TK; while the National Biodiversity Board lacks participation of TK holders.

A number of common response mechanisms also emerged, notably:

- Influencing policy and law to strengthen protection of CBCH and recognition of CL, through changes in existing laws or development of new proposals;
- Identifying community responses for protection of TK and CBCH.
- Developing positive protection mechanisms for CBCH which include a landscape dimension, such as Community Conserved Areas or ‘sacred farms’ or ‘sacred commons’, based on communal land rights.
- Developing local tools for TK protection such as community registers.
- Using ‘soft’ IPRs to provide additional defensive protection (eg. copyrights and trademarks).
- Lobbying and networking to further the protection of community CBCH.

### **Lares Barter Market**

The barter market in Lares provides a means for communities from different agro-ecological zones to exchange agricultural products and medicinal plants. High altitude produce (meat and potatoes) is traded for mid altitude (eg. corn, quinoa, cabbage, beans) and low altitude produce (fruit and vegetables). The market plays a vital role in meeting nutrition/health needs, and in sustaining traditional production systems and biodiversity. It is locally controlled and relatively stable.

The barter market is essentially needs based – goods are exchanged because people do not have money. Exchanges are based on customary norms – reciprocity is a

fundamental principle on which all exchanges are based, but also solidarity and complementarity. The value of a product is determined by the effort invested to produce it (time and other inputs) – eg. coffee is worth more than fruit. Only women and male widows can participate in the market.

Barter is an ancient Andean survival strategy, which used to operate between family groups travelling between altitudes, and only became established as a market after roads were built in the 1970s. There are now a number of similar barter markets in the Peruvian Andes, in the more indigenous areas.

## **Towards a Common Research Framework**

### *1) Focusing on Collective Bio-Cultural Heritage*

The holistic concept of Collective Bio-Cultural Heritage itself provides a common vision to link the diverse case studies. It emerged as an important guiding framework for the research because it recognises the inter-linkages between TK, biodiversity, landscapes, cultural values and customary laws, and the need to protect TK systems as a whole, ie. rights related to all their components. It thus provides the basis for developing sui generis mechanisms to protect TK which also help to strengthen local knowledge systems, livelihood security and conservation of biodiversity.

Using Bio-Cultural Heritage as the framework for research means focusing on:

- Protection of rights to all the components of BCH - including land, biological and genetic resources, cultural values and customary laws, as well as TK.
- How customary laws relate to all the components of BCH (or to BCH as a whole).
- How customary laws/values shape ‘internal’ use and conservation of BCH by communities, and how they apply to ‘external’ access/use of BRs/GRs and TK and benefit-sharing.
- The role of the different components of BCH, and their interaction, in sustaining TK (eg. how does lack of land tenure/access affect the use and transmission of TK?).

### *2) Using a shared Conceptual Framework*

Using the conceptual framework developed by Andes for all the studies will provide an additional means to promote consistency in focus between the case studies. It proved to be a useful analytical tool, which helps to orient the research towards development of practical responses to key threats and opportunities.

### *3) Addressing Common Research Themes/Issues*

It was felt that identifying specific research issues or questions for all the studies would constrain the flexibility needed to respond to diverse local and national needs. So the workshop focused on identifying common research themes, objectives and approaches to be pursued:

A) Overall objective: to inform and promote the development of sui generis mechanisms for protection of traditional knowledge, based on the concept of Collective Bio-Cultural Heritage.

#### B) Policy:

##### 1. Policy:

- a. Recognition of customary law and legal pluralism (eg. through changes in constitutions; use of contractual agreements).

- b. Integration of CBCH models into conservation and development policy (protected areas, agriculture, fisheries, forestry, water etc.) so that policies support, and do not undermine, protection and conservation of CBCH.
  - c. Engaging different government agencies in the studies, as a way to influence government policy; and sharing lessons between studies on tactics for engaging and influencing sectoral departments.
2. Legal:
- a. Developing sui generis systems for the protection of CBCH
  - b. Legal agreements for the restitution of CBCH

### C) Management of CBCH

1. General tools:
  - Establishing local registers of TK/BRs & Community Conserved Areas
  - Taking a highly participatory research approach led by communities.
2. Intellectual and Spiritual:
  - Strengthening cultural and spiritual values
  - Integrating emerging concepts such as 'spiritual capital' into research
3. Bio-Cultural Materials:
  - Link genetic resources (GRs) to livelihood issues and concerns
4. Landscape/Ecosystem:
  - Integrate landscape/ecosystem linkages into the analysis of GRs & TK
  - Integrate emerging 'commons' concepts (eg. management of common property resources)

### D) Lobbying and Networking:

1. Local: sharing information and experience amongst communities involved in the research
2. National: sharing information and experience; organising national meetings
3. International: participating in key international events.

*4) Focusing on Customary Law Principles or Values:* While specific customary laws vary considerably, underlying customary principles are quite similar across different ethnic groups and ecological contexts. A focus on customary principles or values may therefore be better for developing policy frameworks at national and international level which can accommodate diverse cultures. It is these principles or values which often underpin sustainable and equitable management of natural resources and the maintenance of knowledge systems. Furthermore, it may be difficult to identify specific customary laws where these have been eroded or where ethnic groups are mixed. However, the studies should also aim to specific customary norms and the institutions and processes that apply customary laws. The workshop also stressed the need to focus on identifying customary laws that are orally practiced (rather than codified) and currently recognised by communities.

### **Informing Key International Meetings in 2005/06**

- *WIPO Inter-Governmental Committee on Genetic Resources, Traditional Knowledge and Folklore, Geneva, 6-10 June 2005:* IIED will submit comments on the WIPO policy objectives on behalf of the group, based on the concept of CBCH.

- *WTO TRIPs Council, Geneva 14-15 June*: IIED should try to attend to get a better understanding of the process, and inform the NGOs trying to influence it based on the concept of CBCH. The Quaker House have breakfast meetings with delegations; we could also link up with ICTSD, CIEL, the South Centre.
- *UN-Working Group on Indigenous Populations (High Commission on Human Rights), Geneva, 18-22 July 2005*: The WGIP is developing Principles on the protection of the Cultural Heritage of Indigenous Peoples, which take a holistic and rights based approach, but focus more on cultural expressions than TK/Biodiversity.
- *UN Permanent Forum on Indigenous Issues, Technical Workshop, Panama, 21-23 September*: A meeting of all UN agencies dealing with TK protection (WIPO, WTO, CBD, UNCTAD, WHO, FAO, UN-WGIP etc) to improve coordination and integration of indigenous perspectives.
- *WIPO IGC, Geneva, December 2005*: Provided the IGC's mandate is extended, this will be an important meeting to feed in the emerging findings from the project.
- *WTO 6<sup>th</sup> Ministerial Conference, Hong Kong, December 2005*: This will conclude the Doha Development round of trade talks.

**CBD Working Groups on Article 8(j) and ABS, Granada, Spain, 23-27 January and 30 January to 3 February 2006** (*dates still tentative*)

These are key meetings for the project to inform, given their focus on developing 'Elements for sui generis mechanisms', and an international regime for ABS and TK protection. They will develop draft decisions for adoption by the CBD 8<sup>th</sup> Conference of the Parties in May 2006. In order to influence the outcomes of the WG meetings, we need inform the preparatory processes. It was therefore decided that we should compile the results of the case studies by mid-October with the aim of their inclusion as an official Information Document circulated to all Parties with the official documentation.

**Mid-Term Review Workshop for the project, 16-20 January 2006:**

It was agreed that this meeting should be held in Spain just prior to the CBD WG meetings, to review progress, pull together the research results, prepare inputs for the WG meetings, and plan the next steps. This would enable the partners to participate directly in the CBD WG meeting, and gain a better understanding of key international processes that the project seeks to inform. A side-event could be organised to present the results of the project and recommendations for CBD policy.

**CBD 8<sup>th</sup> Conference of the Parties, Brazil, March 20-31 2006** (*tentative*):

This meeting will be a key opportunity to disseminate the findings of the project to a large audience of NGOs, governments and indigenous organisations. We could prepare a briefing paper with key conclusions and recommendations and organise a side event. As a second 18 months phase of research is expected after May 2006, it may be better to wait until its completion before publishing more detailed reports of the findings.

## Next Steps

1. 1. WIPO 6-10 June: IIED and Andes will host a side-event to present the concept of CBCH and submit comments on the principles for TK protection.

2. First Interim Reports: The deadline to submit the first interim reports to IDRC has been extended to August 15<sup>th</sup>.

3. Preparing an Information Document for the CBD 8(j) WG: Reports with findings of each study should be sent to IIED by 15th October 2005, so that we can compile a synthesis report by 23rd October, which can be submitted to the CBD for circulation as an Official Information Document.

4. Mid-Term Review Workshop, Granada, 16-20 January 2006: IIED will seek funding for the workshop so that all the partners can attend (travel, hotel costs etc.)

5. Project Websites: IIED will set up an internal website for the project, for jointly reviewing/editing documents, posting messages, and posting research documents and references. We may be able to use DFID's free software for development projects, called 'D-Groups'. We should also think about setting up a website as an external dissemination tool for the project.

6. Conceptual Framework: Andes has developed a note on the Conceptual Framework and will further elaborate this to provide guidance for using the framework for all the research partners.

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