Experiences and strategic lessons on protecting TK through national ABS legislation – practical issues and options to regulate access to TK, PIC and benefit sharing with IPLCs

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Defining
and
Understanding Traditional Knowledge
Defining Traditional Knowledge

• Neither CBD nor the Nagoya Protocol define TK
• UNESCO defines TK as “the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings.”
• Traditional Knowledge (TK) refers to tradition-based innovations and creations resulting from activity in the industrial, scientific, literary or artistic fields.
# Management Principles for TK

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<tr>
<th>S.No.</th>
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<tbody>
<tr>
<td>1.</td>
<td>Traditional Knowledge is complex and difficult.</td>
<td>6.</td>
<td>Traditional Knowledge is dynamic and not static.</td>
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<td>2.</td>
<td>Traditional Knowledge can only be volunteered, it cannot be conscripted</td>
<td>7.</td>
<td>Managing Traditional Knowledge needs different skills and approaches than to managing modern forms of knowledge.</td>
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<td>3.</td>
<td>Traditional Knowledge seeks community</td>
<td>8.</td>
<td>Traditional Knowledge offers solutions but suffers from the solutions it provides.</td>
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<td>4.</td>
<td>Traditional Knowledge travels via language, customs and practices</td>
<td>9.</td>
<td>TK is tested, used, adapted and mostly fool-proof but is local specific</td>
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<td>5.</td>
<td>One cannot impose rules and systems on TK</td>
<td>10.</td>
<td>TK systems are based on principles of equity, ethics as well as common but differentiated responsibilities</td>
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TK and its Treatments

✓ The UNGA
✓ CBD
✓ UNFCCC
✓ UNCCD
✓ UNESCO
✓ WIPO
✓ UNDP
✓ UNEP
✓ FAO
✓ IPBES
✓ CMS
✓ CITES
✓ Ramsar
✓ IFAD
✓ Green Climate Fund
Work under the CBD (Article 8 j)

Composite report on the status and trends of TK and the guidelines

(a) The Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments,

(b) The Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities,

(c) The Mo’otz kuxtal voluntary guidelines for ensuring PIC

(d) The Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge of IPLC and

(e) The global Plan of Action on the Customary Sustainable Use of Biological Diversity
The Sharm El Sheik Declaration on Nature and Culture, COP 14

- *Recalls* the Muchtanbal Summit Declaration of December 2016;
- Malama Honua-Nature-Culture Journey of September 2016;
- Ishikawa Declaration on Biocultural Diversity of October 2016;
- Florence Declaration on the Links between Biological and Cultural Diversity of April 2014
Some key elements ....

- Urge the establishment of a multi-partner International Alliance on Nature and Culture, as a platform for international cooperation on links between biological and cultural diversity to achieve the global vision of humanity “Living in Harmony with Nature” by 2050;

- Promote a sustained dialogue between science and indigenous and local knowledge systems to provide a foundation for a new paradigm, generating the best possible knowledge and solutions for biological and cultural resilience;

- Explore further the contributions of culture, traditional knowledge, innovations and practices and collective indigenous initiatives and self-determined community initiatives in nature conservation and biological and cultural diversity
Dealing with the Aichi Target

Target 18
By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.
National Actions

• Country focus through National Biodiversity Strategies and Action Plans (NBSAPs)
• Focus on recognition, support and links to ABS
• Links to programmes and actions weak
• Progress on work under Target 18 unclear
General Treatments of TK at national level

- Documentation
- Mainstreaming
- Recognition
- Links to sustainable use and conservation
- Address issues in relation to ABS
- *Sui generic* protection
Article 7. Access to Traditional Knowledge Associated with Genetic Resources

• In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.
Article 12. Traditional Knowledge Associated with Genetic Resources

In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities’ customary laws, community protocols and procedures,......

Parties, with the effective participation of the indigenous and local communities concerned,, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations.....

Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

(a) Community protocols .......

(b) Minimum requirements for mutually agreed terms....

(c) Model contractual clauses for benefit-sharing....

Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.
Traditional Knowledge, ILCs, Experience

❖ 370 million ILCs around the world
❖ Two-thirds of land holdings are with local communities
❖ TK integral part of their livelihoods
❖ Use and protection of TK key for modern development
❖ Experiences vary across sectors
Protecting TK and ILC interests

- Knowing the rights and privileges
- Policy making
- Legal and regulatory frameworks
- Implementation
- Awareness rising and capacity building
India – for example

• Promote sustainable use of biological resources by supporting studies on traditional utilization of natural resources in selected areas [...] and promote best practices;
• Develop *sui generis* system for protection of traditional knowledge and related rights including intellectual property rights
• Create public education and awareness about the need to conserve, protect and gainfully use traditional knowledge systems
• Harmonise provisions concerning disclosure of source of biological material and associated knowledge used in the inventions under Patents Act, Protection of Plant Varieties and Farmers’ Rights Act, and Biological Diversity Act, to ensure sharing of the benefits by communities holding traditional knowledge from such use
• Under national biodiversity target 5 related to sustainable agriculture, one of the indicators is trends in awareness levels related to “agrobiodiversity and associated knowledge.
• Under target 9 related to access and benefit sharing, one of the indicators is “trends in number of cases seeking third party transfer for accession of biological resources and associated traditional knowledge”.
• ..And “approval to bioresources and associated traditional knowledge for commercial utilization”
Traditional Knowledge Digital Library (TKDL)

CSIR – Premier R&D network
Digitising TK in formal forms
100,000 documents translated and digitised
SAARC level initiative
Links to WTO discussion – disclosure, patent review
Link to various patent databases
TK and Conservation - China

• 55 Ethnic Minorities
• Documentation of TK, practices and values under way (55 volumes to be launched at COP 15)
• Links to ABS strong (national framework under development)
• National and International programmes on TK
• Issues of dealing with policy in TK recognizing how western knowledge system understands TK
• Education and research institutions taking the lead
TK – Sri Lanka

- Project on recognition, protection and reward of TK
- Rick in TK and traditional medicine
- Project in 2000
- TK legal system adopted in 2005
- Focuses on protecting forms of TK relevant to traditional medicine, covers issues related to ABS partly and focuses on trade related issues
Experiences - Ghana

Centre for Indigenous Knowledge and Organizational Development (CIKOD)

Functional indigenous organizations (FIOs)
Community Knowledge and Information Mapping

Gender Issues
Sustainability
Focus on economic development
Experience – S. Africa

- ILCs receive their rights and privileges
- TK protection and ILC issues – Government support, NGOs and CBOs
- Hoodia case
- Community Action Networks – BCP approach
- Focus on economic development and resource use
Experience - Norway

- The SAN Parliament
- Comprehensive National Act on ABS and Biodiversity
- TK widely use Cyclosporin
- Focus on regional approach to TK recognition and protection
- SAMI Parliament deciding authority
Current Need

• Understanding the dynamics of TK, and its management;
• Clarifying the role of local and indigenous communities in preserving further evolution of TK; and
• Making policy and governance systems that are centred around TK
Emerging Issues

• Human Rights and Environment – Biodiversity
• UN Special Rapporteur Report on Rights of Indigenous People
• UNPFII discussions (April 22 – May 3, 2019)
• Post 2020 Strategic Plan and related targets
• Mainstreaming and synergies discussions under the Convention
• Developing a Programme of Work under the CBD, including options for a Subsidiary Body
Dealing with TK and ABS at national level

• Recognize and develop appropriate governance principles
• Address issues of rights and privileges, as appropriate
• Let the national ABS framework fully mainstream issues of PIC in letter and spirit
• Develop guidelines for documenting, sharing and using TK
• Be open to transboundary cooperation and identify options for action
• Input into the ongoing discussions on post 2020 framework
Over to you for defining the way forward!