

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The text is centered in a white space between these green elements.

Biocultural protocols, customary rights and codes of conduct

Question:

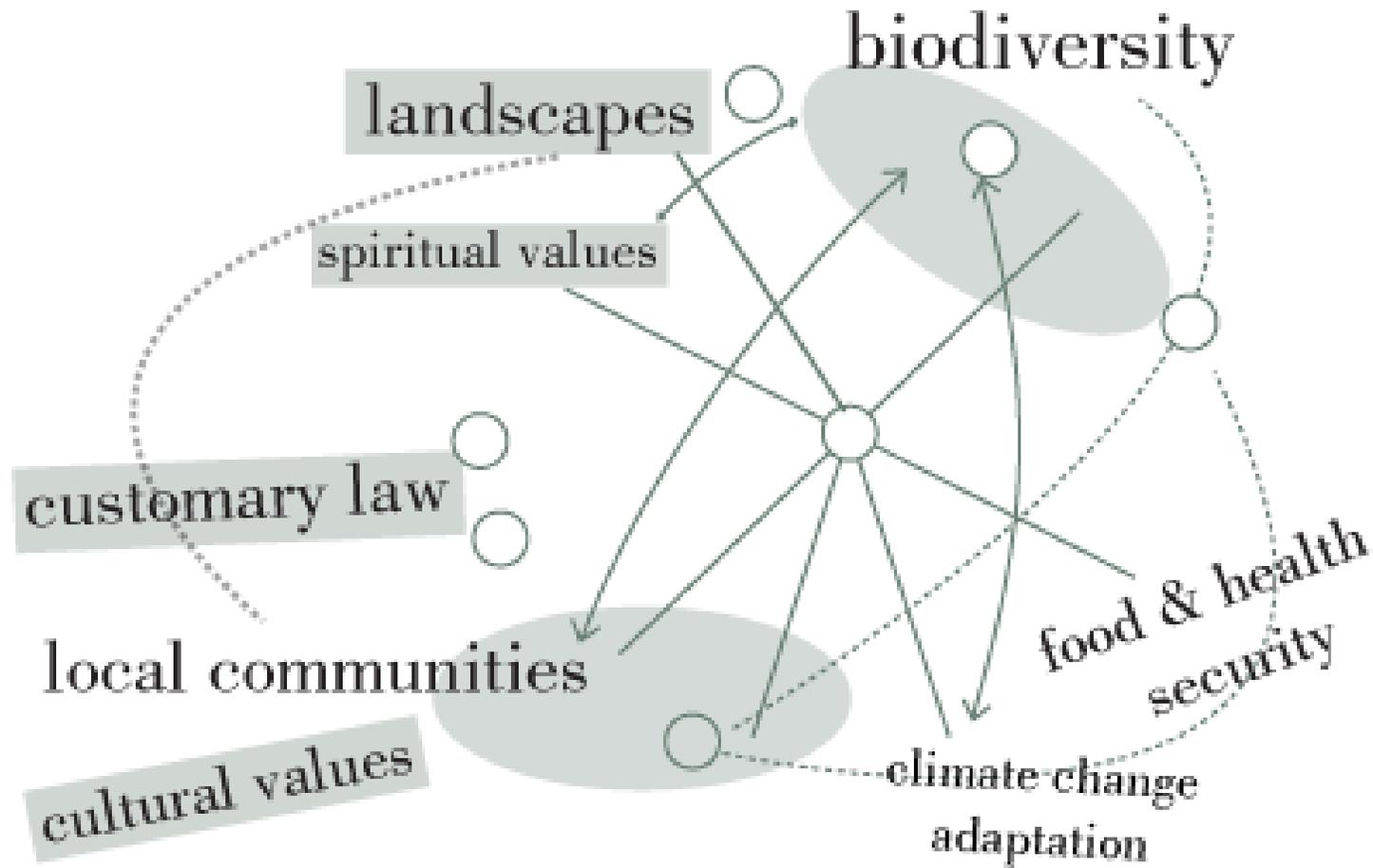
- ▶ What role can/ should customary rights/values and customary institutions and leaders play in the management of genetic resources and traditional knowledge?
- ▶ (at least) three options: biocultural protocols, recognition of customary institutions, National code of conduct (or a combination).
- ▶ The enforcement of these can be through a national research permit scheme.

Relevant Nagoya protocol provisions

- ▶ Article 20
- ▶ 1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.
- ▶ 2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.
- ▶ Article 12
- ▶ 1. In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.
- ▶ 3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:
- ▶ (a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;

Bio-cultural Protocols

- ▶ “A BCP is a protocol that is developed after a community undertakes a consultative process to outline their core ecological, cultural and spiritual values and customary laws relating to their TK and resources, based on which they provide clear terms and conditions to regulate access to their knowledge and resources.”
- ▶ Can be a way of shifting emphasis from commercialisation to considerations of conservation of biological diversity and traditional knowledge
- ▶ Tool for engaging with the outside but also internal governance tools that use customary laws and inputs from national and international law, adapted to local conditions, to regulate interactions among bio-cultural resource users, and define and guide the behaviour of local networks.



Example: Peru Potato Park



What can they cover?

- ▶ Regulation of research
- ▶ Conserve biodiversity;
- ▶ Sustainably use plants and animal genetic resources;
- ▶ **Sacred site access and control of eco-tourism (e.g. protocols surrounding Uluru in Australia)**
- ▶ Manage and benefit from local biodiversity;
- ▶ Use, protect and benefit from traditional knowledge;
- ▶ Provide free, prior and informed consent to access lands, natural resources of traditional knowledge for any number of reasons including commercial and non-commercial research and by the media;
- ▶ Ensure environmental and other laws are implemented according to customary laws;
- ▶ Oppose unsustainable development on their lands; and
- ▶ Engage with governmental or other support.

National code of conduct

- ▶ Another option
- ▶ Already a draft has been started
- ▶ Can reference biocultural protocols
- ▶ Can also deal with issues such as copyright and dispute resolution processes

Recognition given to customary laws and institutions

A range of options about how to include these:

- ▶ Writing down of customary norms and/or values and principles
- ▶ Requiring consultation with particular customary bodies
- ▶ Referencing customary norms in general

Questions to consider

- ▶ What is “a community”? Should this be done at a national level or at a more local level?
- ▶ How would it tie into the research permit scheme?
- ▶ Who should the protocols/ codes of conduct be directed to? (just foreign researchers?)
- ▶ Which institutions should be involved in implementing and enforcing them?
- ▶ How should knowledge that has been collected be stored and accessed? **Who can access it? (e.g. TKDL in India is only accessible by patent examiners for stopping biopiracy/bad patents).**