



Report on the Indigenous Knowledge Forum 2012

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“As biological resources and the know-how of them come to be commoditised in the global trade, real questions of protection arise. For protection itself implies different things to diverse ‘stakeholders’. The meaning of protection can fundamentally vary depending on whether so-called protection regimes are constructed from the perspective of informal knowledge systems or from that of the formal market”.

Shalini Bhutani Co-ordinator, Campaign for Conservation and Community Control over Biodiversity, India

A forum on Indigenous knowledge and biodiversity in India and Australia took place at the University of Technology, Sydney (UTS) on 1-3 August 2012. The forum provided an opportunity for dialogue on comparative issues in Indigenous knowledge and biodiversity in Australia and India from the perspective of intellectual property and biodiversity laws and policies. The forum explored current and future directions regarding the implementation and operation of these laws and policies, particularly with respect to the rights and interests of Indigenous and local peoples. Emphasis was given to Indigenous peoples’ activities in formulating their own approaches regarding the protection and use of their knowledge, as well as advocating for rights and recognition, and participation in policy development.

Rationale

The rationale for the forum was twofold. Firstly, to address the interface between two spheres of legal regimes that are currently dealing with Indigenous knowledge; namely biodiversity and environmental laws on the one hand; and intellectual property laws on the other. Secondly, the forum provided a comparative focus in which to explore the issues arising from this interface, with a particular emphasis on implementation and operation of law and policy in these areas, and the rights and interests of Indigenous and local peoples. The reasons for choosing a comparative focus on India and Australia are outlined below.

A comparative perspective: India and Australia

The comparative focus on India and Australia was selected for the UTS forum for good reason. There are significant ecological, historical and legal similarities between Australia and India. Each nation has identifiable Indigenous and local populations. Each nation covers an entire continent or sub-continent, and comprises a federation of states and territories. Both have experienced British colonialism – albeit in very different modalities - and have emerged as democracies. India and Australia are both members of the Commonwealth and operate a common law legal system. Both nations are regarded as being biologically mega-diverse. These similarities provide a valuable opportunity to explore the interactions between Indigenous knowledge and practices with intellectual property and biodiversity laws, recognising also that these interactions occur within broader contexts of social, political and legal issues that concern Indigenous and local peoples.

The comparative focus is equally attentive to differences between India and Australia. There are significant differences in population size, and in economic development and growth models. The two nations also differ markedly in their discourses on Indigenous and local peoples across a wide range of matters including notions of ‘Indigenous’ identity, political and legal aspects, and different perspectives in recognition and implementation of rights. It

is these differences and commonalities between India and Australia that presented a compelling opportunity for a forum for comparative exchange and dialogue.

The Convention on Biological Diversity (CBD)

Biodiversity conservation legal and policy regimes are based on the objectives of the *Convention on Biological Diversity 1992* (CBD). These are to promote the conservation and sustainable use of biological diversity and its components, 'and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding' (Article 1).

The urgent need for action on the conservation of biological diversity is well recognised.

The action taken over the next decade or two will determine whether the relatively stable environmental conditions on which human civilization has depended for the past 10,000 years will continue beyond this century.

If we fail to use this opportunity, many ecosystems on the planet will move into new, unprecedented states in which the capacity to provide for the needs of present and future generations is highly uncertain ("tipping points"). Global Biodiversity Outlook 3, Convention on Biological Diversity

Traditional custodians of land hold knowledge critical to conservation of biological diversity. Moreover, for the past twenty years, Indigenous or traditional knowledge has taken centre stage in discourses on sustainable socio-economic development and poverty alleviation in developing countries, the countries that contain the majority of mega-biologically diverse regions in the world. It is no wonder that the utility of such knowledge in the conservation and sustainable use of biological resources is specifically addressed in the CBD in articles 8(j),ⁱ 10 (c)ⁱⁱ and 18(4)ⁱⁱⁱ. Equally the need to 'respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles', 'encourage customary use' and 'methods of cooperation' are emphasised in the context of prior informed consent and mutually agreed terms with a view to the fair and equitable sharing of the benefits arising out of the utilization of such knowledge.

Indigenous knowledge and intellectual property: the role of the World Intellectual Property Organisation (WIPO)

The idea of protecting knowledge and at the same time encouraging its use leads to a discussion of proprietary rights and in particular intellectual property rights. The CBD recognises the interface with intellectual property rights, particularly patent rights, and the potential influence of those rights on the implementation of the CBD (Article 16.5). Specifically, nations are expected to 'cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to' the CBD objectives.

The World Intellectual Property Organisation (WIPO) is a United Nations agency which, together with UNEP, the United Nations Environment Programme responsible for the introduction of the CBD, jointly commissioned 'a study on the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge'.^{iv} Together with the result of other WIPO work including joint work with UNESCO on 'expressions of folklore' dating back to 1978, the WIPO General Assembly established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in 2000. The extensive work undertaken by the Intergovernmental Committee resulted in a range of information, practical tools and policy resources. However, this included a Gap Analysis^v in 2008 which identified shortcomings of the current intellectual property regimes to provide appropriate protection of Indigenous or traditional knowledge.

Meanwhile, WIPO member states have been negotiating, through the IGC forum, international instruments for the protection of traditional or Indigenous knowledge and culture. These instruments have been divided into two overlapping but separate streams. The stream on 'traditional cultural expressions' deals with subject matter that would be covered by the copyright, designs and trade marks systems, such as stories, symbols, handicraft and dance. On the other hand, the stream dealing with 'traditional knowledge' views Indigenous knowledge through the lens of the patent system addressing knowledge related to traditional medicinal practices, plant uses and land management. This separation into two streams does not reflect the interaction and interdependence of these two 'aspects' of traditional or Indigenous culture. A 'cultural expression' is one of many manifestations of the knowledge in Indigenous culture, as well as a means of preserving, transmitting, using and communicating that knowledge. In this regard, an important aspect of the UTS forum was the discussion of the issues and complexities in determining the scope of what Indigenous knowledge might mean.

Structure of the forum

The forum brought together a range of participants from Australia and India, as well as other international and local presenters. These included Indigenous and local peoples, representatives, participants from government, non-government and community organisations, and from academic and private sectors, and legal practitioners. A notable point of comparison was the stronger Indian experience with biodiversity and Indigenous/local peoples' issues, which provided valuable input for the forum. India appears to have a more active NGO sector than Australia in this arena. Also critical to the dialogue at this forum was the engagement of Aboriginal and Torres Strait Islander participants in sharing their experiences, including successes and challenges, in the wider use of their biodiversity-related knowledge and practices. Also noted in this regard were Indigenous peoples' perspectives on the persistent lack of respect by many in the wider community for their biodiversity knowledge and practices.

The forum was opened with an Acknowledgement to Country by **Aunty Joan Tranter**, Elder in Residence, Jumbunna Indigenous House of Learning, University of Technology, Sydney (UTS), followed by welcome addresses from **Consul General Arun Kumar Goel** of the Consulate General of India, Sydney, **Ian Goss**, General Manager, Business Development & Strategy Group IP Australia, **Dipen Rughani**, National Chairman of the Australia India Business Council, **Innes Ireland**, Executive Manager, International and External Engagement, UTS, and the Forum Chair, **Professor Natalie Stoianoff**.

The program for the forum comprised plenary sessions in which diverse perspectives were presented highlighting many of the issues and challenges, outlining the various legal and policy developments, and identifying questions that need further attention. A number of these presentations included valuable case studies. One key question that was a common theme throughout the forum concerned ways in which existing and emerging legal and policy frameworks are engaging with the rights of Indigenous and local people. Speakers addressing all these subjects included representatives from the Secretariat of the CBD, Australian Federal and State governments, Indian and Australian NGOs, the United Nations University, and Indigenous communities, and non-government activist organisations. Academic and legal experts from Australia and India presented on issues such as international protocols, national implementation, ethical knowledge management, rights to country and right to benefit from bio-resources and related knowledge.

The first plenary considered the question, **What is Indigenous knowledge?** This question was approached from a number of perspectives. The first was from an Aboriginal Elder from the *D'harawal* Bitter Water Clans, **Aunty Fran Bodkin**, a 'Western' qualified botanist, author and traditional knowledge holder. She spoke about the Aboriginal concept of truth as the lens through which knowledge and experience is viewed recognising that truth is a multidimensional concept affected by the perspective from which one views knowledge and experience. Aunty Fran utilised storytelling to explain the interconnectedness between knowledge, country and the importance of respect noting, on the one hand, the great importance to Aboriginal people of the spiritual dimension that pervades this relationship and, on the other hand, the dangers of misuse of such knowledge. The second speaker was **Henrietta Marrie**, a *Gimuy Walabura Yidinji* person, and direct descendant of *Ye-i-nie* King of Cairns. Henrietta was the first Indigenous Australian to gain a senior position with a United Nations agency, serving with the UN Secretariat for the CBD, based in Montreal, Canada for 6 years. Her message centred on the need for Indigenous people to be empowered to fulfil their responsibilities in regard to their knowledge. **Kanchi Kohli**, a member of the Kalpavriksh Environmental Action Group, India, considered the debates in India relating to the concept of 'Indigeneity', exploring the preferred use of terms such as 'tribal' or 'traditional' when referring to the knowledge of local peoples in India.

The second plenary focussed on **Biodiversity Access and Indigenous Knowledge**. The first speaker was **John Scott**, an Indigenous Australian who has the role of Programme Officer for Traditional Knowledge, Innovations and Practices, Focal Point for Indigenous Peoples and Local Communities, Social, Economic and Legal Matters, in the CBD Secretariat at Montreal. John confirmed that Indigenous peoples are rights holders under the CBD. He outlined the CBD's program of work in Indigenous peoples over the past decade, and future directions.^{vi} He explained that while progress towards *sui generis* approaches encompassed voluntary

guidelines, their ethical and moral weight will, over time, become standards in customary international law. **Ben Philips**, Director, Protected Areas Policy and Biodiscovery, Parks Australia in Australia's Federal Department of Sustainability, Environment, Water, Populations and Communities, noted the commencement of work towards the implementation of the *Nagoya Protocol*^{vii} and the proposed amendments to the *Environmental Protection and Biodiversity Conservation Act 1999*. These include provision, among other aspects, for deterrent level penalties in relation to the access and benefit sharing regulations. The third speaker in the session, **Shalini Bhutani**, Co-ordinator, Campaign for Conservation and Community Control over Biodiversity, considered India's biodiversity know how and the trend toward homogenising culture and knowledge, recognising that knowledge may be shared and collective which in turn raises the question - who are the beneficiaries? Shalini noted the significant impact of India's Traditional Knowledge Digital Library and the agreement with IP Australia regarding its use, and she also referred to the development in India of a proposed *Traditional Knowledge Bill*. The final offering in this plenary session was a joint presentation by **Anthony Watson**, Chairman, Kimberley Regional Economic Development Inc, Jarlmadangah Community Representative, Mudjala Aboriginal Medicine Project, and **Paul Marshall**, Mudjala Aboriginal Medicine Project Coordinator. These speakers gave a direct account of a benefit-sharing arrangement struck between the Jarlmadangah community, *Nikyina* country in the Kimberley Region of Western Australia, and Griffith University, in relation to the Mudjala plant's medicinal qualities. The partnership was set on a 50/50 basis with patents having been granted, however, commercialisation had been stifled at a crucial time when the Global Financial Crisis came into being despite the funding required to produce a topical product being minimal.

The third plenary considered **Environmental Stewardship, Agriculture and Managing Country**. **Sam Johnston** from the Institute for Advanced Studies, United Nations University, presented primarily on climate change policy and Indigenous peoples paying particular attention to mitigation strategies. He provided a local example of the success of the fire abatement policy in West Arnhem Land. A direct result of this policy has been increased biodiversity and the creation of carbon credits which are in turn saleable as commodities in the new carbon trading economy. **Professor Dr T. Vidya Kumari**, Dean of Law, Osmania University, Hyderabad, India, emphasised the role of the 'class' or 'branding' system in India, linking the fact of a rigid class structure with its relationship to the protection of knowledge relevant to the preservation of biodiversity in India. She noted that Indigenous knowledge is the source of the farmers' rights and that these rights link the past with the present for future prosperity. Meanwhile, **Peta-Marie Standley**, Program Manager, Cape York Natural Resource Management Ltd, CSIRO Atherton, provided a powerful example of how the Indigenous led co-generative action research team for the Traditional Knowledge Revival Pathways Kuku Thaypan Fire Management Research project has provided on country training for both Indigenous and non-Indigenous natural resource management practitioners and researchers in Traditional fire management in the Cape York Peninsula region of northern Queensland. This has led to the development of an Indigenous research theory embodying an ancient way to undertake cultural practice. Interactions with country and people are undertaken according to protocol, kinship and lore by ensuring that the right people have a voice. **Norman Laing**, Executive Director, Country, Culture and Heritage Division, in the New South Wales government's Office of Environment and Heritage,

emphasised the importance of determining 'who speaks for Country'. He reinforced the need to resolve that question before 'realistic and advanced conversations' could take place between Aboriginal communities, government and the private sector that would lead to sustainable cultural heritage protection and provide social and economic benefits to future generations.

The theme of the fourth plenary was **Ethical Knowledge Management and Intellectual Property**. The first speaker was **Michael Davis**, a Postdoctoral Research Fellow in the Department of History at the University of Sydney. He explored some common elements from a range of international and domestic protocols and guidelines, with particular references to a revision of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) *Guidelines for Ethical Research in Indigenous Studies*. By requiring researchers to recognise and respect Indigenous knowledge, and follow processes to achieve free, prior and informed consent, these Guidelines ensure equity in participation in projects, and the use of just and ethical approaches. Michael also drew attention to some historical attempts to introduce *sui generis* regimes in Australia for protecting Indigenous knowledge and practices in a holistic way, and concluded by suggesting that further work towards developing a *sui generis* approach should refer to these past developments, as well as common themes emerging from protocols and guidelines. **Virginia Marshall** is *Wiradjuri Nyemba* and is connected in kinship with *Nyikina Mangala*. She is a Solicitor & Member of the Indigenous Issues Committee of the Law Society of NSW. Her presentation noted that various guidelines for intellectual property, bio-cultural heritage and the conduct of research had been developed over the past decade in Australia. These guidelines have implications for legal practice requiring a cross-cultural approach for ethical practice and the preparation of agreements. Virginia utilised the example of policy and legislation around water rights in the Murray Darling Basin and the rights of Indigenous people as an opportunity to consider actualised self-determination. **Steven Bailie**, Assistant Director International Policy and Cooperation, IP Australia, presented on the Australian government's discussions with stakeholders on the role of the intellectual property system in protecting and valuing Indigenous knowledge and biodiversity. He reported that some stakeholders had cautioned against inappropriate government intervention while others had suggested a dedicated national body and new laws. All stakeholders had so far agreed that being 'on Country' and preventing loss of languages were vital, that education of both the public and government was important, and that specific protocols and relationships were important to address the wide diversity of Indigenous individuals and communities in Australia. He also promoted the important role of the international instrument being negotiated in the WIPO for guiding the nature of such national mechanisms. **Rajul Joshi**, Assistant Professor at Symbiosis International University in India, explored how value-creation occurs through the interaction of knowledge holders, innovators, scientists, development agencies and private companies. She emphasised the importance of institutional measures to protect traditional knowledge and innovation noting that India was the first country to do so.

The last plenary considered the **Implementation of Rights, Holding Rights and Native Title**. **Kanchi Kohli**, Member of the Kalpavriksh Environmental Action Group, India, addressed the inevitability of private and commercial uses of Indigenous and local peoples' knowledge, and the need for models of valuation to determine benefit claimers and benefit sharing. She addressed the access-oriented legislative framework of India's *Biological Diversity Act 2002* which utilises a centralised decision making process around bio-resources and knowledge. This contrasted with *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act 2006* which relies heavily on the recognition of individual and community rights with respect to forest area in the country. In a joint presentation, **Mark Allen**, Executive Lawyer, Bartier Perry, and **Virginia Marshall**, Solicitor & Member, Indigenous Issues Committee, Law Society of New South Wales, drew on lessons learned from their experiences in dealing with the negotiation of arrangements for the commercialisation of Indigenous Knowledge. It was recognised that such arrangements must be achieved within the existing domestic legal framework while in the context of international law principles, and, most importantly, must meet both community expectations and the needs of the commercial arrangement that has been negotiated. **Patricia Adjei**, Indigenous Communications Coordinator and Legal Officer, Copyright Agency Limited, presented an interpretation of the 22nd session of the WIPO Intergovernmental Committee on Traditional Cultural Expressions (TCE). Patricia explained the political context and discussed the contentious draft articles for the proposed regime to protect TCEs, especially regarding their definition. She also discussed the determination of , beneficiaries, the scope of protection considering exceptions and limitations, and rights administration, and noted the success of the Indigenous panel on the interaction between the *United Nations Declaration on the Rights of Indigenous People 2007* and the TCE draft Articles. **Natalie Stoianoff** Professor & Director, Intellectual Property Program Faculty of Law, UTS, reviewed the expectations from the key international instruments, considered the variety of Australian laws that address some of the issues and then focussed on the expected outcomes from the WIPO Intergovernmental Committee considering the draft Articles for the protection of traditional knowledge. The draft Articles have implications for patent law and plant breeder's rights, and consider the expectation that a competent authority at national or regional level be established by member nations to administer the rights of traditional knowledge holders according to their customary protocols, understandings, laws and practices. Natalie discussed the purpose of the Workshops for the last day of the forum, noting the discussion questions and draft statement for consideration during those workshops. The day finished with the Forum Dinner at which the **Hon. Justice Brian Preston**, Chief Judge, Land and Environment Court of NSW, delivered the speech, *Language, learning and life: linked losses*, wherein he explained his major premise that the conservation of biological diversity is dependent in part on the conservation of the languages and traditional ecological knowledge of Indigenous and local communities.

On the final day of the forum, opportunities to discuss specific issues arising from the plenary sessions were provided through a series of parallel workshops. These workshop discussions were then reported back to the forum plenary, to inform recommendations for action that could include legislative reforms, and the development of policy. Themes discussed in the workshops flowed from the plenaries. These included: ethics and consent; cultural expressions and art; biodiversity and medicine; implementation of rights; education

and language; and environmental stewardship. Each workshop was provided with the following list of issues for consideration:

- What is the scope of protection?
- How might a Competent National Authority be designed to administer rights and interests, and a fair and equitable benefit-sharing regime?
- What are some of the key elements to include in establishing a mechanism and process for the above kind of *sui generis* approach, including a Competent National Authority? These might include, but not be limited to:
 - Ethical approaches,
 - Designing and enforcing Mutually Agreed Terms, and
 - Obtaining free, prior informed consent.
- What kinds of models are there in yours, and other jurisdictions (international, regional, national, provincial or state, and local) that could be examined as a basis for developing appropriate approaches in India and Australia?
- How would a body or entity be managed and/or by whom?
- What kind of a structure might it have?
- What mechanisms and processes might be introduced to provide for decisions about access to, use of, and benefit-sharing arising from the wider use of Indigenous and local peoples' knowledge, innovations and practices, and biological resources?
- How might decisions be made regarding Indigenous and local peoples' claims in knowledge, and biological resources?

Outcomes

Forum organisers had sought to encourage the workshop discussions to lead to endorsement by forum participants of a statement that largely reflects international agreements. However, it became apparent throughout the workshop discussions and subsequent reporting back, that such a statement was not going to be readily adopted by participants. This was despite attempts to accommodate the use of different terminology used by the Indian participants and the Indigenous Australian participants. In seeking to find a meeting point between different participants' perspectives on the draft document, some participants in the forum questioned the style and language of the statement. Logistic and strategic concerns in regard to this draft statement also became apparent as a number of participants, especially Indigenous and local community representatives, argued for a need to consult within their communities before endorsing any such statement. Government representatives also indicated that they were unable to engage in the process.

The forum concluded with an agreement to form working parties to create a draft form of legislation (elements towards a *sui generis* approach) for consideration by governments and decision-makers, and which could ultimately be used in lobbying for protection for Indigenous knowledge and for its use on fair terms where informed consent for that use is given. Forum participants agreed on the requirement for consultations among Aboriginal and Torres Strait Islander peoples and communities in order to settle the wording of any proposed draft legislation. The forum considered that such *sui generis* legislation offers the best prospect for effective protection for Indigenous knowledge in Australia and elsewhere, rather than relying solely on existing laws such as intellectual property rights. A significant

factor in the support for this approach (developing community based models for a sui generis regime), is awareness of the plethora of legislation and agreements that impinge on these issues so that Indigenous peoples may articulate clearly their rights to their knowledge and its associated practices and products.

While the forum identified a need for further work and discussion, its achievements were significant in the opportunity it presented for participants to listen to and learn from one another. The forum brought together individuals who previously had not had opportunities to engage in this type of discussion on these issues. The forum has opened a door for ongoing dialogue and potential collaboration on a subject that is crucial to both Australia and India, and also has important implications for many other countries and regions. In this regard, it is anticipated that a follow-up forum will be organised for 2013 in India, with the intention then to expand participation beyond Australia and India.

Conclusions

Clearly there is still much that needs to be done. One of the biggest challenges will lie in achieving a transfer of ownership to Indigenous peoples in the processes of protecting Indigenous knowledge systems through the design and production of intellectual property systems and procedures. This will require necessary consultation with Indigenous communities across the country. Nonetheless this ownership transfer and consultation is essential in arriving at model legislation that not only fulfils international obligations but also ensures that the rights, interests and the Indigenous knowledge ownership of Aboriginal and Torres Strait Islander people are honoured, providing internationally, a model of fair and equitable dealing with Indigenous knowledge. It is also clear that regimes to protect and utilise traditional and Indigenous knowledge will vary greatly across the globe. For example, the Indian speakers made it clear that grassroots activism in India was strongly focussed on protection and community access rather than commercialisation. Thus the traditional model of intellectual property regimes may not be appropriate for all indigenous/traditional/tribal communities.

"You see the only way we can go forward into the future is together."
Aunt Fran Bodkin Elder of the D'harawal Bitter Water Clans

31 October 2012

Indigenous Knowledge Forum Organising Committee:

Natalie Stoianoff	Chair
Ann Kurts	Administrator
Michael Davis	
Devleena Ghosh	
Sonya Pearce	
Alpana Roy	
Steve Fox	
John Chelliah	
Nicole Graham	

ⁱ Article 8(j) CBD:

Each Contracting Party shall, as far as possible and as appropriate:... (j) Subject to its national legislation, 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

ⁱⁱ Article 10(c) CBD:

Each Contracting Party shall, as far as possible and as appropriate:

...

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

ⁱⁱⁱ Article 18(4) CBD:

The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

^{iv} WO/GA/26/6, WIPO General Assembly, Twenty-Sixth (12th Extraordinary) Session, Geneva, September 25 to October 3, 2000, *Matters Concerning Intellectual Property And Genetic Resources, Traditional Knowledge and Folklore*, 2.

^v WIPO Secretariat, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The Protection Of Traditional Cultural Expressions: Draft Gap Analysis*, WIPO, Thirteenth Session Geneva, October 13 to 17, 2008.

<http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_13/wipo_grtkf_ic_13_4_b_rev.pdf> (12 August 2012)

^{vi} To this end the Achi Biodiversity Targets, found in the CBD's *Strategic Plan for Biodiversity 2011 – 2020*, recognise the protracted process that has been involved in realising the Convention and seek to promote urgent action on critical issues. Achi Target 18 requires that:

By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.

Indigenous and local communities have been acknowledged as key partners in achieving the goals of the Convention since its inception. Their close dependence on biological diversity is acknowledged in the preamble of the Convention. Their knowledge, innovations and practices are considered essential for efficient and economic ecosystem management, sustainable development and maintenance of biological and genetic diversity. Target 18 and the effective participation of Indigenous and local communities is intended to provide services such as local ecosystem management, including Indigenous Community Conservation Areas, and in turn contribute to the realization of other targets. A critical element of this process is for Indigenous knowledge to be respected, protected, maintained and promoted, and thus used in local ecosystem management, drawing upon experiences of customary use, with the prior and informed approval of relevant communities.

^{vii} *The 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* is an international agreement which aims at sharing the benefits arising from the utilization of genetic resources in a fair and equitable way, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing

to the conservation of biological diversity and the sustainable use of its components. It was adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting on 29 October 2010 in Nagoya, Japan. Australia signed the Nagoya Protocol in January 2012, and is now pursuing its implementation and ratification.

The Nagoya protocol imposes specific obligations with respect to ensuring:

- benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with the relevant Indigenous and local communities;
- prior and informed consent or approval and involvement of these Indigenous and local communities;
- consideration of Indigenous and local communities' customary laws, community protocols and procedures;
- mechanisms to inform potential users of traditional knowledge about their obligations, including measures as made available through an Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge;
- development by Indigenous and local communities, including women within these communities, of community protocols in relation to access to traditional knowledge and the fair and equitable sharing of benefits; minimum requirements for mutually agreed terms; model contractual clauses;
- that customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention is not restricted;
- compliance and response to instances of non-compliance.