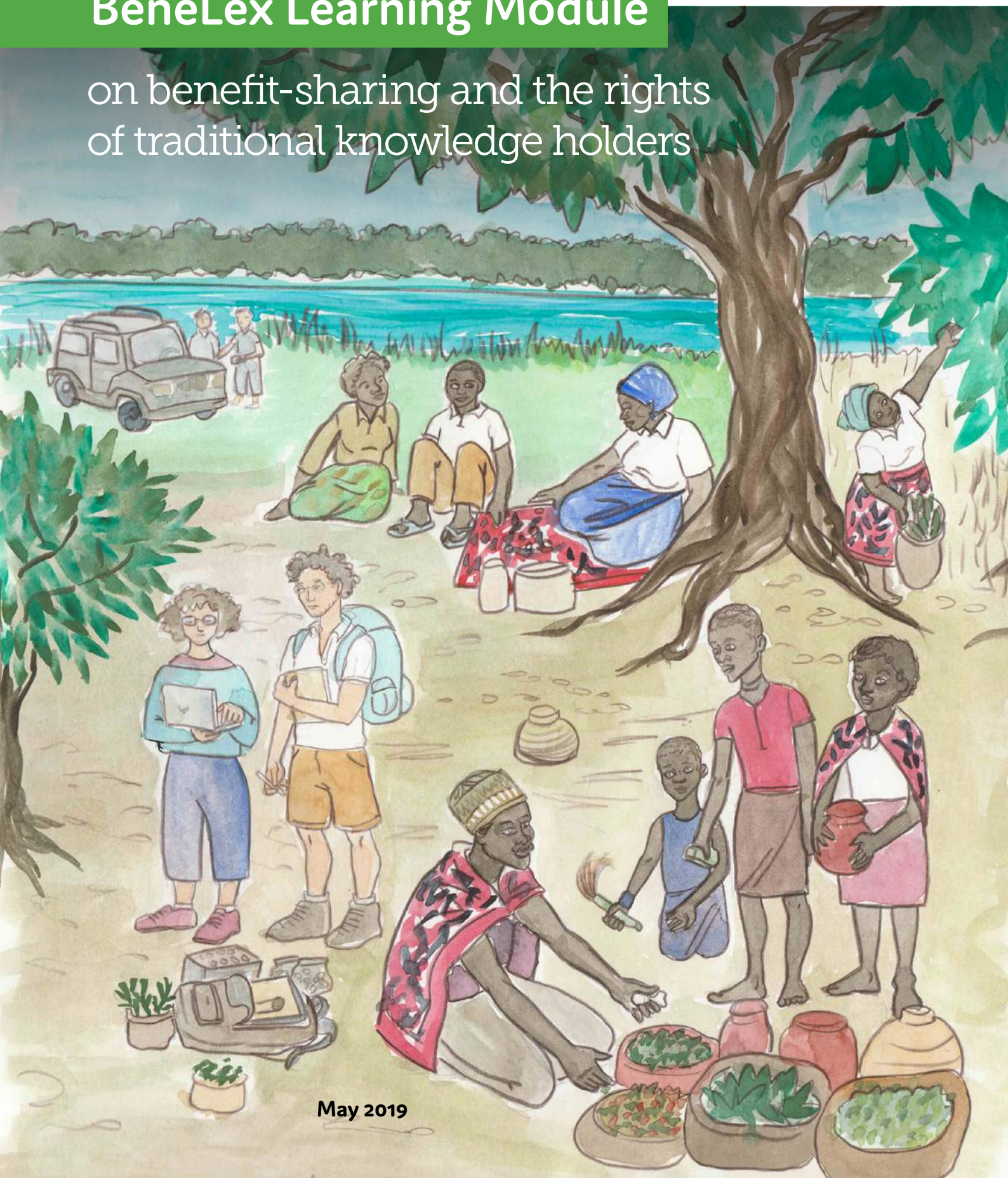


BeneLex Learning Module

on benefit-sharing and the rights
of traditional knowledge holders



May 2019

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1 Introduction



THE BENELEX
RESEARCH

Background: BeneLex is an academic project funded by the European Research Council (2013-2018) and is led by Professor Elisa Morgera of the University of Strathclyde, Glasgow, UK. The project focuses on the legal concept of **“fair and equitable benefit-sharing”**, which is understood as the **good-faith, iterative dialogue aimed at building equitable partnerships in identifying and allocating economic, socio-cultural and environmental benefits among State and non-State actors**. The

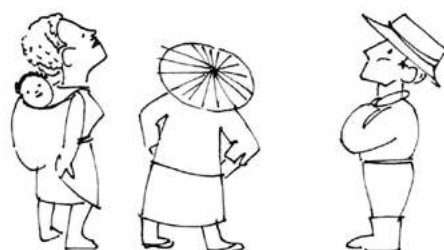
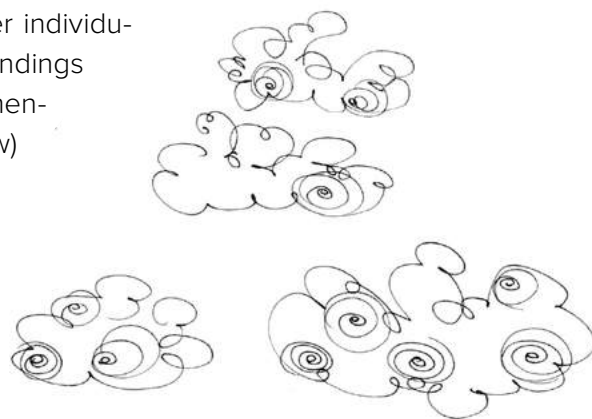
project explores different ways in which fair and equitable benefit-sharing is understood and put into practice in various contexts.

By understanding benefit-sharing in different contexts, the project seeks to clarify how law can help realize the potential of benefit-sharing to create fair and long-term partnerships between communities and other users of natural resources. To this end the project in particular builds on mutually supportive interpretations of international biodiversity law and international human rights law. In short this means reading international biodiversity law and international human rights law together to disqualify any inconsistencies between them and clarify how they each can help realize the objectives of the other.

The **targeted users** of this learning module are indigenous peoples and local communities’ representatives, and human rights and environmental advocates.

This learning module seeks to enable users (either individually or as part of a group) to rely on key research findings from the BeneLex project on international environmental law (which includes international biodiversity law) and international human rights law concerning the rights of traditional knowledge holders when:

- Deciding if to provide free, prior informed consent (FPIC);
- Negotiating agreements with outsiders on benefit-sharing;
- Developing community protocols;
- Organising training sessions;
- Undertaking advocacy activities; or
- Carrying out litigation activities.



TARGETED USERS



The **learning objectives** of this module are to rely on a combination of international biodiversity law and international human rights law to:

- Protect traditional knowledge from unauthorized use;
- Ensure the participation of traditional knowledge holders in scientific processes and decision-making, including at the international level;
- Ensure the sharing of benefits arising from the use of traditional knowledge with traditional knowledge holders, including by the private sector and by researchers.



This module is part of a series of 3 learning modules (the other two will focus on indigenous peoples' rights over natural resources and on farmers' rights).

Other outputs of the **BeneLex** project include:

- **Working papers and academic publications** analysing international legal developments related to fair and equitable benefit-sharing and relating research findings to broader academic debates in international law;
- **Blog posts** providing real-time, accessible analysis of new international legal developments related to fair and equitable benefit-sharing;
- **Policy briefs** distilling in a succinct and action-oriented way the main project findings for specific groups of end-users: international negotiators, the private sector, NGOs and bilateral donors. They will be available in English, French and Spanish.



Go deeper

All **BeneLex** outputs are available on the project website and, upon request (email benelex@strath.ac.uk) in memory sticks that will be mailed to you.

Authors

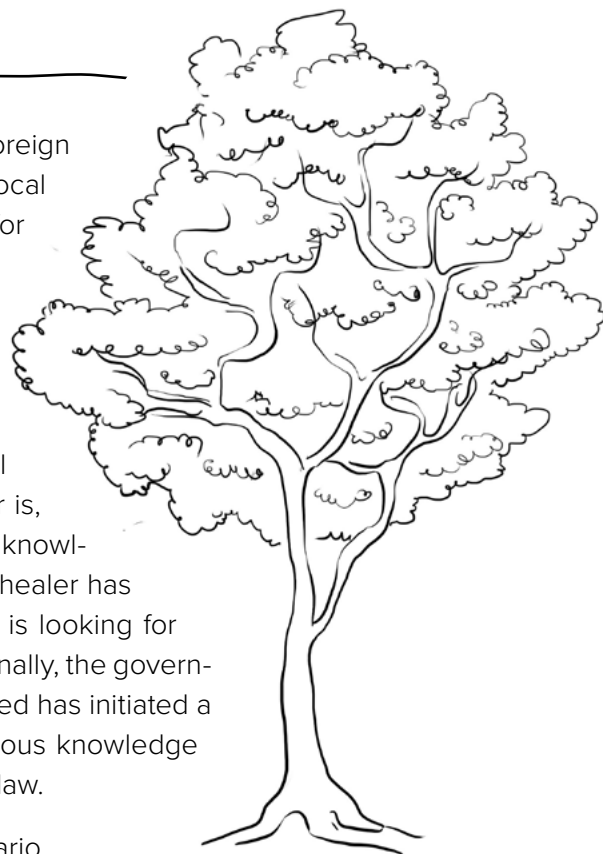
This module was prepared by Professor Elisa Morgera and Thierry Berger and benefited from comments and review by members of the **BeneLex** team including Margherita Brunori, Louisa Parks, Wim Peters, Annalisa Savaresi and Elsa Tsioumani. Margherita Brunori prepared the visuals and Yoge designed the layout. The module draws on Elisa Morgera, 'Fair and Equitable Benefit-Sharing at the Cross-Roads of the Human Right to Science and International Biodiversity Law' (4 *Laws* 803–831, 2015) and 'Reflections on 2016 UN Biodiversity Conference (Part II): Assessing the Mo'otz kuxtal Guidelines on Benefit-Sharing from the Use of Traditional Knowledge' (*BENELEX Blog*, 2017) and sources cited in them; as well as Annalisa Savaresi, 'Traditional Knowledge and Climate Change: a New Legal Frontier?' (9(1) *Journal of Human Rights and the Environment* 32–50, 2018) and 'Benefit-sharing and Traditional Knowledge: Recent Developments and New Frontiers in the Climate Regime', (*BENELEX Blog*, 2017) and sources cited in them.

2 Why is this learning module needed?

Scenario: A traditional healer is approached by a foreign researcher to discuss the medicinal properties of a local plant. The researcher wishes to use the information for a PhD thesis, and has received funding from a pharmaceutical company to carry out the research. The researcher is also interested in the healer's observations about the impacts of climate change on the plant and suggests that this information could be included in a new international platform on traditional knowledge and climate change. The traditional healer is, however, unsure about how to keep control over her knowledge once it is shared with outsiders. In addition, the healer has observed that medicinal plants are disappearing and is looking for ways to gain access to plants within protected areas. Finally, the government of the country where the traditional healer is based has initiated a process of developing a national database of indigenous knowledge to evaluate the scope of the country's benefit-sharing law.

If you were to advise the traditional healer in this scenario,

- How could the healer protect her traditional knowledge from unauthorized use by a researcher and also, potentially, by the company? What could she do about potential negative consequences from the research?
- Why and how could the healer consider sharing knowledge on an international platform?
- How can the healer gain access to medicinal plants in protected areas?
- What should the healer's expectations be in relation to sharing her knowledge with outsiders and the development of the database?
- What could the healer do in case her rights are not respected?



This module will first highlight opportunities for the protection of traditional knowledge by relying on both international environmental law and international human rights law. It will then discuss various ways in which traditional knowledge can be protected, looking in turn at the obligations of the government and the responsibilities of non-commercial researchers and businesses. Finally, it will conclude by returning to the scenario above to give you an opportunity to apply what has been discussed in the previous sections.

The below diagram maps various sources and concepts relevant to traditional knowledge that will be referred to throughout the module, shows how they relate to each other and highlights the steps traditional knowledge holders can take to protect their rights.

Diagram map. International human rights and biodiversity sources and concepts relevant to traditional knowledge holders' rights



International Environmental Law

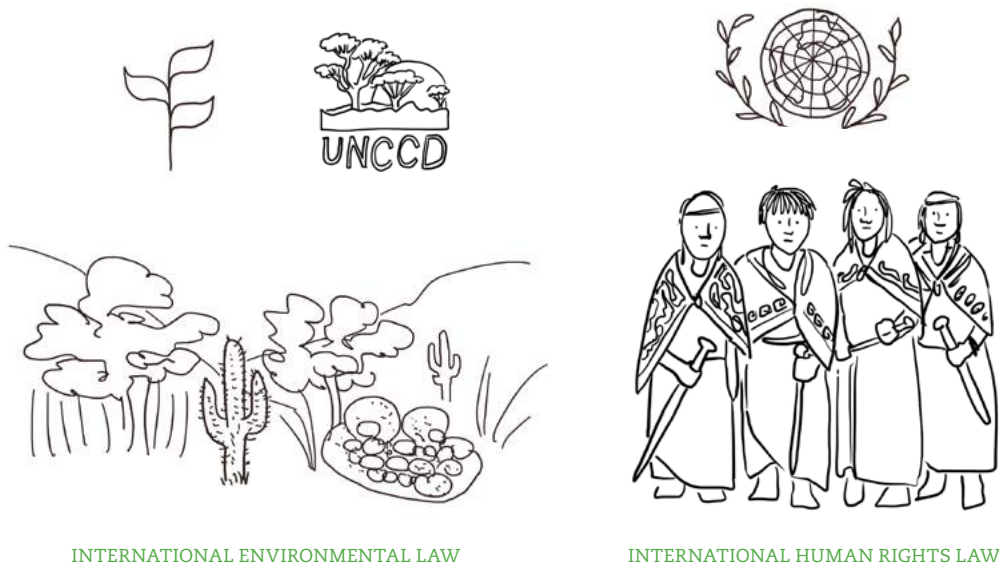
Convention on Biological Diversity
Decisions of the CBD Conference of Parties
Nagoya Protocol on Access to Genetic Resources and Benefit-sharing
UN Convention to Combat Desertification
International Treaty on Plant Genetic Resources for Food and Agriculture

International Human Rights Law

International Covenant on Civil and Political Rights
International Covenant on Economic, Social and Cultural Rights
UN Declaration on the Rights of Indigenous Peoples
Universal Declaration of Human Rights
Committee on Economic, Social and Cultural Rights
General Comment No. 21
Special Rapporteur in the field of cultural rights

Framework Principles on Human Rights and the Environment

A. Protecting traditional knowledge by relying on both international environmental law and international human rights law



Although “modern” or “western” science often tends to marginalize the traditional knowledge of indigenous peoples and local communities, much “modern” science can be said to derive from local knowledge (Vermeylen et al. (2008)). There is growing international recognition of, and interest in, the **distinctive contributions of traditional knowledge to the realization of various international objectives**, such as the conservation of nature, the sustainable use of natural resources, the protection of health and the availability of food. There are therefore several international rules aimed at the protection of traditional knowledge holders under both international environmental law and human rights law.

International biodiversity law, in particular, affords protection to traditional knowledge in recognition of its contributions to the conservation and sustainable use of biodiversity. **International human rights law** protects traditional knowledge as part of the broader human right to culture. Even if these two areas of law address traditional knowledge from different perspectives, they can be read together so as to provide complementary forms of protection. This has been recently acknowledged by the former UN Special Rapporteur on Human Rights and the Environment John Knox in the 2018 **UN Framework Principles on Human Rights and the Environment** (see Box 1 below).

Box 1. UN Framework Principles on Human Rights and the Environment (2018)

Framework Principle 15: Obligations to indigenous peoples and members of traditional communities

“States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:

[...]

(c) Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;

(d) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.”

In the explanatory note relating to Principle 15, Knox clarifies that benefit-sharing also applies to the use of traditional knowledge: “States must ensure that indigenous peoples and traditional communities affected by ... the use of their traditional knowledge and genetic resources ...fairly and equitably share the benefits-arising from such activities”.



BeneLex research can offer specific suggestions on how to use international biodiversity law and international human rights law (including the right to culture and the right to science – see below) together to help protect the rights of traditional knowledge holders more effectively:



International human rights law clarifies the minimum **standards of protection** for traditional knowledge holders that are not defined under international biodiversity law (which tends to avoid human rights terminology and uses qualified language);

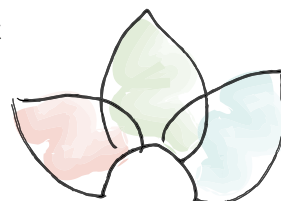


International biodiversity law provides **practical guidelines** on the implementation of international obligations concerning the use of traditional knowledge in the complex context of natural resource management, which are absent from international human rights law (that tends to be more abstract);



Reading international biodiversity law and international human rights law together clarifies how to protect the **rights of traditional knowledge holders** in relation to:

- States’ obligations with regard to the **recognition** of traditional knowledge on an equal basis with other systems of knowledge;
- States’ obligations with regard to the **protection** of traditional knowledge from unauthorized use through FPIC and fair and equitable benefit-sharing;
- States’ obligations with regard to the continuous and effective **involvement** of traditional knowledge holders in relevant decision-making processes and in scientific research;



- the responsibility of businesses to respect the human rights of traditional knowledge holders;
- the responsibility of researchers to respect the human rights of traditional knowledge holders;



Linking international human rights law, international biodiversity law and international climate change law can help promote the respectful use of traditional knowledge in international processes related to biodiversity and climate change, with an opportunity to enhance the influence of traditional knowledge holders at the international level.

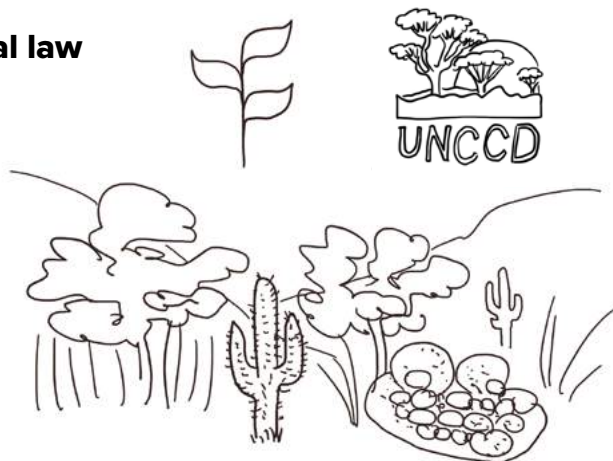
B. Key sources

One of the challenges of reading international human rights law and international biodiversity law together is that obligations and guidance on the protection of traditional knowledge are **dispersed** in a variety of instruments. In addition, these instruments may use **different language** and take different **approaches**. Some of these instruments are more developed or better understood than others. As a result, there is a variety of bases under which traditional knowledge can be protected. We will introduce them in turn here, as invoking a specific international legal instrument can contribute to make a stronger argument about the protection of traditional knowledge and to challenge obstacles that may have emerged at the national level.

a) International environmental law

Relevant treaties concerning traditional knowledge holders under international biodiversity law include the **Convention on Biological Diversity (CBD)** and the **Nagoya Protocol on Access to Genetic Resources and Benefit-sharing** (see Box 2 below). The Nagoya Protocol is a supplementary agreement to the

CBD that provides a legal framework for the effective implementation of the **fair and equitable sharing of the benefits arising** from the utilization of genetic resources under the CBD. The CBD requires parties to **respect, preserve and maintain** traditional knowledge (see Box 2 below) with the “approval and involvement” of traditional knowledge holders and encourages benefit-sharing. Binding obligations on **FPIC** and **benefit-sharing** became clearer in connection with traditional knowledge associated with genetic resources under the Nagoya Protocol.



The implementation of the benefit-sharing obligations under the CBD and the Nagoya Protocol rests on the **bilateral negotiation of mutually agreed terms between traditional knowledge holders and users**.

There are other international environmental law treaties that consider traditional knowledge. The **United Nations Convention to Combat Desertification (UNCCD)** requires State Parties to protect, promote and use traditional knowledge, make inventories of such knowledge and their potential uses, and disseminate such information (art. 18.2(a)). The **International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)** addresses traditional knowledge in the context of the protection of farmers' rights (see [Farmers' Rights module](#)).

Box 2. Key international biodiversity treaties on traditional knowledge



CBD, art. 8(j) "Each Contracting Party shall [...] respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".



CBD, art. 10(c) "Each Contracting Party shall [...] protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements".



Nagoya Protocol, art. 5(5): "Each Party shall take legislative, administrative or policy measures [...] in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms."



Nagoya Protocol, art. 6(2) "In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources."¹



Nagoya Protocol, art. 7 "[...] each Party shall take measures [...] with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established."



¹ The connection between traditional knowledge and genetic resources is not discussed in depth in this module. Please refer to the open-access commentary on the Nagoya Protocol (Morgera et al. (2014)).

Voluntary guidelines have been adopted under the CBD to provide a significant level of detail about how to put the CBD obligations into practice. The guidelines that are relevant to traditional knowledge, benefit-sharing and FPIC include the:



Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity (the CBD Code of Ethical Conduct);



Mo'otz Kuxtal voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the “prior and informed consent”, “free, prior and informed consent” or “approval and involvement”, depending on national circumstances, of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge (the CBD Mo'otz Kuxtal Guidelines).

Even if CBD guidelines are voluntary, the Inter-American Court of Human Rights has underscored that they can be considered an **authoritative interpretation** of the CBD obligations, and as relevant for the purposes of interpreting international human rights instruments (as discussed in the [Natural Resources module](#)). This shows that international biodiversity and human rights law instruments can be **complementary**.

Along similar lines, the meaning of “respect”, “preserve” and “maintain” under the CBD can be explained by reference to the use of these terms in international human rights law or other areas of international law (Box 3 below).

.....

Box 3. Meaning of “respect”, “preserve” and “maintain” under the CBD and “control”, “protect” and “develop” under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

.....

The obligation to **“respect”** requires States to refrain from interfering, directly or indirectly, with the use traditional knowledge (Former independent expert in the field of cultural rights Farida Shaheed and General Comment 21 from the Committee on Economic, Social and Cultural Rights).

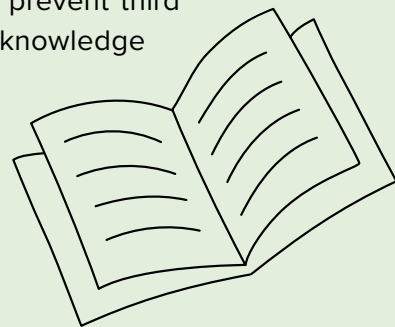
“Preserve” can mean: “first, the preservation of the living cultural and social context of traditional knowledge and cultural expressions, so that the customary framework for developing, passing on and governing access to traditional knowledge or cultural expressions is maintained; and second, the preservation of traditional knowledge and cultural expressions in a fixed form, such as when they are documented.” (WIPO (2012)).²

² The Secretariat from the World Intellectual Property Organization (WIPO) prepared a glossary of key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions for the twenty-second session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore held in 2012. Whilst the glossary was prepared in the context of

“Maintain” and **“develop”** in that sense would be aspects/consequences of the preservation of traditional knowledge.

Note that neither the CBD nor the Nagoya Protocol specifically call for the “protection” of traditional knowledge. However in practice instruments developed under the CBD aim for its protection (Ruiz Muller (2013)) including the CBD Mo’otz Kuxtal Guidelines (see below). In human rights language, the obligation to “protect” can be understood as requiring States to take measures to prevent third parties from interfering in the exercise of the rights of traditional knowledge holders (General Comment 21).

“Control” can mean both maintaining and strengthening the traditional knowledge of indigenous peoples and local communities and to promote its development in accordance with their aspirations and needs (UNDRIP, Recital).



b) International human rights law

Under international human rights law, traditional knowledge is protected as part of the broader **human right to culture**, which includes both FPIC (which is a requirement not only for access to but also the management of traditional knowledge) and benefit-sharing requirements. Key treaties relating

to the human right to culture include the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** and the **International Covenant on Civil and Political Rights (ICCPR)** (see box 5 below). Human rights bodies have specifically highlighted, in the context of the general right to culture, the right of indigenous peoples to maintain, control, protect and develop their traditional knowledge and the need to respect the principle of FPIC including the UN Committee on

Economic, Social and Cultural Rights (General Comment No. 21). Global human rights processes, such as the UN Permanent Forum on Indigenous Issues (UNPFII) and the UN Expert Mechanism on the Rights of Indigenous Peoples, have confirmed that UNDRIP can be interpreted as including a benefit-sharing requirement as part of indigenous peoples’ rights to traditional knowledge (see Box 4 below). This is also confirmed in the 2018 UN Framework Principles on Human Rights and the Environment (see Box 1 above and the [Natural Resources module](#)).



the international intellectual property regime, it does specifically relate to the CBD and traditional knowledge, among other things, and the key terms, including the definition of “preservation” are therefore relevant to this module.

Box 4. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Art. 19 “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

Art. 31 “1. Indigenous peoples have the right to maintain, control, protect and develop their [...] traditional knowledge [...], as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such [...] traditional knowledge [...]. 2 In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.”



The meaning of “control”, “protect” and “develop” under UNDRIP is explained in Box 3.

Case law from regional human rights bodies, such as the Inter-American Court on Human Rights, the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights has mainly focused on natural resources rather than traditional knowledge (see [Natural Resources module](#)). However, their interpretation of FPIC and benefit-sharing under international biodiversity law and human rights law can also be used in the context of traditional knowledge.

While the human **right to culture** is a well-established and understood legal basis under international human rights law for the protection of traditional knowledge, it is not the only one available. Another is the **human right to science** (see Box 5 below). The human right to science is a long-standing, legally binding right, but its content remains subject to speculation and its implementation has been slow. This is why the former Special Rapporteur in the field of cultural rights, Farida Shaheed has worked on clarifying the meaning of the right to science and the Committee on Economic, Social and Cultural Rights is currently developing a General Comment in relation to it.

Box 5. Key international human rights instruments relating to the human right to culture and the human right to science

Universal Declaration of Human Rights (UDHR)

Art. 27(1) “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Art. 15(1) “The States Parties to [the ICESCR] recognize the right of everyone: (a) To take part in cultural life; b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author [...]”.



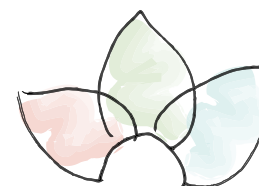
International Covenant on Civil and Political Rights (ICCPR)

Art. 27 “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

UN former Special Rapporteur Shaheed underscored the need for adopting measures to ensure the right of indigenous peoples to maintain, control, protect and develop their intellectual property over traditional knowledge under UNDRIP. She suggested breaking down the **right to science** into four components (paras 1, 25, 30-43):

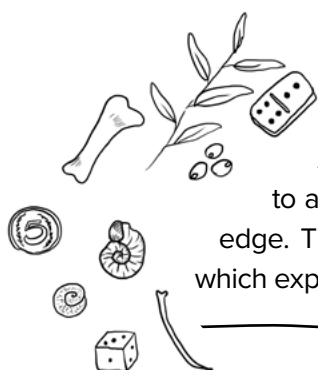
- The right to sharing in the benefits of science by everyone without discrimination;
- The opportunity for all to contribute to scientific research;
- The obligation to protect all persons (including marginalized populations, such as indigenous peoples) against the negative consequences of scientific research or applications on their food security, health or environment;
- The obligation to ensure that priorities for scientific research focus on key issues for the most vulnerable.

BeneLex research suggests that all these components of the right to science are relevant for the protection of traditional knowledge, and can be fleshed out by being read together with the implementation guidance on FPIC and benefit-sharing developed under the CBD, as discussed in the next sections.



In practice...

A group of traditional health practitioners developed a community protocol to articulate how to lawfully access and respectfully use their traditional knowledge. They were able to rely on a national legal framework implementing the CBD, which explicitly addresses benefit-sharing, including in protected areas.



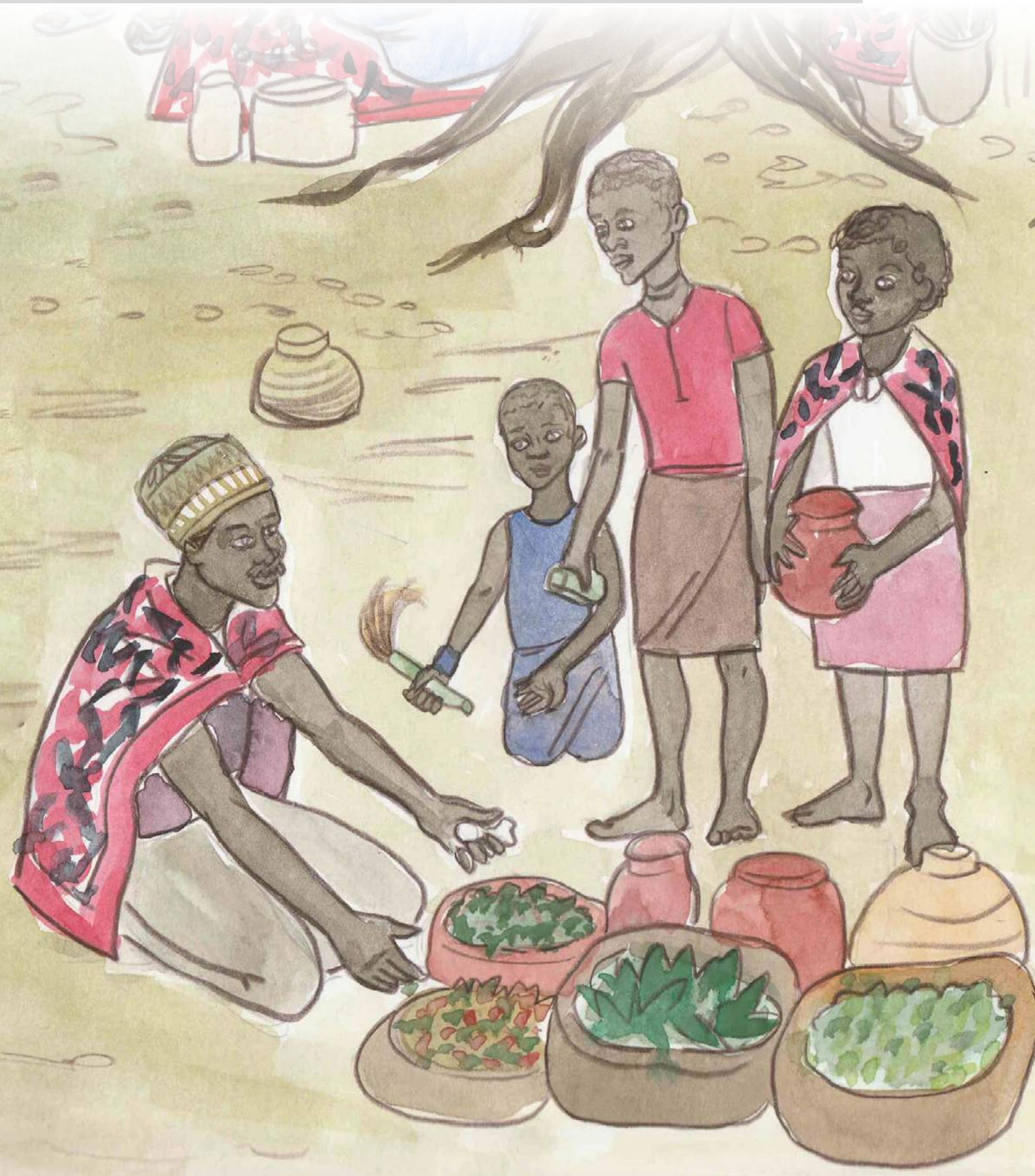
3 How to use both international biodiversity law and international human rights law to protect the rights of traditional knowledge holders

This section discusses in more detail how to rely on both international biodiversity law and international human rights law to protect the rights to traditional knowledge of indigenous peoples and local communities on the basis of States' obligations to ensure:

- The recognition of traditional knowledge on an equal basis with other systems of knowledge;
- Traditional knowledge holders' control over the use of traditional knowledge through:
 - FPIC and benefit-sharing;
 - community protocols as a precursor to obtaining FPIC;
 - continued participation in scientific research;
 - involvement in the collection of information relating to traditional knowledge;
 - access to remedies.

The section also addresses the responsibility of businesses and non-commercial researchers to respect the rights of traditional knowledge holders.

A. States' obligations to ensure recognition of traditional knowledge on an equal basis with other systems of knowledge



International biodiversity law supports the recognition of traditional knowledge on equal basis with other systems of knowledge. The **CBD Code of Ethical Conduct** states that the respect of traditional knowledge relevant to the conservation and sustainable use of biodiversity requires that it **is valued equally with and complementary to scientific knowledge**. The **CBD Mo'otz Kuxtal Guidelines** further clarify that recognizing traditional knowledge as a form of science is a precondition for considering traditional knowledge holders as partners in the management of natural resources through the inclusion of traditional knowledge in:



Environmental impact assessments (see the CBD Akwé: Kon Voluntary Guidelines on socio-cultural and environmental impact assessments and the Natural Resources module);



Natural resource management plans (see the CBD Addis Ababa Principles and Guidelines on the Sustainable Use of Biodiversity and Natural Resources module).

The inclusion of traditional knowledge is also starting in international environmental science processes, which may provide an opportunity for traditional knowledge holders **to influence international decision-making processes**. For instance, steps are being taken under the CBD to consider how to integrate traditional knowledge in scientific and technological discussions on the CBD's implementation. The CBD Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA)³ noted the importance of traditional knowledge in scientific data and research, as well as in communication at the science–policy interface. Furthermore, the **Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES)** is working on ways to integrate traditional knowledge into regional and thematic assessments of biodiversity and ecosystem services in a participatory manner. The IPBES is an independent intergovernmental body whose functions include strengthening the science-policy interface for biodiversity, catalysing efforts to generate new knowledge, assessing such knowledge and supporting policy formulation and implementation, and capacity building. One aspect of IPBES's work programme relates to procedures for and approaches to working with traditional knowledge systems.

³ The SBSTTA is an open-ended intergovernmental scientific advisory body that was established under art. 25 of the CBD to provide the Conference of the Parties (COP) to the CBD and its other subsidiary bodies with timely advice relating to the implementation of the CBD (<https://www.cbd.int/sbstta>).

B. States' obligations to ensure control and respect of traditional knowledge through FPIC and benefit-sharing



FPIC and benefit-sharing obligations from the use of traditional knowledge can be found under both international biodiversity law and international human rights law. These States' obligations underpin indigenous peoples' and local communities' control of the use of their traditional knowledge.

a) Seeking FPIC prior to using traditional knowledge

Under international biodiversity law, States are required to promote the wider application of traditional knowledge with the approval and involvement of knowledge holders (art. 8(j) CBD). The Nagoya Protocol refers to "prior informed consent or approval and involvement" of the holders of traditional knowledge associated with genetic resources (Nagoya Protocol, art. 7). Under international human rights law, traditional knowledge is protected as part of the human right to culture which includes both FPIC and benefit-sharing requirements. Accordingly, **indigenous peoples have the right to ensure respect for their right to maintain, control, protect and develop their traditional knowledge, and States should respect the FPIC of traditional knowledge holders** (General Comment 21 referring to UNDRIP art. 19 in particular).



CBD guidelines have clarified the implications of "approval and involvement" and "free prior informed consent." The **CBD Mo'otz Kuxtal Guidelines** clarify that:

- **"Free"** means that traditional knowledge holders should not be "pressured, intimidated, manipulated or unduly influenced";
- **"Prior"** underscores the need to respect traditional knowledge holders' "time requirements";
- **"Informed"** implies that information is provided that covers aspects such as:
 - the intended purpose of the access;
 - its duration and scope;
 - a preliminary assessment of the likely economic, social, cultural and environmental impacts, including potential risks;
 - personnel likely to be involved in the execution of the access;
 - procedures that the access may entail and benefit-sharing arrangements;
- **"Consent or approval"** includes the right not to grant consent or approval and unless otherwise mutually agreed, it merely allows temporary use of traditional knowledge for the purpose for which it was granted.

Furthermore, according to the **CBD Mo'otz Kuxtal Guidelines**, seeking "consent or approval" entails:

- A **written application** in a manner and language comprehensible to the traditional knowledge holder;
- Legitimate and culturally appropriate **process and decision-making**, including possible social, cultural and economic impacts;
- Adequate and balanced **information** from a variety of sources that is made

available in indigenous or local languages using terms understood by traditional knowledge holders and including safeguards to ensure that all parties to an agreement have the same understanding of the information and terms provided;

- Culturally appropriate **timing** and deadlines.

Accordingly, **BeneLex** research has underlined how the CBD Mo'otz Kuxtal Guidelines provide an understanding of freely given **consent**, which requires more than the mere absence of coercion. They also emphasized that consent is not a one-off exercise, but

“a continual process of building mutually beneficial, ongoing arrangements ... in order to build trust, good relations, mutual understanding, intercultural spaces, knowledge exchanges, and to create new knowledge and reconciliation.”

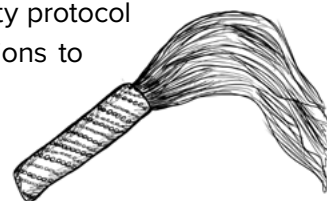
The CBD Mo'otz Kuxtal Guidelines further indicated that community protocols could be used as mechanisms to seek the FPIC of traditional knowledge holders (see sub-section c below).



In practice...

A group of traditional health practitioners clarified in their community protocol that requests for FPIC must start with an application to the Executive Committee of their association for any access to their knowledge or indigenous biological resources.

The application must include information relating to the intended use of the knowledge and/or resource and the applicant's commitment to respect the Committee's process of community deliberation and ancestral consultation, according to customary laws, before deciding whether the knowledge should be shared and on what basis. The community protocol indicates the likely timescale for these internal consultations to manage applicants' expectations.



b) Sharing benefits from the use of traditional knowledge

Under international biodiversity law, States are required to encourage the equitable sharing of the benefits arising from the utilization of such knowledge (art. 8(j) CBD). Under the Nagoya Protocol, States have an obligation to develop measures to share the benefits arising from the utilization of traditional knowledge associated with genetic resources in a fair and equitable way with knowledge holders (art. 5(5)).

The CBD Mo'otz Kuxtal Guidelines provide further details on benefit-sharing as a process that, like FPIC, is about building partnerships. They underline that cooperation should “guide the process of establishing mutually agreed terms to ensure the fair and equitable sharing of the benefits arising from the utilization of traditional knowledge with and among the holders of that traditional knowledge”. Accordingly, **BeneLex** research has underlined that benefit-sharing, similarly to FPIC, is an **iterative process**, not a one-off exercise.



The **CBD Mo'otz Kuxtal Guidelines** also add that:

- Benefit-sharing “should be fair and equitable within and among relevant groups, taking into account relevant community level procedures, and as appropriate gender and age/intergenerational considerations”;
- Benefit-sharing mechanisms can “vary depending upon the type of benefits, the specific conditions and national legislation in the country where the traditional knowledge was originally accessed, the content of the mutually agreed terms and the stakeholders involved”; and
- Benefit-sharing mechanisms should be “determined by the partners involved” and could draw on community protocols that could be used as mechanisms for benefit-sharing and to seek the FPIC of traditional knowledge holders (see sub-section c below).

The obligation to share benefits has been confirmed under international human rights law, with international bodies clarifying that:



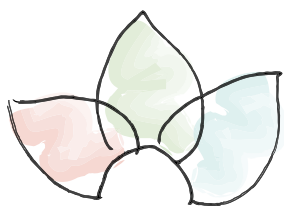
States have the obligation to recognise indigenous peoples' right to benefit from traditional knowledge (Expert Mechanism, 2015);



Fair and equitable benefit-sharing should not be considered as an alternative to obtaining the FPIC of indigenous peoples and local communities but rather a pre-condition for it (Expert Mechanism, 2012); and



Fair and equitable benefit-sharing should also be seen as a safeguard against non-compliance with consent once it has been obtained (report from former Special Rapporteur on the rights of indigenous peoples, James Anaya, 2013).



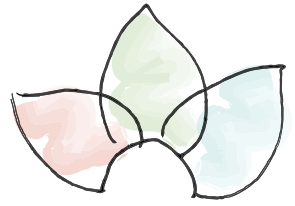
The human right to science also supports obligations for benefit-sharing from the use of traditional knowledge. **BeneLex** research suggests that ‘access’ conveys a passive role for traditional knowledge holders, and it is preferable to refer to benefit-sharing in line with international biodiversity law. Human rights experts have also underscored that the term to “share” or “participate” in benefits (rather than to “access” or “receive” benefits) underlines the **agency of beneficiaries** in the context of the human right to science (Mancisidor (2015)). This highlights that those benefiting from scientific research should be actively part of the discussion about what should be considered a benefit in a specific case, and how it should be allocated.

In practice...

A group of traditional health practitioners clarified in their community protocol that benefit-sharing arrangements related to the use of their traditional knowledge need to be fair and equitable. According to the protocol, this implies protecting the interests of the community to retain and continue to develop knowledge based on access to certain medicinal plants. This in turn also entails ensuring access to these plants in protected areas, in close cooperation with protected areas managers, if the plants are no longer available elsewhere.



c) Supporting the development of community protocols as part of the processes for obtaining FPIC



Governments are required to take into consideration indigenous peoples' and local communities' community protocols when implementing their obligations under the Nagoya Protocol. They should support the development of these protocols and take measures to raise awareness about them (arts. 12 and 21). **BeneLex** research (Parks (2018)), however, underlines that those providing external support to traditional knowledge holders need to be aware that **communities 'own the process'** of developing protocols. So the organizations supporting them should not impose solutions, and governments should not make community protocols obligatory.

Community protocols have become more broadly applicable across areas of work under the CBD that are of interest to indigenous peoples and local communities. The **CBD Mo'otz kuxtal Guidelines** suggest relying on community protocols in processes for granting access to traditional knowledge, in order to obtain FPIC and ensure the fair and equitable sharing of benefits arising from the use of such knowledge. The CBD Mo'otz kuxtal Guidelines also emphasize other benefits that may arise from using community protocols:

- They can help outsiders understand customary laws and community values and beliefs;
- They can provide communities an opportunity to focus on their development aspirations vis-a-vis their rights; and
- They can support communities in considering the interconnections between their land rights, current socio-economic situation, environmental concerns, customary laws and traditional knowledge, to be better placed to determine for themselves how to negotiate with a variety of actors (CBD Mo'otz Kuxtal Guidelines para. 19).

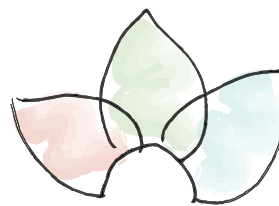
According to the CBD Mo'otz kuxtal Guidelines, community protocols comprise "expressions, articulations, rules and practices generated by communities to set out how they expect other stakeholders to engage with them. They may reference customary as well as national or international laws to affirm their rights to be approached according to a certain set of standards." (para. 19).

As such, **community protocols** could include information concerning:

- Community identity;
- Community history;
- Community territoriality;
- Social organization and decision-making processes (which are often collective decision-making procedures at the community level) (CBD Mo'otz Kuxtal Guidelines para 20);
- Concerns about the implementation of environmental laws according to customary laws;
- Concerns about sustainable development on community lands (CBD Mo'otz Kuxtal Guidelines para. 21).

BeneLex research (Parks (2018)) has highlighted that:

- The processes for developing community protocols should be **inclusive** and may clarify the ‘red lines’ that traditional knowledge holders are not willing to compromise on;
- Community protocols could clarify **community worldviews**, including the community’s understanding of what benefits are (monetary and non-monetary) in both the long- and short-term;
- Community protocols could clarify relevant areas **of customary law** and make explicit their relevance with regard to applicable national and international laws; and
- Community protocols should be seen as **“longer-term processes”** rather than “short-term events” to ensure that all voices within a community are properly heard at all relevant stages from the initiation of negotiations through to the conclusion of the protocols and during their implementation.



In practice...

A group of traditional health practitioners from various ethnic and linguistic backgrounds came together to draft a community protocol to govern the use of traditional knowledge of medicinal plants by those outside of their association, and to form the basis of a ‘traditional knowledge commons’ among the members based on common procedures of self-governance. The practitioners also wanted to protect traditional knowledge held by members of the association against potential biopiracy and to secure plants facing overharvesting. Due to the diversity of

their interests, all parties agreed that a continued dialogue was required in order to reach a mutual understanding on the benefits to be shared. As a result, an initial community protocol was amended by the group to reflect changing needs and roles.



d) Ensuring the continued participation of traditional knowledge holders

As discussed above, FPIC and benefit-sharing are an ongoing process which “should underpin and be an integral part of developing a relationship between users and providers of traditional knowledge” (CBD Mo’otz Kuxtal Guidelines para 8) and goes beyond a strict understanding of ‘coercion’. A key issue in this connection is to ensure the continued participation of indigenous peoples and local communities in the decision making processes that relate to their traditional knowledge, as well in the use of traditional knowledge by others. This is in line with the CBD Mo’otz Kuxtal Guidelines’ reference to **FPIC** as a “continual process of building mutually beneficial, ongoing arrangements between users and holders of traditional knowledge of indigenous peoples and local communities” discussed above. The **CBD Code of Ethical Conduct** emphasizes the fact that indigenous peoples and local communities should have the opportunity **to actively participate in the research that affects** them or which makes use of their knowledge,

and that they should be able to decide on **their own research priorities** and conduct their own research.

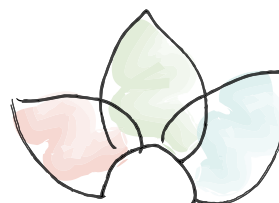
The **CBD Mo'otz Kuxtal Guidelines** also emphasize the fact that benefit-sharing could play an important role for **cultural reproduction** in that it “could include a way of recognizing and strengthening the contribution of indigenous peoples and local communities to the conservation and sustainable use of biological diversity, including by supporting the intergenerational transmission of traditional knowledge”. This can be linked to the importance for traditional knowledge holders to have continued access to traditional lands and resources to which their knowledge is intimately related. The **CBD Code of Ethical Conduct** thus underscores the link between the respect for traditional knowledge and the **recognition of land tenure** of indigenous peoples and local communities, their access to natural resources and their relationship with the environment. Along similar lines, the **CBD Akwé: Kon Guidelines** note that the “diminution of the genetic diversity maintained and fostered by such customary use may lead to a loss of associated traditional knowledge.”

Continued participation by traditional knowledge holders can also be related to the second dimension of the right to science – **the opportunity for all to contribute to scientific research**. This is relevant to the sharing of non-monetary benefits in order to support indigenous peoples and local communities to independently undertake bio-based scientific research. The sharing of **non-monetary benefits** could apply in both commercial (with private companies, see section C below) and non-commercial contexts (with researchers, see section D below).

Under the **Nagoya Protocol**, some of the examples of non-monetary benefits can also be related to the second dimension of the right to science. They include:

- Collaboration in scientific research and development programmes;
- Cooperation in education and training; and
- Admittance to databases (Nagoya Protocol, Annex, paras 2(b), (d)-(e)).

However, in practice, implementation could face challenges, including lack of financial support and sustainability issues (due to reliance on external support). **BeneLex** research therefore underscores the importance of other non-monetary benefits that can support the **effective participation** of traditional knowledge holders in scientific endeavours.



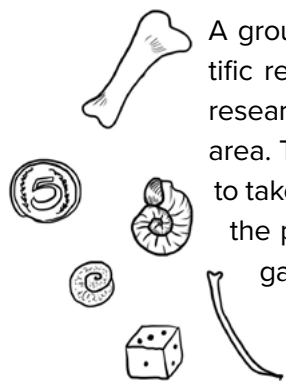
At the international level, State Parties to the international climate change regime and **IPBES** have adopted ways to allow for the continued participation of traditional knowledge holders in their work. One aspect of IPBES's work programme relates to procedures for and approaches to working with indigenous and local knowledge systems. To this end, it has created a **task force on indigenous and local knowledge**. It has several functions, including to:

- Oversee the development of **procedures and approaches for working with traditional knowledge systems**, including convening global dialogue workshops and developing case studies;

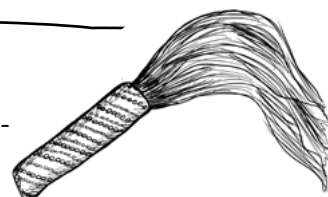
- Support the establishment of a **participatory mechanism** for traditional knowledge systems to facilitate linkages between indigenous and local communities and scientists;
- Encourage the **involvement of indigenous peoples in IPBES**.

IPBES has developed an **approach** for recognizing and working with indigenous and local knowledge which follows the FPIC principle, defined as “consent given before access to knowledge or genetic resources takes place, based on truthful information about the use that will be made of the resources, which is adequate for the stakeholders or rights holders giving consent to understand the implications.”

In practice...



A group of traditional health practitioners sought to contribute to scientific research by becoming involved in joint long-term monitoring and research planning concerning medicinal plant species in a protected area. To support this involvement, they also agreed with park managers to take part in available training courses, including on the protection of vultures, and the planting of pepper bark trees. While the practitioners have made progress in gaining access to protected areas to harvest medicinal plants, they still need financial support to pay for transport costs and the processing and storage of harvested plants.



e) Involving traditional knowledge holders when collecting information that relates to them

Several international instruments foresee the collection of information relating to traditional knowledge, including the UNCCD and the climate change regime. The **Paris Agreement** is the first international climate change treaty to address traditional knowledge. It specifically recognises the role of **traditional knowledge as a means to adapt to climate change**. State Parties to the international climate regime have set up a platform for local communities and indigenous peoples to share experiences and best practices regarding climate change mitigation and adaptation (Decision 2/CP.23). Its functions are to strengthen the knowledge, technologies, practices and efforts of local communities and indigenous peoples; to share their experiences and best practices regarding climate change mitigation and adaptation; and to enhance the engagement of local communities and indigenous peoples in the climate regime process.

The **platform** will perform a number of functions including:

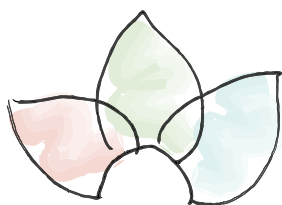
- **Knowledge:** promote the exchange of experience and best practices with a view to applying, strengthening, protecting and preserving traditional knowledge, knowledge of indigenous peoples and local knowledge systems regarding climate change mitigation and adaptation, taking into account the FPIC of the holders of such knowledge, innovations and practices;

- **Capacity for engagement:** build the capacity of indigenous peoples and local communities to enable their engagement in the international climate change governance process;
- **Climate change policies and actions:** facilitate the integration of diverse knowledge systems, practices and innovations in designing and implementing international and national actions, programmes and policies in a manner that respects and promotes the rights and interests of local communities and indigenous peoples.

As noted, States are required to obtain the **FPIC** of indigenous peoples before adopting and implementing legislative or administrative measures that may affect them (see Box 4 above).

The need to seek the FPIC of traditional knowledge holders means that any processes aiming to create traditional knowledge inventories or databases should

properly involve traditional knowledge holders and respect their rights, including their decision not to participate in such processes. According to **BeneLex** research, a discussion of the possible benefits and benefit-sharing approaches that may derive from inventories and databases, from the viewpoint of traditional knowledge holders, also needs to be part of the FPIC process.



In practice...

A government starts a process of developing a national database of indigenous knowledge with a view to assessing the scope of the country's benefit-sharing law. Consent procedures are put in place, involving traditional leadership and communities undertaking training to properly record their indigenous knowledge and to sort it according to different levels of protection. One of the challenges encountered, nonetheless, is to ensure that the consent procedures reach out to all relevant traditional knowledge holders.

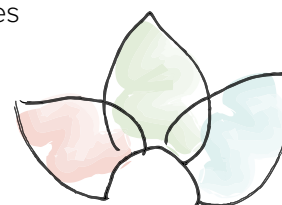


f) Protecting against negative consequences of scientific research and setting priorities for the vulnerable

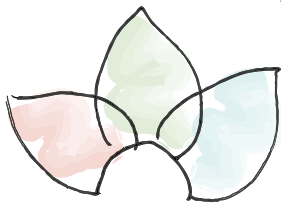
The continuous involvement of traditional knowledge holders in scientific research, and in the collection of information on their traditional knowledge, can be related to the **third and fourth dimensions of the human right to science**.

The third dimension of the right to science is the obligation to **protect all persons against negative consequences of scientific research** or its application on their food, health, security and environment. International biodiversity law tends to focus on positive rather than negative impacts of scientific research and does not therefore address the need to prevent or minimize possible negative impacts of scientific research.

BeneLex research argues that ensuring the participation of traditional knowledge holders in scientific endeavours through an ongoing dialogue based on



FPIC and benefit-sharing also provides an opportunity to collaboratively identify possible negative consequences of proposed research from the viewpoint of traditional knowledge holders. It also allows the identification of any possible, culturally appropriate, ways to minimize or mitigate them, if the research is nevertheless considered by all as necessary.



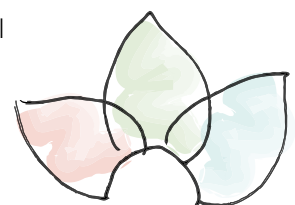
The fourth dimension of the right to science is **the obligation to ensure that priorities for scientific research focus on key issues for the most vulnerable**. A focus on the most vulnerable is indirectly addressed under international biodiversity law: the Nagoya Protocol lists as non-monetary benefits research directed towards priority needs, such as **health and food security** (Nagoya Protocol Annex, para. 2(m)). BeneLex research argues that ensuring the participation of traditional knowledge holders in scientific endeavours through an ongoing dialogue based on FPIC and benefit-sharing also provides an opportunity **to collaboratively identify research priorities** on the basis of what traditional knowledge holders would consider key issues for the most vulnerable.

Many of these standards are also reflected in the **CBD Code of Ethical Conduct**, which indicates that indigenous peoples and local communities “should have the opportunity to actively participate in research that affects them or which makes use of their traditional knowledge related to the objectives of the [CBD], and decide on their own research initiatives and priorities, **conduct their own research**, including building their own research institutions and promoting the building of cooperation, capacity and competence.”

g) Providing access to remedies for traditional knowledge holders

Under international human rights law the obligation to “**protect**” can be understood **as requiring States to take measures to prevent third parties from interfering in the exercise of the rights of traditional knowledge holders** (General Comment 21). Former Special Rapporteur Shaheed has also highlighted States’ obligations to make available effective remedies, including judicial remedies to individuals and communities as part of the human right to culture.

International biodiversity law does not provide explicit standards for access to justice or international avenues to seek justice. However, BeneLex research underscores that reading international biodiversity law in conjunction with international human rights law means that individuals and communities who consider their traditional knowledge has been misused or misappropriated **should be given access to effective remedies**. This includes judicial remedies at the national and international level, and avenues available under international human rights law, such as:



- Complaints under the Optional Protocol to the ICESCR;
- The Compliance Committee of the Nagoya Protocol;
- A claim before regional human rights bodies, notably the Inter-American Court on Human Rights, the African Commission on Human and Peoples’ Rights or the African Court on Human and Peoples’ Rights.

Key messages

- States are required to promote the use of traditional knowledge with the FPIC of knowledge holders, which implies a continual process of building mutually beneficial, ongoing arrangements between users and holders of traditional knowledge, without pressure, intimidation, manipulation or undue influence;
- Similarly to FPIC, benefit-sharing should be implemented as a continual process of building mutually beneficial, ongoing arrangements, not a one-off or top-down process;
- Community protocols should be developed in an inclusive manner without impositions from outsiders offering support to their development;
- States should ensure that traditional knowledge holders actively participate in the research that affects them or which makes use of their knowledge, including deciding research priorities, identifying possible negative consequences of proposed research, and conducting their own research, as part of the FPIC and benefit-sharing process;
- States should ensure that traditional knowledge holders have continued access to traditional lands and resources to which their knowledge is intimately related;
- States should require that any processes that aim to create traditional knowledge inventories or databases properly involve knowledge holders and respect their rights, including their decision not to participate in such processes;
- States must provide effective remedies in cases where traditional knowledge is not protected. Certain international avenues are available under international human rights law and international biodiversity law to raise issues about inadequate remedies at the national level.



C. Business responsibility to respect the rights of traditional knowledge holders



Businesses play a key, but possibly problematic, role in the production and sharing of scientific knowledge. Former Special Rapporteur Shaheed emphasised that business enterprises have the responsibility to respect human rights in light of international law as clarified in the **UN Guiding Principles on Business and Human Rights** (UN Guiding Principles). Businesses need to carry out **human rights due diligence**, including in relation to the human rights of indigenous peoples. Undertaking human rights due diligence implies assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Businesses also need to establish **grievance mechanisms**.

According to former Special Rapporteur Anaya, in order to respect the human rights of indigenous peoples, businesses should integrate **FPIC and fair and equitable benefit-sharing** into due diligence processes that they carry out. Although Anaya was referring to the extractives sector, the same FPIC and benefit-sharing standards apply in the context of traditional knowledge. This is, for instance, confirmed in the **CBD Code of Ethical Conduct** and the **CBD Mo'otz Kuxtal Guidelines**, which are addressed not only to States, but also to the private sector.

BeneLex research suggests that businesses should take into account issues related to the **four dimensions of the right to science**, including:

- benefits obtained from the use of traditional knowledge should be shared in understandable and culturally appropriate formats (in accordance with the CBD Mo'otz Kuxtal Guidelines – see section D below);
- the benefits of scientific research should be accessed by everyone without discrimination;
- the need to protect against the negative consequences of scientific research; and
- the prioritisation of the needs of the most vulnerable.

Those issues could be addressed:

- As part of businesses' internal processes such as risk assessments;
- During consultations and redress mechanisms.

Key message

Businesses should integrate FPIC and fair and equitable benefit-sharing into due diligence processes that they carry out concerning the proposed use of traditional knowledge, in understandable and culturally appropriate formats, as well as provide grievance mechanisms.



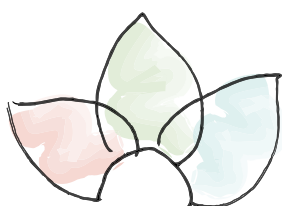
D. Responsibility of non-commercial researchers



Even when private business is not involved, non-commercial researchers should seek FPIC and share benefits from the use of traditional knowledge. While the CBD does not address this issue explicitly, the **Nagoya Protocol** requires States to **create conditions to promote and encourage research which contributes to biodiversity conservation** through simplified measures on access for non-commercial research purposes (arts. 8(a), read with art. 5 and Annex, and arts. 16–17).

CBD Guidelines provide some clarification, as they are addressed not only to States, but also to researchers. Thus, CBD State Parties agreed that indigenous peoples and local communities ought to receive **fair and equitable benefits for their contribution to activities by academic institutions** and other potential stakeholders in research projects related to traditional knowledge associated with biodiversity that are proposed to take place on, or that are likely to impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities (CBD Code of Ethical Conduct, para. 14).

Guidance adopted under the CBD has confirmed that benefits obtained from the use of traditional knowledge including results of research should be shared “in understandable and culturally appropriate formats, with a view to building enduring relationships, promoting intercultural exchanges, knowledge and technology transfer, synergies, complementarity and respect” (CBD Mo’otz Kuxtal Guidelines).

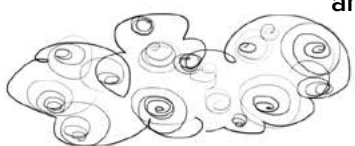


BeneLex research argues that there is an **international obligation** to seek FPIC and share non-monetary benefits from the non-commercial use of traditional knowledge, even when the research objective is to meet the global target of biodiversity conservation. As a result, non-commercial researchers have a **responsibility to engage in a good-faith, iterative dialogue** with traditional knowledge holders to develop an equitable partnership on the basis of FPIC and fair and equitable benefit-sharing.

BeneLex research also argues that such a partnership should take into account all four dimensions of the right to science, with a view to ensuring the continued participation of traditional knowledge holders in research efforts, as well as in the determination of research priorities.

Key message

Non-commercial researchers have a responsibility to engage in good-faith, iterative dialogue with traditional knowledge holders to develop an equitable partnership and to ensure their continued participation in research efforts, including in determining research priorities.

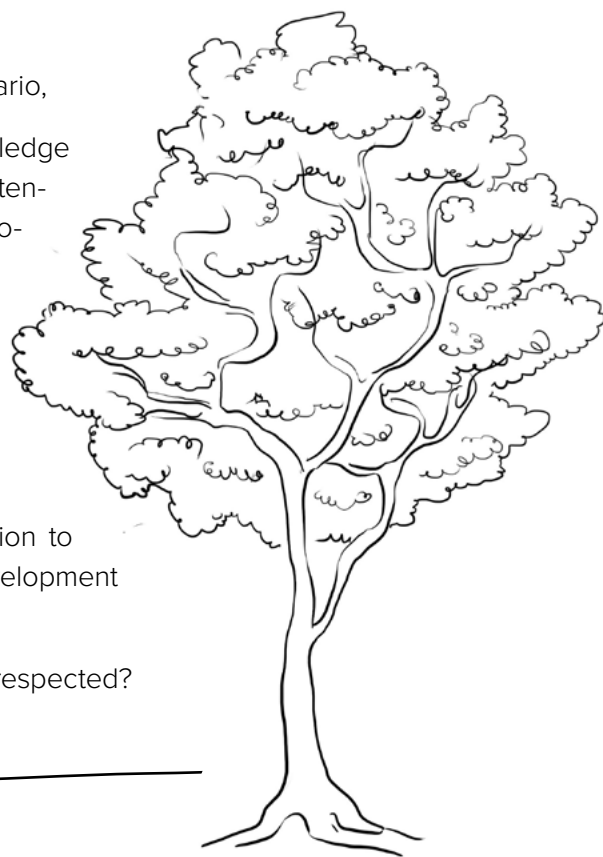


4 Self-evaluation

Back to the initial scenario: a traditional healer is approached by a foreign researcher to discuss the medicinal properties of a local plant. The researcher wishes to use the information for a PhD thesis, and has received funding from a pharmaceutical company to carry out the research. The researcher is also interested in the healer's observations about the impacts of climate change on the plant and suggests that this information could be included in a new international platform on traditional knowledge and climate change. The traditional healer is, however, unsure about how to keep control over her knowledge once it is shared with outsiders and is concerned about possible negative consequences from the research. In addition, the healer has observed that medicinal plants are disappearing and is looking for ways to gain access to plants within protected areas. Finally, the government of the country where the traditional healer is based has initiated a process of developing a national database of indigenous knowledge to evaluate the scope of the country's benefit-sharing law.

If you were to advise the traditional healer in this scenario,

- How could the healer protect her traditional knowledge from unauthorized use by a researcher and also, potentially, by the company? What could she do about potential negative consequences from the research?
- Why and how could the healer consider sharing knowledge on an international platform?
- How can the healer gain access to medicinal plants in protected areas?
- What should the healer's expectations be in relation to sharing her knowledge with outsiders and the development of the database?
- What could the healer do in case her rights are not respected?



Solutions

- The traditional healer is entitled to first require that **neither the researcher nor the company use traditional knowledge without her FPIC**. Importantly, the researcher and the company need to seek consent prior to undertaking any research and/or using the traditional knowledge and they cannot seek to pressure, intimidate, manipulate or unduly influence her. Further, the healer is entitled to insist that FPIC is not a one-off but rather a continuous process throughout the duration of the research.
- Should the healer be willing to give access to her traditional knowledge, she is entitled to **negotiate an agreement on benefit-sharing** with the researcher and the company if appropriate. The healer is entitled to insist that she should have the opportunity to actively participate in the research, and that she should be able to contribute to decisions on research priorities and identify potential negative consequences from her viewpoint.
- The healer is entitled to **FPIC and benefit-sharing when she considers sharing her knowledge on an international platform** to be involved in the creation and assessment of scientific knowledge at the international level as a way to influence international decision-making.
- The government should ensure that the healer has **continued access to traditional lands and resources** to which the knowledge is intimately related.
- As regards the proposed database, the healer is entitled to require that **the process properly involve her and respect her rights**, including her decision not to participate in such a process.
- If the healer's rights are not respected, she is entitled to have **access to remedies** at the local level and she may also be able to pursue certain avenues at the international level. She could also make use of the grievance mechanism which the company is required to provide.



Resources

A. Acronyms

CBD	Convention on Biological Diversity
COP	Conference of Parties
FPIC	Free, prior, informed consent
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPBES	Intergovernmental Platform on Biodiversity and Ecosystem Services
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
SBSTTA	Subsidiary Body for Scientific Technical and Technological Advice
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNCCD	UN Convention to Combat Desertification
UNPFII	UN Permanent Forum on Indigenous Issues

B. List of boxes

- Box 1.** UN Framework Principles on Human Rights and the Environment (2018)
- Box 2.** Key international biodiversity treaties on traditional knowledge
- Box 3.** Meaning of “respect”, “preserve” and “maintain” under the CBD and “maintain”, “control”, “protect” and “develop” under UNDRIP
- Box 4.** United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Box 5.** Key international human rights instruments relating to the human right to culture and the human right to science

C. List of international sources

i) International treaties

- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)
- Convention on Biological Diversity (1992)
- United Nations Convention to Combat Desertification (1994)
- International Treaty on Plant Genetic Resources for Food and Agriculture (2001)
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (2010)
- Paris Agreement (2015)

ii) Decisions under CBD and climate change regime

- CBD Addis Ababa Principles and Guidelines on the Sustainable Use of Biodiversity, CBD Decision VII/12 (2004), Annex II
- CBD Akwé: Kon Voluntary Guidelines on socio-cultural and environmental impact assessments, CBD Decision VII/16F (2004), Annex
- CBD Tkarihwaí:ri Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, CBD Decision X/42 (2010), Annex
- CBD Mo'otz Kuxtal voluntary guidelines for the development of mechanisms, legislation or other appropriate initiatives to ensure the "prior and informed consent", "free, prior and informed consent" or "approval and involvement", depending on national circumstances, of indigenous peoples and local communities for accessing their knowledge, innovations and practices, for fair and equitable sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge, CBD Decision XIII/18 (2016), Annex
- Decision 2/CP.23, Local communities and indigenous peoples platform, Number FCCC/CP/2017/11/Add.1 (2018)

iii) Other international human rights instruments

- Universal Declaration of Human Rights (1948)
- UN Declaration on the Rights of Indigenous Peoples, UNGA Res. 61/295 (2007)

iv) Human rights general comments, reports and studies

- Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (2009) UN Doc. E/C.12/GC/21
- Human Rights Council, Report of the independent expert in the field of cultural rights, Farida Shaheed (2011) UN Doc A/HRC/17/38
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- Expert Mechanism, Follow-up report on indigenous peoples and the right to participate in decision-making with a focus on extractive industries (2012) UN Doc A/HRC/21/52
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- Expert Mechanism on the Rights of Indigenous Peoples, 'Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage' (2015) UN Doc A/HRC/EMRIP/2015/2
- UN Framework Principles on Human Rights and the Environment (2018)

D. Additional Sources

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