



XVI BIENNIAL CONFERENCE OF THE INTERNATIONAL
ASSOCIATION FOR THE STUDY OF THE COMMONS

“PRACTICING THE COMMONS: SELF-GOVERNANCE, COOPERATION AND
INSTITUTIONAL CHANGE”

UNIVERSITY OF UTRECHT, 10-14 JULY 2017

**Community Protocols, common pool resources, indigenous people
and local communities: a case study from the Bailique
Archipelago, Brazilian Amazon**

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* The authors acknowledge the support received from
The Fundação de Apoio à Pesquisa do Distrito Federal – FAP/DF,
Protocol number: 16099.76.28019.18042017

7th July 2017

INTRODUCTION

Community protocols targeting indigenous and traditional groups have gained attention and interest among academic institutions and the third sector in the last decade. This instrument helps to build the resilience of local institutions devoted to managing common pool resources, to fight poverty, dispossession of land, and migration from rural areas.

Research literature shows that the promotion of community participation at local level often raises social capital levels and strengthens social ties. It is widely acknowledged that initiatives with a top-down design are likely to achieve poor results in terms of human development and environmental conservation. Similarly, evidence shows that public policies elaborated by large institutions, such as national governments, may not translate in concrete benefits at the local level, as desired. To ensure that public policies and development initiatives become more effective, agencies should further tailor their actions in line with the multidimensional features of specific local realities.

The aim of integrating multidimensional development initiatives in the perspective of several international agencies is to build links between human development, environmental conservation and human rights protection. Under the umbrella of the Convention on Biological Diversity, community protocols became an instrument for consultation and building of prior informed consent and rights protection. The basis of this instrument, as it is being implemented in various countries is the systematization of the customary law, which is seen as to be the super structure from which prior informed consent derives. Furthermore, it is an appropriate instrument for the strengthening of social capital ties, technical capabilities and increase community capacity for engagement with external economic and political actors. As such, community protocols became instruments which empower communities, ensuring that they are the main actors of their own development. Additionally, they also become an effective tool to manage the use of common pool resources and integrate them in strategies to fight poverty and conserve biodiversity.

This paper will draw from the experience of three years of field work applying participatory research methods in the construction of the Bailique Archipelago community protocol, which is the first and most comprehensive protocol conducted to date in Brazil. This case study aims to deepen these topics of discussion and contribute with elements of concrete, multidisciplinary and cross-cut experience.

BACKGROUND

Prior informed consent is a growing concern today for indigenous peoples and traditional communities in Brazil. The land they occupy, which is about 25% of the national territory, is among the best conserved in the country and there are approximately 4,5 million people that depend on this land for their livelihood (Silva, 2009). These communities have very diverse social and historical backgrounds and their traditional knowledge of biodiversity is of significant value for the economic purposes of several technology-based sectors.

Within this context, community protocols became of special interest as they support the delineation of customary law to regulate interaction between communities and external stakeholders. One experience of a community protocol, which is emblematic for its innovation and scope is being developed in the Bailique Archipelago community, at the mouth of the Amazon river, and is becoming a model to be adopted by communities in other regions of the country.

Brazil has one of the largest examples of biological diversity in the world and it is home to many of indigenous people and traditional communities. In this way the discussion of how to implement Access and Benefit-sharing (ABS) in the country has been the subject of national debate for more than 20 years. As a signatory of both the Convention on Biological Diversity (CBD) and the Nagoya Protocol, Brazil enacted a new Law on that matter in 2015. More friendly to business and research, it is expected that the pace of product development based on Brazilian biodiversity will increase drastically with this legislation.

At the same time, associated traditional knowledge held by local communities is in the spotlight. Consequently, these communities are concerned about their technical capacity to elaborate favorable prior informed consent terms on complex themes such as ABS. Hence community protocols are increasingly being pointed out as instruments of choice by such traditional communities to ensure consent is properly achieved. The benefits of adopting community protocols in the Amazon context seem to be broad.

Brazil is the most biodiverse country in the world, hosting around 15% of all living species, most of them from the Amazon bioma (Groombridge and Jenkins, 2002). As such it plays a central role in the world conservation agenda and domestic dispositions on that matter are generally followed with interest. On the subject of genetic resources, national legal framework derives from the implementation of the 3rd objective of the Convention on Biological Diversity (CBD) that affirms the right of the provider country to receive benefits as a counterpart for the use of their biodiversity. The logic behind it is that efforts for conservation should be compensated by parties with a more consolidated biotechnology sector.

Local and traditional communities are directly affected by this legal framework since they hold ancestral knowledge on their uses of biodiversity (Lal and Sorte, 2011). Industrial sectors may strongly profit from such traditional knowledge, as it is often understood to be a shortcut in the development of new products. Therefore, Access and Benefit Sharing (ABS) as a market scheme devoted for conservation of biodiversity incorporates provisions to protect communities' rights, trying to ensure fair negotiations between them and other stakeholders.

In the prevailing scenario, communities barely collected benefits arising from the commercial use of their associated traditional knowledge. Between 2002 and 2014, the national authority which is the government institution responsible to issue authorizations of access, published 316 authorizations for access to genetic resources and/or associated traditional knowledge, of which 47 (14.87%) were related to access of traditional knowledge and 21 (6.65%) concerned access to both genetic resources and traditional knowledge (MMA, 2014).

A snapshot of the requests for access and authorizations given shows some of the trends of access in the country. During 2014, there were 57 authorizations issued of which four authorizations were for access to both genetic resource and associated traditional knowledge and three authorizations were for access to traditional knowledge only (*ibid.*).

These numbers suggest that the image of traditional communities are of marketing value for specific biotechnological sectors. Thus it explains the overall preference for accessing solely genetic resources and the little interest, no need or even avoidance in accessing traditional knowledge. Indeed, it is argued that there is an overestimation of the role of traditional knowledge in research and technological development. For instance, it is known that industries such as pharmaceutical, cosmetic and botanic medicine use traditional knowledge to guide their product research but they tend to use literature rather than ethno botanical collection to find the necessary data (Laird and Kate, 2002).

However, considering the softness of the CBD's ABS scheme and the ineffective way in which it was implement at the national level, it is possible to look into other aspects that could also have played a role in how access happened in Brazil. Access to traditional knowledge is a more complex process as it has specific requirements such as the anthropological report; it potentially takes longer than the access to genetic resources, as there is a need to enter into a negotiation with communities, which often requires time; different stakeholders worry about legal security which could generate fines or even bad press. At the same time, still biodiversity has a great value for economic strategic and dynamic sectors. In that frame, in general the contracts did not translate in real benefits for communities, with small a number of commercial product developed and marketed and those that attained that goal allocated an average of 0.05% of net revenues from the product sales.

Legal and institutional arrangements are to change with the actual legislation. Nevertheless, prior informed consent is still to be granted by a holder of traditional knowledge in accordance with private law regulations. As a result, tackling capacity gaps between parties to negotiate fair terms become a central issue.

CUSTOMARY LAW AND COMMUNITY PROTOCOLS

Human rights advocacy groups support the perspective that customary local rules and regulations constitute one of the major assets of traditional communities. These rules are invariably in operation in almost all traditional communities and are the basis for their internal governance. In this sense, the dispossession of territories and environmental assets go hand-in-hand with the loss of local consuetudinary law (Tobin, 2013).

Therefore, they need to be organized in order to strengthen capabilities and reinforce local institutions.

One way to achieve that is through a community protocol that constitutes the systematization of operating customary law in a given community. More specifically, the objective of building a community protocol is to empower people and traditional communities with the expectation that they will feel prepared to engage in a dialogue and negotiations with external agents on isonomic terms, strengthening the community's understanding of their own rights and establishing the importance of conservation of environmental assets.

In this sense, the development of a community protocol is not necessarily a response to an outside threat but it becomes an instrument of community empowerment, management and control of their territory and natural resources (Booker, Makagon, Braun, Banuoku, 2014). Community protocols prepare communities to be proactive rather than only reactive to outside challenges.

In May 2013, a project in the Bailique archipelago territory was initiated to develop the first community protocol in Brazil with a specific methodology that had the rights of communities as its foundation. According to their definition, community protocols are internal rules created by the community which reflect their own traditional character, the manner in which the community relates both to itself and externally, and also define certain procedures, criteria, and tools for territorial management and the use of natural resources.

The Bailique community is located at the mouth of the Amazon river, in Amapá state, Brazil, and is comprised of eight islands inhabited by approximately 7.618 people (IBGE, 2010) distributed in about 51 communities, according to the Bailique Community Council. The population of this archipelago is young as

56,05% is less than 20 years old and only 8.5% is more than 50 years old (IBGE, 2013). Their main income comes from the extraction of açai berries and fishing, but they also work with small-scale agriculture, animal farming and handmade shipbuilding.

This project has two specific phases covering different coordinated aspects. The first phase of the project supports communities in the development of their own community protocol. The methodology developed works with a bottom-up approach where the community is the one to feed in the information, demands, needs and challenges to be present in their protocol. The second phase is when, with the protocol in hand, the community starts to organize and improve their production methods, identifying new opportunities in their territory and potential markets to be partners with.

These phases are interconnected, given that phase 2 of the project is essential for strengthening the community protocol developed in the first year. Following the first 24 months of execution of the project, a set of results may be observed at the community level, including the acquisition of capabilities on technical topics. Among them, we can list:

1. Basic knowledge of the text of the Convention on Biological Diversity and the Nagoya Protocol
2. Internalization of the main concepts of Access and Benefit sharing instruments
3. Understanding of the technological development in the biotechnological field and the relevance to the industrial sector of their traditional knowledge
4. Strengthening of their local institutions
5. Interest of adopting a participatory bottom-up approach to engage in talks with external stakeholders
6. Identification of public policies aiming at strengthening their communities and increasing their income
7. Importance of building a dialogue with key official institutions such as public prosecutors, ministries and state offices.
8. A broad view on stocks and natural resource management
9. Awareness of the shortage of natural resources and unsustainable use of species, deforestation, erosion of community river bank

Historically, the use of associated traditional knowledge of local communities has been done without their consent or sharing of benefits. With the provisions of the CBD and its national implementation and the pressure of the biotechnological sector to access biodiversity and traditional knowledge at a faster pace, it is essential to prepare communities for dialogue with various stakeholders by strengthening their customary laws. Looking at the Bailique experience in constructing their community protocol, it is possible to identify some areas that need special attention.

(i) Community Participation

It is essential that the community is involved in all phases of the project, taking ownership of it from the very early start so that when the project finishes they are prepared to use the protocol to improve their rights and resource management systems. They should be able to shape the activities and the content of the discussion in order to truly own the process.

(ii) Prevent competition

It is not uncommon that a given associated traditional knowledge is shared by several communities. Competition among communities to receive benefits, on a supply and demand scheme, would profit solely the industrial or commercial sectors. Efforts should be made to prevent this scenario from happening. The replication of community protocols in other communities holding the same traditional knowledge would be a major contribution in that sense.

(iii) Natural resources management

As part of the process to strengthen the capabilities to engage with external actors, the community must identify the potential of their natural resources stocks and improve the quality and sustainability of their production methods. This process should be guided by the community protocol in order to strengthen the internal governance of the community.

The implementation of the new legislation on access and benefit sharing in Brazil brings to the forefront of the debate the need for traditional communities to secure their right to be active agents in the ABS process. It is, therefore, paramount that the right for free, prior, informed consent is guaranteed and that there is a protection of the customary norms of these societies.

The building of community protocols is one way to achieve this and the Bailique experience shows that the process of constructing a community protocol also brings awareness about sustainable use of natural resources and it contributes to the strengthening of local institutions. Certainly, community protocols can be an important tool to empower communities to have an isonomic dialogue with external stakeholders, ensuring their right to be consulted is guaranteed, their local norms and traditional knowledge is respected, contributing in this way to the maintenance of their livelihood and their traditional territories.

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