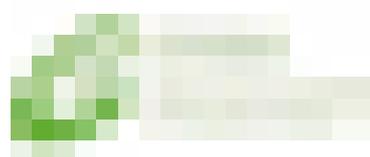




African Indigenous Peoples and the UNEP Green Economy Initiative

||Hui!gaeb Report on
Green Economy, Equity & Green Governance



**African Indigenous Peoples and the UNEP Green Economy Initiative:
||Hui!gaeb Report* on Green Economy, Equity & Green Governance**

August 15-16, 2011

Medindi Manor, Cape Town, South Africa

** ||Hui!gaeb is the Khoekhoegowab indigenous name for what is now the city of Cape Town.*

ORGANISERS: Hosted and facilitated by the **Indigenous Peoples of Africa Coordinating Committee (IPACC)** and **Natural Justice (Lawyers for Communities and the Environment)**¹ in co-operation with the **United Nations Environment Programme (UNEP)** and the **Open Society Institute of Southern Africa (OSISA)**.

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Executive Summary

THE UN Environment Program (UNEP) has released a report on the Green Economy Initiative (GEI), which is a major theme for the upcoming UN Conference on Sustainable Development (UNCSD) marking the 20th anniversary of the Earth Summit, held in Rio de Janeiro, Brazil in 1992. The GEI represents a central element in international policy about responding to the crisis of global climate instability, the rapid decline in biodiversity and the serious threats these pose to peace and well-being on the planet. The GEI offers some important ideas about moving to a low carbon economy, but is based on some questionable premises, including its exclusion of the role of civil society and the rights of Indigenous Peoples to conserve and sustain the biodiversity in their traditional territories.

From August 15-16, 2011, IPACC and Natural Justice facilitated a workshop of African indigenous leaders from nine African countries to study the content of the Green Economy Initiative, develop a critical understanding of its recommendations, assumptions and purpose, articulate a response, and issue a formal statement and a response document to be submitted to UNEP.



The main conclusions of the workshop included:

- GEI is an important contribution to integrating the value of the environment into national and multilateral economic analyses and planning. GEI helps national governments move away from the idea that natural resources are ‘free’, and requires them to engage in accurate cost benefit analyses before causing further loss of biodiversity and ecosystem services in the name of ‘development’;
- GEI’s most valuable aspect is that it encourages an inter-sectoral consideration of the value of biodiversity and resilient ecosystems, thus moving from the idea that this is the responsibility of Environment Ministers, and bringing greater attention to the role of Finance Ministers, Agriculture, Mines and Industry, Fisheries and so forth;
- IPACC values the attention of UNEP and the GEI to the issues of equity and the disproportionate impact of biodiversity loss on Indigenous Peoples and other communities reliant on natural resources;
- IPACC calls on UNEP and African governments to give more attention to the role of Indigenous Peoples and local communities as stewards of biodiversity – this is a foundational principle of the Convention on Biological Diversity yet it is notably ignored in the GEI. IPACC reaffirms the Agenda 21 principle of sustainability being a multi-stakeholder process;
- IPACC highlights that greater attention needs to be given to protecting the rights of local stewards of biodiversity and ecosystems. GEI must also address the problem of State Parties failing to comply with the Rio Conventions and ensure due process and the respect of fundamental rights of Indigenous Peoples, with specific reference to secure land tenure and the maintenance of traditional institutions of governance and knowledge systems;
- IPACC notes that the GEI is naive about the relationship between the State and the private sector, ignoring the growing power of multinational corporations to hold undue influence over national governments and ruling political parties;
- IPACC emphasises that there is a misuse of the term ‘*natural capital*’ in the GEI. If UNEP is saying that all nature should be considered as ‘capital’, this negates the argument for the **inherent value** of nature and the importance of intergenerational obligations for sustainable use and conservation of biodiversity and ecosystems. IPACC recommends that the term ‘*natural capital*’ be dropped from the GEI as it is inaccurate and contradictory to the main message of the report; and
- IPACC notes that Payment for Ecosystems Services provides new economic opportunities for rural communities, however this must be tempered by the primacy of access to sustainable use of biodiversity (as set out in the CBD and the Addis Ababa Principles & Guidelines), and it must be effected within a rights-based framework, preferably adhering to emerging norms of Free Prior and Informed Consent.



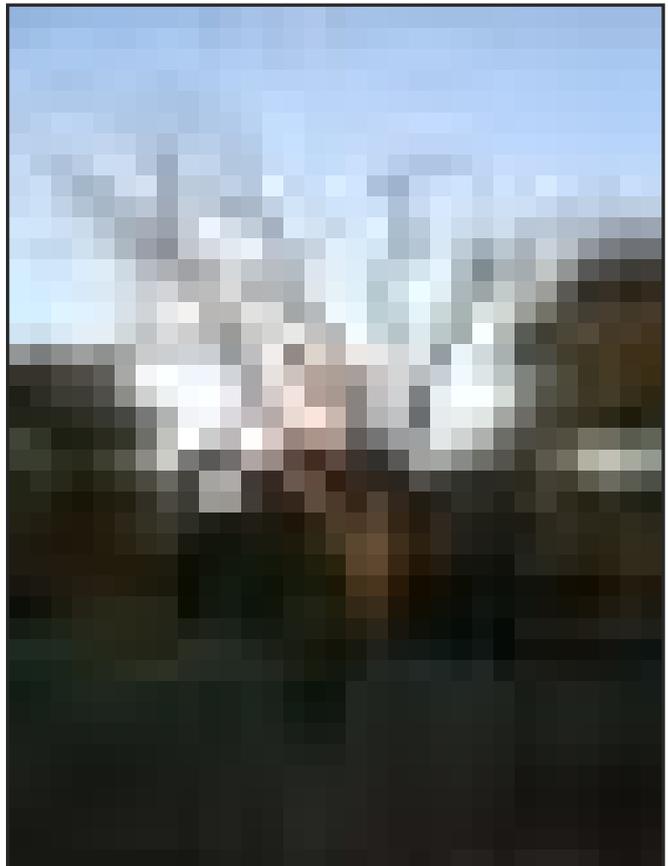
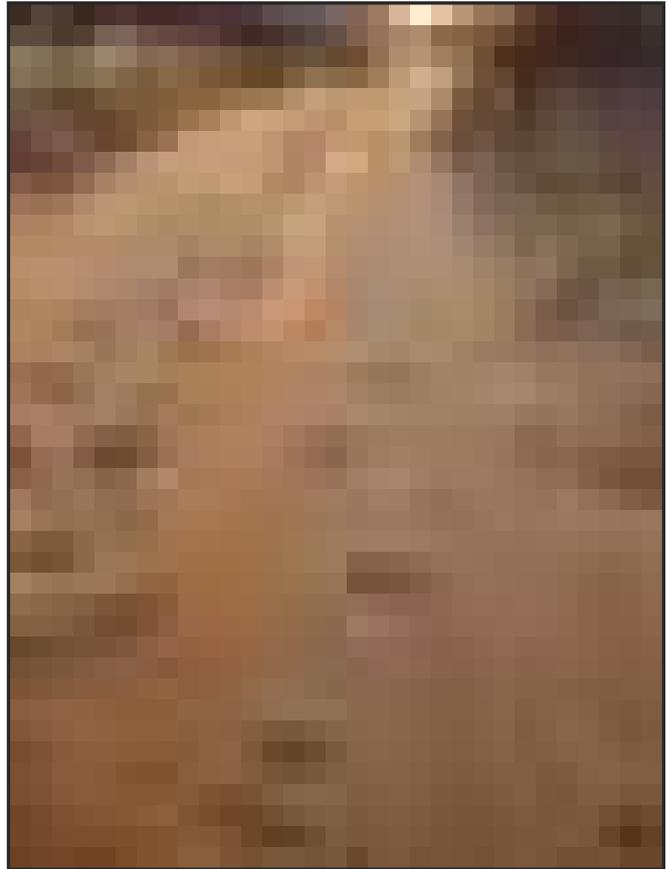
Workshop Summary

Objectives of the two day workshop of indigenous leaders were as follows:

- Analyse the GEI and the relationship between this development model and key indigenous concerns about self-determination, stewardship of natural resources, access and benefit sharing, and reforms to the multilateral environmental governance system being considered at Rio+20.
- Generate a statement of African Indigenous Principles in relation to GEI, governance and rights to be presented and discussed at the Global Indigenous Caucus in Manaus, Brazil (August 22-24, 2011).
- Set up an action plan for sharing insights and views about the Green Economy and Green Governance with the African Group of Negotiators in the Rio Convention system and with influential policy bodies such as the African Ministerial Conference on the Environment; and (AMCEN), UNEP, the International Union for Conservation of Nature (IUCN), the Global Indigenous Caucus and IPACC's members and allies.

Outcomes of the Workshop:

- ||Huilgaeb - Cape Town Declaration on the Green Economy / Green Governance (delivered to the indigenous global caucus in Manaus, Brazil);
- Statement of IPACC Recommendations to UNEP and African State Parties to the Rio Conventions on the Green Economy Initiative and the need for robust Green Governance (submitted to UNEP and AMCEN); and
- IPACC – Natural Justice Workshop Report on the Green Economy Initiative and Green Governance with accompanying action plan.

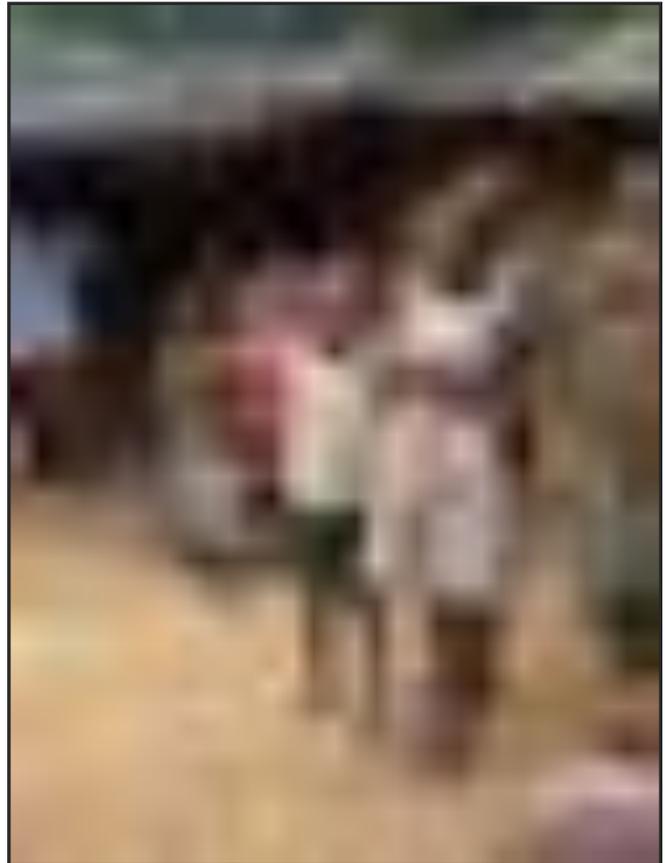


Background of the Meeting:

The UN Environment Program (UNEP) has released a report on the **GEI**, a major theme for the upcoming **UN Earth Summit 2012** (known as Rio+20)², the 20th anniversary of the historic UN Conference on the Environment and Development (UNCED) which was held from June 3-14, 1992 in Rio de Janeiro, Brazil.

IPACC holds one of the two seats for Indigenous Peoples in the UNEP Major Groups system. IPACC's intention is to contribute a policy position on the Green Economy Initiative in line with African indigenous values, indigenous economics and the norms and standards inherent in the UN Convention on Biological Diversity (CBD) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

All of the Rio Conventions are failing to meet their targets³, and there is a growing sense that the UN approach to environmental governance is flawed. Rio+20 will be an important occasion for Indigenous Peoples and others in civil society to call for a more duty bound, inclusive approach to governance that empowers a variety of actors and rights holders, rather than an approach that sees the State and private sector as competent to act on their own.



The UNEP Report⁴ aims to provide a macroeconomic analysis of policy reforms and investments in green sectors (i.e. sectors with a low Green House Gas emissions level) and in greening brown sectors (i.e. reducing GHG emissions from established economic sectors and industries). The GEI summary report emphasizes the economic benefits of transitioning to a green economy and investing in renewable energy and resource efficiency. The UNEP report assesses how sectors – such as renewable energies, clean and efficient technologies, waste and water management, and sustainable agriculture – can contribute to economic growth, job creation, and poverty alleviation, while addressing climate change and environmental risks.

The key agents identified in this transition are the State and the private sector. The primary argument is made to policy makers, to encourage them to recognise the medium and long term value of greening the current economic system and providing the private sector with incentives to grow capacity and create jobs in sectors that will assist with protecting natural ecosystems and reduce GHG emissions into the global atmosphere. The argument is based in part on the principle that ecosystems services are economic resources which are not assessed in national economic planning. Investment in ecosystem conservation pays dividends in avoiding poverty, conservation of the soils and water on which humans and agriculture depend, and which through degradation are increasing poverty and other dangerous pathologies.

² See <http://www.earthsummit2012.org/>

³ See <http://gbo3.cbd.int/>

⁴ UNEP, 2011, Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication - A Synthesis for Policy Makers. www.unep.org/greeneconomy.

IPACC agrees with the UNEP analysis that the world is facing a series of crises in regards to impacts of climate change, food and water shortages, volatile markets, and environmental degradation and climate variability. The current economic model of growth, consumption and a lack of wisdom and accountability is not sustainable and is placing life on Earth at grave risk. The GEI is meant to signal a meaningful engagement with key stakeholders to address climate change and environmental degradation. There is a risk that the green economy focus merely displaces the main questions, failing to recognise the amoral character of the modern private sector, and the transformation of the State into a facilitator of extractive economic behaviour, to support national elites, rather than going back to core human values of respect for biodiversity, a moral obligation to ensure inter-generational sustainability, and a faith-based / belief-based reverence for the relationship between nature, local territories, and one's own sense of identity and culture.

The focus of IPACC's response is critical support for the GEI, and a call for greater attention to balancing the Green Economy approach with the need for **Green Governance**, highlighting the historical evidence that the state and the private sector have failed to meet commitments under the Rio Conventions, and the conviction that a sustainable future requires a robust system of governance that protects ecosystems and local stewardship against the threats posed by extractive industries and forms of 'development' that are detrimental to bio-cultural diversity.

Indigenous Peoples have the lowest carbon emissions in Africa with highly adaptive land and natural resource governance systems that are threatened by national authorities who frequently make decisions based on profit rather than according to sustainability criteria. Greater attention needs to be given to legally empowering Indigenous Peoples as stewards of nature, particularly ensuring land tenure rights and being assisted by the international system to constrain behaviour by national states and the private sector that undermines indigenous governance, value systems and sustainability. African Indigenous Peoples are holders of valuable traditional ecological knowledge, which has thus far been stigmatised and marginalised from sustainable environmental and economic policy making. Using indigenous Traditional Environmental Knowledge (TEK) could help facilitate a transition to a fully low-carbon economy, a point entirely ignored by the GEI / UNEP.

IPACC leaders also noted with concern the misleading use of certain economic terms and assumptions. The GEI report makes use of the term 'natural capital', which suggests that nature's value is only recognised in terms of its commodity value in a market economy. IPACC members and many other Africans reject such Western reductionism. To refer to nature as 'capital' implies it must be able to be converted into cash, bought, sold and used as a commodity to be part of the circuit that gives capital its value. Nature has many values, including its ecosystem services which are trans-generational and should not be drawn into unstable commodity markets. Examples of other values of nature which do not permit their consumption or alienation include grave sites, sacred trees that house ancestral spirits, sacred forests, rivers and springs used for ritual cleansing, sacred mountains, communal grazing lands, communal seed banks and walled protected communal gardens (*agadir* and *agdal*), desert springs where there are communal or clan rights and responsibilities for maintenance.

Capitalism is a recent phenomenon in human organisation. African Indigenous Peoples assert that their ways of valuing nature as sacred and an inter-generational responsibility is more sustainable and stable than short-term consumerist notions embodied in UNEP's unfortunate use of commodity language.

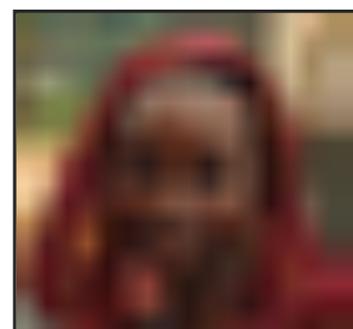
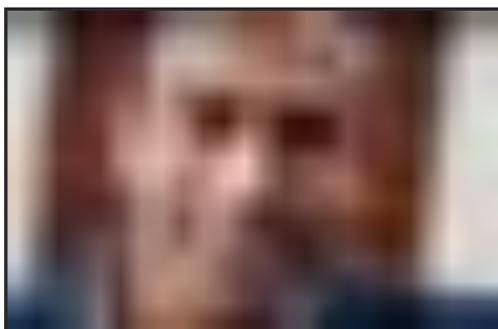
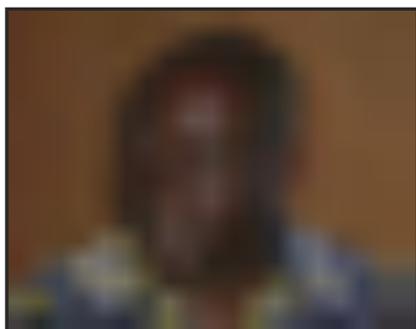
Workshop Minutes

DAY ONE

Welcome and Opening Statements

Hindou Oumarou Ibrahim, IPACC Executive Committee member for the Sahelian region, and global representative of the Indigenous Peoples to the UNEP Major Groups, made welcoming comments and introduced the new UNEP development paradigm known as: ‘the Green Economy Initiative’.

The ‘new method’ aims to focus more attention on issues such as the low carbon economy as a means of environmental sustainability and increasing quality of life through poverty eradication. The Green Economy is complex, touching on a range of critical and interlocking policy issues such as biodiversity, conservation, carbon emissions, REDD+, models of economic development, governance, participation and human rights. As the ‘Green Economy’ is already practiced amongst African Indigenous communities, the challenge is for Indigenous Peoples to effectively share their experiences and concerns to a wider forum, given upcoming meetings, including Rio+20, where the green economy and issues of sustainability will be major themes.



Kabir Bavikatte, Natural Justice, also welcomed participants, remarking that as the ‘Green Economy’ gains momentum, the protection of nature and its finite but invaluable resources should be seen as the most important issue, an issue of shared importance to all stakeholders. The GEI should be examined not in and of itself, but in relation to a previous report, “The Economics of Ecosystems and Biodiversity” (TEEB). The objectives of the GEI should be consistently evaluated so as to ensure that the intended beneficiaries of such an initiative are *actually* benefitting from the GEI. Kabir noted that the success or failure of a Green Economy paradigm will depend on green governance. It is vital that we do not leave it to the market (green or otherwise) to devolve rights. Rather we must ensure that a green governance framework with clarity on the rights of community stewards of ecosystems is in place before embarking on the green economy. In order for the GEI to work, it would need to incentivize communities who have stewarded ecosystems for generations. The only way a system of incentives can work is by ensuring that the rights of those communities who need to be incentivized are clarified through a robust green governance process from the outset. Putting economic value on nature as the GEI does, without clarity on rights holders and beneficiaries vis-à-vis the green economy, will lead to the exclusion of communities, which are ultimately the *de facto* real stewards of Nature. Instead, like most market driven processes, the potential for green profits will lead to denial of rights of community beneficiaries resulting in a paradoxical counter-productivity i.e. the green economy destroying green governance thereby leading to further ecological devastation.

The meeting was addressed by Kanyinke Paul Sena, East African regional representative and African member of the UNPFII. Sena stressed the importance of developing a strategy to present at Rio+20. How do Indigenous Peoples want to fit into the picture? The issues of governance, traditional knowledge, the CBD, the Nagoya Protocol on Access and Benefit Sharing (ABS) have all been mentioned in the background note but what needs to be defined is how Indigenous Peoples can contribute to the GEI and what inputs we want to provide. How do we put these environmental issues at the top of the governance and government agenda? Communities are fighting as a result of droughts and flooding; they have been forgotten in the rural areas. How do we strategize to put environmental, climate and natural resource issues at the forefront of the political agenda?

What is the Green Economy Initiative?

At the 14th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA), the United Nations Convention on Biodiversity released its third Global Biodiversity Outlook report (GB0-3), painting a bleak picture of the tremendous loss of biodiversity in all ecosystems, in all regions of the world. Questions have arisen as to how to turn around present circumstances.

A starting point is the recognition of the failure of existing Conventions in their aims to reduce carbon emissions (and the deleterious effects of climate change) and the rapid loss of biodiversity gripping ecosystems around the world. This is not only a failure of the Conventions themselves, but also of nation-states and, possibly, the failure of the UN system itself. Indeed, Achim Steiner, Executive Secretary of UNEP, has posed the question as to whether a system designed on national States competing for their self-interest can deliver a product which is based on a global good of planetary scale. The GEI is the “roadmap” envisioned to lead civilisation out of its present environmental crisis in the context of a wider economic crisis. UNEP argues that to be viable, there must be a new approach to recognising how nature underpins human civilisation and economies, and how this is particularly true for the poor who rely heavily on natural resources for their livelihood.

The Green Economy, as defined by UNEP, is one that is “results in **improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities**” or, simply put, one that is low carbon, resource efficient and socially inclusive.⁵ In a green economy “growth in income and employment should be driven by public and private investments that reduce carbon emissions and pollution, enhance energy and resource efficiency and prevent the loss of biodiversity and ecosystem services”, positively impacting on poor people whose livelihood is dependent on nature.⁶ The GEI consists of a report, advisory services and research, the collective objective of which is “to provide the analysis and policy support for investing in green sectors and in greening environmental unfriendly sectors”.

Delegates noted that despite UNEP’s enthusiasm for the GEI, this is, in practice, not happening. In particular, some of the assumptions of the GEI with respect to the independence and accountability of State parties is naive. Further, the Commission on Sustainable Development has struggled to bring any new proposals or initiatives to the table for Rio+20 to bring about the necessary change and find solutions for such a global crisis. It is the view of IPACC that one of the fundamental problems of the Rio Conventions is they are overly

⁵ See United Nations Environment Program Green Economy website at <http://www.unep.org/greeneconomy/AboutGEI/WhatisGEI/tabid/29784/Default.aspx>.

⁶ UNEP, “Towards a Green Economy. Pathways to Sustainable Development and Poverty Eradication”, 2011:16. See <http://www.unep.org/greeneconomy/GreenEconomyReport/tabid/29846/Default.aspx>.

State-centric, and has not adequately lived up to the vision of Agenda 21, which called for a multi-stakeholder approach to finding shared and equitable solutions. The voice of the civil society and diverse peoples has been marginalised. Indigenous Peoples are now preparing to provide their inputs for fairer and more sustainable solutions while at the same time taking into account their rights.

The transition to a green economy requires a change in perception in the links between human civilisation and its interaction with the market, particularly with respect to the poor who rely so heavily on natural resources for their livelihood. In fact, it involves a trade-off between traditional notions of economic growth and investment and the wide variety of benefits (including social, cultural and economic) of conserving and enhancing environmental quality, natural resources and social inclusiveness.

The Economics of Ecosystems & Biodiversity

Participants then watched two films on the Green Economy. The first was *“Your Voice”*, a humorous video clip that tries to explain the Green Economy (at <http://vimeo.com/16961590>). The second was *“What is the World Worth?”* presented by the economist Pavan Sukhdev, The Economics of Ecosystems & Biodiversity (TEEB) Coordinator at the Conference of the Centre for Policy Development (CPD) (at <http://vimeo.com/16841649>).

Pavan Sukhdev questioned what the actual price of nature is, including the price of environmental damage, considering the services nature provides to humanity such as food, oxygen, water and grazing areas for livestock, which are currently not valued. If nature and natural processes are not valued, then these will not be used sustainably - the lack of awareness of the importance of nature and natural processes could result in the destruction of nature through unsustainable human usage.

TEEB, Private Profit vs. Public Loss

There is an economic value to biodiversity⁷ – it provides humankind with welfare, well-being and benefits to society. “Ecosystem goods and services” refers to the contributions that biodiversity and ecosystems make to human needs, for example clean air, water, carbon storage, pollination, rainfall and fish (as food).

Biodiversity has created public goods and services that have not been given an economic value. It is argued that in order to fully understand the true cost of our choices in development, nature’s services in the economy need to be measured and considered. The example given of an existing mangrove and shrimp farm in Southern Thailand elucidates this point – balancing private and public interests in the potential conversion of a unique ecosystem. The example given compares the initial attraction in private gain from a shrimp farm (approximated at US\$1,200 per hectare, per year, taking into consideration government subsidies given but without consideration of the about \$10,000 per hectare rehabilitation costs to clean the area after five years of exploitation) with the costs and benefits of the mangrove to society including wood resources and coastal protection against storms, totalling about US\$12,000/ha. Hence, evaluating the benefits of the mangrove against that of the shrimp, not just in monetary terms but the services each provides (and the length of time each is provided for) illustrates that the conversion of this particular mangrove to a shrimp farm lacks

⁷ Biological diversity or “biodiversity” is used to refer to the diversity of life on this planet. The CBD defines “biological diversity” as the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (CBD, Article 2).

viability and sustainability in both short and long term. There is a huge economic cost that society pays when it converts ecosystems into other land uses, in comparison with the relatively small private profits made (private profit arguably does not benefit the community). It is important to remember exactly who is the community that is likely to shoulder the biggest burden in this process. Invariably they are Indigenous Peoples and local communities - Indigenous Peoples who traditionally acted as “stewards” of these ecosystems for centuries. The costs to these Indigenous Peoples are not measured.

TEEB’s Three Key Messages

The three key messages: 1) the sheer size of loss of “natural capital” is huge – about \$2-4 trillion/year wiped out as a result of “business as usual”; 2) discount rates are ethical choices – we are deciding what to leave our future generations; 3) there is a strong link between biodiversity loss and poverty.

Destroying nature is destroying development and increasing poverty. The loss of biodiversity increases poverty and impedes development. Those that are reliant on natural ecosystems for their livelihood will have no alternative but to either relocate for work or rely on a country’s social welfare resources to survive. It is often the poor who have a higher reliance on natural resources as these resources are free – ecosystem services are the GDP of the poor - therefore the destruction of nature affects the world’s most vulnerable – the poorest of the poor. It is hurting the livelihoods of the poor.

Relative importance of nature to human livelihoods vs. GDP and employment

Currently, wealth is considered in the short term only. There is very little understanding about the greater economic picture, thereby causing economic mismanagement on a global scale. Open access and government subsidies are huge problems. When assessing Environmental Impact Assessments (EIA), governments should measure the small and big pictures. The flaw of EIAs is that they do not take into account the value of the environment.

Payment for Ecosystem Services (PES)

Understanding Payment for Ecosystem Services (PES)

PES is an innovative method of generating revenue by looking at Ecosystems goods and services (EGS) based rewards. This already exists in practice, evidenced by present payments and compensation through carbon markets and biodiversity offsets⁸

Payment for Ecosystem Services Panel

The films were followed with a panel on PES with three panellists: Julian Sturgeon (Resource Africa), Kanyinke Sena (IPACC), Johanna von Braun (Natural Justice) and Kabir Bavikatte (Natural Justice)

⁸ A Good Practice Guide. Ecosystem Goods and Services in Development Planning, Secretariat of the Convention on Biological Diversity (2010), p.51.

Who gets paid by whom for what? Understanding Payment for Ecosystems Services

1) **Conservancy Payments Models** (e.g. conservancy hunting and conservation revenues) - **Introduction to Payment for Ecosystem Service by Julian Sturgeon from Resource Africa**

Examples of ecosystem services include environmental goods (in the form of food, fresh water, fuel and fibre), regulating services (such as climate, flood and disease regulation and water purification), supporting services (nutrient cycling, soil formation and primary production) and aesthetic, spiritual, educational and recreational cultural services. Without ecosystem services, humanity and the planet will die. The value of ecosystem services is far more than all existing economies combined. However, the *value* of ecosystem services cannot be evaluated purely on monetary terms, since our very existence is dependent on proper functioning of ecosystem services. There are challenges to the PES system, including security of tenure, lack of clarity as to how to measure the amount of service provided and lack of clarity as to how to sustain a service. However, there are clear examples of PES at work in practice.

There are five factors that are the basis of the PES scheme. These include: 1) the voluntariness of ecosystem services between the buyer and seller/provider; 2) a well-defined environment service (ES); 3) at least one buyer of ES; 4) at least one seller/provider of ES; 5) payments are conditional on the supply of the ES. Groups and organisations are likely to purchase ecosystem services, either to purchase carbon credits (as part of the Clean Development Mechanisms) or those that require fresh water, sustainable forests or any functioning ecosystem to continue (e.g. Panama Canal). These services are normally sold by governments who can organise carbon capture through avoided deforestation or other means, or owners of forests, wetlands, grasslands or any functioning ecosystems. Whilst it is the national governments and not Indigenous Peoples that enter into contracts for PES, the role of Indigenous Peoples cannot be overstated – they are vital as they provide crucial services as “stewards” of ecosystems as well as managing natural resources.

2) **REDD+ Carbon Sequestration Payments – Rights, Risks and Opportunities by Kanyinke Sena**

REDD+⁹ mechanisms involve offering incentives for developing countries to reduce emissions from forested lands and invest in low-carbon methods of sustainable development.¹⁰ It is important to note that since the programme’s launch in 2008, the value of these particular ecosystem services is still being debated, with the value of carbon at the centre of the debate. Given the difficulties of putting a value on carbon given location, size, concentration of biodiversity etc, this process is likely to take some time.

Putting a price on carbon increases the value of carbon stocks within a particular area, which is likely to have an impact on Indigenous Peoples who have traditionally inhabited forested areas. In particular, land tenure rights are likely to become increasingly difficult for Indigenous Peoples to advocate for when areas of land are “valued” according to their carbon stores. The question also arises as to ownership of the carbon on land inhabited by Indigenous Peoples. The potential sharing of any benefits derived from the pricing of carbon is also a relevant consideration for Indigenous Peoples. It will be crucial for Indigenous Peoples to be part of the discussion and decision making process whilst these elements are

⁹ “REDD” refers to the United Nations Collaborating Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries. See <http://www.un-redd.org/>

¹⁰ See “About REDD+”, UN REDD programme website at <http://www.un-redd.org/AboutREDD/tabid/582/Default.aspx>

still debated within the REDD programme. Safeguards for Indigenous Peoples should include carbon trade territories and national mechanisms for environmental impact assessments. IPACC proposes the linking of REDD+ with the African Commission on Human and People's Rights.

3) **Intellectual Property Rights Payments and the *Hoodia Gordonii* Case - Access and Benefit Sharing in Practice and Challenges in Governance by Johanna von Braun, Natural Justice**

The recently adopted Nagoya Protocol to the CBD¹¹ implies that those using the Ecosystem Services are obliged to pay for them. This provides an incentive for conservation but the question then arises as to whom obtains the benefit for the payment of such services? At a national level, governments will decide whether benefits flow directly to communities or whether the state as a whole will obtain the benefit.

The cases of *Hoodia Gordonii* and *Rooibos and Honeybush (the Nestle case)* were given as examples:

Case 1: Hoodia Gordonii Case

The Hoodia case involved the interactions between the Council for Scientific and Industrial Research, foreign pharmaceutical companies and the San People of South Africa (and later, San peoples across four African countries) over the traditional knowledge (TK) and genetic resources (GR) in the *Hoodia Gordonii* plant. Before the South African Access and Benefit Sharing (ABS) Regulation came into force, the San were compelled to organise a governance structure amongst themselves so as to liaise with the foreign multinational that wished to use Hoodia extracts to combat obesity problems in Western countries. Several challenges arose out of this case including governance challenges (issues in initial access to the GR, which was done without recognition of TK and without consent). As there was no appropriate rights framework in existence when negotiations took place, issues arose as to the sharing of the eventual benefits (which have been limited to date), the time lag between extracting the benefits from the genetic resource and the agreement made with the San and the eventual depletion of the resource due to poaching.

Case 2: Rooibos and Honeybush – the Nestle Case

Nestle obtained access to Rooibos (*Aspalathus linearis*) and Honeybush (*Cyclopia spp*) at a fair in France, without travelling to South Africa, the origin of these plants. They attempted to patent these and related products and argued that since they did not access the plants from South Africa, they did not have to deal with South African laws. Pressure was put on Nestle to liaise with the South African government, but they eventually decided not to continue with the patent application. Several challenges arose out of this particular case, including issues that arise when materials that would normally be protected by ABS laws are accessed outside their country of origin. In these situations, the question arises as to who owns the GR and TK and whether or not respective rights are being implemented in practice.

Discussion:

Discussions arising from the above two case studies highlighted the need for increased awareness of rights both within Indigenous communities and internationally; the capacity of Indigenous Peoples to negotiate; and the ability of Indigenous Peoples to provide evidence of their traditional knowledge.

¹¹ See <http://www.cbd.int/abs/>

Certain provisions were created within the CBD in order to stop the occurrence of offshore companies exploiting the traditional knowledge and genetic resources of Indigenous Peoples without sharing any benefits. Hence, the requirements of “free, prior and informed consent” and the equitable sharing of benefits under mutually agreed terms were addressed. However in practical terms, issues arise as to who can sell TK and GR (who “owns” the knowledge and resource?) and how these negotiations should take place given the different bargaining powers at play (what is the capacity of Indigenous Peoples to negotiate with different parties?). Lessons have been learnt

4) **Nagoya Protocol on Access & Benefit Sharing (ABS) – What are the opportunities?**

Equity and Benefit Sharing: The Nagoya Protocol on Access & Benefit Sharing by Kabir Bavikatte, Natural Justice

The Nagoya Protocol on ABS arose out of discussions and decisions in several Conferences of Parties to the CBD relating to access to genetic resources, fair and equitable sharing of benefits and the implementation of certain provisions of the CBD including Articles 8(j) and 15. These discussions arose out of issues with bio prospecting and piracy of Indigenous Peoples’ traditional knowledge (TK) for the Western market. Whilst the link between TK and GR is acknowledged in the Protocol, without implementation bio-piracy is likely to continue. However, the increasing emergence of jurisprudence with respect to and in acknowledgement of bio-cultural rights may assist in enforcing the spirit of the protocol within local jurisdictions.

The importance of Indigenous Peoples’ rights cannot be understated when discussing the emerging priorities in the Nagoya Protocol. Without clear and effective IP rights, access and benefit sharing becomes problematic if issues such as land tenure, consent, participation, equity, ownership of TK and GR, receipt of benefits and PES are not clearly addressed beforehand. The weaknesses in governance and community involvement are evident in the recent work of the CBD, for example the Programme of Work on Protected Areas: Governance and Participation, Equity and Benefit Sharing (preceding the Nagoya Protocol). Communities have had little involvement in the management of Protected Areas to date. In addition the GEI report mentions very little regarding the involvement of communities. The lack of willingness to recognise and acknowledge the rights of Indigenous Peoples is not only featured in the work of international conventions, but in the domestic legislation of the majority of the 193 parties of the CBD. Until the terms of the Nagoya Protocol are implemented (currently no states have signed this protocol), it will be difficult for Indigenous Peoples to enforce their rights to protect their own TK and GR. For example, whilst there is currently no patent for products derived from the Hoodia plant, numerous companies sell Hoodia-based products with no benefit to the San. The San are unable to address their claims.

Discussion Points:

TK and GR can be exploited to the detriment of Indigenous Peoples who have developed TK or GR over generations. Whilst the GEI hopes to reform thinking as to the actual value of GR, any reforms in the economic process must be done with a view to the protection and strengthening of Indigenous Peoples.

1. Governance

Proposed Group Work – Brainstorming & Key Notes:

Participants were divided into small groups to reflect on issues to be considered and implemented. Topics included whether the GEI proposition was a good idea; Indigenous Peoples' governance and sustainability in relation to GEI; GEI with respect to extractive industries; and the capacity of Indigenous Peoples with regard to GEI and Indigenous investment.

1) Is the GEI proposition a good idea?

Benefits of the GEI acknowledged included the possible reduction of climatic impact; potential reductions in the use of dangerous gases; the impacts of floods and droughts; the reduction of poverty amongst Indigenous Peoples; the creation of jobs; potential recognition of Indigenous Peoples' knowledge and governance; and the advantages of solar energy creation in Africa. Potential negative aspects of the GEI included the probable expense for African countries in implementation; the lack of existing governance; the very real danger that Indigenous Peoples will have no opportunity to contribute to relevant discussions on GEI; and the fast pace of GEI discussions and implementations hindering Indigenous Peoples from keeping up with GEI progress.

In light of the above, the group decided that there should be full consultation and participation of Indigenous Peoples with respect to the GEI as well as the inclusion of Indigenous Peoples' governance and TK and its real value. Indigenous Peoples ought to be acknowledged as "experts" with respect to their ecosystems and included in governance processes and discussions, not simply for the sake of being heard but to ensure that their opinions are given due weight.

2) Indigenous Peoples Governance and Sustainability in relation to the GEI. Current practices and involvement of the Indigenous People (natural resource traditional management systems) in the management of the natural resources

There is a need for legislative reforms that will recognise Indigenous Peoples and the vital role they play in the success of the GEI. Whilst there is a direct relationship between legislation, recognition of Indigenous Peoples and the implementation of the GEI, many countries do not recognise the rights of Indigenous Peoples. Traditional systems of governance within Indigenous communities need to be reinforced thereby enabling Indigenous Peoples to play a meaningful role in discussions at local, national and international levels, the outcomes of which will heavily impact on the lives of Indigenous Peoples in the present and future. Presently, governments are making decisions, usually based on financial profit, without any consultation with Indigenous Peoples. Indigenous Peoples must be more confident in their knowledge of the issues, so as to express a strong, united African voice on the matters at hand.

3) GE and Extractive Industries: What are the opportunities with the GEI?

A number of issues were discussed. A real, "GEI" analysis on mining costs is likely to produce interesting results and case studies ought to be prepared on current and old mines so as to gauge long and short term impacts. Presently, Africa is a large source of wealth for extracting industries, yet the poverty of Indigenous Peoples is overwhelming. Sustainable mining should be pursued as an alternative option to current mining practices that have deleterious effects on the environment and local populations. In particular, Indigenous Peoples have TK on non-invasive mining that should be utilised, both to the

benefit of the TK holder and the environment. A further important consideration for Indigenous Peoples is the mining of sacred sites and forests. Often valuable and biodiversity-rich ecosystems have cultural and religious significance to Indigenous Peoples, though this is not a factor taken into consideration by extracting industries. The value of lands must be considered holistically.

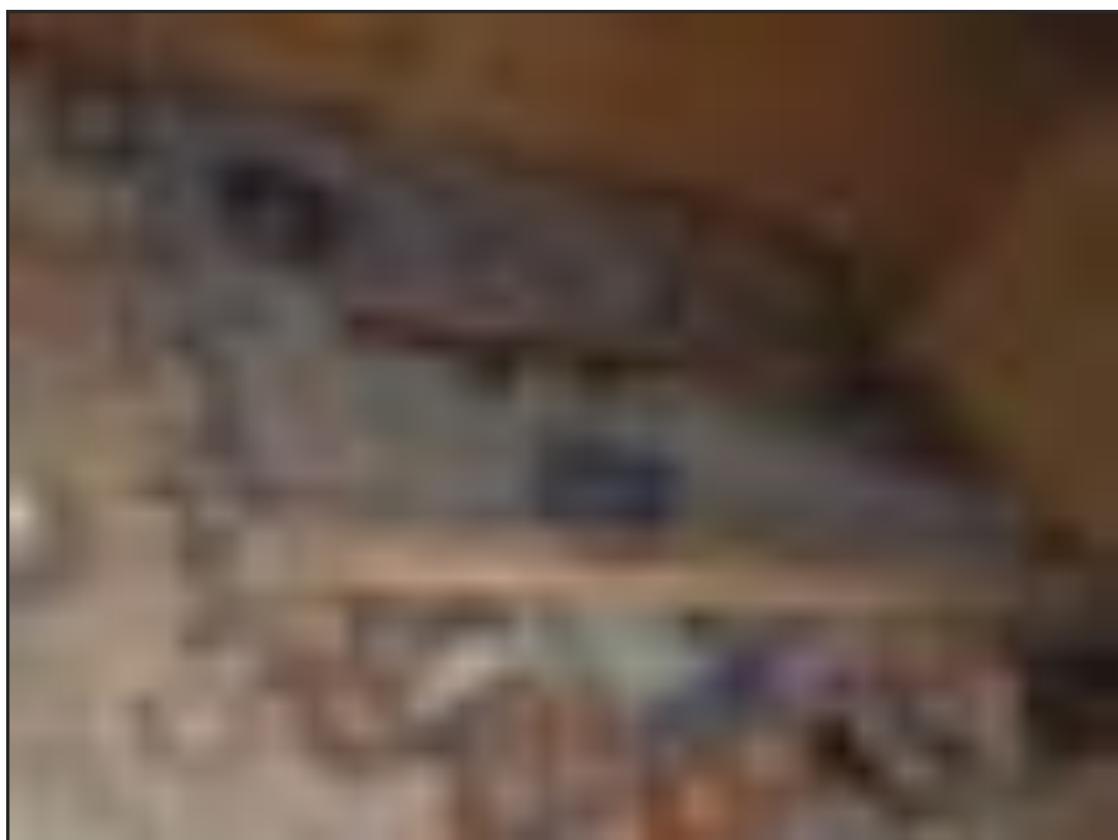
Delegates are somewhat hopeful that the GEI will create opportunities for Indigenous Peoples to enter into useful dialogue with extracting industries.

4) Indigenous Capacity: If the GE is going to be a success, there is a need for indigenous investment in this area.

Participants argued strongly that increased capacity is required by both Indigenous Peoples, so as to increase their awareness and skills with respect to their rights and other issues, and by governments, so they are more aware of the roles Indigenous Peoples play with respect to ecosystems in their everyday function (given their stewardship role). There is an unavoidable link between Indigenous Peoples' rights, the environment, land tenure and customary law - yet there is no indication of these links and their significance in the GEI report. It is vital that Indigenous Peoples are given the opportunity to build their capacity so as to have a voice in relevant discussions. This is to ensure that all parties are equal in their ability to discuss and advocate their respective positions. Whilst capacity is required in order to "level the playing field", there is no indication of this in the GEI report.

5) General Comments

General comments were made as to the accountability of states (or lack thereof) to citizens and the global community. In particular the GDP of the poor was discussed, as were potential ways in which Indigenous Peoples could rewrite the GEI to include important aspects of their lives and livelihoods not presently considered in the calculations of "natural capital".



DAY TWO

Review of Day One in the Form of a Role Play

Role Play: Industrial development or Indigenous Peoples' survival?

The workshop enacted a role play to review the first day's intensive session on the issues of the Green Economy. The role play turned out to be much richer and more helpful than was expected.

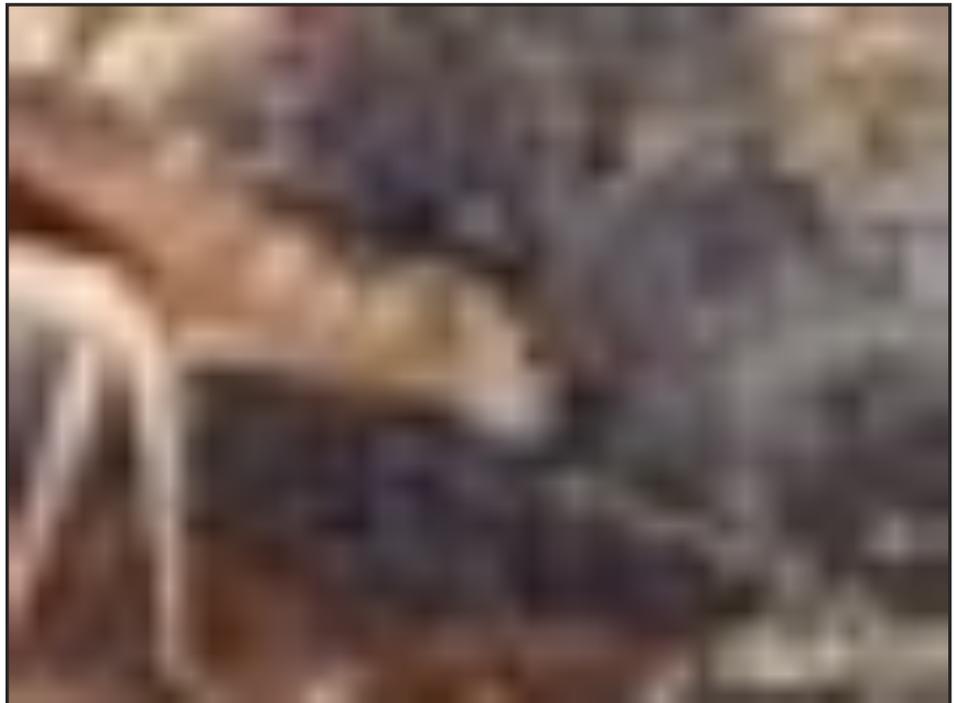
The scenario was a fictitious Parliamentary briefing session on whether an oil pipeline should be built from Angola to South Africa, running through sensitive environmental sites in Namibia where Indigenous Peoples reside. Characters included an African investor and philanthropist, the Minister of Finance, the Minister's legal advisor, an Indigenous representative and a Parliamentary Portfolio Committee.

Each representative expressed their respective concerns including impact on Indigenous Peoples, long term environmental impacts, employment vs. social problems created by displacement, possible alternate routes (for the pipeline), an EIA, job creation, poverty, international relations and state sovereignty.

Questions were put by the Portfolio Committee for comment, including the wisdom of investing in the oil industry; consideration of the country's other alternative resources; examination of PES as an alternative; questioning the impacts on the quality of life of Indigenous Peoples; and examining the balance between economic development and the value of our own management of our territories by the indigenous people. The Panel had an opportunity to respond, noting the creation of "green" jobs, the need for an EIA, and the possibility of looking at renewable energy alternatives.

Key-Points and Observations

A number key points and observations were made. It was startling to see how quickly everyone accepted their roles and the challenges that arose listening to different positions. It was obvious that those interested in business and finance issues were not concerned about human rights or the environment. Arguments for a low-carbon economy or against environmental degradation were not convincing to those in power.



However, some important points triggered more serious dialogue:

1. Nobody contested the legitimacy of the 'Green Economy' – whether you like the GEI or not, it is providing a platform for different stakeholders, rights holders and interest groups to meet around a single policy table and talk about sustainability, energy, poverty and economics all in a single context;
2. Questions were raised about serious environmental crises that could lead to public scandals or international policy fallout;
3. Opening the question of alternatives which would do less damage to the environment and local economics was more productive than insisting on diametrically opposed ideologies, such as going for renewable energy. Where the government had no real interest in renewables, they were not seriously going to entertain this option;
4. Pan-African political discourse is used to threaten those standing up for the environment – Pan-Africanism can be misused by politicians to favour 'national' development at the expense of the environment and local communities. IPACC needs to think about a counter-argument to this abuse of Pan-African discourse;
5. Environmental Impact Assessment (EIA) is a far weaker tool than analysing the economic value of natural resources to poor and indigenous communities. Here IPACC members strongly support the GEI's use of innovative economic models;
6. Those fighting against the investment forgot to use the "GDP of the poor" argument, which would be helpful when dealing with economists and the Ministry of Finance;
7. Politicians are always in a difficult position and often make short-term decisions. How can we put the longer-term at the forefront of the discussion?;
8. Sometimes you do not need to concentrate on the politician, but concentrate on the policy advisor. In this case, it was evident that the legal advisor was aware of the risks involved, and would be able to influence the Minister to a degree. Lobbying and advocacy using Green Economic arguments needs to be well planned;
9. For Indigenous Peoples to make effective use of some of the tools in the GEI kit, there needs to be capacity building and closer cooperation with experts who understand economic decision making, environmental issues, and policy processes;
10. Indigenous Peoples are only at the 'table' when they are able to participate in decision-making. Being present in Parliament and similar forums is critical to have influence. Indigenous Peoples in Africa need a robust civil society, but they also need a place in the political system to have a direct say in decisions affecting their peoples;
11. Electoral politics are often the downfall of Indigenous Peoples in Africa. In election years, Indigenous Peoples seem to be sacrificed for votes, regardless how just their cause –therefore timing is important in advocacy;
12. Media play a highly influential role. Lobbying the media and educating journalists about the importance of a deeper understanding of the GEI (not how it is sold to them), would help indigenous people put pressure on policy makers; and
13. Generally, there is a need for training at all levels. A "bridging" language that is understood by all actors – Indigenous Peoples, ministers, and company representatives - is required to assist and encourage with sympathetic decision-making and strategy formulation.

Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity

After the role play, the participants discussed the Addis Ababa Principles¹². These consist of 14 practical principles, operational guidelines and instruments that help govern the uses of components of biodiversity to ensure sustainability.¹³ The principles were discussed with respect to TEEB for Indigenous Peoples, the GDP of the poor and the need for Indigenous Peoples to have the opportunity to discuss and provide input regarding potential development proposals and uses for lands traditionally inhabited by such groups. Government investment must be made to assist Indigenous Peoples develop the capacity to provide this input so that they can competently engage in processes. In addition, when making decisions on the viability of a development project, EIAs are simply not enough to determine the real impact – short and long term – on ecosystem services and thus Indigenous Peoples. The Green Economy is a legitimate platform for Indigenous Peoples to engage in dialogue, though this is limited.

Indigenous Economics, Traditional Knowledge and Genetic Resource Conservation

The role of Indigenous Peoples as actors within the GEI was discussed, including what individual participants were aware of in terms of sustainability, environment management and governance. The following statement was also discussed:

‘Indigenous Knowledge is an asset of great value to Indigenous Peoples. How can it be applied to environmental sustainability and livelihoods?’



¹² <http://www.cites.org/eng/res/13/addis-gdl-en.pdf>

¹³ See <http://www.cbd.int/sustainable/addis.shtml>

Environmental Sustainability/Sustainable Livelihoods: Points made by participants

1. TK is of crucial value to the management of local ecosystems.
2. The value and services provided go beyond the local and regional (material).
3. Community livelihoods benefit from projects such as tourism.
4. Biogas projects are positive and sustainable.
5. The value of Indigenous People's TK is a world heritage.
6. Assessing the real cost of this value will allow for better outcomes in negotiations.
7. The fact that IPs have sacred sites means that in practice they protect them.
8. It is important to give IPs the opportunity to manage their own ecosystems.
9. Maintaining oases and the management of herds play a key role in ecosystem management.
10. In many instances TK is already in use for sustainability and livelihoods.
11. Therefore TK must be valued by governments.
12. TK already conserves biodiversity, which is the basis for treatments, medicines, and foods.
13. By giving attention to TK, we draw attention to how IPs are contributing to conservation.
14. The next step is the recognition of TK in its context – what is the traditional framework that sustains TK (tribe system / belief systems) and how to link that framework to national policy and institutions.
15. Security of access to lands and resources occupied by the Indigenous Peoples, not only in terms of tenure but also in terms of customary law and governance.
16. We have to sustain indigenous medicine which carries with it spiritual values.
17. The need to identify practices of Indigenous Peoples that have economic value and contribute to sustainable livelihoods.
18. TK equals biodiversity itself (you can only value biodiversity through TK).
19. TK has its greatest value (biodiversity + livelihoods) in its place of origin.

The list was reduced into draft statements.

Action Planning- Defining Three Key Messages

The participants engaged in group discussions on practical measures to map the way forward. This included strategies on getting the message across, such as liaising with African regional decision makers, national political influences, alliances with civil society organisations and IUCN regional Conservation Forums, and with the World Conservation Congress.

The participants also discussed strengthening our work through various alliances including the media, NGOs, civil society networks (such as PACJA), religious/faith-based organisations and State parties. With respect to interactions with the media, it was highlighted that a clear, strategic message to different sources of media is necessary, together with training, financial resources, technology and legal advice. It was suggested that events be organised, NGOs be invited to share information and networks be built. In addition, there should be face to face meetings with religious representatives and the sharing of experiences through visits to respective religious sites. Strategies were also devised as to what should be done prior to, during, and after AMCEN.

The following were also suggested, specifically with respect to the outcomes of this meeting:

- Forwarding the outcomes of the meeting to GEI and starting a dialogue with prominent actors in UNEP and other relevant bodies;
- Forwarding the meeting documents/declaration to the NGO network PACJA to strengthen the African position on the GEI.

Closure and Thanks



APPENDIX 1
IPACC – Natural Justice Workshop on African Indigenous Peoples and Green Economy / Green Governance

Participants List
August 16 – 17, 2011

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APPENDIX 2

Indigenous Peoples of Africa Coordinating Committee

|| Hui!gaeb Statement on Green Economy, Equity & Green Governance

IPACC Recommendations to UNEP and African State Parties to the Rio Conventions on the Green Economy Initiative and the need for robust Green Governance

August 15-16, 2011

The Indigenous Peoples of Africa Coordinating Committee (IPACC) appreciates the underlying principles of the **Green Economy Initiative** (hereinafter GEI) and encourages all African State parties and African Indigenous Peoples' organisations to support the Initiative, with the following specifications:

- IPACC calls on African States to reduce Green House Gas (GHG) emissions unilaterally, and move to national and regional economies which are sustainable, equitable and assist in environmental rehabilitation and resilience;
- IPACC notes that a sustainable low-carbon, equitable economy is not a new concept; this is the basis of Indigenous Peoples' survival for millennia. Africa needs to assert its own approach to sustainability without excessive GHG emissions or further environmental degradation;
- IPACC calls for the removal of the phrase '*natural capital*'. According to capitalist theory, capital does not include the inherent value of an item (such as life sustained by a water catchment or the value of a sacred forest); it is related to *market value* and only becomes '*capital*' when it is possible to convert the capital value of the item by selling the commodity into a market system. IPACC's members strongly believe, according to indigenous culture and values, that nature is inherently valuable, is sacred to our ancestors and provides a future for the next generations. Nature should not solely be defined as part of the money-commodity circuit in UN or national policies; this would undermine the core principle of sustained stewardship for intergenerational benefit, the foundation of indigenous beliefs. IPACC rejects the misuse of this term by UNEP in the GEI terminology. IPACC calls on African leaders to distinguish between the *inherent value of nature*, and capital value of natural resources and ecosystem services;
- IPACC strongly supports the integration of innovative economic cost-benefit analyses into national policy and decision-making procedures that take into account the dependence of Indigenous Peoples and local rural communities on natural resources (ie. *GDP of the Poor*). Governments need to factor in any degradation or alienation of such resources and ecosystems services before granting concessions to extractive industries or pursuing land privatisation at the expense of the environment or people reliant on the environment;
- IPACC supports the GEI emphasis on social equity. The growing gap between rich and poor, *haves* and *have-nots* is exacerbating environmental degradation. This is true inside Africa and globally;
- IPACC supports the call to end subsidies to sectors that are damaging the environment, most notably mining and coal-fired electricity, and shift tax advantages and subsidies to renewable energy, and community-based conservation of biodiversity and ecosystems; and

■ IPACC recognises that Payment for Ecosystems Services (PES) agreements may provide certain income opportunities for stewards of natural resources and ecosystem resilience. However, there is a potential contradiction between the reality that African Indigenous Peoples are heavily reliant on natural resources and run the risk of alienation from such resources when PES cuts the community off from sustainable use of these resources. PES should be approached as an *additive opportunity* on top of secure land tenure and secure tenure rights over sufficient natural resources to conserve biodiversity, ecosystems services and Indigenous Peoples' livelihoods.

IPACC notes the following **omissions** from the GEI which should be included in the revised version and supported by the Africa Group at the 2012 Earth Summit, Rio+20:

- Indigenous Peoples are historic and contemporary stewards of biodiversity – any attempt to achieve a Green Economy must also include attention to empowering local stewards and indigenous institutions;
- Governance is a major problem in sustaining biodiversity and ecosystems. Africa's environmental problems are in part due to the legacy of colonialism which undermined equitable governance of resources in Africa and overly centralised decision-making. Green Economy must be supplemented with greater attention to **Green Governance**;
- GEI should make explicit reference to decisions agreed to by Parties to the Convention on Biological Diversity (CBD), notably Articles 8j, 10c, and Element 2 of the Programme of Work on Protected Areas; the Akwé: Kon-Voluntary Guidelines for the conduct of Cultural, Environmental and Social Impact Assessments¹⁴ regarding developments proposed to take place on, or which are likely to impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities; the Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities; and the Addis Ababa Principles and Guidelines on the Sustainable Use of Biodiversity;
- Fundamentally, IPACC is concerned about the ability of multinational extractive industries to manipulate African political systems to their own ends, creating greater poverty and environmental degradation. This is evident in mining, forestry, industrial agriculture, industrial fisheries and fossil fuel extraction. Rio+20 and the GEI must support a more robust system of international norms and standards able to protect local stewardship and the rights of Indigenous Peoples as defined in the UN Declaration on the Rights of Indigenous Peoples, in line with the principles of the African Charter on Human and Peoples' Rights and the African Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources;
- African Indigenous Peoples typically live only partly in the wage and commodity economy. African herders and hunter-gatherers are still partly in the subsistence economy, which relies on the good governance and sustainability of biodiversity and ecosystems services. The wealth of Indigenous Peoples is found in the health of the environment, livestock and wild natural resources, both floral and faunal. The aim of a Green Economy should be to support indigenous territorial governance and sustainable use of natural resources, while at the same time developing opportunities for equitable integration into the national wage economy. Such policy evolution should be developed through the full and effective participation of Indigenous Peoples;

¹⁴ <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>



- Traditional Ecological Knowledge (TEK) is a valuable resource of Indigenous Peoples in Africa. The GEI fails to take account of how important knowledge of biodiversity is when promoting a Green Economy, improving governance and equity, and empowering the rural poor. Greater attention to collective, community-based intellectual property rights, and the application of TEK in conservation and land management would directly address all of the primary goals of the GEI;
- GEI repeatedly refers to agriculture. IPACC reminds African leaders and UNEP that there are over 40 African peoples who live partially or primarily from hunting and gathering wild resources. There are tens of millions of Africans who rely on transhumant pastoralism. Both systems rely on ecosystem management and natural resource governance, usually misunderstood or ignored by Ministries dealing with agriculture. IPACC recommends that an African approach to Green Economy needs to recognise the valuable role that hunter-gatherer and pastoralists have played in sustainability and conservation of natural resources. Wild food products need to be legally recognised and protected for sustainable use, as the foundation of indigenous subsistence, health and culture;
- IPACC notes the reference in the GEI to the threat of growing urbanisation. Support for the sustainable livelihoods and governance of Indigenous Peoples is also a contribution to rural areas. Indigenous Peoples are not seeking to move into the urban areas, this only happens when rural economies are undermined. An African approach to GEI should also focus on sustainable rural subsistence and livelihoods.

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