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Item 8 of the provisional agenda*

DEVELOPMENT OF ELEMENTS OF *SUI GENERIS* SYSTEMS FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES

Note by the Executive Secretary

I. INTRODUCTION

1. In paragraphs 2 and 3 of decision VII/H, the Conference of Parties invited Parties, Governments, indigenous and local communities, and relevant international organizations to communicate to the Executive Secretary any relevant information on existing indigenous, local, national and regional *sui generis* systems for the protection of the knowledge, innovations and practices of indigenous communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and any relevant information of innovative policy, administrative and legislative measures that are supportive of customary law and practices. The Conference of the Parties further requested the Executive Secretary, to compile information on issues identified in paragraph 2, and on the nature of customary laws and traditional protocols of indigenous and local communities relating to customary uses and the conservation and sustainable use of biological diversity, in cooperation with indigenous and local communities, for the consideration of the Working Group.

2. Pursuant to paragraph 2, the Executive Secretary issued notification 2004-049 of 4 June 2004, inviting contributions. The Secretariat is circulating herewith the submission received from the International Institute for Environment and Development (IIED) pursuant to this request.

3. This document is being circulated in the language and form in which it was received by the Secretariat.

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Protection of Traditional Knowledge and the Concept of ‘Collective Bio-Cultural Heritage’

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IIED together with researchers in Peru, Panama, India, China and Kenya is conducting participatory research on traditional knowledge systems of indigenous and local communities and the role of customary law in protecting traditional knowledge². Through community-level case studies, we aim to ensure that international and national policy is built on a good understanding of local realities, concepts, norms and strategies. We believe that this is critical for the development of sound policy on traditional knowledge protection, genetic resources and folklore.

National and international policy processes for protection of traditional knowledge of indigenous peoples and local communities are underway in various fora. At international level, these include the Biodiversity Convention, WIPO, the UNESCO Convention on the protection of Intangible Cultural Heritage, the FAO International Treaty on Plant Genetic Resources and so on. Contrary to the worldview, needs and beliefs of indigenous peoples and local communities who are the holders of traditional knowledge these policy processes focus narrowly on the protection of the intellectual component of knowledge systems, and do little to confront the increasingly rapid loss of biological and cultural diversity, often driven by loss of rights to use, access and control traditional resources and territories.

In this paper we suggest that a broader approach is needed, which focuses on the protection of knowledge systems as a whole, including their cultural, biological and landscape components, in order to safeguard traditional knowledge. We introduce the concept of ‘collective bio-cultural heritage’ which encompasses the material, spatial and cultural as well as intellectual components of knowledge systems, as the basis for protecting and safeguarding traditional knowledge. We also propose the development of an international Treaty for the Protection of Collective Bio-Cultural Heritage, under the auspices of the UN Permanent Forum on Indigenous Peoples.

1) Introduction

Unless approaches for traditional knowledge protection are founded on a good understanding of the distinct cultural, biological and ecological character of traditional knowledge systems, they risk doing little to safeguard traditional knowledge and may accelerate its already rapid loss. Just as intellectual property rights facilitate and encourage industrial innovation and creativity through market incentives, mechanisms to protect traditional knowledge should be designed to facilitate and encourage traditional innovation.

Through their reliance on and interaction with nature and natural resources, communities have acquired an immense knowledge of their natural environment. Yet this accumulated knowledge is rapidly

¹ IIED – the International Institute for Environment and Development - is an independent non-profit policy research institute dedicated to promoting sustainable development.

² This collaborative research project, ‘Protecting traditional knowledge: Implications of customary laws and practices’, focuses on biological or ecological knowledge systems, in particular medicinal plants and traditional crop varieties. *Contact: Krystyna Swiderska, email: krystyna.swiderska@iied.org*

disappearing as the world steadily becomes more culturally and biologically uniform. It has been estimated that 80% of all cultural diversity will have disappeared in 100 years time³. According to the IUCN Task Force on Indigenous Peoples, the main threats to cultural diversity include extension of government control, unjust land policies, cultural modification policies and inappropriate conservation management⁴. Since colonial times, the lack of recognition of traditional territories, resources and customary authorities, together with markets and other external pressures, have steadily driven cultural and biological erosion. With globalisation these pressures are stronger than ever. It is therefore imperative to ensure that mechanisms to protect traditional knowledge also help to stem the rapid loss of knowledge. This means respecting and strengthening the distinct holistic character and integrity of traditional knowledge systems.

2) The distinct character of traditional knowledge

While there is a diversity of cultures and local knowledge systems, certain characteristics are common to many knowledge systems. In particular, the way in which knowledge, cultural values, customary laws, biological resources and landscapes are inextricably linked and together maintain the integrity of knowledge systems:

- *Biological resources* cannot be separated from knowledge for a number of reasons. Firstly, thousands of traditional crop varieties (or 'landraces'), are themselves the product or embodiment of knowledge of past and current generations of farmers which have developed, conserved and improved them. Secondly, according to the worldview of many indigenous societies, knowledge and resources, ie. the intangible and tangible components, cannot be separated. Knowledge and resources are used and transmitted together. Knowledge is derived from biological resources and landscapes, through spiritual beliefs and rituals, eg. from sacred plants, forests or mountains. Areas which have been degraded of their biological wealth lose their 'sacred' character and hence ability to impart knowledge. Thirdly, the maintenance and creation of knowledge depends on the customary use of biological resources and their informal exchange between individuals and communities.
- *Landscapes* provide the physical space for interaction with natural and biological resources, and for sharing of knowledge and resources between individuals and communities. Knowledge is often acquired from particular sites in the landscape of spiritual significance such as sacred lakes, rivers, forests or mountains. Furthermore, traditional forms of governance and belief systems often operate at landscape scales, through customary institutions for management of common property resources. Where peoples have lost their traditional territories or no longer have access to sacred wilderness areas, the processes which sustain and create traditional knowledge and beliefs are likely to be severely weakened or lost, thus putting traditional knowledge at serious risk.
- *Cultural and spiritual values*: the social processes by which traditional knowledge is acquired and used, which sustain knowledge systems and give traditional knowledge its distinct character, are shaped by the unique cultural and spiritual values and beliefs of communities. Many traditional knowledge holders believe that all parts of the natural world are infused with spirit and that it is from these spirits or gods that knowledge is acquired. Spiritual values and beliefs are closely interlinked with, or expressed in, customary laws which govern the way knowledge is acquired and shared and the rights and responsibilities attached to possessing knowledge, and have a strong spiritual character. Thus the misappropriation that most offends communities may not be economic but cultural.

3) Collective Bio-Cultural Heritage

³ Representative of UN Permanent Forum on Indigenous Peoples, WIPO/IGC March 2004

⁴ Inter-Commission Task Force on Indigenous Peoples (1997). 'Indigenous Peoples and Sustainability: Cases and Actions', Utrecht: IUCN and International Books.

We propose that any policy for the protection of traditional knowledge should be founded on and guided by the holistic the concept of ‘Collective Bio-Cultural Heritage’ to reflect the reality of many local knowledge systems, and reinforce and strengthen such systems. The concept of Collective Bio-Cultural Heritage is explained in the definition below, along with sub-definitions to further explain key terms used in the main definition. These terms were developed at a recent workshop of research partners, to provide a common framework for our research, and as the basis for proposing alternative sui generis approaches for TK protection.

Collective Bio-Cultural Heritage: *Knowledge, innovations and practices of indigenous peoples and local communities which are often held collectively and inextricably linked to traditional resources and territories; including the diversity of genes, varieties, species and ecosystems; cultural and spiritual values; and customary laws shaped within the socio-ecological context of communities.* These components of knowledge systems and their ongoing interaction are fundamental for the creation and preservation of traditional knowledge, and are often linked to knowledge of cosmic forces (as part of indigenous peoples ‘cosmovision’ or holistic worldview).

This holistic understanding of knowledge systems is nothing new. For example, the Statement of Principles and Guidelines for the Protection of Heritage of Indigenous Peoples of the Working Group on Indigenous Populations, UN Commission on Human Rights⁵, emphasizes that the discovery, use and teaching of indigenous peoples’ knowledge, arts and culture is inextricably connected with the traditional lands and territories of each people; and that control over traditional territories and resources is essential to the continued transmission of indigenous peoples’ heritage to future generations, and its full protection.

The NGO resolution on farmers’ rights circulated at the FAO Conference in Leipzig 1996 emphasised the importance of recognizing that collective knowledge is intimately linked to cultural diversity, land and biodiversity and cannot be dissociated from either of these three aspects. Similarly, the concept of Traditional Resource Rights recognizes that protection of traditional knowledge will only be adequate if it is conserved, maintained and enhanced in-situ, as part of the lands, territories and cultures of indigenous and local communities⁶. Similarly, the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples (1993) underlines that indigenous flora and fauna is inextricably bound to the territories of indigenous communities, and that land and natural resource claims must be settled in order to promote traditional production systems. A number of international instruments on indigenous and human also recognize rights to land and traditional territories, as vital for the survival of indigenous peoples and cultures.

Indigenous Peoples: In accordance with ILO Convention 169, Indigenous and Tribal Peoples may be defined as:

- a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

⁵ E/CN.4/sub.2/1995/26, 1995

⁶ Posey D. (1996). Traditional Resource Rights: International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities’. IUCN

Local Communities: The human population in a distinct ecological area who depend directly on its biodiversity and ecosystem goods and services for all or part of their livelihoods and who have developed or acquired traditional knowledge as a result of this dependence, including farmers, fisherfolk, pastoralists, forest dwellers and others.

Traditional Resources: Tangible or intangible assets of biological, spiritual, aesthetic, cultural and economic value.

Traditional Territories: Lands, forests and waters traditionally occupied, used or conserved by indigenous peoples and local communities.

Heritage: The product of the collective effort of indigenous peoples and local communities, belonging to past, current and future generations. The Principles and Guidelines for the Protection of Heritage of Indigenous Peoples define the heritage of indigenous peoples as including all kinds of scientific, agricultural, technical and ecological knowledge and resources, including cultigens and sacred sites, which have been transmitted from generation to generation, and which pertain to a particular people or its territory.

Customary Law: Locally recognized principles or systems applied to internally govern or guide aspects of the lives and activities of indigenous and local communities, which are orally held and transmitted and applied by community institutions, and which include specific norms or rules for the management of particular resources or conflicts.

Collective: Held by a community or peoples, as well as by individuals within them, for the common good of the community or peoples. Recognition of collective rights does not imply loss of individual rights. Knowledge is sustained and created by the transmission and sharing of knowledge and biological resources between individuals, families, communities and generations. While some knowledge may be attached to individual specialists, decision-making requires sharing of knowledge as no one, and no family or clan, can possess sufficient knowledge to act alone⁷. As explained in the Farmers Rights Charter of the Indian Farmers Union (1996), farmers' innovations take place collectively and cumulatively, hence farmers rights arising from their role as conservers and breeders are community rights, and not individual rights.

We therefore propose the following definition of **Traditional Knowledge Protection**: Full recognition and protection of rights of indigenous peoples and local communities to own and control their bio-cultural heritage, including to conserve it for livelihood security, and to restitution of heritage and traditional resources taken from them.

The right to restitution of traditional lands, territories and resources, and cultural, intellectual and spiritual property taken without proper authorization is recognized by the UN Draft Declaration on the Rights of Indigenous Peoples, and the Principles and Guidelines for the Protection of Heritage of Indigenous Peoples. The Biodiversity Convention (Article 17.2) also provides for repatriation or return of information of importance to indigenous and local communities and relevant for conservation of biodiversity.

Traditional knowledge is embodied in thousands of farmers' traditional crop varieties and animal breeds. These resources play a critical role in sustaining modern agricultural production and are extensively used by the agriculture industry. Unless the intellectual contribution of farmers' traditional knowledge is recognised by measures to prevent misappropriation of knowledge, a large proportion of traditional

⁷ Barsh, R. (1999), "Indigenous Knowledge and Biodiversity" in UNEP, Cultural and Spiritual Values of Biodiversity, Nairobi.

knowledge will remain unprotected. The need to protect farmers' rights over traditional knowledge is already enshrined in the FAO International Treaty on Plant Genetic Resources for Food and Agriculture. This objective should also be central to any international regime or standards for the protection of traditional knowledge.

We propose the following definition of **Farmer's Rights** should be used, as set out in the Farmer's Rights Charter of the Indian Farmers Union, which recognises farmers inalienable rights to:

- Communal ownership of plant genetic diversity and domestic animal breeds, whose rich diversity embodies the knowledge and innovation of farming communities in the conservation, evolution and multiplication of this diversity.

- Participate fully in any benefits derived from the improved use of these genetic resources
- Control access to land, water and genetic resources needed to sustain their livelihoods and provide for universal food security
- Reject any form of patents on, or genetically engineered forms of, plant and animal breeds, as this violates ethical values and cultural traditions and can threaten the existence of biological diversity.

4) Proposal to the Permanent Forum for Indigenous Peoples

Given the urgent need to confront the linked challenges of rapid loss of biodiversity and cultural diversity and erosion of rights of indigenous peoples to their traditional resources and territories, we propose that the Permanent Forum should consider the development of an international treaty for the Protection of Collective Bio-Cultural Heritage. In view of the role of the Permanent Forum in convening coordination between various UN bodies involved in traditional knowledge protection, this could provide an appropriate forum in which to propose such a treaty.
