

# Knowledge Protection, Value-Addition and Benefit-sharing: Perspective from Indigenous Peoples

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# Outline of Presentation

- Introductory Remarks
- Traditional Knowledge: Background and Context
- Politics of Knowledge
- Multiple Policy and Regulatory Frameworks for Protection of TK
- Nagoya Protocol on ABS of CBD
- On Value-addition and Benefit-sharing

# Knowledge Societies

- Contemporary societies are knowledge intensive societies characterized by incredible developments in information, biotechnological and communication technologies
- Existing databases and networks
- Knowledge protection, value-addition and benefit-sharing

# Background and Context

Some underlying causes and threats to traditional knowledge

- ❖ Non-implementation of human rights obligations
- ❖ Degradation of lands and environment
- ❖ Colonial education
- ❖ Commercialization and misuse by tourism
- ❖ Expropriation by outsiders

# Background and Context

Affirmation of the vital role and contributions of Indigenous peoples, local communities and traditional knowledge in addressing contemporary social and ecological problems:

- environmental loss and degradation
- deepening poverty and social injustice
- spiritual values and cultural renewal
- climate change mitigation and adaptation
- contributions to local green economies

# Background and Context

- Reaffirmation by the World Summit on Sustainable Development of the vital role of Indigenous Peoples in sustainable development recognised at the Rio Summit and in environmental agreements – including CBD
- Adoption by the UN General Assembly of the UN Declaration on the Rights of Indigenous Peoples (September 2007)
- Nagoya Protocol on ABS (October 2010)

# Background and Context

The problem of lack of respect, erosion and misappropriation of traditional knowledge is very serious and needs to be addressed at all levels – by communities, national governments and international community

- ✓ Cultural renewal and revitalization
- ✓ National legal recognition and protection
- ✓ Appropriate international standards

# The politics of knowledge

- Researchers have warned about the dangers of depoliticised approaches that highlight knowledge, rather than people or their social and political context. Arun Agrawal in his article on the politics of classification in the International Social Science Journal, examined the processes of establishing databases of indigenous knowledge starting with particularisation, validation, abstraction, generalisation, and dissemination.
- He concludes that such efforts to document and catalogue traditional knowledge can strip away the detailed, contextual, applied aspects of knowledge that may be crucial to the meaning and effectiveness of such specific knowledge. These practices convert indigenous knowledge into instruments for scientific progress and development.



# People in Context vs. Abstract Traditional Knowledge

- Indigenous peoples have consistently stated that the way forward in promoting traditional knowledge is by recognizing their rights and empowering them in the development process, including upholding their right to free, prior and informed consent for all development, conservation and other activities affecting them.

# Protection of Traditional Knowledge

- **Subject Matter of Law and Policy**
  - Human Rights values versus other values
  - Holistic cultural heritage vs. specific components
  - Access and Benefit-sharing
- **Forms of Protection and Promotion**
  - Broad protection versus narrow protection
  - Affirmative versus defensive protection
  - Collective versus individual protection
- **Enforceability**
  - Local, national, regional and international mechanisms
  - Weak versus strong

# Multiple Policy and Regulatory Frameworks

- Indigenous Peoples' Rights
- Natural and Cultural Heritage Protection
- Multilateral environmental agreements  
(Convention on Biological Diversity)
- Intellectual Property Rights

# Cultural Rights are Human Rights

- *Cultural rights are an integral part of human rights, which are universal, indivisible and inter-dependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights.*
- *Cultural rights in the UN Declaration on the Rights of Indigenous Peoples*

# Cultural Rights in the UN Declaration on the Rights of Indigenous Peoples

- *To maintain and develop their distinct political, economic, social and cultural identities and characteristics as well as their legal systems and to participate fully, "if they so choose," in the political, economic, social and cultural life of the State.*
- *Right not to be subjected to genocide or ethnocide, i.e., action aimed at or affecting their integrity as distinct peoples, their cultural values and identities, including the dispossession of land, forced relocation, assimilation or integration, the imposition of foreign lifestyles and propaganda.*

# Indigenous Peoples' Rights to Cultural Heritage

## *Article 31 - UNDRIP*

1. 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.**
2. In conjunction with indigenous peoples, States shall take effective measures to **recognize and protect the exercise of these rights.**

# Cultural Heritage Protection in United Nations Agencies

- How is indigenous cultural heritage addressed in the mandate of various UN Agencies and what are the negative or positive impacts arising from their work ?
- What do we mean by protection and promotion of cultural heritage?

# Meaning of Protection and Promotion

- In UNESCO terminology, “protection” refers to the adoption of measures aimed at preservation, safeguarding and enhancement.
- This is the sense in which the term is used in various instruments such as the Convention concerning the Protection of the World Cultural and Natural Heritage (1972) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003).
- The term “protection” in this context has none of the connotations that it may evoke in the commercial sphere eg prevention of misappropriation or assertion of intellectual property rights



# Meaning of “protection and promotion”

- When used in conjunction with the term “promotion”, it implies the need to keep alive cultural expressions imperiled by the quickening pace of globalization.
- “Promotion” calls for perpetual regeneration of cultural expressions to ensure that they are not confined to museums, “folklorized” or reified.
- Furthermore, the paired terms “promotion and protection” are inseparable, applied in an expansive way

# Which values of TK are being protected in CBD? ABS regime? for whom?

- Values for conservation and sustainable use and ecosystem services
- Values as a resource in the of life/ biological industries (bio-economy) and information and knowledge industries

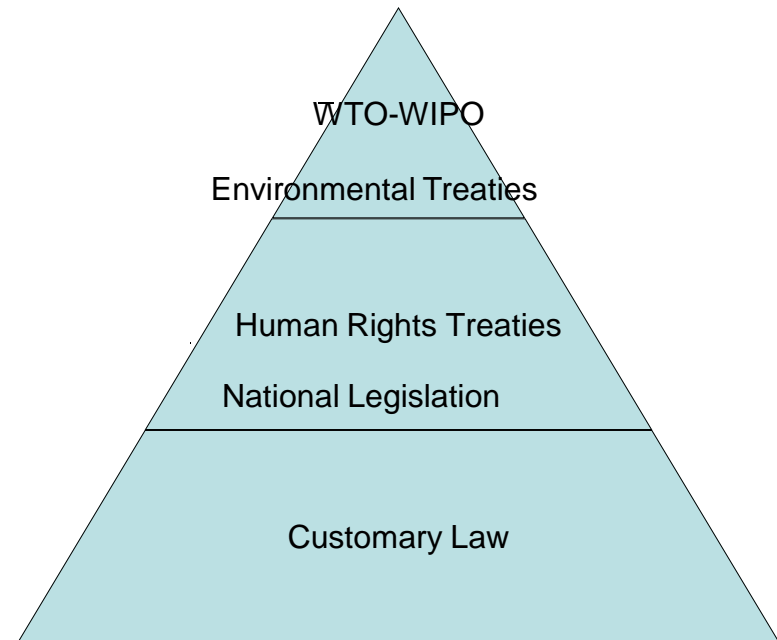
# Strategic Plan for Biodiversity (2011-2020)

***Target 18:*** By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels

# Protection of Traditional Knowledge

## Impacts of Regulatory Framework

- Formal regulations are inappropriate for informal system – but neutral
- Inappropriate but biased against the informal system
- They could restrict the informal system
- They could exploit them
- They are declared illegal
- They could support them



# Inter-linkages between customary law, national legislation and international standards

- Address the deep differences between existing IPR law and indigenous customary law in developing an international legal regime,
- Recognise the limitations of the public domain or cultural commons when applied to indigenous knowledge.

# Inter-linkages between customary law, national legislation and international standards

- Indigenous peoples have rights over their knowledge and resources, which are not part of a national or international melting pot of knowledge, but organized according to customary law and a shared cosmology.
- Indigenous peoples have traditions of sharing, and many are interested in contributing substantially to sustainable development. But to get there will require mutual respect, obligation, reciprocity and trust

# Approaches towards Protection of Traditional Knowledge

- Neither enforced isolation nor enforced assimilation
- Hierarchy of values and protection measures
- Holistic/broad approach versus narrow protection
- Both renewal and preservation and protection from misuse and misappropriation
- Inter-linkages between customary law, national legislation and international standards

# TK Protection - Different Approaches

Two approaches with respect to the protection of traditional knowledge of indigenous and local communities in national and international law.

- International human rights, cultural rights and indigenous rights regimes (HRC, UNESCO, )
- Regimes evolving around the wider distribution and use of traditional knowledge and traditional resources for sustainable development (CBD, WTO, WIPO)

The two regimes will need to find ways to connect.



# The principle of subsidiarity and the hierarchy of values and protection measures

Property regimes are subsidiary to higher-order human rights and indigenous rights principles, and will need to respond to developments in those rights, and ensure that intellectual property principles and law do not prejudice the development of these principles.

Marginal modifications to the existing intellectual property (IPR) regimes will not provide the range of protection due for traditional knowledge and resources and a *sui generis* regime is necessary.

# Holistic/broad approach versus narrow protection

- Despite the attention that IPRs have attracted in current debates, its possible role in the protection of TK is quite limited.
- The purpose of IPRs is not to conserve biodiversity or preserve knowledge but to create a market around specific pieces of information, requiring identification and isolation of the protected information.

# Holistic/broad approach versus narrow protection

- The effective protection of TK needs the conservation of a whole system of knowledge that by its very nature is holistic and dependent upon the interaction with a particular environment.
- It may be far more important for countries to grant and enforce indigenous rights than to develop an intellectual property regime in order to protect TK.

# On Value-Addition and Benefit-sharing

- “Wilderness” or social -ecological complex?
- Close inter-relationship between genetic resources and knowledge
- Conservation and sustainable use of biological and cultural diversity
- Build on partnership approach rather than an extractive approach
- Address implementation challenges of the Nagoya Protocol on Access and Benefit-sharing

# Indigenous Peoples' Priorities

Defending land and resources from external threats

Maintenance of livelihood security

Use of indigenous languages

Revitalization of cultures through cultural adaptation and inter-cultural collaboration

Policy advocacy for the adoption and implementation of international, national and local standards on the rights of indigenous peoples.