

Elements for Sui Generis Systems: Collective Bio-Cultural Heritage and Customary Laws in Peru, Panama, India, China and Kenya

Side Event at 8(i) Working Group, Wednesday 25th January hosted by: IIED, ANDES (Peru), Fundacion Dobbo Yala (Panama), University of Panama, Ecoserve (India), Centre for Indigenous Farming Systems (India), Herbal and Folklore Research Centre (India), Centre for Chinese Agricultural Policy, Southern Environmental & Agricultural Policy Research Institute, Kenya Forestry Research Institute.

“Protecting Community Rights over Traditional Knowledge: Implications of Customary Laws and Practices” – K. Swiderska (IIED). This project was initiated in January 2005, to understand what it means to protect traditional knowledge in accordance with customary laws and practices of indigenous and local communities. It entails participatory research with Quechua farmers in the Potato Park, Peru; Kuna, Embera and Wounaan communities in Panama; Maasai pastoralists and Mijikenda in Kenya; Yanadi tribals in Andhra Pradesh, India; Lepchas in the Eastern Himalayas, India; Adhivasis in Bastar, Central India; and Indigenous farmers in Guangxi, S.W. China. The project does not seek to record the details of customary laws, rather to understand key principles or values that guide use/exchange of TK and bio-resources; customary decision-making institutions and processes; and how knowledge is transmitted and maintained. It is applying the Code of Ethics of the International Society of Ethnobiology.

The concept of ‘Collective Bio-Cultural Heritage’ provides a common framework for the research. This is defined as: “Knowledge, innovations and practices of indigenous peoples and local communities which are collectively held 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.” This concept recognises the *holistic character* of traditional knowledge, where biological and cultural elements are linked.

Research in all the study communities clearly shows the importance of customary use of biodiversity and ecosystems, cultural practices and spiritual beliefs, and customary laws for the development, use and transmission of traditional knowledge relevant for biodiversity conservation and sustainable use. In many of the study areas TK and biodiversity have declined significantly in the last decade, particularly where access to traditional resources and territories has been reduced. Key reasons for this are: insecure land tenure and reduction of landholdings; alienation from forest resources and management; extension of Government control weakening customary governance; and markets and globalisation eroding traditional values. In order to respect, preserve and maintain knowledge innovations and practices, holistic sui generis systems are needed, which protect the rights of communities not only to their knowledge, but also to traditional resources, territories and customary laws.

The project has developed the following working definition of customary laws: “Locally recognised principles, and more specific norms or rules, which are orally held and transmitted, and applied by community institutions to internally govern or guide all aspects of life”. Customary laws have a legal character because they provide the basis for patterns of conduct to which people adhere. People have a duty to respect customary laws, and sanctions are often imposed for their infringement. Customary laws are often closely linked to spiritual beliefs, and based on fundamental values of respect for nature (Mother Earth), social equity and harmony, and common good ethics. Because they are not written down, they are flexible and evolving, and able to respond to the needs of communities.

For Quechua peoples of the Andes, three customary law principles were identified: *Reciprocity*: what is received has to be given back in equal measure; *Duality*: everything has an opposite which complements it; behaviour cannot be individualistic; and *Equilibrium*: refers to balance and harmony, in both nature and society. All customary laws are essentially derived from this principle. Customary law principles of the other communities/countries in the project are very similar, although they may be termed differently (eg. ‘harmony’ instead of ‘equilibrium’). While specific customary laws vary considerably between cultures and ecological contexts, there are strong similarities in the customary principles. National and international sui generis systems could be based on a set of common principles. The table below identifies customary law principles related to TK and Bio-resources:

Customary Principle/ Value	Role in Conservation & Livelihoods	Implications for TK Protection & ABS
Collective custodianship & decision-making: Even TK which is accumulated individually is believed to come from God and hence viewed as collective heritage	Promotes biodiversity and TK through sharing of resources/TK and collective management. Ensures access to resources for subsistence and survival. Promotes social cohesion, solidarity and equity.	No single individual can claim ownership of GRs/TK. Individual & commercial rights (eg. IPRs) will erode collective management. Need to recognise collective rights and support subsistence economies. Need to engage neighbouring communities in PIC and Equitable Benefit-Sharing.
Free/ Open Access to GRs & TK: Resources are shared freely, even across borders. The obligation to share is particularly strong in relation to seeds	Ensures access to and maintenance of biodiversity and TK. Critical for survival and adaptive management in biodiversity-based subsistence economies.	Need to safeguard free access to GRs/TK at local level and avoid IPRs which restrict access for customary use. Need transboundary measures to protect TK and safeguard access for customary use
Equal Exchange (Reciprocity): Resources are exchanged in equal measure	Sharing increases the resource base of those that participate and results in the maintenance of biodiversity	Communities should be given access to GRs held ex-situ in return for providing access to their resources (most ex situ resources originate from their traditional lands)

Sui generis and ABS systems which conform with the obligation to respect, preserve and maintain TK should recognise: 1) The holistic character of TK systems, by protecting 'Collective Bio-Cultural Heritage' as a whole. 2) The close linkages between Articles 8(j) and 10(c) 3) The customary rights of indigenous and local communities who are the custodians and stewards of biodiversity on traditional territories, as part of the concept of 'State sovereignty' over natural resources.

Customary Law in the Potato Park, PISAQ, Peru – A. Argumedo (ANDES). The Potato Park is an Andean Community Conserved Area managed by six Quechua communities in a centre of origin of potato diversity. It seeks to protect Collective Bio-Cultural Heritage through sui generis systems based on customary law, including collective land tenure, Community based resource management, community registers, protocols for research and ABS. IPRs are designed for a totally different context and responses based on customary laws are needed to protect TK. National laws only protect the intangible elements of TK systems, and provide a rigid framework, whereas the Potato park provides a landscape-based approach which is needed to protect institutions and culture in flexible system.

Quechua customary law principles are being explored to identify derivatives to address new challenges, such as ABS. The research is focusing on the principle of Reciprocity and norms for distribution and redistribution of wealth to develop an Inter-Community Agreement for Equitable Benefit-Sharing, which will be used for sharing of benefits from the agreement between the Potato Park communities and the International Potato Centre. The benefits include access to potato varieties held by CIP, a share of benefits derived by CIP from use of potatoes collected from the communities in the past, and agreement by CIP not to allow patents on the potatoes. Customary norms included in positive law, such as National Indigenous Law and of the variables that influence the choice of law by communities are also being explored. Different types of reciprocal exchange have been identified and there is a need for further research to ensure Equitable Benefit-Sharing systems strengthen local biodiversity-based economies.

Knowledge Systems of Yanadi – Dr S. Vedavathy (HFRC). The Yanadi tribals of Andhra Pradesh traditionally lived in forests. New policies have led to forced eviction, alienation from the forest resources and restricted access. This is making them lose their TK about medicines and wild foods, their conservation customs, and their health and food security. Tribals, who once nurtured the forest, now need a permit to collect NTFPs and can be fined for collecting medicinal plants.

Protection of Rice Diversity – J. Nellithanam (CIFS). 23,000 varieties of rice are included in a collection from Madhya Pradesh alone, of which 6,000 are from the Bastar region. These traditional varieties have been developed by indigenous farmers' TK and innovations. However, the collection is held in a university and the communities do not have access. The university has attempted to enter into an MoU with Syngenta to hand over the collection. The State in India offers little protection for farmers rights. National policies are geared only towards promoting scientific and commercial use.