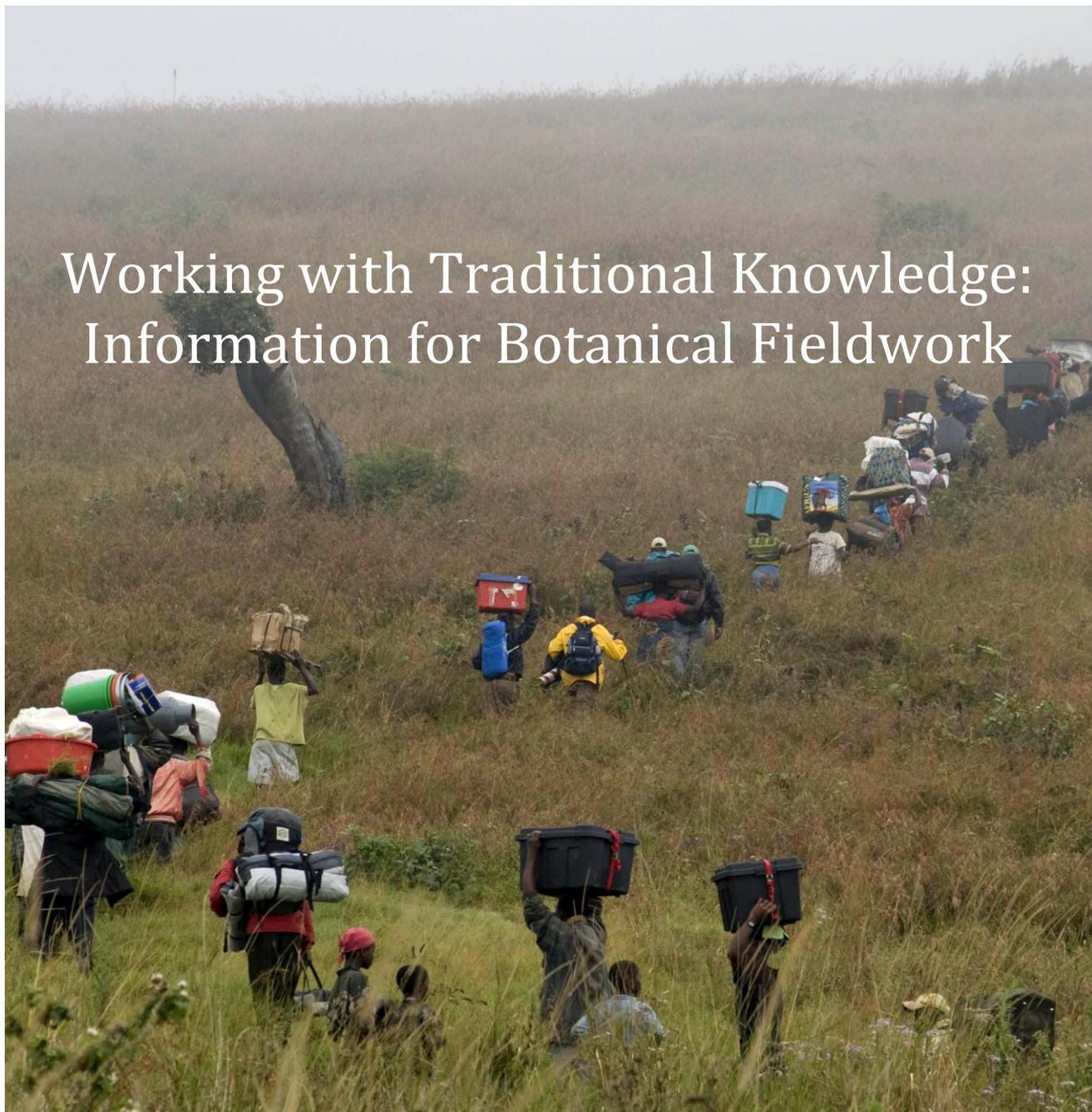


Working with Traditional Knowledge: Information for Botanical Fieldwork



Kew

PLANTS PEOPLE
POSSIBILITIES



Maurice Tse-Laurence
Giulia Sajeва
China Williams
CBD Unit, RBG Kew

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1) A guide to working with traditional knowledge and indigenous and local communities.

Botanical research can often involve access to traditional knowledge, as well as to botanical material held or managed by Indigenous and Local Communities (ILCs). There is a large and growing body of local, national and international laws, declarations and codes of conduct to guide best practice in this area. Researchers and students must be aware of this changing framework before collecting material and information in areas inhabited by ILCs.

1.1 The Framework set by the Convention on Biological Diversity (CBD)

The 1992 Convention on Biological Diversity was the first international treaty to address the important link between the use and conservation of biological diversity and the knowledge, innovations and practices of Indigenous Peoples and traditional communities .

Article 8(j) of the CBD states this traditional knowledge must be:

- Respected, preserved and maintained
- Promoted, with the approval and involvement of the holders; and that
- Benefits arising from use of such knowledge must be shared equitably.

In addition Article 10(c) of the CBD calls on Parties: 'to protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements'.

The CBD contains important framework provisions on **Access and Benefit Sharing (ABS)**, which lay out the international framework for the achievement of the third goal of the CBD - *the fair and equitable sharing of the benefits arising out of the utilization of genetic resources*. The CBD recognises the sovereign right of States over their genetic resources and states that access to these resources:

- is subject to **Prior Informed Consent (PIC)** of the country of origin.
- has to be agreed under **Mutually Agreed Terms (MATs)**.
- And that the benefits arising from the utilization of the genetic resource have to be **fairly and equitably shared** with the country providing them.



In October 2010, the Parties to the CBD agreed on a legally binding Protocol on Access to Genetic Resources and Benefit Sharing, the Nagoya Protocol, which clearly extends these provisions to access to traditional knowledge associated with material held by Indigenous and Local Communities (ILCs) (Articles 7 and 12 of the Protocol).

Thus it is now not only good practice, but an international legal requirement, to seek prior informed consent (PIC), mutually agree terms (MAT), and share benefits with ILCs arising from the use of their traditional knowledge.

What is meant by the 'Utilisation of Genetic Resources'?

The Nagoya Protocol defines the “**Utilization of Genetic Resources**” as: “to conduct research and development on the genetic and/or biochemical composition of genetic material.”. The Nagoya Protocol also includes a definition of “derivatives” as: “a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources.”. In some cases these “derivatives” may also be subject to Access and Benefit Sharing legislation.



1.2 The Wider Context

There is a large body of national and international laws and regulations, local and customary laws, practice guidelines, codes of ethics, policies and protocols of academic and research institutions and indigenous and local peoples' organizations to guide researchers in their work. The toolkit at the end of this booklet provides links to these.

Since research that involves access to traditional knowledge cannot be properly regulated with the same tools used for research on genetic resources, in 2010 the Parties to the CBD agreed to work on elements of a so called '*sui generis* system' to regulate it that will be agreed in the next few years. In addition the Parties agreed on “The Tkarihwaie:ri Code of Ethical Conduct” to ensure respect for the cultural and intellectual heritage of indigenous and local communities.

1.3 Traditional Knowledge and Indigenous and Local Communities

Who are Indigenous and Local Communities (ILCs)?

There is currently no standard definition of the term 'indigenous and local community'. For the purpose of botanic gardens' work the most appropriate definition to use is probably the one provided in the CBD text. Article 8j refers to those 'communities embodying traditional lifestyle relevant for the conservation and sustainable use of biological diversity'.

What is Traditional Knowledge (TK)?

There is no agreed international definition of TK, though in some cases national laws and agreements have developed their own definitions. Therefore great care should be taken by when working with TK in different countries. As broad guidance the Convention on Biological Diversity (CBD) does provide a definition of TK.

'Traditional knowledge' refers to the knowledge, innovations and practices of indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, and forestry' (1).



1.4 Customary Law and the bio-cultural heritage perspective

Indigenous and Local Communities (ILCs) often have their own customary laws and values which set out their rights and responsibilities relating to traditional knowledge (TK). These are dynamic and evolving. Sometimes they have been written down or they may be held orally. The term 'bio-cultural heritage' is used to emphasize the interdependence between indigenous and local peoples, TK, biodiversity, land, cultural values and these customary laws.

As indigenous people have stated in a number of international declarations (2), their lifestyle stems from the concept of the self as part of the natural system. It is based on ethical and spiritual beliefs that arise from an intimate relationship with their lands and ecosystem and is ruled by customary laws that call for a sustainable use of the resources they directly depend on.

Bio-cultural Heritage

The traditional knowledge that evolves from the relationship with the ecosystem is not seen as a simple set of information. It is embodied in the so called biocultural heritage of the community (<http://biocultural.iied.org/>) that is defined as knowledge, innovations and practices of indigenous and local communities that are collectively held and inextricably linked to traditional resources and territories, local economies, the diversity of genes, species and ecosystems, cultural and spiritual values, and customary laws within the socio-ecological context of communities (IIED, 2009).



(1) Definition provided in the CBD TK portal: www.cbd.int/tk/material.shtml

(2) See for example: the Declaration of Indigenous Peoples of the Western Hemisphere Regarding the Human Genome Diversity Project (1995), the Heart of the People Declaration (1997), the Declaration on Indigenous Peoples' Rights to Genetic Resources and Indigenous Knowledge (2007) and the United Nations Declaration on the Rights of Indigenous Peoples (2007).

This more holistic approach to looking at the rights of ILCs is becoming very influential to policy makers (see IIED publications <http://pubs.iied.org/>, search for- **Protecting Community Rights over TK: Implications of customary laws and practices** (2006) and **Traditional Knowledge in Context** (2011)).

2) Collecting Material and Information

Collection and use of traditional knowledge, by institutions and third parties.

2.1 Prior Informed Consent

Prior Informed Consent (PIC) means that you need to ask a provider for permission (**consent**) before acquiring the information(**prior**) and you need to give full details of what you want to collect and how it will be used so that the provider knows enough to make an **informed** decision.

Obtaining Prior Informed Consent

In the context of Indigenous and Local Communities (ILCs) the *process* of obtaining PIC is vital, and should be seen as an ongoing commitment. Consent should usually be obtained from a community, or communities, not just one individual. The procedure of obtaining PIC will vary from one community to another as each has different institutions, customary laws and decision making procedures. Ideally a researcher should provide the community with:

- all available information on the project in an understandable and accessible form,
- time to engage in consultations and to discuss with neighbouring communities or traditional knowledge sharer communities,
- expert support if appropriate.



The traditional knowledge holder has to be kept *informed* on any change of the circumstances of the project as its *consent* shall cover all elements of the research and should be allowed to withdraw its consent at anytime. True PIC includes the right to veto, or say no (enshrined in the 2007 **United Nations Declaration on the Rights of Indigenous Peoples**).

2.2 Mutually Agreed Terms

Terms of collection and use (including known future use) must be agreed mutually with the traditional knowledge holders at the time of negotiating PIC. You should be clear on terms and future commitments, and be sure that you and your institution have the capacity to fulfil these conditions. Terms should be recorded, preferably in writing. Any change of use means Prior Informed Consent will need to be renegotiated.

Terms that should be considered may include provisions on the ownership of the research results, the rights to publish and/or commercialize them, access by third parties, and any limitation on access or use and on the sharing of benefits

2.3 Sharing the Benefits

Researchers need to agree future benefits that will be shared with the provider or information holder.

Ways to Share the Benefits

Benefits should be agreed between the researcher and the information provider, which should be realistic about what can be shared, what is most appropriate and useful for the recipient, and the timescale over which the benefit sharing should be spread. Since the CBD does not define benefit sharing you can be imaginative. Examples include:

- training and capacity building,
- educational opportunities,
- joint research/co-authorship,
- linking communities with markets for sustainable products.



In the case of a botanic garden, benefits are likely to be non-monetary, but in some cases may include fees or royalty payments.

It should also be noted that there is a responsibility to manage the expectations of the providers of TK. For example the field worker should not raise unrealistic hopes of significant financial returns from the commercialisation of information.

2.4 Use of Written Agreements and Letters

In order to obtain Prior Informed Consent, agreed future use and benefit sharing is best discussed and agreed with knowledge-holders in the form of a letter or agreement, which should be translated into relevant languages.

In some contexts it may be very difficult for people to understand the nature of the use of knowledge a field worker is proposing, for instance scientific papers. Careful explanation is often necessary.

Verbal agreements are an option, especially in communities where literacy is an issue, but it can be difficult to rely on these in the event of a dispute and if used it is necessary that some record be made – by recording the conversation in writing or filming, for example. Care needs to be taken, however, when filming communities, to ensure no members are offended by this procedure.

Researchers need to be clear who has the right to make decisions within a community; is it an individual, a nominated representative of the community, or an organisation or committee? They must ensure that the context of work carried out is understood by the community and that agreements are made at the appropriate level/levels.

It is vital that terms of acquisition accompany all collected information and material (for instance by being recorded and entered on databases), to ensure full understanding of any

restrictions involved for when information is used at a later date by other members of staff or third parties.

2.5 Collection and use of Traditional Knowledge obtained from Third Parties

In some situations traditional knowledge (TK) will be obtained from third parties – that is, not directly from the knowledge holder. This could be unpublished data collected by and kept at national institutes, or where partners collect data from local communities and transfer this information to the main institution or botanic garden.

Where a researcher obtains TK from third parties, they must ensure Prior Informed Consent was obtained, and that conditions of use and transfer are clear.

Where possible a single institution should not be the single repository of TK; it is recommended that duplicate records are maintained by local partners.

2.6 Use of Traditional Knowledge by institution staff

Traditional knowledge (TK) included on herbarium sheets is likely to be imaged and disseminated on the internet or through other systems in the future. It is therefore very important that staff ensure Prior Informed Consent has been obtained for such use, as publication could affect local people(s) and/or their communities as well as the species in question.

The source of the TK should be included in all references to that knowledge. In the case of including local names and uses on herbarium specimen labels, the provider of the knowledge should also be noted. For publications, full acknowledgement should be given to the knowledge-providers. Indicating the source of data may help in the event of any disputes that may arise in the future.

In cases where agreements restrict the dissemination of TK, layers of access to this information will need to be negotiated. These could include research partners, botanic garden staff and the public domain, with respective reductions in access to detail. This layering of data will need to be managed and coordinated effectively by an agreed department.

2.7 Publishing Traditional Knowledge

Involve local people

Involving local people in the collection and publication of TK can help to avoid complications and it is suggested that collectors use this approach wherever possible.

Options include allocating an in-country partner as a first author when publishing TK.



Traditional knowledge (TK) is likely to be very useful to future scientific and conservation work carried out at botanic gardens and elsewhere. However, the level of detail in which this information is published, and therefore available for future use, should be agreed with knowledge-holders.

For example, TK relating to local names of plants and local germination techniques may be too much detail for some knowledge holders and general statements such as “used for traditional food or medicine” may be considered more acceptable.

At the same time these more general statements have more limited use for conservation work in the future so the right balance needs to be struck.

Similarly while publishing detailed locality data may well be sensitive, and could even threaten the survival of vulnerable species, general descriptions of the area where the species is found are usually acceptable. However, as such detailed locality data are often of value for future scientific and conservation purposes, collectors are encouraged to gather as much detail as possible in agreement with TK providers.

3) Fieldwork Checklist

Working with traditional knowledge - checklist for before, during and after fieldwork.

Issue	Steps to Take, Things to Consider BEFORE fieldwork
The Project checklist	<ul style="list-style-type: none"> • What working relationships will I have with the Indigenous and Local Communities (ILC) - e.g. use of field guides, local accommodation, interviews, translators etc.? • What type of traditional knowledge (TK) am I planning to access? • What might TK be used for? <ul style="list-style-type: none"> - publication - herbarium sheet - data recorded in botanic gardens' database (e.g. SEPASAL) for future use - chance of future commercial utilization? • What impact might my research have on the community and on its access to the resources it traditionally uses and the areas it traditionally lives in (including sacred sites).
The Provider country	<ul style="list-style-type: none"> • What does the national legislation say on access to TK (contact the National Focal Point: Search 'NFP' on the Convention on Biodiversity Website) • Any other relevant legislation/codes etc. • Has any other affiliated researcher or partner institution accessed TK in that country?
Traditional knowledge and the community	<ul style="list-style-type: none"> • Is the TK already in the public domain? - literature and database searches. • Have any other affiliated staff or partner institution researcher accessed TK of that community? • Is there any NGO or similar working with the community? • Is there any protocol, guidelines or other document the community has developed on access to its genetic resources or TK? • Is there any relevant customary law available to me and if yes what does it say? • Who is/are the authorities in charge of granting access and signing Prior Informed Consent (and Mutually Agreed Terms if necessary)?
Prior Informed Consent (PIC)	<p>Detailed PIC includes providing information on full range of potential benefits (monetary and not) that could arise for the community:</p> <ul style="list-style-type: none"> • possible harm to the community, its practices and ecosystem • all foreseeable utilisations of the TK • predicted results and possible applications (commercial and non) • problems that may arise for the community or its ecosystem <ol style="list-style-type: none"> 1. Identity of those carrying out the activities in situ and ex situ. 2. Role – if any – of members of the community in the activities of the project. 3. Information on affiliations, partnerships and sponsorships. 4. Statement of approval from the national government and NFP. 5. Conditions for re-issue of PIC (changes in intent). 6. Conditions for supplying the TK to third parties. 7. Any discovery that may arise during the project that might affect the community. 8. How TK will be recorded and where the information will go. 9. Right of the community to withdraw their consent at anytime.
Negotiate Mutually Agreed Terms	<p>Elements to be agreed:</p> <ul style="list-style-type: none"> • Ownership of the information collected • Use in publications, record in herbarium sheet, in public/secret

	<p>databases. Under what forms?</p> <ul style="list-style-type: none"> • Who is information available to - layers of access in database • Acknowledge the community in any publication • Identification of individuals giving information – anonymity or recognition • Agreed procedure to require new consent for new forms of use (publications/further research) • Benefits to be shared and how – incorporating the needs of the community in the project (if possible) • Accessibility of the results by the community • Direct involvement of the community during the research (field guide hiring, interviews) • Conflict resolution
Sharing the Benefits	<ul style="list-style-type: none"> • Find out priorities/community needs • What can you realistically deliver • Consider types of benefits to be shared: <ul style="list-style-type: none"> - Facilitate and fund education programmes - Education/training/capacity building - Exchange programs for scientists - Provide training in herbaria collection, resource mapping, GIS, and other activities that may be useful during the project. - Train local people rather than bringing in trained people from outside - Plan, help with funding and grants for conservation or development - Provide equipment - Money if and where appropriate
Collection and use of traditional knowledge from third parties	Negotiated written agreements which lay out elements of Prior Informed Consent, Mutually Agreed Terms and benefit sharing should be agreed.

Issue	Steps to take, Things to Consider DURING field work
Working with the community	<ul style="list-style-type: none"> • Ongoing, dynamic consultations • Relationships with the community's leaders and members and the focal point • Be transparent on the results, problems, unexpected findings, news... • Understand and respect values and customary laws
Collecting traditional knowledge	<ul style="list-style-type: none"> • Be clear on what you want to collect • Develop written documents for Prior Informed Consent • Ensure that sources are recorded by name and location for all information; provide feedback to community after completion and before leaving, on what's been done and next steps

Issue	Steps to take, Things to Consider AFTER field work
Publishing and recording the data	<ul style="list-style-type: none"> • Leave records with local partners • Level of detail published to be agreed with the community • Local collaborators as first authors in the publication • Acknowledging the community • Providing a copy of the publication to the community before the publication so that they can decide whether it has commercial applications • Consider what software to be used - free or 'open source'/restricted fields
Continuing to share benefits	Make sure system in place in your institution to ensure benefits continue to be shared – how have you recorded this information so future staff are aware?

4) Toolkit

Links to International, national and local legislation, regulations, best practice guidelines, and indigenous peoples guidelines and codes of conduct.

4.1 International Regulations

- **Universal Declaration of Human Rights (1948)**
www.un.org/events/humanrights/2007/hrphotos/declaration%20_eng.pdf
- **International Covenant on Civil and Political Rights (ICCPR)** was adopted by the UN General Assembly on December 16, 1966, and entered into force on January 3, 1976.
www2.ohchr.org/english/law/ccpr.htm
- **International. Covenant on Economic, Social and Culture Rights (ICESCR)** adopted by the UN General Assembly on December 16, 1966, and entered into force on January 3, 1976.
www2.ohchr.org/english/law/cescr.htm
- **Declaration of the United Nations Conference on the Human Environment (or Stockholm Declaration)**, which was adopted June 16, 1972
www.unep.org/Documents.Multilingual/Default.asp?documentid=97
- **ILO 169 (1986) Concerning Indigenous and Tribal Peoples** – requires consultation prior to the granting of exploration and exploitation rights over natural resources
http://pro169.org/res/materials/en/general_resources/Manual%20on%20ILO%20Convention%20No.%20169.pdf
- **UN Convention on Biological Diversity 1992**. Under the CBD the working group on Article 8j meets to discuss issues relating to ILCs and TK.
www.cbd.int/
- **Akwe: Kon Guidelines 2004** – voluntary guidelines agreed under the CBD for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.
www.cbd.int/doc/publications/akwe-brochure-en.pdf
- **United Nations Declaration on the Rights of Indigenous Peoples 2007** was adopted by the UN General Assembly following more than 20 years of negotiation, and enshrines the right to veto.
www.un.org/esa/socdev/unpfii/en/drip.html
- **The Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities (CBD 2010)** <http://www.cbd.int/traditional/code.shtml>
- **The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing 2010** – www.cbd.int/abs/



4.2 National Legislation

Several governments are now in the process of implementing **Article 8j** through their national biodiversity action plans, strategies and programmes and some have adopted specific laws, policies and administrative arrangements for protecting traditional knowledge. These usually emphasize that the Prior Informed Consent of knowledge-holders must be obtained before their knowledge can be used by others.

There are a range of sources where information on up to date national legislation can be sought:

- **Traditional Knowledge Information Portal** of the CBD provides links to traditional knowledge legislation information, including draft legislation. www.cbd.int/tk/
- **World Intellectual Property Organization** provides information on up-to-date legislation in a number of countries. A **comparative table** provides a useful overview of key features of a range of sui generis laws that protect traditional knowledge in Africa (African Model Law), Brazil, China, Costa Rica, India, Peru, Philippines, Portugal, Thailand and the USA. www.wipo.int/tk/en/laws/tk.html



4.3 Indigenous peoples guidelines, declarations, codes of conduct, local and community laws and community bio-cultural protocols

Some indigenous groups have developed guidelines and declarations and drawn up codes of conduct for those wishing to carry out traditional knowledge related research in the areas where they live.

- **Declaration of Belem** 1988 –representatives of indigenous and local people met with scientists and environmentalists at the First International Congress of Ethnobiology to develop a common strategy to stop the loss of biological and cultural diversity. The declaration outlines the responsibilities of researchers in addressing needs of local communities and the unique ways Indigenous and Local Communities perceive, use and manage their natural resources. www.ethnobiology.net/global_coalition/declaration.php
- **Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples** 1993 www.wipo.int/tk/en/databases/creative_heritage/indigenous/link0002.html
- **Declaration of Indigenous Peoples of the Western Hemisphere Regarding the Human Genome Diversity Project** (1995) www.ipcb.org/resolutions/htmls/dec_phx.html
- **Inuit Tapirisat of Canada: Principals for Negotiating Research Relationships in the North** www.itk.ca/sites/default/files/Negotiating-Research-Relationships-Researchers-Guide.pdf
- **Traditional Knowledge Research Guidelines: A Guide for researchers in the Yukon** www.tc.gov.yk.ca/pdf/science_research_guidelines.pdf
- **Natural Justice** website for further information on the community protocols www.naturaljustice.org/

4.4 Best practice guidelines – professional bodies and governments

- **Society for Economic Botany:** www.econbot.org/home.html
- Code of Ethics of the **International Society of Ethnobiology:** www.ethnobiology.net/ethics.php
- The Pew Conservation Scholars Initiative - **Suggested Ethical Guidelines for Accessing and Exploring Biodiversity:** www.eubios.info/EJ52/EJ52I.htm
- The Pew Conservation Scholars Initiative has established a project to create a **Directory of Guidance Documents relating to biodiversity and cultural knowledge research and prospecting** which is worth consulting but rather out of date: <http://geography.berkeley.edu/ProjectsResources/BRP/SurveyA-F.html>
- Australian Government (2002) - Nationally consistent approach for access to and the utilisation of Australia's native genetic and biochemical resources, Natural resource

Management Ministerial Council:

www.environment.gov.au/biodiversity/publications/access/nca/index.html

- World Bank **Indigenous Peoples Policy** 2005: on the World Bank website, search 'indigenous people' follow the first search hit and then select the third tab down on the left of the screen.

4.5 Other sources of information on traditional knowledge legislation, codes of conduct and ethical guidance

- **The Traditional Knowledge** page on the CBD website contains links to most traditional knowledge legislation, codes of conduct, declarations and guidelines: www.cbd.int/tk/
- **Swiss Confederation and IISD** have formed an ABS-Management tool setting out a Best Practice Standard: www.iisd.org/abs/
- **The United Nations Environment Programme (UNEP)** have a useful web resource on indigenous knowledge in Africa: www.unep.org/ik/
- **UNEP** has put together a list of communities, organisations and institutions that have developed protocols: <http://hqweb.unep.org/communityprotocols/resources.asp>
- **The International Indigenous Forum on Biodiversity (IIFB)** coordinates Indigenous and Local Communities involvement in CBD meetings www.iifb.net/ or <http://iifb.indigenouportal.com/>
- **Traditional Knowledge Digital Library (TKDL)** is a project run by the Indian Government to document traditional knowledge in the public domain to prevent this knowledge being misappropriated through patent applications etc. www.tkdl.res.in/tkdl/langdefault/common/AboutTKDL.asp -
- **World Intellectual Property Organisation** website pages on Traditional Knowledge, Genetic Resources and 'Traditional Cultural Expressions': www.wipo.int/tk/en
- **The United Nations Permanent Forum on Indigenous Issues;** www.un.org/esa/socdev/unpfii/
- **Community-University Connections** is a community based research initiative with useful guidance for scientific researchers working with local communities. <http://web.uvic.ca/~scishops/index.html>
- **The CBD Alliance** is a network of activists and representatives from nongovernmental organizations, community based organizations, social movements and Indigenous Peoples organizations advocating for improved and informed participation in CBD processes: www.cbdalliance.org/
- **The CBD has established a Working Group** www.cbd.int/convention/wg8j.shtml to specifically address implementation of Article 8(j), which is open to all Parties, and indigenous and local communities' representatives play an active role in its work. Those indigenous and local community representatives who attend meetings held under the CBD belong to the www.iifb.net/ (IIFB).
- **The IISD Linkages** page provides up-to-date information on the CBD meetings: www.iisd.ca/
- **International Institute of Environment and Development:** www.iied.org/
- **International Institute on Sustainable Development:** www.iisd.org/

Developments in Wild Law and the campaign to make Ecocide a Crime

The Gaia Foundation lobbies for the rights of Indigenous people over their Indigenous Knowledge and Sacred Sites as part of their campaign against Ecocide:

<http://www.gaiafoundation.org/>