

The Protection of Traditional Knowledge in Latin America

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Key questions to address

1. What *is* traditional knowledge (and folklore) ?
2. *Why* do we want to protect TK (objectives) ?
3. *How* do we want to protect TK ?

It is difficult to *define* traditional knowledge but relatively easy to identify how it expresses itself

- Film settings, sceneries, landscapes
- Photographs which include TK manifestations
- Dances, musical instruments
- Food recipies, drinks
- Medicinal plants and practices
- Potions, lotions, scents, cosmetic uses
- Seeds, native crops and animal breeds
- Tools, agricultural technologies and techniques
- Styles and designs
- Traditional names of plants, products
- Customs
- Traditions, stories, religious ceremonies
- Textiles, garments

Why do we want to protect TK and folklore in Latin America ?

1. Realization that third parties are benefitting without recognition, consent, attribution, compensation to indigenous and local innovators and creators
2. A “feeling” that in some way, TK is being exploited and privatized (e.g. through “biopiracy” and illegal access to and use of TK)
3. Inequitable, unjust, unfair, illegal access to and use of biodiversity and genetic resources (to which TK is essentially connected)

What are the objectives of protecting TK in Latin America?

- 1. Compensation**
- 2. Control**
3. Exclusion of third party access and use (unless authorized)
4. Recognition of “collective” rights over TK
- 5. Prevent misuse or illegal use**
6. Maintaining and preserving TK

How can TK be protected ?

- Contracts, licenses (control - exclusion)
- Funds (compensation)
- Registers (preservation in time)
- Classic intellectual property tools (copyright, trade secrets, unfair competition rules, plant breeders rights, marks, etc.) – *problems in actually utilizing these tools*
- Defensive protection – impeding wrongful granting of patents based on TK
- *Sui generis, ad hoc* instruments and tools (including access to genetic resources legislation)

Legal advances in Latin America

Country	Law	Scope	Type of protection and who provides PIC
Andean Community	Decisions 391 and 486	TK related to biodiversity (intangible)	Defensive protection of TK
Panama	Law 20 and its regulation	Folklore, arts, handicraft (tangible)	Right granting register – Indigenous Congress
Peru	Law 27811	TK related to biodiversity (intangible)	Registers, licences, trade secrets – representative org.
Ecuador	Draft Law for TK	TK related to biodiversity and folklore (both)	Registers and contracts – represent. org

Country	Law	Scope	Type of protection / PIC
Costa Rica	Law 7788	TK related to biodiversity (intangible)	Sui generis intellectual collective rights – indigenous communities authority
Brazil	Provis. Measure 2.186-16	TK related to biodiversity (intangible)	Right to decide – representative of community
Peru	Law 28216	TK and genetic resources	Institutional body to prevent biopiracy

Challenges ahead in the region

- Seeking effective implementation of laws
- Addressing the situation of indigenous peoples in relation to: lands and territories, marginalization, capacity building in TK related issues (legal assistance), access to administrative recourses and bodies
- **Addressing critical issues such as: shared TK and how to obtain *valid* prior informed consent (representative organizations)**
- How to create/find positive synergies between indigenous peoples interests and expectations (including customary rights) and “formal” or prevailing legal systems
- Addressing “non biodiversity” related creations – folklore expressions (songs, dances, textile designs, ceramics, etc.) and their widespread commercialization

Thank you

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