The Protection of Traditional Knowledge in Latin America

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Key questions to address

1. What *is* traditional knowledge (and folklore)?
2. *Why* do we want to protect TK (objectives)?
3. *How* do we want to protect TK?
It is difficult to *define* traditional knowledge but relatively easy to identify how it expresses itself

- Film settings, sceneries, landscapes
- Photographs which include TK manifestations
- Dances, musical instruments
- Food recipes, drinks
- Medicinal plants and practices
- Potions, lotions, scents, cosmetic uses
- Seeds, native crops and animal breeds
- Tools, agricultural technologies and techniques
- Styles and designs
- Traditional names of plants, products
- Customs
- Traditions, stories, religious ceremonies
- Textiles, garments
Why do we want to protect TK and folklore in Latin America?

1. Realization that third parties are benefitting without recognition, consent, attribution, compensation to indigenous and local innovators and creators

2. A “feeling” that in some way, TK is being exploited and privatized (e.g. through “biopiracy” and illegal access to and use of TK)

3. Inequitable, unjust, unfair, illegal access to and use of biodiversity and genetic resources (to which TK is essentially connected)
What are the objectives of protecting TK in Latin America?

1. Compensation
2. Control
3. Exclusion of third party access and use (unless authorized)
4. Recognition of “collective” rights over TK
5. **Prevent misuse or illegal use**
6. Maintaining and preserving TK
How can TK be protected?

- Contracts, licenses (control - exclusion)
- Funds (compensation)
- Registers (preservation in time)
- Classic intellectual property tools (copyright, trade secrets, unfair competition rules, plant breeders rights, marks, etc.) – *problems in actually utilizing these tools*
- Defensive protection – impeding wrongful granting of patents based on TK
- *Sui generis, ad hoc* instruments and tools (including access to genetic resources legislation)
## Legal advances in Latin America

<table>
<thead>
<tr>
<th>Country</th>
<th>Law</th>
<th>Scope</th>
<th>Type of protection and who provides PIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andean Community</td>
<td>Decisions 391 and 486</td>
<td>TK related to biodiversity (intangible)</td>
<td>Defensive protection of TK</td>
</tr>
<tr>
<td>Panama</td>
<td>Law 20 and its regulation</td>
<td>Folklore, arts, handicraft (tangible)</td>
<td>Right granting register – Indigenous Congress</td>
</tr>
<tr>
<td>Peru</td>
<td>Law 27811</td>
<td>TK related to biodiversity (intangible)</td>
<td>Registers, licences, trade secrets – representative org.</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Draft Law for TK</td>
<td>TK related to biodiversity and folklore (both)</td>
<td>Registers and contracts – represent. org</td>
</tr>
<tr>
<td>Country</td>
<td>Law</td>
<td>Scope</td>
<td>Type of protection / PIC</td>
</tr>
<tr>
<td>------------</td>
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<td>--------------------------------------------</td>
<td>----------------------------------------------------------------</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Law 7788</td>
<td>TK related to biodiversity (intangible)</td>
<td>Sui generis intellectual collective rights – indigenous communities authority</td>
</tr>
<tr>
<td>Brazil</td>
<td>Provis. Measure 2.186-16</td>
<td>TK related to biodiversity (intangible)</td>
<td>Right to decide – representative of community</td>
</tr>
<tr>
<td>Peru</td>
<td>Law 28216</td>
<td>TK and genetic resources</td>
<td>Institutional body to prevent biopiracy</td>
</tr>
</tbody>
</table>
Challenges ahead in the region

• Seeking effective implementation of laws
• Addressing the situation of indigenous peoples in relation to: lands and territories, marginalization, capacity building in TK related issues (legal assistance), access to administrative recourses and bodies
• Addressing critical issues such as: shared TK and how to obtain valid prior informed consent (representative organizations)
• How to create/find positive synergies between indigenous peoples interests and expectations (including customary rights) and “formal” or prevailing legal systems
• Addressing “non biodiversity” related creations – folklore expressions (songs, dances, textile designs, ceramics, etc.) and their widespread commercialization
Thank you

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