

**WIPO SEMINAR ON INTELLECTUAL PROPERTY AND
TRADITIONAL KNOWLEDGE**

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**Regional, National and community Experiences Relevant to
Identifying Traditional Knowledge at the international level.**

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Guiding point for my presentation on 24th 1st round table

Discussions on Traditional Knowledge (TK) are issues that have been of great concern to Indigenous Peoples and Local communities in the past few years now. This is because of the new discoveries and use of natural resources in Indigenous Peoples lands and territories. Other concerns for the disappearing of the Traditional Knowledge are rural urban migration; the digital error that has brought technology that interests the young generations and the expiring of our elders without them sharing their knowledge to others. Another critical challenge is that most of the TK in Africa is not documented and where it is, defined structures on how to manage it, remains a challenge for the beneficiaries.

In order to identify protectable traditional knowledge, a deeper understanding is required to enable the determination of appropriate policy choices for its protection at different levels. However, it is important to note that comprehensive protection can only be achieved by way of an international system. Most of the Member States have policies on TK but dissemination and implementation of Policies and instruments to protect the Traditional Knowledge needs more action and a participatory process that will allow Indigenous Peoples and Local communities and other beneficiaries' visibility.

Different Indigenous Communities for example from the Pastoralists, Hunter gathers and other local communities in Africa share traditional Knowledge across the borders. However there are users of genetic resources coming from different regions of the world, to collect materials, which are associated with Traditional Knowledge and therefore a need to have international instruments that can be used by providers, users and beneficiaries. Without that Indigenous Peoples and their local communities will have challenges in protecting their knowledge through the existing intellectual property system that exists at the national levels. In Kenya the state Law office has finalized the Protection of Traditional Knowledge and traditional Cultural Expressions Act, 2015. This law is going to help compliment the other regulations that have already been developed and cover TK and Cultural Expressions.

The International instruments are important because they are inclusive and collectively discussed. This instruments such as the Convention on Biological Diversity which has Article 8J, clearly giving the guidance for states to recognize vital role and recognize Indigenous Peoples and Local Communities as the holders of traditional knowledge, The Nagoya Protocol of the Convention on Biological Diversity and other Protocols and Treaties on plant genetics by FAO help Member States to domesticate the international instruments with their own at the national and regional levels and well supported by the United Nations Declaration on the Rights of Indigenous Population (UNDRIP).

In Kenya for example, there are many characteristics of Traditional knowledge depending on different communities. There are those that are disclosed, secret, documented, publicly available narrowly and widely diffused. The holder of the knowledge and who are the decision makers are the Traditional elders who include both men and women and are collectively controlled by using their own customary laws in their traditional institutions. The traditional Institutions are very important as they hold the community together and give guidance to the rest of the community especially the youth and the children. Indigenous Peoples believe in teaching and the teaching and learning must be participatory and inclusive to include the future generation to always learn from the past.

However in my experience, most of these traditional institutions have not been working very well as expected. This is a concern that has and will impact on the protection of Traditional Knowledge. When such institutions are not working it becomes difficult to know who holds, controls and who gives Prior Informed Consent especially where users of genetic resources or other resources needed for commercial use, who makes decisions, and where the knowledge is sacred and secret, is sometimes held by an individual? This is a concern, which has to be worked on in some of the countries in our region.

Traditional knowledge is perceived in two ways and this needs to be considered if they is has to be protected: holistic view where various component of traditional knowledge cannot be segregated and secondly traditional knowledge as having different components that could be considered on their own e.g traditional medicine. Traditional knowledge has played a significant role in the healthcare systems for centuries for indigenous communities. Traditional medicines are widely used by nearly 60% of the population in Kenya and demand is growing There is growing global demand for natural products e.g. in cosmetic (Body Shop) and healthcare industries hence traditional knowledge is becoming a source of new developments and innovations.

There are some traditional knowledge in my country and other African countries relating to medicinal, health Biodiversity and agricultural knowledge, this knowledge, oral as is held by indigenous Communities, even though its oral it can now be found written and kept by many learning institutions like the Universities and other Government Ministries and departments. It is out in the public domain. This is good but at the same time challenging especially where no one can manage and control Misuse/ Misappropriation.

There are many experiences that could inform the identification of protectable TK associated with particular communities at regional or sub-regional level especially where plants such as Prunus Africana, Muringa tree, and other traditional medicinal plants not confined to one country like the Hoodia plant or Rooibos tea from southern Africa. This also goes with traditional knowledge associated with traditional microorganism. These examples clearly show that for the protection of TK there is need for policies and legal approaches for international protection because most of the access is from international level.

Bio piracy has been taking place and is still happening in many of our communities. This includes, among others, the collection and patenting of our traditional knowledge and genetic materials found in our medicinal plants, seeds, animals and microorganisms found in our territories. If we do not have legal protection, we may see mistakes done in past years, that has seen resources taken without PIC and Community members not benefiting. In 1970's, a cancer institute from a developed country, invested in extensive collections of medicinal plants from Simba Hills of Kenya with traditional knowledge of the Digo communities who have used the plant to treat cancerous conditions for many years. No recognition of knowledge holders. Another example was also in 1990s where again in a developed Country company, took microorganisms from Lake Bogoria-used in dyeing jeans. There was no consent from the communities at all. These examples are among many that Indigenous Peoples and local communities have experienced with the Governments isolating them from involvement and participation. Having a protectable Traditional Knowledge regime at the International level will benefit Indigenous Peoples and local Communities to be visible and have their voice stronger. The existing laws already are helping other complimentary regulations and community protocol developed at the community level.

- Protection of Indigenous Peoples traditional knowledge associated with genetic resource. Indigenous communities in different parts of Africa have accumulated traditional knowledge base to conserve and sustainably use plant genetic resources. For example In Ethiopia, the Tigray communities are working to protect traditional seeds varieties (genetic resources) and the traditional knowledge associated with its protection and use. It is important to note that in protecting the Traditional Knowledge at the international level we need to note the diversity of that Knowledge throughout the world, and the different ways in which it can be protected at a regional, national or community level, there is need to collectively define the kind of TK that should be protected at an international level in Kenya and many African countries for example the traditional Knowledge related to medicine/health, Biodiversity and agricultural has been key. Despite these discussions, there is need for training and capacity building for the Indigenous peoples and Local Communities and other stakeholders on protection of TK, Awareness creation on the instruments both at the national regional and international levels, Need for Indigenous Peoples and local communities to be fully involve participate and recognized as holders of the traditional knowledge.

Important to also note that the forms of traditional knowledge that exist in our Indigenous Communities can be accommodated in the proposed Traditional Knowledge Provisions at the International Level but Indigenous Peoples and local communities have to be fully involved in the discussions. This is crucial as it is defined in the UNDRIP, and other Indigenous Peoples Declarations developed in the past years in different forums on Human rights, Environment and Sustainable development.

References:

(CBD) 1992, Convention on Biological Diversity Article 8J

Convention on Biological Diversity 2010.Nagoya Protocol on Access and Benefit sharing

UNDRIP 2007 Declaration of the Rights of Indigenous Populations

WIPO- Collection of different Information Documentations of IGC and Indigenous Peoples seminar.