

Protecting Community Rights over Traditional Knowledge: Implications of Customary Laws & Practices

IIED, ANDES (Peru), CCAP (China), FDY
(Panama), Ecoserve & HFRC (India), ICIPE &
KEFRI (Kenya)

Key Findings & Recommendations
for the ABS Regime

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Project Objectives

To improve understanding of how to protect community rights over TK based on customary laws and practices (as opposed to using existing IPR models)

- Participatory studies with ILCs in Peru, Panama, China, India and Kenya
- Development of local tools for TK protection/ ABS (protocols, registers, value addition etc)
- Informing national & international policy.

Which ILCs?

- Andean Quechua and Q'eros, Peru (Agrob)
- Kuna and Embera-Wounaan, Panama (MK)
- Lepchas and Limbus, E. Himalayas, India (Ag)
- Yanadi, Andhra Pradesh, India (MK)
- Adivasi, Chattisgarh, India (Ag)
- Zhuang and Yao, Guangxi, SW China (Ag)
- Mijikenda and Maasai, Kenya (MK)

>> diverse ecological and cultural contexts

Issues Explored

- Customary values and worldviews
- Concepts of TK ownership
- How TK is transmitted & renewed
- Norms for access, equitable benefit-sharing & decision-making
- Design of local tools for TK protection/ABS based on customary laws & practices

Conceptual Framework: Collective Biocultural Heritage

- Common framework/vision to link the diverse studies
- Addresses the separation of TK and bio-resources (eg. CBD state sovereignty, WIPO/IPR approach)
- Emerged from work with Andean Quechua communities in Peru and reflects their holistic worldview
- Builds on Article 8(j) and TRRs

Collective Biocultural Heritage - CBCH - Our Definition:

“Knowledge, innovations and practices of indigenous and local communities that are collectively held and inextricably linked to traditional resources and territories, local economies, the diversity of genes, species and ecosystems, cultural and spiritual values, and customary laws shaped within the socio-ecological context of communities”.

>> Focus on understanding and protecting inter-related TK/biocultural systems (not just TK& CL)

Common Findings 1: Customary Values/Principles

- ***Reciprocity***: giving back in equal measure;
- ***Open Sharing***: in order to receive (seeds)
- ***Duality***: everything has a complementary opposite – indiv & collective; dif paradigms
- ***Equilibrium***: social harmony & respect for nature
- ***Solidarity*** (brotherhood): helping the needy

Common Findings 2: Spiritual & Holistic Worldview

- *Spiritual beliefs* – gods associated with nature are respected & feared; beliefs linked to landscapes (eg. mountain gods)
- *Holistic worldview*
 - everything is interconnected and complex
 - tangible & intangible cannot be separated
 - humanity is part of nature

3. Ownership = Collective Heritage

- All TK/BRs are believed to come from God, so individuals cannot claim rights (even if held individually)
- TK/BRs are openly shared within & between villages - sharing provides access to diff. Know & Varieties; & maintains purity of seeds
- Land is held collectively, so NRs & TK are too
- Collective action/ labour sharing activities
- Decision-making is often collective

4: TK Transmission & Renewal depends on:

- Collective activities – communal & family (eg. NTFP collection, agriculture, festivals)
 - Use of diverse Biological Resources, wild and domesticated
 - Access to sacred areas for healing, rituals etc (eg. forests, mountains > Landscapes)
 - Customary Laws that require transmission
 - Cultural & Spiritual Values & worldviews
- >> I.e. Rights over CBCH

5. Rules for Access

- **Communal K** – Agricultural TK, seeds & everyday health K = Open Access
 - >> 3rd Parties should ensure open access, even to derived products
- **Specialised K** – medicinal, restricted to family, clan or kin. Must ensure proper use for community healthcare.
 - >> 3rd Parties should recognise collective & individual rights; use TK to address community needs
- **Sacred K** – must be kept secret

6. Equitable Benefit-Sharing

- *Reciprocity* means giving communities reciprocal access to knowledge/resources
- Collective heritage/ sharing bet. villages, means PIC/EBS with neighbouring villages to support TK systems & avoid conflict
- Benefits are shared with families according to labour invested in NRM; and to help those in need (widows, orphans); and are conditioned by customary laws of equity and conservation

7. Loss of TK, BRs & CLs

- Customary values and worldviews are very similar across cultures.
 - The main difference lies in the extent to which such values and laws are still recognised and enforced
 - TK, biodiversity are being lost; customary authorities and laws weakened
 - Rapid loss of traditional crop varieties
- >> Key threats: lack of land rights, reduced landholdings, local govts, NR laws, integration

Some Conclusions

- A landscape/community-based approach to TK protection provides a means to strengthen community control over TK
- It also sustains TK, livelihoods, biodiversity & culture and enables adaptation to climate change
- If land cannot be secured, supporting local organisations for collective NRM can strengthen TK systems, and empower communities to claim rights
- CBCH – useful for understanding complex, inter-related TK systems, identifying different threats to TK and developing responses to strengthen TK systems as a whole

Conclusions (cont.)

- A range of local tools are often needed to effectively protect TK and biocultural systems: non-legal (eg. collective NRM, registers, value addition), and legal (ABS protocols, 'soft' IPRs, collective land rights)
- Principles of Reciprocity, Open Sharing and Equilibrium are widely shared (& Duality?), and so offer potential for national & Intl policy

Recommendations for the IR

1. The IR should require legal protection of community rights over bio-cultural systems as a whole, in order to 'maintain' TK (8 j) and 'protect' customary use (10 c) in the face of multiple threats, and to protect TK in situ for adaptation to Climate change.
2. This means recognising ILC rights over TK, GRs, landscapes, cultural and spiritual values and customary laws.

Recommendations for the IR

3. The IR should recognise customary rights over GRs associated with TK, ie. shared sovereignty with ILCs, in order to support (& not undermine) customary use – including rights over:
 - Landraces developed by communities
 - Bio-genetic resources under customary use or originating from ILC territories

Recommendations for the IR

4. Customary rights over *ex situ* GRs and TK should also be recognised – many GRs originate from ILC territories, but ILCs are often denied access. ILCs expect reciprocal access (not one way flow)
5. Customary laws and authorities should be recognised through PIC, even if the authorities are not immediately obvious.

What are Customary Laws?

Customary laws include:

- Worldviews (cosmovision/beliefs)
- Key principles or social values (eg. reciprocity)
- Rules & Codes of conduct (eg. sust. use; healers)
- Established practices (eg. for conflict resolution)

>> Are enforced by community institutions, can have sanctions attached

>> Are derived from NR use – some practices & beliefs acquire the force of law

>> Locally recognised and orally held

>> Dynamic and evolving over time