

Biocultural Protocol of the Biocultural Heritage Initiative

This is a first draft that will be further refined with community members of the Biocultural Heritage Initiative, notably the International Network of Mountain Indigenous Peoples (INMIP).

Preamble

Recognizing that the Biocultural Heritage (BCH) of Indigenous Peoples and Local Communities (IP & LCs) is a complex, adaptive and holistic system, interconnected by processes, resources, knowledge and all living beings as relational parts of an indivisible whole. This integral worldview is the foundation of their self-determination.

Affirming that IP & LCs are the custodians and creators of biocultural heritage and associated traditional knowledge (TK), and that their customary laws and traditional governance systems are fundamental tools for the protection and promotion of this heritage.

Considering the imperative need to protect TK and genetic resources (GR) from exploitation, biopiracy and misappropriation, especially in a context of accelerated technological development and the erosion of rights and the concentration of power.

Inspired by the successful experience of Asociacion ANDES (Peru) and other community members of INMIP (International Network of Mountain Indigenous Peoples), that has demonstrated how community protocols based on customary laws can serve as a model for governance, conservation and equitable benefit-sharing.

Aware of the obligations and recommendations established by relevant international instruments and national laws that recognize and seek to protect the rights of Indigenous Peoples and local communities, including:

- **Convention 169 of the International Labor Organization (ILO):** Recognizes the rights of Indigenous Peoples to their lands and territories, and the importance of their laws and customs.
- **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):** Affirms the right to self-determination, autonomy, culture, traditional knowledge, and ownership of land and genetic resources.
- **Nagoya Protocol on Access and Benefit-sharing (Convention on Biological Diversity):** Requires Prior and Informed Consent (PIC) and the establishment of Mutually Agreed Terms (MAT) for access to GR and associated TK, recognizing the importance of customary laws and community protocols.
- **International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA):** **Recognises** the rights of farmers to protect traditional knowledge, participate in benefit-sharing and decision-making on plant genetic resources for food and agriculture, and to save, use, exchange and sell farm-saved seed, and recognizes their contribution to the conservation of genetic resources.

- **Convention on Biological Diversity (CBD):** Highlights the interdependence between biodiversity, culture and traditional knowledge, and calls for the protection of traditional knowledge systems.
- **World Intellectual Property Organization (WIPO):** Has worked on the development of *sui generis* systems for the protection of TK, recognizing the centrality of customary rules.
- **UN Declaration on the Rights of Peasants (UNDRoP):** Recognises the rights of IP & LCs to protect traditional knowledge related to plant genetic resources for food and agriculture, equitably participate in benefits from their utilization, participate in decision-making on conservation and sustainable use; and to save, use, exchange and sell farm-saved seed and maintain their own seeds and traditional knowledge.

We establish this Biocultural Protocol based on principles of equity, justice and inclusion for traditional knowledge, in order to protect the collective rights of IP & LCs, promote the shared management of resources and ensure reciprocity and sharing in the use of biocultural heritage, in accordance with the values and customary laws of the Indigenous Peoples and local communities that are the holders, owners and creators of biocultural heritage.

Fundamental Principles of the Biocultural Protocol

This Protocol provides the basic principles and norms to guide the BCH Initiative and its member organizations, including regarding the use of the BCH Initiative logo. The Protocol is governed by the following principles, derived from Indigenous and traditional peoples' worldviews and customary laws, as well as from best practices and international recommendations. Where the customary law principles of the custodians of BCH differ from those set out below, their own customary principles will prevail:

1. **Priority of Free, Prior and Informed Consent (FPIC) and Community Self-Determination:** All access to and use of TKs and GRs of IP & LCs must be contingent upon their free, prior and informed consent, obtained in accordance with their own customary laws and procedures. The self-determination and autonomy of IP & LCs must be protected and prioritized in all decisions.
2. **Collective Ownership and Shared Management:** TK and BCH are inalienable collective property of PI&CLs and must be managed collectively. The BCH Initiative logo should symbolize this unity and support, but not replace, the identity and logo of each community.
3. **Reciprocity and Sharing:** What is received must be returned in equal measure, ensuring equity and mutual benefit between all parties, including Pachamama (Mother Earth). The accumulation of profits by third parties without adequate remuneration is contrary to this principle.
4. **Duality:** Recognition of the existence of two opposite but complementary halves in the cosmos and in society, without one being superior to the other. This implies the interdependence of rights and obligations, and the need to integrate indigenous and Western perspectives into the legal and governance framework.

5. **Balance:** Harmony and proportion with nature, the sacred world, and among the members of the community. The fair and equitable distribution of benefits must consider the needs, capacities, responsibilities, contributions and efforts of each of these parties.
6. **Non-Monopolization and Non-Privatization:** Restricting access to or customary rights over knowledge and resources through patents, copyrights or other means of intellectual property that seek to privatize or monopolize TK/GR derivatives or enhancements is prohibited. The Protocol must operate under copyleft or non-commercial Creative Commons principles (eg. for publications).
7. **Transmission and Revitalization of TK:** Encourage the intergenerational transmission of knowledge, practices and values, ensuring that research findings are returned to communities in their local languages.
8. **Cultural Sensitivity:** The logo and Protocol should be culturally sensitive and respect the diversity of the IP&LCs, without claiming to represent local indigenous nations.

Scope of Application

This Biocultural Protocol applies to:

- **All organizations** that are part of the Biocultural Heritage Initiative, including Indigenous organizations, research organizations, universities, NGOs and other partners.
- **Any external person or organization** that interacts with the TK, GR and BCH of IP & LCs within the context of the BCH Initiative, or that uses the BCH Initiative logo on its outputs or publications.
- **Any content, product or service** that is part of the work of the BCH Initiative or that incorporates TK, GR or derivatives of BCH, including publications, presentations, graphics, print or digital content, commercial products and services.
- **Use of the BCH Initiative logo.**

Key Clauses of the Biocultural Protocol

1. Ownership and Governance of the BCH Initiative Logo and Biocultural Heritage

1.1. Ownership of the BCH Initiative Logo: The BCH Initiative logo represents a collective network of which communities are a part. Although the Initiative as a whole (including IIED and ANDES) has an interest in its use, ownership and decision-making about the use of the logo ultimately rests with the collectivity of the communities that comprise the BCH Initiative.

1.2. Approval for Use of the BCH Initiative Logo on Print and Digital Materials: For publications, presentations, graphics and any other print or digital content that is not a community product or service, use of the BCH Initiative logo will require prior and joint approval from the BCH Initiative Board of Directors (including ANDES, IIED, INMIP and an academic), following the procedures established in this protocol.

1.3. Use of the Logo by Communities on Products and Services: IP & LCs are the owners and creators of biocultural heritage and have full autonomy to decide on the use of the BCH Initiative logo on their own products and services, including seeds. There will be no external oversight of

this use by communities. The goal is to empower communities to protect their rights and promote their own brand. The BCH Initiative logo should appear alongside and never replace the community's or organization's own logos, which will always take precedence as primary identifiers.

1.4. Brand Protection: The possibility of obtaining a "service mark" for the BCH Initiative logo, which does not relate directly to goods, but to the provision of services and the promotion of the network, will be explored. Any trademark protection should facilitate collective governance and not centralize control, empowering local customary norms.

2. Access to and Use of Traditional Knowledge (TK) and Genetic Resources (GR)

2.1. Free, Prior and Informed Consent (FPIC): Any access to TK or GRs associated with BCH requires the FPIC of IP & LCs, in accordance with their customary laws and protocols.

2.2. Respect for Community Standards and Protocols: Any publication or product that includes TK/BCH must adhere to the existing rules and protocols of the communities involved, especially if the information could be commercially exploited (e.g. taxonomy of crops, traits of medicinal plants). In such cases, communities should be consulted and a "community bill of rights" setting out the rules and conditions for the use of their knowledge should be requested, which will be included in the final product or output. Consultation will not be necessary for TK of a more general nature that is not exposed to the risk of commercial exploitation (e.g. knowledge of the skies).

2.3. Return of Research Results: All research results containing Traditional Knowledge and Biocultural Heritage will be returned to the communities that provided them, in their local language whenever possible, in an accessible and culturally appropriate format.

3. Fair and Equitable Benefit-Sharing

3.1. Benefit-sharing: Any benefits derived from the use of TKs and GRs, including TK derivatives, must be shared fairly and equitably with the source communities, encompassing both monetary and non-monetary benefits. The fair and equitable distribution of benefits will be carried out by prioritizing non-monetary benefits that strengthen the biocultural system, according to the needs, capacities, responsibilities, contributions and efforts of the communities. Monetary benefits should be allocated to a Community Fund for the reinvestment and maintenance of the Biocultural Heritage, guaranteeing its equitable distribution among the communities according to agreed community criteria.

3.2. Community Commercial Use: Other communities will be allowed to use the information for commercial purposes for their livelihoods, as long as this is approved by the BCH holders and adheres to its rules.

4. Licensing and Intellectual Property

4.1. Non-Commercial Copyleft or Creative Commons License: Any output or product identified as part of the BCH Initiative must be available under a Creative Commons license that does not allow commercial use (CC BY-NC-ND 4.0) or a copyleft license that does not reserve

rights. The copyleft model, used in a Potato Park publication, is the preferred as an approach to protect collective rights and ensure that improvements are not monopolized.

4.2. Outputs or products that contain BCH: Any output or product of the BCH Initiative that contains Traditional Knowledge or Biocultural Heritage will be governed by the principles of copyleft, guaranteeing its free non-commercial use and the non-restriction of access through patents or copyrights. Users undertake not to monopolize the resulting improvements and to include this clause in any transfer of knowledge.

4.3. Defensive Licensing: The BCH Initiative network, through its collective governance structures (such as its Board of Directors or INMIP), reserves the right to revoke the license of use if the terms of the Protocol are not met. This acts as a compliance measure and defensive protection against misuse.

4.4. Community-Centered Licensing Model: The aim will be to create a licensing model that emanates from the communities and fully engages them in decision-making, avoiding paternalistic approaches and strengthening collective governance over traditional use associated mainly with agriculture.

5. Compliance and Dispute Resolution Mechanisms

5.1. Monitoring Compliance: Although the formalization of follow-up and compliance mechanisms can be complex, the Protocol will seek to foster a "moral community" where shared values promote voluntary compliance with the Protocol. Initial testing and scans could be conducted within the INMIP network to develop and refine the rules and ensure compliance.

5.2. Conflict Resolution Based on Customary Law: Conflicts arising from the application of this Protocol will be resolved through mechanisms based on the customary laws of the communities, seeking to restore social balance and harmony, and prioritizing the participation of the Community Assemblies and the Association of Communities of the BCH Initiative or INMIP for inter-community conflicts.

6. Considerations for New Technologies and Derivatives

6.1. TK/GR Derivatives: This Protocol, including its benefit-sharing and FPIC clauses, applies to derivatives of traditional knowledge and genetic resources including new forms of use, such as digital sequence information (DSI), genetically modified organisms (GMOs) and genome editing.

6.2. Protection against Emerging Technologies: The use of Artificial Intelligence (AI) for the analysis of Traditional Knowledge (TK) and Genetic Resources (GR), as well as the generation and use of Digital Sequence Information (DSI) derived from biological material or data associated with BCH, will be subject to the Free, Prior and Informed Consent (FPIC) of the communities and the benefit-sharing principles of this Protocol. The patenting and introduction of Genetically Modified Organisms (GMOs) or genome editing technologies that affect the rights, practices or resources of communities without their express consent and full control is prohibited, seeking to avoid any form of digital or biological biopiracy.

6.3. Benefit-sharing from Downstream Improvements: Improvements or innovations developed from TK and GR should not be monopolized by third parties. Any benefits derived from downstream uses must be shared fairly and equitably with communities, prioritizing the strengthening of BCH and local livelihoods.

7. Role of the BCH Initiative Partners

7.1. Facilitators and Advocates: IIED, ANDES, INMIP and other BCH Initiative partners should act as facilitators and advocates for the rights of IP & LCs, prioritizing their decision-making and supporting the development of their own brands and the protection of their rights.

7.2. Capacity Building: BCH partners will support capacity building in communities for the management of their BCH, the negotiation of equitable agreements and the strengthening of their customary governance systems and rights.

7.3. Promotion of Ethical Biotrade: Communities will be supported to link up with ethical biotrade initiatives for products derived from their biocultural heritage that they decide to commercialize.

8. Review and Adaptation of the Protocol

8.1. Dynamic Nature: This Biocultural Protocol recognizes the dynamic nature of customary laws and the ability of communities to adapt to new situations. The Protocol will therefore be a "living agreement" subject to revision and evolution.

8.2. Participatory Review Process: This Biocultural Protocol is a living document that will be adapted and evolved in ongoing consultation with Indigenous Peoples and Local Communities, reflecting the dynamic nature of their customary laws and their changing needs. Periodic reviews will be carried out through participatory workshops with all BCH Initiative members including communities.

Additional Contextual Considerations and Legal Justification

The implementation of this Biocultural Protocol is based on the need to correct the historical and structural imbalances in the access and benefit-sharing of TK and GR, recognized in multiple international instruments.

- **Critique of Existing ABS Models:** The prevailing models of Access and Benefit-sharing (ABS) have been criticized for fragmenting traditional knowledge from their biocultural systems, treating it as a commodity, and failing to consider the holistic relationships that underpin it. This Biocultural Protocol, by being based on the customary principles of communities, including reciprocity, duality and balance, and by prioritizing community visions of holistic wellbeing, such as "Sumaq Causay" (harmonious life), offers an alternative that values integral wellbeing over material accumulation.
- **Articulation with Customary Law:** The experience of the Potato Park underscores that the most effective ABS mechanisms are those that arise from the customary laws of communities. ILO 169 (Art. 8) and UNDRIP (Art. 34) recognize the right of Indigenous Peoples to maintain their own customs and institutions. The Nagoya Protocol (Art. 12.1 and

12.3) urges Parties to take into account customary laws and support the development of community protocols. The "legal coupling" of customary laws with 'modern' legal systems (national and international) strengthens the applicability and respect of these protocols.

- **Impact of Biopiracy and Intellectual Property:** Western intellectual property legislation often does not align with the collective and holistic vision of IP & LCs relating to TK, thereby facilitating biopiracy. For example, Peru's Law No. 27811, while protecting TK as cultural heritage, has limitations by excluding knowledge in the "public domain." This Protocol seeks to counter this through the use of copyleft and a defensive approach, ensuring that knowledge remains in the collective domain and custodianship of communities, just as Cusco's Regional Ordinance 048-2008 requires disclosure of origin.
- **Right to Food and Food Security:** Concern for GMOs and food security is reflected in the experience of Cusco (Regional Ordinance 010-2007). This Protocol strengthens the capacity of communities to control their genetic resources and ensure their food sovereignty, in line with Article 8 of the Nagoya Protocol on Food Security.

Conclusion

This Biocultural Protocol represents a robust and community-centred framework for the protection of the Biocultural Heritage of Indigenous Peoples and Local Communities. By integrating the principles of copyleft, customary law and international obligations, it seeks to empower communities to exercise their rights, promote fair and equitable benefit-sharing, and ensure the conservation and revitalization of their traditional knowledge and genetic resources in an ever-evolving technological world. The flexibility and "living" nature of this Protocol ensure its adaptability to the future needs and decisions of communities, consolidating their role as guardians of biodiversity and cultural diversity.

Supporting Referrals

- Convention on Biological Diversity (CBD): Articles 8(j) and 10(c).
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization: Articles 1, 5.1, 5.2, 5.5, 6.2, 6.3(f), 7, 8, 9, 12.1, 12.2, 12.3, 12.4, 17, 18, 19, 20, 21, 22, 23.
- International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).
- International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples: Article 8.
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP): Articles 4 and 34.
- Universal Declaration of Human Rights (UDHR): Article 27.2.
- International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 11, 15(1).

- Peruvian Legislation: Law No. 27811, Law No. 28216, Regional Ordinance 048-2008 CR/GRC. CUSCO, Regional Ordinance 010-2007 CR/GRC. CUSCO.
- WIPO (World Intellectual Property Organization).