

Issue Profile

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NGOs' Perspectives on Piracy and Protection

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ACRONYMS USED IN THIS PAPER

ABS	Access and Benefit Sharing
CBD	Convention on Biological Diversity
FAO	Food and Agriculture Organisation
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
IPRs	Intellectual Property Rights
MAT	Mutually Agreed Terms
PIC	Prior Informed Consent
TRIPs	Trade Related Aspects of Intellectual Property
UNCTAD	United Nations Conference on Trade and Development
UNPFII	United Nations Permanent Forum on Indigenous Issues
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

A BRIEF INTRODUCTION TO THE ISSUE

Traditional knowledge (TK) has been transmitted over generations and used over the centuries. It plays an indispensable role in the lives of millions of people in developing countries. There is increasing interest in the role that TK can play in innovative process when coupled with ‘modern’ or western medicine. Historically however, Western societies have not recognized any obligations that may be associated with the use of TK in inventive processes. Despite growing recognition that TK has economic value, the common perception under western intellectual property law has been that TK is information that is freely available for use by anyone, or in other words, property of the public domain¹. As the ‘value’ of TK gains recognition, people are increasingly questioning how the system in place recognizes, rewards and compensates the holders of TK who contribute to the inventive process.

The ability of modern intellectual property law to adequately protect the innovations produced by industries in developed countries and its inability to adequately protect those innovations that utilize traditional knowledge found within developing countries has led to the belief shared by developing countries, indigenous people and many NGOs that this feature of the patent system enables various actors to misappropriate traditional knowledge. This situation has given rise to two developments, indigenous communities and developing countries are realizing that traditional knowledge is often utilized without prior informed consent and without equitable access and benefit sharing arrangements that arise from its use (otherwise known as biopiracy of traditional knowledge) and secondly, the significance of traditional knowledge for its creators and the global community and the need to preserve and protect such knowledge has gained growing recognition in several international multilateral discussions. Prevention of misappropriation such as the granting of patents incorporating genetic resources or traditional knowledge without benefit sharing and the prior informed consent of the communities is of high importance for developing countries, indigenous communities, the private sector and many NGOs that participate in multilateral discussions on Intellectual Property.

Despite the numerous multilateral discussions on TK, major questions related to access and benefit sharing persist: how can the stakeholders devise an effective protection mechanism for TK to prevent biopiracy and ensure justice for those whose biological materials and traditional knowledge may be part of other people's research aspirations and patent applications?

¹ Correa, Carlos. Traditional Knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge. (QUNO) Quaker United Nations Office. Geneva.

Abstract

The objective of this report is to provide an overview of the actors that are involved in discussions that are deliberating potential protection mechanisms for TK. This paper will begin with a discussion of the importance of protecting TK. This will be followed by an overview of the controversy surrounding bioprospecting and biopiracy and the use of conventional IPRs (such as patents) to protect TK. The proceeding section will then outline the various Stakeholders engaged in this debate and provide a presentation of their respective interests, positions and concerns. This will be followed by a brief introduction to the relevant multilateral international discussions underway that have substantial implications for the future of TK protection.

The final section of the paper is dedicated to providing profiles on some of the NGOs relevant to discussions on TK protection. The first section aims to represent the diversity of interests and positions among NGOs that are involved in discussions related to TK. The second section will briefly profile some of the NGOs that are facilitating traditional knowledge holders in the documentation of their knowledge. The third section will provide some examples of NGOs that provide legal advocacy services, networks and funds to assist indigenous communities in protection of TK.

Considering the complexity of the relationship between Intellectual Property Rights, Traditional Knowledge Bioprospecting and Biopiracy, this research is reflective of an explorative study and is not intended to be exhaustive.

What is traditional knowledge and why should it be protected

A Matter of Perspective: TK, Bioprospecting and Biopiracy

Due to the complexity and the variations in the forms of expression of TK, NGOs, State Agencies, International Organizations, Indigenous Groups and the private sector have found it difficult to agree on a concise definition. However the WIPO secretariat used the following all encompassing and working concept of Traditional knowledge:

‘traditional knowledge refer[s] to tradition based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names and symbols, undisclosed information, and all other tradition based innovations and creations resulting from an intellectual activity in the industrial scientific or literary fields. `Tradition based` refers to knowledge systems, creations, innovations and cultural expressions which: are generally regarded as pertaining to a particular people or its territory, and, are constantly evolving in response to a changing environment. ²

² <http://www.wipo.int/tk/en/glossary/index.html#tk>

While 'genetic resources' have been defined under several international agreements there is to date no universally recognized definition for traditional knowledge.³ There is recognition however, that there is a growing problem associated with the misappropriation of TK for commercial and other purposes.⁴ The absence of a specific definition for traditional knowledge has significantly complicated the ability of the formal sector to incorporate it into a regulatory framework to control, manage and protect the use of that knowledge. Increasingly, TK is being used to complement 'contemporary' scientific and technological knowledge to find solutions to complex problems. However, as the economic value and the potential uses for TK increase, there is growing concern that the commercial use of such knowledge can result in misappropriation of that knowledge through the use of patents or copyrights.

As NGOs, Indigenous Groups, the private sector and Developed and Developing nations begin to acknowledge the economic value of Traditional Knowledge there is increasing importance being placed on methods to identify, register and protect it. Numerous proposals have been made that recommend 'protection' for TK. The need for increased protection for TK is not obvious yet, there are several reasons why TK is deserving of increased protection and they should be considered. Ultimately, the development of a mechanism that could effectively protect TK has the potential to improve the lives of TK holders and their communities, to prevent 'biopiracy' and to encourage the growth of national economies. For traditional and indigenous communities, TK is an integral aspect to their health, well being and livelihood and therefore, a TK regime that preserves, encourages and rewards its continued use in conjunction with food production and health applications would improve the lives of millions of people. A form of protection may create the basis of trust required by the local community to part with their knowledge and improve their position to obtain value from it.⁵

The bioprospecting-biopiracy debate is relevant to discussions on TK protection because the deficiency of protection measures in place for protecting TK have led to subjective interpretations pertaining to what constitutes legitimate and illegitimate use of TK. Bioprospecting and biopiracy both refer to the collection of genetic resources and-or knowledge associated with the use of those materials from biologically diverse regions by corporations and individuals for the purpose of extracting biochemical resources that have profitable and patentable commercial applications. The terms of bioprospecting arrangements (such as the benefit sharing arrangements) are increasingly being scrutinized and the degree to which these agreements are equitable or exploitative is highly subjective.

³ Correa, Carlos. 'Traditional Knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge'. (QUNO) Quaker United Nations Office. Geneva.

⁴ CIEL (2007)' The Proposed WIPO Framework on Traditional Knowledge: Does it Meet Indigenous Peoples Demands?' Second Quarter

⁵ Drahos, Peter. 'Indigenous Knowledge and the Duties of Intellectual Property Holders'. *Intellectual Property Journal*, 11, August 1997

The ‘Biopiracy’ Perspective

The word ‘biopiracy’ was initially developed by the Action Group on Erosion, Technology and Concentration (ETC Group), an NGO known formerly as the Rural Advancement Foundation International, to refer to the uncompensated commercial use of biological resources or associated TK from developing countries as well as the patenting by corporations of claimed inventions based on such resources or knowledge.⁶ While the ETC definition is widely accepted by indigenous groups and developing countries, other stakeholders in the discussions concerning protection mechanisms for TK have divergent approaches as to how the term should be defined and applied. For example, The International Chamber of Commerce (ICC) defines the term ‘an essential step which is often not taken (too often it is used simply as a generalized term of abuse for the behavior of multinational companies dealing with genetic resources) and that a ‘rationalized’ view of biopiracy would focus on activities relating to access or use of genetic resources in contravention to national regimes based in the CBD. According to this definition, legitimate claims of ‘biopiracy’ will involve unauthorized access to a controlled genetic resource and the use of that resource which contravenes the national regime based on the CBD.⁷ Currently, some 25 nations have adopted *sui generis* systems to protect TK, traditional cultural expressions and genetic resources. The problem is however, that many struggle with the implementation of these laws due in part to financial constraints. Furthermore, countries such as Peru that implemented such a regime over twenty years ago emphasized that the country, despite its experience with a *sui generis* regime would greatly benefit from an international instrument.⁸

The multitude of ways in which the term biopiracy can be applied generates considerable disagreement over what constitutes the legitimate, legal and equitable use of someone else’s property and what constitutes unfair or illegal use of that property (see Annex I). The biopiracy perspective is critical of the access and benefit sharing arrangements between bioprospectors and the parties that helped create the opportunity for innovation. Essentially, the strategic vagueness of the term makes it hard to measure. The fact that it is hard to quantify the frequency with which biopiracy occurs has complicated the process of devising mechanisms to prevent it. Numerous multilateral discussions are focusing on developing protection systems for traditional knowledge as a way to regulate the conditions for ownership in an effort to prevent claims of ‘biopiracy’. Attempts to prevent biopiracy are complicated by the fact that there is a very fine line between what constitutes a legitimate practice and what constitutes an act of ‘biopiracy’.

The Bioprospecting Perspective

Bioprospecting raises a host of critical questions about critical global issues which include indigenous rights, intellectual property environmental conservation, international treaties and patents.

⁶ Dutfield, Graham. (2001) ‘Bioprospecting: Legitimate research or biopiracy?’ www.scidev.net October

⁷ International Chamber of Commerce (1999). Policy Statement: Trips and the Biodiversity Convention: What Conflict? Prepared by the Commission on Intellectual and Industrial Property, Doc no 450/897 Rev. 2. www.iccwbo.org

⁸ Bridges: Weekly Trade News Digest. ‘WIPO Committee on Genetic Resources, Traditional Knowledge Inconclusive Thus Far.’ Volume 11. Number 25. July 11, 2007

The United Nations Environment Program defines bioprospecting as the ‘exploration of biodiversity for commercially, scientifically, or culturally valuable genetic and biochemical resources.’⁹ Bioprospecting activities are not limited exclusively to the pharmaceutical sector and it should be noted that bioprospecting impacts a range of industries that are dependent on the access, sourcing, processing or production of genetic resources and traditional knowledge to develop commercially valuable materials.

The abundance of biological diversity and opportunity for drug discovery are inextricably linked. Without the conservation of ecological resources and biological diversity, many undiscovered organisms are likely to become extinct. As organisms disappear, so do the opportunities for new drug discoveries.

Proponents of this perspective argue that through well-designed laws and contracts, bioprospecting activities can satisfy the three objectives of the Convention on Biological Diversity (CBD) which include sustainable use, conservation of biological diversity and benefit sharing. Supporters of bioprospecting claim that bioprospecting can give developing countries interested in safeguarding their biodiversity the option to work with companies to further their conservation objectives. The idea is that once the product that was developed through bioprospecting activities reaches the market, the source country could receive royalties and the economic revenue could be used for in situ conservation while simultaneously fueling drug research and development. In light of the fact that there is no legally binding instrument that regulates bioprospecting activities, there is considerable ambiguity that surrounds the concept of ‘equitable’ compensation between the corporations and individuals that accrue economic benefits from the use of TK in inventive processes and the creators of that knowledge. Corporations claim that overwhelmingly, suspicions of biopiracy activity are unfounded and stringent regulations such as those currently in place in Brazil have substantially slowed the research, cataloging and analysis of plant materials that could be useful in developing new drug compounds that could benefit society.¹⁰ On the other hand, NGOs are increasingly voicing their discontent that bioprospecting has failed as a conservation tool and sustainable development mechanism and that advance payments affiliated with bioprospecting arrangements have failed to prevent deforestation.¹¹

To date there is no legally binding instrument that regulates bioprospecting activities. Advocates of this perspective say that benefit sharing arrangements seek a balance between economic, environmental and economic objectives. However, outstanding questions remain with regard to bioprospecting such as, what is ‘equitable’ compensation? How is ‘ownership’ of traditional knowledge and genetic resources defined? Ultimately, these questions have no simple answers.

⁹ <http://www.unep.org/dec/onlinemanual/Resources/Glossary/tabid/69/Default.aspx?letter=>

¹⁰ Astor, Michael. (2005) Biopiracy Fears Hampering Research in the Brazilian Amazon. *Associated Press*. October 30

¹¹ Rodriguez, Silvia (2002). ‘Bioprospecting has Failed-What Next?’ Grain www.grain.org

The Problem with Patents

The main issue of controversy in discussions on potential protection mechanisms for TK is the extent to which intellectual property systems are seen to be compatible with objectives related to protection of TK. TK can generate value when it is used in processes that are patented under the current Intellectual Property Rights system. Due to the nature of the system in place a criticism is that indigenous/ traditional communities are not fairly compensated for their contributions. Patents are one method under the existing IPR system that can be used to grant private rights to applicants who use TK in their inventions. There are instances when patent rights are extended to TK based inventions without the prior informed consent of the creators of such knowledge and without a benefit sharing arrangement as a result of the commercialization of such knowledge. Under these circumstances, the patenting process under the current IP regime facilitates biopiracy rather than prevents it¹²

ETC group and other NGOs contend that such patents are wrongly awarded for three main reasons. Firstly, the examiners may not have adequate time and resources to conduct 'prior art' searches

Secondly, the required standards for inventiveness that are being applied to patent applications may be too low, and lastly, the companies or scientific institutions applying for the patents may intentionally or unintentionally, fail to cite the prior art upon which their invention is based. Proponents of this perspective use the example of 'bad patents' that are issued on the use of traditional knowledge (for example see 'biopiracy' cases on Neem and Ayahuasca) and claim that the intellectual property system as it stands has a bias against traditional knowledge and indigenous rights. Critics of the status quo have called attention to the fact that certain patents previously awarded to bioprospectors for 'novel' inventions are sometimes so closely premised on TK that this form of patenting is in essence intellectual piracy.

Effective and adequate protection of TK through the use of the conventional IPR system is complicated by a number of factors. TK is collectively held and generated, while patent law treats inventiveness as an achievement of an individual. Therefore, it is impossible to identify an individual inventor due to the collective nature of traditional knowledge. Applying for patents and enforcing them once they have been awarded is prohibitively expensive. The lack of economic self sufficiency of many traditional communities, the unequal power relations between them and the corporate world and the high cost of litigation make it very difficult for them to protect their knowledge through the patent system. The costs of preparing and prosecuting a patent application and periodically renewing that application once the patent after it has been granted are well beyond the financial means of most communities. Most traditional communities and indigenous people seem fundamentally opposed to patents for the above reasons. In addition, patent law tends to be formulated in ways that tend to be highly supportive of corporate interests

¹² CIEL. (2007). 'The Proposed WIPO Framework on Traditional Knowledge: Does it Meet Indigenous Peoples Demands?' *Intellectual Property Quarterly Update* Second Quarter 2007

and the demands of traditional communities are rarely if ever taken into consideration when patent regulations are reformed.¹³

ACCESS AND TRADITIONAL KNOWLEDGE: STAKEHOLDERS INTERESTS

The ongoing debate over what form the mandates on access and traditional knowledge ought to assume at the national levels reveals different levels of interests in bioprospecting. The lack of consensus among the different stakeholders is reflective of the lack of clarity on fundamental issues relevant to potential bioprospecting frameworks and access and benefit sharing including the identification of beneficiaries, varying approaches to biodiversity conservation and critical features and characteristics of the various implementation mechanisms. Genetic Resources and Traditional Knowledge are sourced through a variety of channels such as private individuals, Governments, Research Institutions, specialized agencies, corporations and sometimes botanical gardens and national parks.

National Governments

Under current international law, national governments exercise a degree of physical control over the biological resources within their country. The Convention on Biological Diversity reiterates the sovereign rights of states over their natural resources and declares that national governments have authority for determining access to biological and genetic resources. One advantage of national government ownership is that some national governments may be strong enough to defend those property rights as opposed to assigning rights to parties that may not be able to defend them.¹⁴

Creating, modifying and implementing national laws on traditional knowledge and genetic resources is the most visible action taken by governments aside from participation at the international level in multilateral discussions. 'Law making' related to TK is propelled by the pressure to meet obligations stemming from international agreements.¹⁵ To date there is nothing to prevent states from developing *sui generis* systems at the national level for protection of TK in different areas. However, the number of countries that have enacted legislation remains small. Countries such as Brazil, Thailand, Costa Rica and the Phillipines have national laws enacted or under consideration dealing with communities rights over their knowledge.¹⁶ However, a regime of IPRs protection implemented at the national level only creates territorial rights. This means that these rights cannot be claimed and enforced in third countries. Since in many cases the appropriation of TK is made by foreign companies which eventually obtain IPR protection abroad, the existence of a national system does not fully address concerns pertaining to biopiracy.¹⁷ National experiences with TK and suitable forms of protection for TK are highly varied but access

¹³ ICTSD and UNCTAD (2003), Intellectual Property Rights & Sustainable Development Series ISSN: 1681-8954 pg 123

¹⁴ http://en.wikipedia.org/wiki/Biopiracy_and_bioprospecting#Ownership_rights_of_national_governments

¹⁵ GRAIN. (2002) Briefings: Traditional Knowledge of Biodiversity. www.grain.org

¹⁶ Correa, Carlos. 'Traditional Knowledge and Intellectual Property: Issues and Options Surrounding the Protection of Traditional Knowledge'. (QUNO) Quaker United Nations Office. Geneva.

¹⁷ Ibid.

and benefit sharing arrangements that are implemented at the national level may offer more expedient solutions to the problems of 'biopiracy' than negotiations at the international level that are considering a potential internationally legally binding instrument.

Progress towards the adoption of an international framework for TK protection is challenged by the fact that at the domestic level, the resolution of important problems concerning self determination, autonomy and land rights continue to persist. However despite their different positions on sovereignty over national resources, there is consensus between Developing Nations and Indigenous Groups that the incorporation of disclosure requirements in patent applications where the invention involves TK is a promising measure to prevent biopiracy. In contrast to this position, many industrialized countries including those such as the US, Japan and Canada have questioned the desirability of establishing international rules on genetic resources, TK and folklore, citing the need for more time to understand the issues and determine how to proceed.

The fact that TK is being discussed in so many forums has introduced new complications for Governments, NGOs and Indigenous People that are considering protection mechanisms. Consistency in representation of developing countries positions has become problematic as a result of the multitude of discussions on TK at the international level. Some developing countries may have different delegates for different multilateral fora and this can lead to contradictory positions being presented from the same country in different forums.¹⁸ Therefore in the discussions, the importance of consistency and clarity of position of country delegates cannot be overemphasized. This has presented a new opportunity for the International NGOs as it can perform a useful role in facilitating improved policy coherence for developing countries bridging the gap that sometimes exists between what is happening in various forums and what is known by government officials that are based in the capital.¹⁹

National governments are usually reluctant to recognize customary laws of indigenous groups that safeguard TK. Very few delegations participating in discussions on TK protection, recognize customary law in their national legislation and where this exists, national legislation usually takes precedence in event of a conflict in the two areas of law. Ultimately, the idea of recognition of customary law is significantly unpopular with member states. In light of these large issues, questions remain: should establishment of TK protection systems start at the national level and overtime progress to the point of an international legal framework, or should an international legal framework serve as the backbone for national frameworks?

Multinational Corporations

In the absence of a legally binding international instrument to regulate bioprospecting and the use and dissemination of TK, corporations have been called upon to act in a socially responsible

¹⁸ Matthews, Duncan. (2006) NGOs, Intellectual Property Rights and Multilateral Institutions. *Queen Mary Intellectual Property Research Institute*.

¹⁹ Ibid

manner and voluntary mechanisms have been established to guide ethical use of genetic resources and traditional knowledge.

In terms of the voluntary guidelines for multinationals, in April 2002, the member states of the CBD adopted the 'Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization' which are voluntary guidelines that offer guidance in the roles and responsibilities of the various parties involved in access and benefit sharing. These guidelines are intended to assist stakeholders when they are establishing legislative, administrative or policy measures on access and benefit sharing and when negotiating contractual arrangements for access and benefit sharing. Ultimately, the value of voluntary initiatives depends greatly on public pressure and they are most effective when corporations fear consumer reaction. In other words, when it comes time to commercialize an innovation that has used TK in the process of its development, it will be entirely up to corporate goodwill whether a company decides to recognize or compensate an indigenous communities.

It is important to mention that there are instances in which certain pharmaceutical companies are taking the initiative to adhere to voluntary requirements such as the Bonn Guidelines. The Danish biotechnology company known as Novozymes voluntarily follows disclosure requirements in many developing countries. Generally speaking however, the pharmaceutical industry favors a contract-based approach and steadfastly maintains that disclosure of origin should not have to be included in patent applications.

Unfortunately there is no mechanism available to regulate the number of contractual agreements that are currently in place and no way to completely identify all of the countries, corporations and institutions that are involved. While it is possible to obtain some information about 'high profile' bioprospecting arrangements such as the Merck -INBio there could be hundreds of bilateral contracts that receive no public scrutiny. This heightens the immediate need for increased transparency in bioprospecting agreements to ensure that all parties that make a contribution to the development process are recognized and rewarded equitably.

Industry Associations

The issues regarding the use of biological diversity, traditional knowledge and genetic resources have become areas of interest for industry in recent years, particularly the pharmaceutical industry. Historically, industry associations and rights holders groups such as the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA) and the International Chamber of Commerce (ICC) have been significantly more involved in the process for norm establishment in intellectual property policy making when compared to public action NGOs²⁰. Despite their divergence in positions on this issue, industry and NGO s alike acknowledge the need to achieve common goals and participate in dialogues to understand their respective restraints and needs.

²⁰ Matthews, Duncan. (2006). NGOs, Intellectual Property Rights and Multilateral Institutions. *Queen Mary Intellectual Property Institute*.

From an industry standpoint, the prospect of the alteration of existent patent law creates ambiguities that some representatives' claim could undermine the incentives for companies to pursue natural molecules and genetic resources. The pharmaceutical industry is not favorable to disclosure of origin, whereas the seed industry, with the possible exception of the bigger firms is less resistant to the prospect of a potential disclosure of origin requirement and is confident that compliance would not present great difficulties. Having made that point though, the seed industry is not much interested in bioprospecting and the little interest it has may evaporate if it would have to comply with ABS regulations in the same way that pharmaceutical companies do.²¹ In WIPO, WTO and the CBD, biotechnology industry organizations have been concentrating their efforts on preventing the addition of disclosure of origin requirements in international patent applications.

There is a relatively recent trend for well established pro-industry think tanks to engage with intellectual property issues in order to rebut the work of public action NGOs. According to a recent report by the Queen Mary Intellectual Property Institute, representatives of public interest NGOs interviewed for an IP-NGOs project pointed out that think tanks such as the American Enterprises Institute for Public Policy Research and the new industry group, the American BioIndustry Alliance (ABIA) are examples of the type of NGOs that exemplify this trend. ²². Industry associations such as ABIA and Biotechnology Industry Organization (BIO) are participating in the deliberations in WIPOs IGC and these industry associations represent more than 95% of the global bio industry. ²³ The ABIA is a non-profit NGO advocating for biotechnology patenting and is against any amendment to WTO rule to establish mandatory disclosure requirements. This organization provides a counterview to developing countries and indigenous peoples positions on disclosure of origin requirements.

An indication that biological diversity and genetic resources is a timely industry issue was reflected last year when BIO released its 'Guidelines for BIO Members Engaging in Bioprospecting'. The guide is meant to serve as a tool to direct BIO members to take certain steps before engaging in bioprospecting and to help members meet existing CBD ABS obligations including Prior Informed Consent and Mutually Agreed Terms (MAT) for commercialization²⁴. Again, due to the voluntary nature and lack of compliance oversights, it is hard to measure the utility of such measures.

Research Institutions

It is becoming increasingly evident that most Northern based corporations do not bid directly for access to biodiversity but instead work through intermediaries. In contrast to the simplistic view that considers bioprospecting to be a one shot contract between the end-developer drug firm, the

²¹ Dutfield, Graham. (2006). Protecting Traditional Knowledge: Pathways to the Future. ICTSD.

²² Matthews. Duncan. (2006) NGOs, Property Rights and Multilateral Institutions. *Queen Mary Intellectual Property Research Institute*.

²³ See www.abialliance.com

²⁴ See www.abialliance.com

national access authority and the community that possesses the knowledge, in reality there seem to be very few cases where large firms approach source countries directly for access.²⁵ Intermediaries may include non-governmental and non profit organization such as scientific Research Institutes, botanical gardens, conservation or environmental groups, or ethnobotanists employed under contract. Research Institutions refers to Science Councils, National Research Institutes, and Universities.

The majority of funding for endeavors that are undertaken by research institutions comes from government funding. However, significant commercial interests and pressure to supplement research budgets has often led to collaboration between the private sector and such institutions. Research Institutions have frequently undertaken work related to biodiversity prospecting without full consideration of the ramifications of their research endeavors.²⁶ Consequently, this has given rise to bioprospecting arrangements that have had both beneficial and detrimental results for the stakeholders involved.

The first major bilateral contract was made prior to the CBD in 1991, between Merck a US based pharmaceutical organization and the Instituto Nacional de Biodiversidad (INBio) a private, non governmental research institute. INBio agreed to give Merck access to plants, insects and microorganisms and in exchange Merck agreed to give INBio a two year research budget of 1.135 million USD.²⁷ Some argue that Merck compensation for the labor and access to biological resources was completely insufficient and others hail the agreement as a 'model' agreement for future bioprospecting arrangements. Essentially, this case is the embodiment of the divergent perspectives on the definition of 'equitable' compensation. Since the announcement of the Merck/INBio agreement, similar contracts between Northern-based corporations/institutions and Southern based research institutes/ government agencies have ensued.

One of the first agreements that granted the holders of traditional knowledge a share of royalties accrued from drug and product sales was reached in South Africa and it set the precedent for future collaboration between NGOs and Research Institutions. The case involved the development of an appetite suppressant derived from the species *Hoodia* which was used by indigenous people known as the San, to reduce hunger and thirst. The Council for Scientific and Industrial Research (CSIR) in South Africa recognized that the active material in the plant could be used for fighting obesity and international patents were filed while the San People remained unaware of the fact that their knowledge had commercial applications. The CSIR sold the development rights to the active ingredient 'P57' to a UK-based company, Phytopharm, which in turn sold the rights to the world's biggest pharmaceutical company, Pfizer.²⁸ In 2003 after months of negotiations and international pressure for a benefit sharing arrangement, an agreement was reached between

²⁵ Sampath, Padmashree.(2005) *Regulating Bioprospecting: Institutions for Drug Research and Access and Benefit Sharing*. United Nations University Press.

²⁶ <http://www.biowatch.org.za/main.asp> Biodiversity Prospecting in South Africa: A Profile of Some of the Involved Sectors

²⁷ [Http://www.latinsynergy.org/bioprospecting.htm](http://www.latinsynergy.org/bioprospecting.htm) Bioprospecting, Biopiracy and Indigenous People.

²⁸ Kahn, Tamar. (2003). South African Tribe Seals Benefit Sharing Deal. www.scidev.net

CSIR and the San People to give the indigenous group a share of royalties from potential drug sales.²⁹ Despite its flaws, there is no doubt that the agreement set important international and national precedents.

The South African San Institute (an NGO that mobilizes resources for the benefit of the San peoples) worked with the indigenous group on access and benefit sharing (ABS) agreements related to the patenting and commercialization of products derived from Hoodia Gordonii. The recognition of the TK contribution of the San People to the drug development process highlights the significance of NGO impact and engagement with indigenous people at the grassroots level. In the case of Hoodia Gordonii the initiative to achieve an ABS Agreement was supported by technical expertise from the South African NGO Biowatch (which itself received assistance from ActionAid) and by the legal resources center which provides advice and technical expertise to support rights of indigenous people to their land and to facilitate access to anti-retroviral drugs amongst local communities in South Africa.³⁰

Local Communities and Indigenous Groups

Indigenous Peoples inhabit large areas of the earth's surface and are spread around the world from the Arctic to the South Pacific. Recent source estimates range from 300 million to 350 million as of the start of the 21st century. This would equate to just under 6% of the total world population. This includes at least 5000 distinct peoples in over 72 countries.³¹ Indigenous people tend to be among the poorest of the poor³² and they are particularly vulnerable to the loss of their heritage.

A number of factors influence the degree to which indigenous and local communities benefit from the use of genetic resources and traditional knowledge, innovations and practices. The most important factor is probably the socio-political status of communities within a country. It determines the degree to which their basic human rights are respected and the extent to which communities participate in decision making. Just recently, Indigenous Peoples' struggle to achieve international recognition of their rights was realized in September of 2007 with the Adoption of the Declaration of the Rights of Indigenous People. The logic and structure of the Declaration articulates the rights of Indigenous People and States respective obligations and helps clarify the relationship between states and indigenous peoples. The UN Declaration contains the norms on the rights of indigenous people to guide the establishment for *sui generis* systems at the sub-regional, regional and national levels.

The participation of Indigenous People in the norm establishment process for TK protection continues to be limited by a number of factors. Structural impediments such as lack of access to

²⁹ Wynberg, R. (2004). Rhetoric, Realism and Benefit Sharing: Use of Traditional Knowledge of Hoodia Species in the Development of an Appetite Suppressant. *The Journal of World Intellectual Property*, 7(6): 851-876

³⁰ Matthews, Duncan. (2006) NGOs, Intellectual Property Rights and Multilateral Institutions. Queen Mary Intellectual Property Research Institute

³¹ See http://en.wikipedia.org/wiki/Indigenous_peoples#Population_and_distribution

³² An Assessment of UNDP's Activities Involving Indigenous People. Draft 1999

basic communication resources and lack of funding to finance indigenous peoples direct physical participation in multilateral discussions continues to place constraints on their levels of engagement with intellectual property issues at the international level. There are indications that there are increasing levels of dialogue and coordination between international NGOs and groups in the South in order to achieve better representation among the groups.³³ Networks and coalitions can address representation problems that many groups are confronting to a degree. However, they should not be a substitute for direct indigenous participation. Conclusively, there is evidence that indigenous communities and local groups are effectively engaging with the issues related to intellectual property at the sub-regional, regional, and national level but their ability to influence intellectual property issues and norm establishment at the international level could still be improved.

For Indigenous People, national control over biological resources is a threat to their self-determination and autonomy and they have advocated for local control over these resources. One main concern of NGOs that defend indigenous people rights such as the Indigenous Peoples Council on Biocolonialism and the International Indian Treaty Council is the recognition of sovereignty of the indigenous people over their resources as a measure to combat “biopiracy” and “biocolonialism”. An additional concern among many indigenous NGOs is that some of the potential mechanisms that could be used to extend existing IP systems to include TK may actually undermine some fundamental aspects of their cultures. Indigenous organizations have often expressed their frustration with the lack of progress towards and agreement on TK and cultural expressions. Generally speaking, indigenous people advocate for an appropriate mechanism to recognize and respect their knowledge and many groups feel that a provision for prior informed consent would warrant against suppression of traditional knowledge and stop the culturally offensive use of certain material.³⁴ The current IPR system excludes consideration for indigenous peoples customary law systems. Indigenous Customary laws continue to exist parallel to conventional IPRs.

The World Intellectual Property Organizations’ Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is one of the main forums where indigenous, local communities and ‘Southern’ NGOs are able to express their respective demands and concerns. However there are several reasons why indigenous peoples demands within the IGC are not being fully addressed. For example, some of the IGC members demand a focus on TK protection mechanisms consistent with existing IP systems and on the other hand, indigenous and local communities demand protection of sui generis forms of protection that do not incorporate the current IP regimes. Additionally, there is lack of convergence between developing and industrialized countries on whether or not an international instrument for the protection of TK should be legally binding or not. Ultimately, the most

³³ Matthews, Duncan.(2006) NGOS Intellectual Property and Multilateral Institutions. *Queen Mary Intellectual Property Research Institute*

³⁴ BRIDGES.(2007). WIPO Committee on Genetic Resources and Traditional Knowledge Inconclusive Thus Far. Volume 11 Number 25. www.ictds.org/weekly

challenging issue is that only a small portion of WIPO member states have enacted legislation measures for protection of TK. This has made it difficult to draw from national experiences in trying to create an international agreement³⁵.

Currently, existing forms of protection for Indigenous peoples knowledge, innovations and practices of indigenous communities include conventional intellectual property rights regimes, *sui generis* systems, national access and benefit sharing legislation embodying the prior informed consent principle, contractual agreements and customary law regimes. The main non-legally binding forms of protection of local indigenous knowledge, innovations and practices include voluntary guidelines, codes of conduct and traditional resource rights.³⁶

NGOS AND MULTILATERAL DISCUSSIONS, TRADITIONAL KNOWLEDGE AND INTERNATIONAL DIPLOMACY

A key policy challenge at the moment is to ensure that the benefits that are accrued from innovations based on traditional knowledge are equitably distributed and shared amongst the various stakeholders. Several policy measures are currently being deliberated in a number of multilateral fora to develop adequate regulation mechanisms, benefit sharing and protection regimes for TK used in inventive processes. One major factor in the complexity of discussions on TK is that it is being dealt with by no less than 11 UN bodies all of which are currently considering issues ranging from rule making to capacity building. Several intergovernmental multilateral discussions including the World Trade Organizations and the TRIPs Council, the United Nations Permanent Forum on Indigenous Issues (UNPFII) United Nations Conference on Trade and Development (UNCTAD), the Convention on Biological Diversity (CBD), the Food and Agriculture Organization (FAO) International Treaty on Plant Genetic Resources for Food and Agriculture, the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) all host discussions related to intellectual property issues.³⁷

Within the context of these discussions, NGOs have become key players by providing developing country delegates with the tools to enhance their negotiating capacity and for many countries, NGO's can articulate viewpoints that would be politically or diplomatically unacceptable for developing countries themselves to make.³⁸ This section will take a closer look at the discussions that are the predominant platforms for devising methods for the future of TK protection and management. The positions and contributions of NGOs within the context of these discussions will also be discussed.

³⁵ CIEL (2007). The Proposed WIPO Framework on Indigenous Knowledge: Does It Meet Indigenous Peoples Demands? *Intellectual Property Quarterly Update*. Second Quarter

³⁶ UNEP/CBD/WG8J/1/2, 10 January 2000. Ad-Hoc Open Ended Inter Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity. First Meeting, Seville March 2000

³⁷ CIEL(2007). The Proposed WIPO Framework on Traditional Knowledge: Does It Meet Indigenous Peoples Demands? *Intellectual Property Quarterly Update*. Second Quarter 2007

³⁸ IP Watch. (2007) *Report Assesses IP NGOs Impact on Developing Country Negotiators*. January 17 www.ip-watch.org

WIPO and the Intergovernmental Committee on Intellectual Property Genetic Resources, Traditional Knowledge and Folklore

The World Intellectual Property Organizations' Intergovernmental Committee on Intellectual Property Genetic Resources, Traditional Knowledge and Folklore (IGC) is one of the primary platforms for international policy debate and development of legal mechanisms related to the protection of TK and the intellectual property aspects of access to and benefit sharing in genetic resources. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was established in 2000 in response to growing concerns among developing countries, indigenous people and local communities about the inadequacy of protection mechanisms for TK. The IGC has cooperated closely with other intergovernmental agencies and processes that address the interface between intellectual property genetic resources and TK protection.

At the heart of the IGC discussions is the debate over how to design a protection regime for traditional knowledge, traditional cultural expressions and genetic resources. The debate has broken down along classical North- South lines. Several biodiversity rich developing countries want an internationally legally binding instrument and countries such as the US Japan and Canada want a non-binding recommendation³⁹. Developing countries such as India and Pakistan have reiterated that while there are national laws and regional measure to protect TK, they need increasing support from effective binding international rules.⁴⁰ In spite of the divergent positions, there is recognition that the main goal of any protection regime should be the prevention of misappropriation. The committee has considered the role of disclosure requirements in the patent system to ensure disclosure of TK that is used in the development of a claimed invention.⁴¹ The IGC is now working on two drafts of a possible instrument for the protection of traditional knowledge.

Many are impatient with the progress of the IGC so far as the development of legal instruments is concerned. However, WIPO has also produced low-key but no less valuable practical outcomes including draft recommendations of the recognition of TK within the patent system for 'defensive' protection purposes⁴², the inclusion of TK related publications as 'prior art'⁴³, options to patent disclosure requirements that are relevant to genetic resources and TK that are used in patented inventions⁴⁴, a draft tool kit for identifying the IP implications of documenting TK,⁴⁵ standards for the documentation of codified traditional knowledge⁴⁶, resources related to managing IP-options

³⁹ BRIDGES. '(2007) WIPO Committee on Genetic Resources, Traditional Knowledge Inconclusive Thus Far.' Volume 11, No 25 11 July

⁴⁰ Ibid.

⁴¹ Gupta, Anil.(2004) 'WIPO-UNEP Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of Biological Resources and Traditional Knowledge'. *Jointly produced by WIPO and UNEP.*

⁴² See Documents WIPO/GRTKT/IC/5/6/ and 11/7

⁴³ See references at <http://www.wipo.int/tk/en/tk>

⁴⁴ WIPO-UNEP(2004)"Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the use of Biological Resources and Traditional Knowledge.

⁴⁵ Document WIPO/GRTKF/IC/5/5

⁴⁶ Document WIPO/GRTKF/IC/4/14

when digitizing intangible cultural heritage⁴⁷, and a database of IP related provisions used in agreements related to access and to benefit sharing in genetic resources.⁴⁸

Unlike the WTO, WIPO has a formal relationship with NGOs in which they can apply for accreditation that enables them to attend meetings and make statements. At its conception, the IGC was attended by only a small number of NGOs that represented indigenous communities. At this time, 130 NGOs have been granted accreditation to the IGC and approximately 25 of them are NGOs that represent indigenous communities. The inclusiveness of WIPO's definition of NGO has served to enrich the debate and discussion on TK especially within the IGC. The IGC is truly a unique space in which indigenous peoples have for the first time had a direct say in the development and evolution of international IP policy.

Public action NGOs have become increasingly involved in WIPO and they are making significant contributions to discussions that were once dominated by rights holders groups and industry. These groups have become increasingly active in presenting their demands and concerns. One major concern among these groups is that some of the potential mechanisms that could be used to extend existing IP systems to include TK may actually undermine some fundamental aspects of their cultures. The recent adoption of the Development Agenda at WIPO is suggestive of the fact that there are disparate levels of development amongst states that are involved in intellectual property discussions. This has created new opportunities for NGOs working on intellectual property matters to engage the government officials of biologically diverse, developing countries at the national and capital level as a measure to enhance capacity at the international, multilateral discussions. NGOs can work alongside members and produce proposals that can be included in draft documents. A Voluntary Fund has been established by the IGC to finance and ensure that indigenous groups are active participants in the IGC discussions. The substance of discussions in the IGC has been focused on definitional issues for TK which include identifying objectives, beneficiaries, and the form, extent and duration of such protection.

Convention on Biological Diversity (CBD)

The Convention on Biological Diversity came into force in 1993. The three major objectives of the Convention are to protect biological diversity, promote its sustainable use and to share the benefits of such use equitably between the users and the providers. The CBD explicitly acknowledges the role of traditional knowledge, innovations and practices in sustainable development and the need to ensure protection through IPRs or other means. International Certificates of Origin, source, or legal provenance and measures to ensure prior informed consent (PIC) and mutually agreed terms (MAT) and access and benefit sharing are some of the most controversial, divisive and complex aspects of discussions within the CBD pertaining to an international regime for TK and Genetic Resources. The utility of other possible protection measures to prevent misappropriation of traditional knowledge such as the use of TK databases

⁴⁷ See WIPO's Creative Heritage Project at www.wipo.int/tk/en/folklore/culturaheritage/index.html.

⁴⁸ See www.wipo.int/tk/en/databases/contracts

and the harmonization of the CBD provisions on TK protection with patent law has also been discussed to great length reveal differences over plausible protection mechanisms.

The patenting or privatization and subsequent commercialization of traditional knowledge is a serious concern for countries rich in biodiversity and for the communities that possess biodiversity related knowledge. Following the adoption of the Convention on Biological Diversity, developed countries were eager to capitalize on their genetic resources but were faced with the daunting challenge of enacting enforceable national regimes on access to genetic resources and traditional knowledge. The varying extent to which provisions of the CBD were implemented by countries generated legal uncertainties pertaining to obligations associated with the use of genetic resources and TK.

Article 8 (j) requires parties to ‘respect preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilization of such knowledge, innovations and practices.’

This article was a response to concerns about TK exploitation by commercial interests without fair and equitable benefit sharing. The Conference of the Parties agreed to establish the ‘Ad Hoc Open-Ended Inter-Sessional Working Group’ to be comprised of the Parties and Indigenous and local communities to address the implementation of Article 8(j). Article 8(j) is subject to national legislation and it is a significant step towards the prevention of misappropriation. However, few countries have introduced national laws to implement the article. Negotiations on Article 8(j) Working Group have seen tensions between countries focusing on national implementation and others keen to negotiate a binding international instrument. Positions on ‘sui generis’ regime are very diverse, some countries want a binding instrument at the international level and others want instruments developed first at the national level⁴⁹

The CBD generated the ‘Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising Out of Their Utilization’. The fear that a number of traditional people and local communities have is that this initiative may encourage the commercialization of life and knowledge in a manner that is unacceptable to them. While in theory such processes are open to non-monetary benefit sharing including political empowerment, in practice most negotiations may restrict themselves to monetary transfers. According to the Indian Treaty Council, ‘For us, “trade” is an equitable exchange relationship between individuals, communities or peoples but we point out that there are aspects of material or immaterial elements of the indigenous peoples that under no condition-we repeat- , under no condition can be sold or exchanged and we ask this to be respected⁵⁰ . In addition, indigenous people have pointed out that Bonn guidelines and other ABS documents or recommendations emanating from the CBD

⁴⁹ BRIDGES. (2007) No Outcome in Sight for Access and Benefit Sharing Under the Biodiversity Convention. Volume 7 Number 18 October 19. www.ictsd.org

⁵⁰ Ibara, M. 2004. Statement by International Indian Treaty Council in Twarong and Kapoor, op.cit

and other international forums are incomplete without the recognition of a number of rights; to self determination, to their territories and resources, to their knowledge and practices, and to prior informed consent. Without such recognition they say, the concept of 'equitable benefit sharing is toothless⁵¹.

In terms of NGO involvement in the CBD-COP, NGOs can engage in formal and informal discussions with the CBD Secretariat, present documents and participate in meetings that take place. Formal accreditation schemes are currently being discussed and NGOs are encouraging separate categories of accreditation for indigenous and local communities. NGOs that are actively supporting the adoption of a disclosure of origin requirement and helping to present different options to what the disclosure requirement might look like include Action Aid, the International Center for Trade and Sustainable Development (ICTSD), the International Union for the Conservation of Nature (IUCN), Greenpeace, The Berne Declaration and the Center for International Environmental Law (CIEL). In contrast, at the Fifth meeting of the Working Groups on Access and Benefit Sharing and on Article 8(j), the American Industry Bioalliance stated any international regime should include measures that generate demonstrable benefits and provide positive incentives to encourage access to genetic resources and objected to any additional conditions for patent applications such as obligations to disclosure source of origin. ⁵²

There is divergence of opinions among developed and developing countries as well as environmental and sustainable development NGOs themselves as to the desirability form and feasibility of the disclosure requirement and whether they would serve to promote the objectives of the CBD. Many NGOs have emerged as benefit sharing middlemen. They speak on behalf of industry or indigenous communities or they are the main producers of discourses on how equitability of biodiversity products should be administered.

WTO and Trade Related Aspects of Intellectual Property (TRIPS Agreement)

The discussions at the WTO on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) are consequential for the sustainable development and intellectual property debate. Discussions are currently underway to address concerns that the TRIPs Agreement permits the granting of patents for inventions that use genetic material and the associated traditional knowledge without requiring compliance with provisions of the CBD.⁵³

There are divergent perspectives regarding the degree of harmony between the TRIPs agreement and the CBD. The TRIPs Agreement is seen by many developing countries and NGOs to be contradictory with certain principles in the CBD while many developed countries and industry associations insist that there is no conflict between the two instruments. The TRIPs Agreement allows intellectual property rights to be extended to genetic resources and obliges Members to protect plant varieties through a patent and/or a sui generis regime without mentioning or

⁵¹ Kothari, Ashish. (2007)Draft for Discussion: Traditional Knowledge and Sustainable Development. www.iisd.org

⁵² <http://www.iisd.ca/vol09/Vol.9> No. 388. Monday 8, October. 2007 Fifth Meetings of the Working Groups on Access and Benefit Sharing and on Article 8 (j) of the Convention on Biological Diversity. Pg 3.

⁵³ CIEL. (2007). A Citizens Guide To WIPO. *Center for International Environmental Law*.

necessitating prior informed consent or benefit sharing. A group of developing countries such as Brazil, Ecuador, India have proposed amending the TRIPs agreement to make patent applications require the disclosure of origin of genetic resources and associated TK used in inventions as well as prior informed consent and benefit sharing.

While the WTO is one of the major forum in which these issues are discussed, NGOs cannot attend the regular TRIPs Council meeting where the main meetings regarding decision making take place. While there is an ongoing informal dialogue with the WTO Secretariat on intellectual property issues, there is ultimately no formalized relationship between NGOs and the WTO.⁵⁴ This is rather significant due to the fact that the products from the WTO discussions have serious implications for intellectual property rights.

Many NGOs and developing countries maintain the position that the lack of coherence between the CBD and the WTO TRIPs Agreement has complicated their ability to address concerns related to misappropriation and 'biopiracy'. With the support of NGOs, many developing countries aim to amend TRIPs to introduce internationally binding disclosure requirements such as proof of consent and benefit sharing requirements in patent applications to lessen the opportunities for misappropriation of genetic resources and traditional knowledge. NGOs have emphasized the importance of implementing the CBD and creating harmony between the existent international instruments concerning traditional knowledge and genetic resources. The Council of TRIPs is an important forum for the discussion of IPRs, biodiversity and the protection of TK. However, the CBD Secretariat has not yet been given permanent observer status to the Council of TRIPs. The number of admitted observers is very limited and NGOs are not allowed to participate. Many NGOs have been involved in the debate on the pending TRIPs review of Article 27.3 (b) by providing support to developing countries for an amendment to the TRIPs Agreement that would necessitate disclosure requirement in patent applications. Unlike the CBD, TRIPs contains no provisions for access and benefit sharing.

It appears the WTO may not be the most promising place to achieve substantial progress on TK although it is the most appropriate forum to call attention to specific concerns about the intellectual property rules of the multilateral trading system, of which inadequate protection mechanisms for TK is an important example. The CBD-COP is an open forum where NGOs, including those that represent indigenous people, can communicate their demands and concerns directly to delegates. The decisions and proposals taken at the CBD-COP are not legally binding but they are reflective of consensus that could be used to support demands made in other multilateral discussions such as the WTO TRIPs discussion and WIPO. To gain increased clarity on the issue of TK, the WIPO IGC seems to be the most promising place. The possibility exists for some legally binding norms to be adopted if enough developing countries can reach consensus on what these norms should be. Evaluating proposals for norms will be difficult and time consuming and it will be a lengthy process. While the loss and erosion of TK is an ongoing and

⁵⁴ Matthewss, Duncan. (2006) 'NGOs Intellectual Property Rights and Multilateral Institutions'. *Queen Mary Intellectual Property Research Institute*.

serious problem, it is better to spend time developing effective norms and regulations than to expedite the adoption of norms that are appealing in their rhetoric but damaging in reality.

Looking Ahead

Through their advocacy and campaigning activities, NGOs have been able to increase the public awareness of the importance and validity of the demands of developing countries related to the conservation, use and sharing of benefits. This has been significant in ensuring that these issues are maintained and prioritized in the agenda in WIPO and the CBD.

Some of the difficulties that NGOs have encountered in the process include the complexity of building expertise and understanding the very technical issues related to issues such as disclosure requirements in patent applications and the inter-relationship between the patent system, the TRIPs Agreement and the principles enshrined in the CBD.⁵⁵ Ultimately, the degree of NGO involvement and participation in the multilateral discussions on intellectual property will always be limited by the fact that within these intergovernmental discussions, it will be the Members that retain the decision making power while NGO's provide technical expertise, and advice to support to the delegates. It appears that the greatest impact of NGOs that are participating in discussions in multilateral institutions is at the informal level where they can work with delegates and facilitate the flow of information from the regional to national to international level and vice-versa.

New developments such as the Declaration on the Rights of Indigenous People and the establishment of the Development Agenda at WIPO have the potential to redefine the role and impact that civil society and public action groups have on the discussions concerning IP rules and TK. There is a very diverse representation of interests amongst NGOs involved in negotiations regarding protection mechanisms for TK. The various stakeholders in these discussions are hopeful that the international debates will be able to generate proposals that will harmonize the frequently conflicting societal and economic implications of bioprospecting and the uses of TK in inventive processes. The prospects for progress are hopeful in light of the fact that TK has become a subject that has generated a wide range of propositions in a number of forums that have the recognition of many nations.

NGO Interests and Initiatives

There is a diversity of views and proposed solutions among NGOs to the challenges related to the equitable access and use of genetic resources and traditional knowledge in inventions. The following section aims to provide a representative sample of some of the NGOs involved in multilateral discussions on intellectual property and potential protection mechanisms for TK. These NGOs vary enormously in their scale, focus, positions and proposals for potential protection mechanisms for TK.

⁵⁵ Tellez, Viviana. 'The Campaign Against Biopiracy: Introducing a Disclosure of Origin Requirement'. www.ipngos.org

A HETEROGENEOUS MIX: NGOs INTERESTS AND INITIATIVES

International Centre for Trade and Sustainable Development (ICTSD)

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Relationship with Intellectual Property Matters:

ICTSD has been rigorously covering the international trade debate on the relationship between intellectual property rights, biodiversity, traditional knowledge, regularly reporting, through its publications the ongoing developments at the WTO, WIPO, CBD, FAO, as well as civil society and other initiatives. Building on its growing Network, it has convened meetings that are policy relevant and feed into talks regionally and in Geneva. ICTSD's dialogues activities in this area commenced in May 1998 with a roundtable discussion Dialogue on TRIPS and Biodiversity with the objective of bringing these issues to a broader community including the WTO; WIPO, Southern NGOs, and indigenous groups.

Main Objectives of the Organization

The International Centre for Trade and Sustainable Development (ICTSD) was established in Geneva, Switzerland in September of 1996 to contribute to a better understanding of development and environment concerns in the context of international trade. It fosters sustainable development as the objective of international trade and policy making and participatory decision making in the design of trade policy. ICTSD's program enables, facilitates and supports multi-stakeholder approaches to trade and policy issues through objective information dissemination, policy dialogues and research. ICTSD's dialogues regularly bring together policy-makers and civil society on trade policy issues in Geneva and the regions. ICTSD is also the publisher of BRIDGES[©] and of the BRIDGES Weekly Trade News Digest [©] as well as PUENTES, PASSERELLES and BRUCKEN which are co-published in Ecuador, Senegal and Germany, respectively. ICTSD worldwide network of leading decision makers and policy influencers currently numbers approximately 9,000 people and organizations. ICTSD is non-partisan on issues and represents no particular constituency.

Description of Organizations Activities

ICTSD partnered with the Quakers United Nations Office on a project entitled 'The TRIPS Process: Negotiating Challenges and Opportunities'. This project aims to strengthen the capacity of developing countries to understand and participate more effectively in review of Article 27.3 (b) through a series of informal meetings with Geneva based delegates which draw on and contribute to the regional dialogues mentioned above. ICTSD has also partnered with UNCTAD on a joint project called 'An Independent policy review on the future and nature of TRIPS'. The main goals of this project are to generate a better understanding of the development implications of the TRIPS Agreement and to strengthen the analytical and negotiating capacity of developing countries so that they are able to participate in IPR's-related negotiations in an informed fashion and achieve the objectives of sustainable development.⁵⁶

⁵⁶ WIPO/GRTKF/IC/1/2 Add. Annex pg 10

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Relationship with Intellectual Property Matters

The Center for International Environmental Law (CIEL) is a nonprofit organization working to use international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society. CIEL has undertaken work related to intellectual property rights particularly in the context of the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights. CIEL attorneys have authored papers on the relationship between the conservation of biological diversity and the TRIP's agreement and on methods of IPR protection that may be of use in protecting traditional knowledge.

Main objectives of the Organization

CIELs aims:

- to solve environmental problems and promote sustainable societies through the use of law;
- to incorporate fundamental principles of ecology and justice into international law;
- to strengthen national environmental law systems and support public interest movements around the world; and
- to educate and train public-interest-minded environmental lawyers.

CIEL provides a wide range of services including legal counsel, policy research, analysis, advocacy, education, training, and capacity building. With offices in Washington DC and Geneva, CIEL provides legal advice on international and comparative law, policy and management. In Geneva, CIEL serves as a public interest international law-firm on issues of environment and sustainable development to government, intergovernmental and non-governmental organizations located in Geneva and around the world. In Geneva, CIEL focuses primarily on the links among trade, environment, development, and provides support to national missions, intergovernmental and non-governmental organizations, with a special focus on matters pertaining to the World Trade Organization.

Description of Organization's Activities

CIEL recognizes that the rules of ecology place real constraints on our future choices and that the rule of law is critical for forging an appropriate balance between environmental protection, human rights, social equity, and economic growth. CIEL seeks to bring its comprehensive knowledge of international law, institutions and processes to bear on issues important to human health and the environment. As international lawyers for the global environmental community, CIEL is dedicated to using principles of justice and ecology to protect the global environment and promote

sustainable development.⁵⁷ CIEL conducts independent policy research on pressing issues of international law for sustainable development, writing, and publishing extensively on topics concerning environmental protection, economic globalization and local governance. CIEL Geneva has been involved in a joint project with the South Center to assist Developing Country WTO delegates on IPR issues.

Countries the organization is primarily active:

CIEL works with developing country delegates in Geneva and NGOs from many regions of the world including Asia, South America and Africa

⁵⁷ ww.wipo.int/edocs/mdocs/scp/en/scp_10/scp_10_7_add-annex1.d

ETC Group

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Relationship with Intellectual Property Matters

ETC Group is dedicated to the conservation and sustainable advancement of cultural and ecological diversity and human rights. To this end, ETC Group supports socially responsible developments of technologies useful to the poor and marginalized and it addresses international governance issues and corporate power. Formerly known as RAFI (Rural Advancement Foundation International), the ETC Group traces its history back to the National Sharecroppers Fund that was established in the 1930's by amongst others Eleanor Roosevelt to help support the plight of the poor mostly black tenant farmers in the US. ETC Group's strength is in the research and analysis of technical information (particularly but not exclusively plant genetic resources, biotechnologies biological diversity), and in the development of strategic options related to socioeconomic ramifications of new technologies

Main Objective of the Organization

ETC Group works in partnership with civil society organizations (CSOs) for cooperative and sustainable self-reliance within disadvantaged societies, by providing information and analysis of socioeconomic and technological trends and alternatives. This work requires joint actions in community, regional, and global fora.

Description of Organization's Activities

ETC Group does not undertake grassroots, community, or national work. ETC Group supports partnerships with community, national, or regional CSOs but ETC does not make grants or funds available to other organizations. They do not have members. ETC is an active participant in the 'Coalition Against Biopiracy' which awards the 'Captain Hook Awards'. ETC provides information and analysis of socioeconomic and technological trends and alternatives. Its analysis mainly focuses on social impact of those new technologies. Its main activity is therefore publishing. ETC Group is also involved with the follow through on the 1996 UN Food Summit.

Country in which the Organization is primarily active:

ETC Group works primarily at the global and regional (continental or sub-continental) levels.

Genetic Resources Action International (GRAIN)

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Relationship with Intellectual Property Matters

GRAIN is an international non governmental organization which promotes the sustainable management and use of agricultural biodiversity based on peoples' control over genetic resources. GRAIN was established at the beginning of the 1990s to launch a decade of popular action against one of the most pervasive threats to world food security: genetic erosion. The loss of biological diversity, undermines the very sense of "sustainable development" as it destroys options for the future and robs people of a key resource base for survival. Genetic erosion means more than just the loss of genetic diversity. In essence it is an erosion of options for development. Central to their approach is the conviction that the conservation and use of genetic resources is too important to leave to scientists, governments and industry alone. Farmers and community organisations have nurtured genetic diversity for millennia, and continue to do so. Any effort in this field should take their experience as a starting point.

Main objectives of the Organization

GRAIN works to meet its aims by:

- Protecting and strengthening community control of agricultural biodiversity: GRAIN actively monitors, researches and lobbies against pressures that undermine the rights of farmers and other local communities to use, and benefit, from biodiversity. At the same time they work with national and local organisations across the world who are advocating and building up mechanisms which enhance community control over local genetic resources and its associated knowledge.
- Promoting agriculture rich in biodiversity: All over the world there are farm and livelihood systems rich in biological and cultural diversity. Together with other NGOs, they work to support farmers and communities in strengthening sustainable agricultural approaches that are people-driven and serve food security first and foremost. GRAIN also explores how agricultural research programmes can better serve these approaches.
- Stopping the destruction of genetic diversity: Agricultural policies and trade liberalisation agreements have led to a more industrialised - and more vulnerable - food system. Through research, information and strategy work, they aim to help those involved in various activities to stop further privatisation and loss of agricultural biodiversity.

Description of Activities of the Organization

Harnessing Diversity' is GRAIN's multi-year programme plan. It is divided into four distinct but interconnected programme areas:

'The fight for rights' focuses on the struggle to articulate, strengthen and implement rights of local communities in relation to biodiversity management and traditional knowledge. This goes hand in hand with the fight against patents on life and the misappropriation of traditional knowledge, be it by governments, scientists or multinational corporations. Activities in this area include: monitoring and research activities on intellectual property rights (IPR) in international

fora and at the regional and national levels; a specialised electronic information service called BIO-IPR; the production of briefings on cutting edge issues in the fight for rights; and direct collaborative support to NGOs, farmers' groups and broader campaigns against IPRs and for community control over biodiversity and local knowledge.

“Agricultural research for whom?” focuses on the promotion of relevant research for farming communities to help further the development of locally adapted sustainable farming and livelihood systems. It also unveils and challenges the privatisation of scientific research, top-down, internationally imposed models of industrial agriculture with its need for uniformity, and new technologies such as genetic engineering which serve to undermine local agricultural systems. Activities include providing analysis and research, the production of case studies and news services, participation and support to various campaigns, and capacity sharing efforts in partnership with NGOs and farmers organisations in the South. In the coming years, a special effort will be put on incorporating and supporting the perspectives and activities of groups and movements working to improve farmer-controlled agricultural research, anchored in the hands of small scale farmers, especially women farmers.

‘Cross-cutting information work’ brings together all of GRAIN's general information activities and outreach functions. It includes: the continued production of periodicals like Seedling, Biodiversidad, and Semences de la Biodiversité; the production of new information materials like Against the Grain; the running of a translation facility in Spanish and French; the continuous development of their website; more proactive work with the media and audio visual materials; and the production of ad hoc information tools and services.

‘Programme and organisational development’ focuses on the further consolidation of GRAIN's organisational development gains and processes, to allow them to address more efficiently and effectively the challenges posed by their programme. It incorporates: the strengthening and further feminisation of GRAIN's governance; the improvement of cooperation and communication among their highly dispersed staff, including more collaborative teamwork; building staff skills in accounting for gender and difference; and the development and implementation of a more systematic monitoring, evaluation and reporting framework.

Intellectual Property Owners Association

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Relationship of the Organization with Intellectual Property Matters

Founded in 1972, IPO is a national US based trade association for the owners of patents, trademarks, copyrights and trade secrets in all industries and fields of technology. IPO seeks to represent the interests of intellectual property owners. In 2006, IPO formed a Genetic Resources and Traditional Knowledge Committee to specifically focus on developing IPO positions relating to the intersection of genetic resources and traditional knowledge issues and intellectual property law. The committee seeks to develop on IPOs behalf, legal frameworks for access and benefit sharing that will lead to increased conservation and to effective and equitable utilization of genetic resources and traditional knowledge.

Main Objectives of the Organization

IPO was established to broaden public understanding of intellectual property rights. Its membership currently includes more than 200 companies and a total of 9,000 individuals who are involved in the association either through their companies or as IPO inventor, author, executive and law firm attorney members. IPO corporate members file approximately 30% of the patent applications filed at the US Patent and Trademark office by US nationals.

Description of Activities of the Organization

The IPO advocates effective and affordable IP ownership rights and provides a wide array of services to members. It concentrates on supporting members interests relating to legislative and international issues, analyzing current IP issues, providing information and educational services and disseminating information to the general public on the importance of intellectual property rights.

Country in which the Organization is primarily active:

United States of America

American BioIndustry Alliance

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USA
Ph: +1 202- 364-3566 - Fax: +1 202- 330-5550
www.abialliance.com

Relationship with Intellectual Property Matters

The American BioIndustry Alliance (ABIA) is a non-profit, non governmental organization founded by members in 2005 to engage pro-actively in the work of the ABS Working Group. Members of ABIA include AvantiTherapeutics, Bristol Myers-Squibb, Eli Lilly, Excel Life Services, General Electric, Hana Biosciences, Millennium Pharmaceuticals, Pfizer and Tethys research.

As an alliance of companies representing the broad spectrum of the American biotechnology industry, members of the ABIA support the development and implementation of equitable, sustainable, mutually beneficial Access and Benefit Sharing (ABS) policies relating to genetic resources. With the ongoing stalemate in the World Trade Organization (WTO) discussions to amend the TRIPS Agreements, the debate has broadened from the multilateral arena to key capitals, particularly in the developing world.

National Initiatives

The fora for debate have multiplied, raising the stakes for the future of biotechnology development. The ABIA will complement its continuing multilateral efforts through engagement in key developing countries considering ABS legislation, such as China. The ABIA will continue outreach in India, which already requires disclosure of source and origin for genetic resources and traditional knowledge.

Description of Activities of the Organization

The ABIA will build on current efforts in three major fora with active ABS work programs:

- The ABIA continues to support positive alternatives to amendment of the WTO TRIPS Agreement, which, if enacted, would reduce certainty for biotech entrepreneurs in developing countries, who already face greater hurdles than developed country counterparts.
- The ABIA remains actively engaged in the ABS Working Group (WG) of the Convention on Biological Diversity (CBD), and its mandate, received at the 8th CBD Ministerial in March 2006, to complete an ABS International Regime by 2010
- The ABIA provides biotech industry expertise and educational outreach to support the World Intellectual Property Organization (WIPO) ABS agenda in the Inter-Governmental Committee on Genetic Resources, Traditional Knowledge and Folklore and the Standing Committee on Patents. The ABIA supports U.S. opposition to amending WIPO patent treaties.

Indian Treaty Council

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The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central, South America and the Pacific working for the sovereignty and self determination of Indigenous peoples and the recognition and protection of Indigenous Right, Traditional Cultures and Sacred lands. IITC supports grassroots struggles through information dissemination, networking, coalition building, technical assistance, organizing and facilitating the effective participation of traditional peoples in local regional, national and international forums, events and gatherings.

Main Objectives of the Organization

1. International Standard setting, in particular:

- Implementation of an effective plan of action for the International Decade of the World's Indigenous Peoples which began on December 10th, 1994
- Adoption of the Draft Declaration for the Rights of Indigenous Peoples
- Development of a permanent forum for Indigenous Peoples within the UN System

2. Addressing violations of Indigenous Peoples' rights and presenting issues of concern to the international community. Primary focus areas include:

- Environment Protection and Sustainable Development Treaty and Land Rights
- Cultural Rights, Sacred Rights and Religious Freedom
- Rights and protection of indigenous children

IITC also has special projects and programs focusing on current priorities. IITC will continue to disseminate the final report of the UN Treaty Study and develop strategies in response to its final recommendations.

IITC's Mentorship Programs will continue to provide intensive training and leadership development to representatives of Indigenous communities, including youth.

IITC will also continue to submit and monitor human rights complaints filed on behalf of Indigenous Peoples facing violations of their freedom of religion, forced relocations, arbitrary detentions and other crisis situations.

Description of Activities of the Organization

The IITC focuses on building Indigenous Peoples' participation in key UN fora such as the Commission on Human Rights, the Working Group on Indigenous Populations, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, the Conference of the Parties to the Convention on Biological diversity, UNESCO and the Commission on Sustainable Development. The IITC submits testimony, documentation, and formal complaints to these fora as well as to the U.N. Center for Human Rights and the Organization of American States (OAS), to redress grievances, increase awareness and impact the development of international standards

protecting the rights of indigenous people. The IITC also focuses on dissemination of information regarding the U.N: and opportunities for involvement to grassroots Indigenous Communities, and works to educate and build awareness about Indigenous struggles among non-Indigenous Peoples and populations.

South Centre

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Relationship with Intellectual Property Rights

The South Center is a Geneva Based- Intergovernmental organization of developing countries and as such, an instrument of South-South cooperation. From its inception, the Centre has been ascribed the functions of a think tank which focuses on the principle development challenges that developing countries face in the multilateral arena in their national development.

Main Aims of the Organization

Among its central objectives, the South Centre aims to contribute to South- wide collaboration in promoting common interests and coordinated participation by developing countries in international fora and multilateral discussions. Two main topics on the WIPO agenda are of particular interest for developing countries and have been given priority for possible future South Center work to build the capacity of developing countries representatives, namely patents and traditional knowledge.

Description of Activities of the Organization

As part of the Centre's trade related work programme, a 'A Sub Project to Improve Developing Country Participation in Intellectual Property Rights Negotiations' was launched in 1999. This project has thus far mainly focused on the negotiations related to the TRIPs Agreement at the WTO. The South Centre within the limits of its capacity and mandate, has aimed at responding to requests for policy advice and for technical and other collaborative support from collective entities of the South. This assistance has usually been provided in the form of publications, policy papers, organization of workshops, as well as through the facilitation of South-South interaction. All of these activities will continue as part of the South Centre work program. In addition, the Centre is aware of the fact that IPR issues covered by WIPO are representative of the main topics in the international agenda that are of interest to all developing countries.

Countries the Organization is primarily active in

Presently, the Centre's membership consists of 46 developing countries but the Centre works for the benefit of the South as a whole.⁵⁸

⁵⁸ WIPO/GRTKF/IC/3/2 Add

Quakers United Nations Office

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www.quno.org

Relationship with Intellectual Property Matters

The Quaker United Nations Office, located in Geneva and New York, represents Quakers through Friends World Committee for Consultation (FWCC). FWCC, which links Quakers around the world, has had consultative status with the United Nations' Economic and Social Council as an international non-governmental organisation since 1948.

In the last 20 years, new rules on the scope and territorial extent for intellectual property rights (patents, copyrights, trademarks, etc.) have expanded beyond national and existing multilateral arenas (i.e. World Intellectual Property Organisation (WIPO)) to bilateral, regional and World Trade Organisation (WTO) trade agreements. The new rules being negotiated extend high minimum standards for intellectual property protection on all signatory states at the WTO (the majority of which are developing countries) and in regional/bilateral agreements. As a result, developing countries no longer have the same flexibility or policy options that developed countries had over the past 200 years in using intellectual property to support what is appropriate for their level of national development.

These new rules apply to a range of biologically based materials, including life forms (such as microorganisms, seeds and plants), that many countries may not have previously been obliged to protect. This will impact upon key development areas important for social and economic prosperity such as: food security, agriculture and access to genetic resources, biodiversity, environment, health and access to essential medicines, and the protection of traditional knowledge, folklore and cultural property.

QUNO aims to enhance the fairness of the negotiating process by providing information to decisions-makers and facilitating off-the-record dialogue.

Main Objectives of the Organization

Since the founding of the United Nations in 1945, Quakers have shared that organisation's aims and supported its efforts to abolish war and promote peaceful resolution of conflicts, human rights, economic justice and good governance

Description of Activities of Organization

Quakers are known for speaking out against injustice and war - issues that are incompatible with their vision of a world in which peace and justice prevail. QUNO staff work with people in the UN, multilateral organisations, government delegations and non-governmental organisations, to achieve changes in international law and practice. QUNO also produces publications on timely issues.

Quakers engaged in international affairs have a long tradition of providing opportunities for people to meet on an equal footing. Such informal and off-the-record meetings, away from the pressures of public life, provide a setting for dialogue where the voices of delegations from all countries may attain equal weight and importance. These meetings encourage a greater understanding of why there are disagreements and provide an opportunity to challenge assumptions between groups, who would not otherwise have the chance to talk openly. Participants may try to find common ground or to explore difficult, controversial or sensitive

issues. Staff both initiate and respond to requests for these meetings, which are held at the Quaker Houses maintained for this purpose in Geneva and New York.

DEFENSIVE PROTECTION: NGOs DOCUMENTING TRADITIONAL KNOWLEDGE

The divergence in positions on potential forms of protection for TK is exemplified by the lack of convergence on the potential use of TK databases to prevent misappropriation. Some governments believe that the databases can be an effective instrument in efforts to mitigate 'biopiracy' by providing an inventory of TK so that patent examiners can prevent issuance of patents that are closely related to TK. By and large, indigenous groups support the establishment of databases that are maintained and controlled locally by the communities themselves. However, there are also concerns that TK databases, if mis-managed, could facilitate 'biopiracy' rather than prevent it. This view is held by developing countries and indigenous communities alike. Either way, documentation has one clear benefit: it would provide patent examiners with increased information to make more informed decisions pertaining to the granting of patents for inventions containing TK.

In light of slow international progress for the establishment of norms for protection of TK, several NGOs have taken the initiative to safeguard TK that is in the public domain through databases as a defensive protection measure. It is hoped that documentation would facilitate tracing of indigenous communities with whom benefits of commercialization of such materials has to be shared. In India for example, work has begun to prepare an easy to use computerized database of documented TK relating to the medicinal use of plants (which is already in the public domain) known as the TK Digital Library (TKDL). Documentation as it stands, does not ensure benefit sharing with the holders of such knowledge and so it is not a cure-all to prevent biopiracy. However increasingly, TK documentation is the subject of discussions in national and international debates on benefit sharing.

Center for Folklore and Indigenous Studies

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Relationship with Intellectual Property Matters

The Center for Folklore and Indigenous Studies is a grassroots level Organization functioning since 1995, currently leading seven research institutes on their project on indigenous knowledge at the Panchayat (local governing level). The Organization is also involved in a project to revitalize local methods of water harvesting in the various villages of north central Kerala. It publishes an indigenous knowledge journal called 'Nattarivu' as well as books relating to indigenous knowledge. The Organization has a legal cell which aims to protect IPR and has collected all printed material connected to IP issues. Through this legal cell the organization aims to assist indigenous people to register their traditional knowledge in the Madras Regional Office.

Main Objectives of the Organization

- Documentation and preparation of databases of traditional knowledge (IK) in audio video writing methods
- Prepare the register of master informants on IK
- Prepare registries of IK on agriculture, water harvesting and ethno-botany
- Awareness campaign on IPR and associated benefit sharing. The organization conducts workshops to campaign on IPRs and shares with communities examples of where it has been successful, namely that of the Kani tribe experience in Trivandrum where the Kani tribe won a case of benefit sharing for a medicinal plant called *Trichopus zeylanicus*.
- Conducting workshops on new IK innovations with the help of Master informants
- To protect traditional knowledge using *sui generis* systems- the Organization follows a so-called Folklore Process from the stage of identification to that of registration followed by a local declaration
- Documentation of lesser known folklore practices in ethnomusicology and natural colors
- Legal Protection of Folklore- the Regional Center in Madras for IPR has a legal sector. The Organization has sensitized local communities about intellectual property and helps them to procure legal applications for Intellectual Property so they can register their IK with the Regional Center in Madras
- Developing a scientific methodology to the mapping of memory- the Organization follows a self devised method called 'Sharing of Local Knowledge' (SLK) where the researchers collect the diachronic data from the memories of custodians of traditions and wise old folk and this information is activated through key words.

Description of Activities of the Organization

- I. Conducting workshops and participatory gatherings in schools, colleges and villages on various IKs such as agriculture, local seeds, water harvesting, local food etc. In this workshop the Organization is using the methodology of sharing local knowledge (SLK)

- II. Exhibition of different IK's with photos, films, slides, posters
- III. Printing of various publications and audiovisual materials
- IV. Workshops on local crafts-bamboo and pottery, conducting village markets to sell village products including seeds
- V. Educative Programs through Folk music (The organization has 2 ethnomusic groups)

Countries in which the Organization is primarily active: India⁵⁹

⁵⁹ WIPO/GRTKF/IC/1/2 Add. Annex pg 10.

Gene Campaign

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Since 1993 Gene Campaign, a leading research and advocacy organisation, has been working to empower local communities to retain control over their genetic resources in order to ensure food and livelihood security. Closely involved in policymaking and legislation with respect to biological resources, Gene Campaign has enabled rural communities to participate in policies relating to these resources.

The Campaign is working for the recognition of Indigenous Knowledge as an important technology and its potential for increasing incomes for rural and adivasi communities. An important goal is to develop a system to grant legal rights to communities over the Indigenous Knowledge that they have created and continue to create. As part of its endeavor to protecting Indigenous Knowledge, Gene Campaign has lobbied hard and has succeeded in keeping medicines and products derived from Indigenous Knowledge, out of the purview of patents so that they are exempted from the Patent law.

Description of Activities

Gene Campaign has adopted a multi-pronged strategy for its campaign work. Their activities are of several kinds and at several levels, ranging from farmers and village communities to members of Parliament and ministers in governments. Their major activities are listed below.

- Organising meetings with rural people at the district and village level to discuss problems and their impact. Here they particularly target schoolteachers who enjoy great respect in the village community. They hoped that endorsement of their work by these teachers would give it credibility, which it did.
- They have held about 400 public meetings over the years in Uttar Pradesh, Bihar, Jharkhand, Madhya Pradesh, Chattisgarh, Maharashtra, Rajasthan, Punjab, Haryana, Karnataka, Andhra Pradesh, Tamil Nadu, Kerala, Assam, Mizoram, Meghalaya and Manipur. In all of them, they tried to reach opinion makers like primary schoolteachers, lawyers, students, doctors, journalists, political activists, the local elite and farmers.
- Interacting with government departments like the Commerce, Agriculture & Environment Ministries, deposing before Parliamentary Standing Committees, Group of Ministers and other expert committees to influence policy
- Lobbying with members of Parliament and members of State Legislatures to create political awareness and pressure. Preparing reference and briefing papers and Parliament questions for members.
- Mobilising farmers and Farmers Associations in various parts of the country to fight for their rights. On March 3, 1993, along with three farmers' organisations, Gene Campaign organised a farmer's rally at the Red Fort, when about 300,000 farmers from Uttar Pradesh, Karnataka and Punjab joined the protest against seed patents.
- Briefing journalists and writing about issues in newspapers and journals to generate awareness.

- Demystifying the GATT/TRIPS and translating technical jargon into language and idiom that common people could understand. Preparing simple campaign literature in English, Hindi and a few regional languages to provide information.
- Engaging in Direct Action programs to register their protest and voice their demands. These have over the years taken the form of demonstrations, sit-ins and signature campaigns.
- Conducting seminars and workshops, providing an interface between scientists and farmers, preparing and circulating documents for debate and discussion
- Gene Campaign has worked with many political parties in their respective States to spread awareness about the issues arising out of the GATT and to mobilise support against seed patents and policies that impact negatively on agriculture. Their effort was to make this a national issue, not a political issue.

Gene Campaign has a project that is among new initiatives in India to impede the consideration of such knowledge as 'new', and therefore patentable in some jurisdictions. Gene Campaign has worked on documentation of biodiversity and traditional knowledge in possession of tribal populations. This includes the Mundas and Oraons of the Chotanagpur region of South Bihar, the Bhils of Uttar Pradesh, the Mishings, Ahoms, Assamese, and Tiwa of Assam in North East India. Educated Tribal youth were recruited to help document plants and related knowledge. Elders in the village, medical practitioners and traditional healers were consulted in the collection and understanding of the information.⁶⁰

⁶⁰ Correa, Carlos. Traditional knowledge and intellectual property pg 19

Red de Cooperacion Amazonica/ Amazon Cooperation Network (REDCAM)

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Venezuela
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Relationship with Intellectual Property Matters

Since 1996, REDCAM has been involved in everything which related to *sui generis* community rights and biopiracy and has contributed both in the national sphere of each country where organizations served by REDCAM are based and also in the North Amazon Region. REDCAM believes that local communities and indigenous peoples require full contact with the main body responsible for the subject at the global level.

Main Objectives of the Organization

- Keeping informed and maintaining relations between the affiliated NGOs and also between these NGOs and governmental institutions from outside the region
- Providing information and documentation for the organizations and communities served which help as tools for their activities
- Promoting and providing training and education opportunities for NGOs from the Amazon region
- Conducting, coordinating and disseminating awareness and enforcement campaigns and problems of the region and possible solutions

Description of Activities of the Organization

- I. Investigating and documenting the activities within the framework of the programs devised through the documentation center
- II. Assisting organizations and communities with specific community work programs
- III. Empowering and assisting in the creation of capacities for NGOs and communities
- IV. Holding events on subjects of particular relevance to affiliated NGOs and to the Amazon region
- V. Participating in regional and international meetings with NGOs served and which relate to REDCAM's aims
- VI. Publishing and disseminating information in any form including materials of interest for REDCAM

Additional Information:

Rights of participation in research by local communities through the Community Resources Register and The Community Resources Inventory

Countries in which the organization is active:

Columbia (Departments of Vichada, Guainia and Vaupes), Venezuela (States of Amazonas and Bolivar), Brazil (States of Amazonas, Roraima and Para), Guyana (Regions of Rupununi and Letham), Surinam (Maroon and Capital), French Guyana, Guatemala and Central America⁶¹

⁶¹ WIPO/GRTKF/IC/9/2

The Sudanese Association for Archiving Knowledge (SUDAAK)

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Sudan
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Website: www.sudanarchives.org

Relationship with Intellectual Property Matters

SUUDAK is constituted and policy bound as a non-profit NGO seeking to avoid or resolve all conflict of interest or the exercise or appropriation of restrictive or sectional or selfish interest in the field of intellectual or cultural property, to protect and articulate local or community interests in balance with global or international interests in the community of knowledge and the appropriate limits, protection and exercise of the rights of private or corporate property, and to rehabilitate and restore war and conflict affected peoples and areas in their property and ownership and articulation of their history and their future

Main Objectives of the Organization

Enhancing the ongoing international efforts aiming at the worldwide recognition and respect of cultural diversity through:

- Promotion of Archiving as a science and a profession in the Sudan
- Improving the statutes of archiving of Traditional Knowledge (TK) within the Sudanese community in collaboration with academic and research institutions
- Participate in uprising the technical know-how in audiovisual archiving and documentation
- Advocacy of IP culture in the Sudanese Community
- Supporting national archiving and documentation efforts in the field of biodiversity and cultural diversity

Description of Activities of the Organization

SUDAAK has the intention of sponsoring an ad hoc national decade with a theme National Capacity Building for Bridging the Gap of Knowledge during the period 2006-2016. The initiative includes the following activities:

- I. To publish report documents in text, electronic and visual media
- II. To promote scholarly exchange in meetings, conferences, workshops, exhibitions
- III. To record, catalogue and protect rare or historical documents, artifacts, cultural practices for the public access and benefit
- IV. To train and educate in Sudan in all technologies, methodologies and philosophies related to the practice of the above

SUDAAK has adopted the 10 year program (beginning in 2006) to appeal to all interested parties to work for the establishment of a nationally coordinated strategy for the promotion of archiving as a science, profession and practice in the Sudan

This strategy requires the building of a national non sectional capacity in all fields in the endeavor to overcome the knowledge gap and to engage with historical responsibilities of the developing society of Sudan; to follow established and accepted scientific methods towards a national institutional structure in all fields relating to the archiving and distribution of such knowledge.

In the process of the implementation strategy SUDAAK is working with similar national and international entities

- To raise institutional and human capacities in the field of language recording, education and training (ie courses, dictionaries, grammars, archives) in various formats ie text, images, sound records, videos, networks, and public information and service broadcasting
- To raise national awareness in all sections and areas in the possibilities and limits in the use of digital technology and archiving and documentation
- To support efforts to promote research in and observation of all aspects of history and practice in the cultural diversity of the Sudan
- To exchange expertise and information and records with all the Institutions worldwide sharing or supporting SUDAAKs objectives

Countries in which the organization is primarily active: The Sudan⁶²

⁶² WIPO/GRTKF/IC/9/2

American Association for the Advancement of Science (A.A.A.S)

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 Website: www.aaas.org

The American Association for the Advancement of Science, (AAAS), is an international non-profit organization dedicated to advancing science around the world by serving as an educator, leader, spokesperson and professional association.

Main Objectives of the Organization

AAAS seeks to "advance science, engineering, and innovation throughout the world for the benefit of all people." To fulfill this mission, the AAAS Board has set these broad goals:

- Enhance communication among scientists, engineers, and the public;
- Promote and defend the integrity of science and its use;
- Strengthen support for the science and technology enterprise;
- Provide a voice for science on societal issues;
- Promote the responsible use of science in public policy;
- Strengthen and diversify the science and technology workforce;
- Foster education in science and technology for everyone;
- Increase public engagement with science and technology; and
- Advance international cooperation in science.

Description of activities of the Organization:

AAAS Project on Traditional Ecological Knowledge

*Traditional Knowledge Prior Art Database (T.E.K.*P.A.D.): Protecting indigenous knowledge against inappropriate patents:*

As a way to address traditional knowledge that is already in the public domain and promote its use as prior art, the AAAS Science & Human Rights Program developed T.E.K.* P.A.D. (Traditional Ecological Knowledge Prior Art Database). T.E.K.* P.A.D. is an index and search engine of existing Internet-based, public domain documentation concerning indigenous knowledge and plant species uses. TEK*PAD currently contains over 40,000 entries already in the public domain, documenting traditional uses of natural resources, TEK*PAD brings together and archives in a single location, various types of public domain data necessary to establish prior art. Data includes taxonomic and other species data, ethnobotanical uses, scientific and medical articles and abstracts, as well as patent applications themselves. It is meant to be used by anyone researching traditional ecological knowledge, including scientists, health professionals, and those involved in the patent application process itself. In addition to information already in the public domain, T.E.K.* P.A.D. allows for the option of defensive disclosure, for traditional knowledge holders who wish to place information in the public domain in order to preempt patenting by others.

TEK*PAD also contains a `News and Events` section as well as a `Biopiracy Hot List`. The `Biopiracy Hot List` contains examples of plants targeted by western pharmaceutical companies and cor-

porations. The entries are linked to archived documentation of prior art in the TEKPAD database. Additionally, traditional knowledge holders can submit their knowledge.

Countries where the organization is primarily active in: International⁶³

⁶³ WIPO/GRTKF/IC/9/2

Society for Research and Initiatives for Sustainable Technologies and Institution (SRISTI)

Ahmedabad 380- 009

Gujarat, India

Ph (91-79) 27912792 - Fax (91-79) 27913293

Website: www.sristi.org

Relationship with Intellectual Property Matters

SRISTI is a non-governmental organisation set up to strengthen the creativity of grassroots inventors, innovators and ecopreneurs engaged in conserving biodiversity and developing eco-friendly solutions to local problems. SRISTI was created to provide institutional support up to the activities of the Honey Bee Network. However, over the last thirteen years, SRISTI has not only intensified the initiatives of the Honey Bee Network, but also has diversified many of its activities. SRISTI, which began with the focus on unearthing grassroots creativity, innovation and traditional knowledge, today is an international player in the field of entrepreneurship promotion, intellectual property rights, knowledge dissemination pertaining to traditional knowledge & creativity, promoting policy favouring innovations and local knowledge, organic farming etc. All throughout these years, SRISTI has focused upon the issue of establishing some sort of synergy between innovations that promote conservation of bio-diversity and other natural resources and the concerns of ethics, excellence, equity and environment. SRISTI has been able to upgrade its standing and legitimacy among the policy makers, intellectuals and grassroots innovators alike and at the root of such wide acceptance lies the activities of the organization.

Main Objectives of the Organization

The primary objectives while setting up the organization were to systematically document, disseminate and develop grassroots green innovations, providing intellectual property rights protection to grassroots innovators, working on the in situ and ex situ conservation of local biodiversity. Lately, SRISTI has been focusing on more concerted ways of hitherto neglected knowledge systems, value addition through a natural product laboratory, using ICT to establish a knowledge network, connecting innovators, traditional knowledge holders with the centres of formal excellence, entrepreneurs and innovators in education.

Description of Activities of the Organization

Scouting, Documentation & Dissemination: The activity focuses upon scouting and documenting unique grassroots innovations and traditional practices from various parts of the country and sharing the learning from such innovations and practices with the wider audience.

Validation and Value Addition: The activities aim at developing the herbal formulations derived from the grassroots practices into viable, user-friendly and marketable products through proper research and development.

Policy Analysis & Advocacy: The activities aim at bringing about policy level changes and incorporating more favourable policy regimes for the promotion of grassroots innovations and practices

Campaigning and Awareness Building: The activities focus upon generating awareness and building public opinion about grassroots innovations and traditional practices, organic farming etc.

AASTIIK: It aims at creating a virtual and real knowledge community of professionals and experts in the field of invention, innovation and traditional knowledge.

The Educational Initiatives: The activities aim at scouting, documenting, encouraging and supporting innovative means of teaching children about the subjects and building awareness about the rich bio-diversity around them.

ICT initiatives: The activities focus upon integrating the services of information and communication technology with the concern of building the knowledge network to connect grassroots innovators and traditional practitioners across the boundary of region, language and culture.

Natural Resource Management: The activities focus upon validating and initiating innovative means of conservation of nature and bio-diversity.

SRISTI provides a back up support to the Honey Bee Network which is the biggest database on grassroot innovations & contemporary/traditional innovative practices. SRISTI has been involved in documenting innovation developed by individuals at the village level. The Honey Bee Network as the initiative is called, documents not elements of biodiversity per se, but their uses in the particular innovations surrounding these elements. This network has been growing since the late 1980s. It aims through this documentation and subsequent accrual of benefits to provide a platform through which biodiversity and local knowledge bases can be conserved.

Countries the Organization is Primarily active in:

India

NGOs: LEGAL ADVOCACY SERVICES, NETWORKS AND FUNDS FOR INDIGENOUS PEOPLE

To reiterate a point that was made earlier in this paper, many indigenous groups do not have the economic resources to cover the high cost of litigation that is needed to protect their knowledge through the patent system. The costs of preparing and prosecuting a patent application and periodically renewing that application once the patent after it has been granted are well beyond the financial means of most communities. Consequently, a number of NGOs have taken the initiative to provide legal support to indigenous communities. The following section will provide some examples of this type of NGOs.

Call of the Earth

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Relationship with Intellectual Property Matters

Analyzing and bringing an indigenous perspective to the debate about the impact of intellectual property rights on Indigenous Traditional Knowledge is central to the mission of Call of the Earth. Call of the Earth is an indigenous intellectual property initiative.

Main objectives of the Organization

It aims to enable indigenous peoples to meet to discuss indigenous knowledge and resources and to reframe the intellectual property debate from their own perspective and in doing so to develop responses at the local, national, regional and international levels to all policy and legal developments that adversely impact on their tradition of preserving their cultural heritage for future generations. It aims to enable indigenous peoples to more effectively engage in international processes from their own perspectives and on their own terms.

Description of the Activities of the Organization

Call of the Earth activities are centered around:

- Regional dialogues on specific IP related process or community experiences ie, upcoming meeting to allow indigenous people to discuss perspectives on access and benefit sharing, intellectual property and CBD related processes
- Thematic dialogues such as IP and genetic resources, IP and cultural expressions, IP and the human genetic resources of indigenous people
- Bellagio Dialogue: annual meeting of Call of the Earth Circle and steering committee to reflect upon policy developments and to define the Call of the Earth work plan
- Analysis: Call of the Earth commissions indigenous scholars to reframe debates in intellectual property policy and to pro-actively suggest solutions drawing from the aspirations and customary law and practices of indigenous communities
- Capacity Building: using Call of the Earth activities to advance the skills of indigenous communities and nations and indigenous scholars on knowledge related issues
- Knowledge Base: developing a repository of analysis and case studies on intellectual property related processes and issues representing indigenous perspectives

Traditional Knowledge Defenders Network

A future project of Call of the Earth, 'Llamado de la Tierra' is the establishment of a legal defense fund and network to assist indigenous communities to protect their cultural and intellectual property, and to seek redress in cases of misappropriation.

The Traditional Knowledge Defenders Network is a global network of indigenous and non-indigenous people willing to provide support, advice and assistance to indigenous communities and nations who are wanting to ensure their cultural heritage is adequately protected.

Countries in which the Organization is primarily active: Representatives and organizations are active throughout the world. Its office is based in Japan.⁶⁴

WIPO/GRTKF/IC/6/2

Native American Rights Fund

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Relationship to Intellectual Property Matters

The Native American Rights Fund (NARF) is a non-profit organization that provides legal representation and technical assistance to Indian Tribes, Organizations and Individuals, a constituency that often lacks access to the justice system. NARF focuses on applying existing laws and treaties to guarantee that national and state governments live up to their legal obligations. NARF is governed by a volunteer board of directors composed of 13 Native Americans from different tribes throughout the country with a variety of experts in Indian Matters. A staff of fifteen attorneys handles about 50 major cases at any given time with most of the cases taking years to resolve. Cases are accepted on the basis of their breadth and importance in setting precedents and establishing important principles of Indian Law.

Main Aims of the Organization:

The staff of NARF many of whom are Native American, use their understanding of Indian legal issues to assist tribes in negotiating with individuals, companies and governmental agencies. NARF has become a respected consultant to policy makers and others engaged in drafting legislation. As a consensus builder, NARF works with religious, civil rights and other Native American Organizations to shape the laws that will help assure the civil and religious rights of all Native Americans. This emphasis helps tribes in all fifty states to develop strong self governance, sound economic development, prudent natural resource management and positive social development.

Description of activities of the Organization:

Since the mid to late 1980's, an increasingly conservative federal bench has made Indian rights cases more difficult to win. Combined with the huge cost of litigation in time and money, this means that NARF and its Indian clients are always attuned to opportunities for negotiation, consensus and settlement. Early in NARF's existence, the Board of Directors determined that the Organization should concentrate on five priority areas: preservation of tribal existence, protection of tribal natural resources, promotion of human rights, accountability of governments, and the development of Indian law and educating the public about Indian rights, laws and issues. Throughout its history, NARF has impacted tens of thousands of Indian people in its work for more than 250 tribes.

Countries that the Organization is primarily active in:

The Native American Rights Fund is headquartered in Boulder, Colorado with branch offices in Washington DC and Anchorage Alaska.⁶⁵

⁶⁵ WIPO/GRTKF/IC/4/2 pg 7

Public Interest Intellectual Property Advisors

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Relationship with intellectual property matters

Public Interest Intellectual Property Advisors (PIIPA) is an international non-profit organization that makes intellectual property counsel available for developing countries and public interest organizations who seek to promote health, agriculture, biodiversity, science, culture and the environment. PIIPA is independent, international, non-partisan, and practical. It is a charitable service and support organization rather than an advocacy or policy group. It has a number of unique services not provided by other organizations working on capacity building and training.

Main objectives of the Organization

PIIPA has three main activities:

- 1) expanding a worldwide network of IP professional volunteers (the IP Corps)
- 2) Operating a processing center where assistance seekers can apply to find individual volunteers or teams who can provide advice and representation as a public service
- 3) Building a resource center with information for professionals and those seeking assistance

Description of Activities

PIIPA is building a network linking people who need help with IP professionals who can represent them. This establishes a framework for action. PIIPA's global approach can be scaled up as needed and ensures that IP professional resources are the right size, available at the right time, and in the right place

PIIPA's IP Corps can take the following specific types of actions for developing country organizations:

- file patent applications
- file trademark applications
- attack and invalidate patents
- attack and invalidate trademark registrations
- search and analyze patent portfolios to determine freedom to operate
- negotiate bioprospecting access and benefit sharing agreements
- negotiate agreements providing access to medicine
- counsel governments on legislative initiatives involving IP protection, e.g. genetic resources, traditional knowledge, and access to medicine
- help governments and NGOs involved in treaty negotiation
- litigate patent and trademark infringement and compulsory license cases

To illustrate a point, a wide range of acts listed below have been considered as acts of biopiracy of traditional knowledge and biopiracy of genetic resources

Traditional Knowledge Biopiracy

Collection and Use

- The unauthorized use of common TK
- The unauthorized use of TK found only among one indigenous group
- The unauthorized use of TK acquired by deception or failure to fully disclose the commercial motive behind the acquisition,
- The unauthorized use of TK acquired on the basis of conviction that all such transactions are inherently exploitive ('all bioprospecting is biopiracy)
- The commercial use of TK on the basis of a literature search

Patenting

- The patent claims TK in the form it was acquired
- The patent covers a refinement of TK
- Patent covers an invention based on TK and other modern/ traditional knowledge

Genetic Resource Biopiracy

Collection and Use

- The unauthorized extraction and use of widespread resources
- The unauthorized extraction and use of resources that can be found in one location
- The unauthorized extraction and export of resources in breach of ABS regulations of the relevant country
- The unauthorized extraction and export of resources in breach of ABS regulations of the relevant country
- The unauthorized extraction and export of resources in countries lacking ABS regulations
- The unauthorized extraction of resources on the basis of a transaction deemed to be exploitive.
- The authorized extraction of resources on the basis of a conviction that all such transactions are inherently exploitive

Patenting

- The patent claims the resource itself
- The patent claims a purified version of the resource
- The patent covers a derivative of the resource and or is based on more than one resource⁶⁶

⁶⁶ Graham, Dutfield. Queen Mary Intellectual Property Research Institute: Queen Mary University of London: International Expert Workshop on Access to Genetic Resources and Benefit Sharing: Identification of Outstanding ABS Issues: Access to GR and IPR. What is Biopiracy?