

# INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

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WIPO Panel on: "Indigenous Peoples' Perspective on: The right to maintain, control, protect and develop their intellectual property over traditional knowledge' (*Article 31, UN Declaration on the Rights of Indigenous Peoples*)".

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*'Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.'* **United Nations Declaration on the Rights of Indigenous Peoples, Article 31, 2007**

## Introduction

For centuries Indigenous Peoples have lived a way of life that they believe is God given. A life full of resources that need to be protected, life with structures that ensures ownership of a cultural heritage. Included in the resource is the traditional knowledge that gives a fundamental component of identity to a community with a speaking native languages, production of artisan goods, music, cloth and medicinal plant. Traditional knowledge often cannot be dissociated from its cultural and institutional setting. This knowledge is vital for sustainability of natural resources, and ecosystems across landscape continuum spanning from households through farms, villages, and wilderness.

It is now almost six years since the UN General Assembly in its 107th plenary meeting 13<sup>th</sup> September 2007 approved the Declaration on the Rights of Indigenous Peoples. This is a declaration where indigenous peoples had worked for years to make it a success. This is what has given us strength and visibility in many forums, conferences and even on activities at different levels. It is a declaration where most of us are proud to see and use. Even though most of the African Countries did not support it at the beginning, there is a lot of awareness now in many countries of Africa and especially that the African Commission on Human and Peoples Rights has embraced it and accepted to us it as an Instrument to help the advancement of Indigenous communities in Africa.

The Declaration from its preamble has strong language which introduces Articles that are easy to understand use and work with.. A good example is in the 9<sup>th</sup> paragraph of the preamble *“Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment”*, This introduces clearly Article 31 *“which gives a strong reason why Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.”*

Traditional knowledge is not so-called because of its antiquity. It is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity. As such, it is not easily protected by the current intellectual property system, which typically grants protection for a limited period to inventions and original works by named individuals or companies. Its living nature also means that “traditional” knowledge is not easy to define.

Africa is economically the least developed continent, and yet is one of the best endowed in biological diversity resources. The continent is particularly rich in cultures, traditional, crops and diversity of medicinal plants, the economic value of these resources has not been quantified.

The knowledge and innovation that its peoples have developed to use and conserve these resources is based on indigenous practices developed and tested over generations. Recognizing traditional forms of creativity and innovation as protectable intellectual property would be an historic shift in international law, enabling indigenous and local communities as well to have a say over the use of their traditional knowledge by others. This would make it possible, for example, to protect traditional remedies and indigenous art and music against misappropriation, and enable communities to control and benefit collectively from their commercial exploitation.

For Africa patents or other forms of intellectual property rights on living organisms have profound implication for communal livelihood that has sustained the continent for generations. The 1992 Convention on Biological Diversity recognizes in its Preamble, the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.

This Convention in its Article 8j and related provisions further requires that every Contracting Party should respect, preserve and maintain knowledge, innovations and practices of traditional and local communities and promote the wider application with the approval and involvement of the holder of such knowledge, innovations and practices and encourage the equitable sharing of the benefits. As nations implement the Convention on Biological Diversity (CBD) work programs, apply its guidelines, and execute national strategies, its influence on science is likely to grow. CBD-compliant national laws and policies already set priorities for research and affect the way in which scientists can access and use genetic resources (Kate, 2002).

The types of rights Africa needs are not those which monopolize for commercial purposes what belongs to communities through privatization, but those rights that recognize and protect the lives and livelihoods of local communities, including farming communities, and Indigenous Peoples. These communities continue to conserve and enhance biodiversity, and maintain stable ecosystem on which human beings and other species depend for their lives. Their livelihoods provide this benefit to present future generations, and they see this as their responsibility inherited from past generations and to be handed to the next generation.

Just like the United Nation Declaration on the Rights of Indigenous Peoples in article 31 emphasizes on right to maintain, control, protect and develop cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, Article 10.of the Biodiversity Convention gives guidance on Sustainable Use of Components of Biological Diversity and encourages the need “ c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements; “

It is for this reason that the Nagoya protocol on access to genetic Resources and the fair equitable sharing of benefits arising from their utilization to the convention on biological diversity has in its preamble;

*Recalling the relevance of Article 8(j) of the Convention as it relates to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge,*

*Noting the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities,*

The protocol goes on affirming the importance of traditional knowledge and why it is critical for Parties to supporting Indigenous Peoples and local community not have a voice but also protect and be the people to stop over exploitation. (Article 6, 7, 12,)

The promotion of traditional knowledge should be based on the recognition that natural resource rights and land tenure and security of Indigenous Peoples and local communities forms the fundamental basis of respecting traditional knowledge. More attention is needed on protection of intellectual property rights of Indigenous Peoples communities. Traditional knowledge and traditions can contribute to advancement of any communities as long as their traditions cultures and folklore are recognized and respected. They can plan their development

activities be based on both geographic and traditional community boundaries which they know and respect.

Human ecological perspective is vital in crafting the sustainability science for natural resource management. Equity of knowledge also provides opportunity for local people to participate in the management of local affairs with global implications. It also provides the opportunity for self-determination. The process of acquisition, transmission, integration, and field application of traditional knowledge on tree-planting with formal science promises to enhance the productivity and efficiency of managing the natural resource. By acknowledging and making use of peoples' knowledge we shall also promote the principle of equity of knowledge (Pandey, 1998). Equity of knowledge between local and formal sciences results in empowerment, security and opportunity for local people. If the state and formal institutions incorporate people's knowledge into the resource management decisions, it reduces the social barriers to participation and enhances the capacity of the local people to make choices to solve the problem. Traditional societies have accumulated wealth of local knowledge, transmitted from generation to generation. Experience has taught them how natural resources should be used and managed. Equity of knowledge can also enhance the security in its broadest sense. By capitalizing on the collective wisdom of formal and traditional sciences, we shall be able to help people address the problem of global warming as well as to manage the risks they face because of the destruction of the local resources.

There is a strong following for the idea that indigenous knowledge and relations with the natural world can teach developed nations to better manage their resources and to protect the planet. However, these practices are declining rapidly, in part because some development projects contribute to changes in the traditional way of life. It comes as no surprise that knowledge of resource and ecosystem dynamics and associated management practices exists among people of communities that, on a daily basis and over long periods of time, interact for their benefit and livelihood with ecosystems ( Berkes et al. 2000, Fabricius and Koch 2004). The way such knowledge is being organized and culturally embedded, its relationship to institutionalized, professional science, and its role in catalyzing new ways of managing environmental resources have all become important subjects (Kellert et al. 2000,)

## Recommendations

- Innovative projects may need to be developed that aim at the enhancement of the capacity of local communities to use, express and develop their traditional knowledge on the basis of their own cultural and institutional norms.
- There is an urgent need for the integration of Traditional and formal sciences that will help the development of methods for mutual learning between local people and the formal scientists.
- It is important that we encourage the documentation of indigenous knowledge and its use in natural resource management. Such documentation should be carried out in participation with the Indigenous Peoples and local communities that hold the knowledge. The documentation should not only consist of descriptions of knowledge systems and its use, but also information on the threats to its survival.
- Exchange of information and sharing of success stories, experiences and activities amongst practitioners of local knowledge.
- Education is key to all development; it is then crucial to develop clear and concise educational material on traditional knowledge systems to be used in communication activities to impart information regarding the merits and threats to indigenous knowledge systems to both policy makers and the general public.
- Capacity building and the development of methods for providing formal training and education in traditional knowledge systems to agencies, researchers and practitioners who work in collaboration with communities is important for them to understand and appreciate the communities and their way of life.
- Indigenous peoples should be encouraged at all levels to develop their oral traditions, literatures, designs, sports and traditional games and visual and performing arts. This will ensure the young children and the coming generation to learn from each other
- Involve Indigenous Peoples and local communities when developing new methods for incorporating local knowledge systems in natural resource management regimes through action research, aimed at assessing the possibilities and constraints of using traditional knowledge under specific conditions. Such research projects should move

beyond the first generation research projects, which aimed at demonstrating the value of local knowledge by focusing on successful cases of application

## **Conclusion**

In conclusion Article 31 of the Un Declaration on the rights of Indigenous Peoples clearly reaffirms that Indigenous Peoples have controlled conserved and protected, their natural resources. The lands that they own and maintain have helped them continue maintaining their cultures traditions songs literature, traditional science of medicines. Through out the decades they have proved that they have the rights to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. We have come found our grandparents and parents conserving and protecting our cultural heritage cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, medicines, knowledge of the properties of fauna and flora. WE need to make sure we pass it on and make sure that that we do not deny the next generation what we found and it is our hope that all the efforts undertake to reaffirm our rights can be maintained considering the vital role Indigenous Peoples and local communities play in sustainable development.

## References:

Berkes, F., Colding, J., and Folke, C. (2000). Rediscovery of traditional ecological knowledge as

Berkes, F., and C. Folke. 2002. Back to the future: ecosystem dynamics and local knowledge. Pages 121–146 in L. H. Gunderson and C. S. Holling, editors. *Panarchy: understanding transformations in human and natural systems*. Island Press, Washington, D.C., USA.

CE, Acosta-Belén E, editors. Women in the Latin American development process. Philadelphia: Temple University Press; 1995.

Gadgil 1994 & 1996, Gadgil *et al.* 2000. Inventorying, monitoring and conserving India biological diversity. *Current Science* 66: 401-406

Gadgil, M, Seshagiri Rao, P. R., Utkarsh, G., Pramod, P., Chhatre, A., and members of the People's Biodiversity Initiative. (2000). New meanings for old knowledge: the people's biodiversity registers program. *Ecological Applications* 10: 1307-1317.

J. A Ekepere ( 2001) The African Model Law; The protection of the rights of local Communities, Farmers and Breeders, and for the Regulation of Access of Biological Diversity- *2<sup>nd</sup> Edition*.2,3.9,appendix preamble -33.

Kate, K.t. (2002). Science and the Convention on Biological Diversity. *Science* 295: 2371-2372.

Kellert, S. R., J. N. Mehta, S. A. Ebbin, and L. L. Lichtenfeld. 2000. Community natural resource management: promise, rhetoric, and reality. *Society and Natural Resources* 13:705–71

Margo Johnson (2011) graduate student Barrett the Honors College at Arizona State University. Bose

Pandey, D.N. (1998). *Ethnoforestry: Local Knowledge for Sustainable Forestry and Livelihood Security*. Himanshu/AFN, New Delhi.

Pandey, D.N. (2000). Sacred water and sanctified vegetation: Tanks and trees in India. Paper presented in IASCP Workshop, Bloomington, 31 May-June 2000.

UNDRIP (2007) United Nations' Declaration on the Rights of Indigenous Peoples

UN Convention on Biological Diversity (1992) Preamble, article 8j and related provisions

UN SCBD (2011) Nagoya protocol on access to genetic Resources and the fair equitable sharing of benefits arising from their utilization to the convention on biological diversity