

United Nations Conference on Trade and Development

**PROTECTING AND PROMOTING
TRADITIONAL KNOWLEDGE:
SYSTEMS, NATIONAL EXPERIENCES AND
INTERNATIONAL DIMENSIONS**

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Contents

Foreword	iii
Acknowledgements	iv
Acronyms	ix

Introduction and Overview	xiii
Sophia Twarog and Promila Kapoor	

PART ONE: THE ROLE OF TRADITIONAL KNOWLEDGE IN HEALTHCARE AND AGRICULTURE

TRADITIONAL MEDICINE

Traditional Medicine: Its Importance and Protection	3
Xiaorui Zhang	

The Use and Commercialization of Genetic Resources and Traditional Knowledge in Vietnam: The Case of Crop and Medicinal Plants	7
Le Quy An	

Traditional Medicine in Burkina Faso	15
Zéphirin Dakuyo	

The Role of Traditional Knowledge in the National Economy: Traditional Medicine in Tanzania	17
Paulo P. Mhame	

AIDS and Traditional Health Care in Africa: The Role of Traditional Healers in Prevention Strategies and Treatment Options	21
Martin Shenton	

FOOD AND AGRICULTURE

Using Farmers' Traditional Knowledge to Conserve and Protect Biodiversity: the Ethiopian Experience	25
Tesfahun Fenta	

Genetic Resources and Traditional Knowledge in Brazil	29
Antonio C. Guedes and Maria José Amstalden Sampaio	

Conservation and Utilization of Plant Genetic Resources for Food and Agriculture: Strengthening Local Capacity for Food Security	33
Murthi Anishetty	

A Food System Overview	41
Geoff Tansey	

PART TWO: PROTECTING TRADITIONAL KNOWLEDGE

Preserving, Protecting and Promoting Traditional Knowledge: National Actions and International Dimensions	61
Sophia Twarog	

INTERNATIONAL DIMENSIONS

The Importance of Traditional Ecological Knowledge and Ways to Protect It	71
Gonzalo Oviedo, Aimée Gonzales and Luisa Maffi	

Recommendations to UNCTAD from Indigenous Groups in Attendance	83
Protecting Traditional Knowledge, Innovations and Practices: The Indian Experience	85
Atul Kaushik	
International Bodies and Traditional Knowledge	91
Manuela Cameiro da Cunha	
Protecting Traditional Knowledge: An Industry View	93
Tim Roberts	
Protection of Traditional Knowledge on Biological Diversity at the International Level: Reflections in Connection with World Trade	95
Susette Biber-Klemm	
The Use and Safeguarding of Folk Handicraft as <i>Sui Generis</i> Intellectual Property	107
Vlasta Ondrusova	
<i>INTERGOVERNMENTAL ORGANIZATIONS</i>	
Note by the Executive Secretariat of the Convention on Biological Diversity	111
Secretariat of the Convention on Biological Diversity	
Intellectual Property and Traditional Knowledge: The Work and Role of the World Intellectual Property Organization (WIPO)	121
Shakeel T. Bhatti	
Traditional Knowledge: Resisting and Adapting to Globalization	131
Douglas Nakashima	
Plant Variety Protection and the Protection of Traditional Knowledge	135
Barry Greengrass	
<i>NATIONAL EXPERIENCES</i>	
Developing and Implementing National Systems for Protecting Traditional Knowledge: Experiences in Selected Developing Countries	141
Graham Dutfield	
Strengthening Traditional Knowledge Systems and Customary Laws	155
Maui Solomon	
Experiences and Lessons Learned Regarding the Use of Existing Intellectual Property Rights Instruments for the Protection of Traditional Knowledge in Kenya	167
Joseph M. Mbeva	
The Peruvian Proposal for Protecting Traditional Knowledge	175
Ana María Pacón	
Protection of Traditional Artisanal Crafts in Panama	181
Beleida Espino R.	
The Protection of Traditional Knowledge in Bangladesh	185
Farid Uddin Ahmed	

The Protection of Traditional Knowledge in Indonesia	193
Sulaeman Kamil	
Access to Genetic Resources, Protection of Traditional Knowledge, and Intellectual Property Rights: The Costa Rican Experience	197
Jorge A. Cabrera Medaglia	
A <i>Sui Generis</i> System for Protecting Traditional Knowledge under the CBD: The Official Position of the Government of Costa Rica	213
Margarita Umaña	
Indigenous Rights and Intellectual Property Rights: Bolivia	217
Javier Ernesto Munoz Pereyra	
Strengthening Public Policy for a Sustainable Exchange of Knowledge between National and International Interests: Recent Legislative Developments in the Area of Traditional Knowledge in Venezuela	221
Rafael Fuentes Niño, Luisa E. Bernal and José J. Contreras	
Protection of Traditional Knowledge, Access and Benefit Sharing, and Intellectual Property Rights: The Colombian Experience	223
María del Pilar Pardo Fajardo	
<i>REGIONAL INITIATIVES</i>	
<i>Sui Generis</i> Legislation and Protection of Community Rights in Africa	235
Joseph. A. Ekpere	
Regulating Bioprospecting and Protecting Indigenous Peoples' Knowledge in the Andean Community: Decision 391 and Its Overall Impacts in the Region	241
Manuel Ruiz Muller	

PART THREE: HARNESSING TRADITIONAL KNOWLEDGE FOR DEVELOPMENT	
Indigenous Knowledge for Development: Opportunities and Challenges	265
Nicolas Gorjestani	
Promoting Development among the Indigenous Loita Maasai Pastoralists of Kenya	273
Mark K. Ole Karbolo	
Commercialization of Traditional Knowledge and Benefit Sharing	279
Suman Sahai	
Harnessing Traditional Knowledge for Development and Trade: The Philippines Experience	293
Jocelyn L. B. Blanco	
Protecting Traditional Knowledge: Systems and Experiences in Sri Lanka	299
Vijaya Kumar	
Biodiversity and Traditional Knowledge: The Malaysian Experience	305
A. Latiff and A. H. Zakri	

STRENGTHENING PUBLIC POLICY FOR A SUSTAINABLE EXCHANGE OF KNOWLEDGE BETWEEN NATIONAL AND INTERNATIONAL INTERESTS: RECENT LEGISLATIVE DEVELOPMENTS IN THE AREA OF TRADITIONAL KNOWLEDGE IN VENEZUELA

Rafael Fuentes Niño, Luisa E. Bernal and José J. Contreras

Introduction

Whenever global issues become local problems, developing countries seem to join yet another “race”, always as latecomers. Traditional knowledge (TK) is one such issue. When a negotiated agreement is not achieved among governments, communities and international enterprises, problems arise, creating unregulated businesses that developing countries cannot stop owing to their weak institutions, lack of enforcement capacity and lack of comprehensive public policy.

Developing countries have to do the analysis and decision making in the area of TK by setting up legislative frameworks and establishing various processes to protect and commercialize their TK within an equitable framework for benefit sharing. In Venezuela, strengthening of public policy-making is achieved through a process of negotiation and participation. This process, called the “agendas”, is an example of finding suitable options for dealing and negotiating within local communities with an international perspective. Agendas involve dialogue on public policy and help to improve links among different components of society, thus empowering grassroots organizations, city governments, small businesses, and the academic community.

This paper briefly discusses recent legislative developments in connection with strengthening of public policy adopted in Venezuela for the recognition and protection of TK.

Initiatives of Venezuela for the protection of TK

Venezuela has taken important legal steps towards recognizing and protecting the TK of its indigenous and local communities. The first step was to acquire a political mandate by amending the Constitution of the Republic of Venezuela adopted in 1999. Article 119 calls for the “recognition and protection of the peoples and indigenous communities, their social, political and economic organization, their culture, practices and customs”. Article 124 of the Constitution guarantees and protects the collective intellectual property rights (IPR) relating to knowledge, technologies and innovations of indigenous and local communities.

On May 24, 1999, Venezuela adopted a Law on Biological Diversity, thus incorporating into the national law the principles of the Convention on Biological Diversity (CBD). The new law is a powerful tool for the conservation of cultural diversity through the recognition and protection of the TK of local and indigenous communities (Article 39). Furthermore, the law recognizes the right of local communities to oppose authorization of collection of genetic material, access to TK, and biotechnology-related plans and projects to be developed on their territory if they are not adequately informed of the uses and benefits expected to accrue from such activities. They can also ask for the cessation of activities that may affect their cultural heritage and the territory’s biological diversity (Article 44). This law establishes an important role for the State in promoting the use of the TK of indigenous and local communities for the benefit of the whole society.

In September 2000, the Andean Community¹ adopted Decision 486 on Industrial Property² that has several provisions aimed at protecting the TK of indigenous, Afro-American and local communities. It sets conditions for granting patents that are based on elements of the communities’ heritage and knowledge. Decision 391 of 1996 complements the regional framework, establishing a common regime for access to genetic resources in the Andean countries to

promote fair and equitable sharing of benefits and establish a basis for the recognition and appreciation of genetic resources, their derivatives and related intangible components (including TK).

As significant as these developments are, they still represent only initial steps towards establishing an effective system for the protection of the TK, innovations and practices of indigenous and local communities.

The “Agendas”: a process of building a sustainable conservation network

The “Agendas” are a kind of process of public policy development by which the academic community, government, community leaders, and small businesses have been negotiating and participating in the process of understanding and solving various problems, particularly those involving “knowledge” and technology. Through this mechanism they also seek to establish interactions between the macro, meso and micro levels of the decision-making process.

During the late 1990s, Venezuela had 22 agendas covering topics such as agriculture and environment in the Amazon, environment in Guayana, oceanology, biodiversity, house and human ecology, poverty, oil and plastic, information technologies, and education and health in border states. These processes have yielded a variety of results.

The Agendas focus on the process of transfer of knowledge and culture. They try to create an enabling environment for negotiations and confidence building among the relevant parties. During this process, the various stakeholders explain their interests according to the specific topics being considered, through various sets of tools defined on an ad-hoc basis by the facilitators. The information made available is then analysed within each group of participants in an open workshop to achieve authentic competitiveness, sustainable development, and empowerment of the grassroots organizations, city governments, small enterprises and non-governmental organizations.

The stakeholders go through four phases in the process:

- In the first phase they have intense interaction “participation” in which their problems and interests are made explicit.
- In the second phase, they plan together. This planning is based on information and knowledge they share on how to achieve the established goals.
- In the third, or “appropriation”, phase they make commitments to the project, which may lead to different levels of involvement by them in different time frames.
- In the fourth phase, projects are developed and implemented.

Conclusion

The development and implementation of the Agendas with a wide variety of participants, including transnational corporations, is risky. However, it is also a constructive way to accommodate different interests, levels of knowledge, and culture-transforming processes. It is a way to take into account different interests and to attract investment by establishing transparent processes, rules and practices. This in turn contributes to improving recognition of and respect for the values and practices of our communities, as well as interconnecting macro-, meso- and micro-level institutional issues relating to public policy.

Notes

¹ The Community’s Members are Bolivia, Colombia, Ecuador, Peru and Venezuela.

² Régimen Común sobre Propiedad Industrial (Decisión 486).