Traditional Knowledge and ABS: Beyond Protection and Recognition

In a day and age where knowledge can be easily sought with the click of a button, customs, traditions and folklore may be regarded by some as useless, baseless and even superstitious. But the wisdom of our ancestors should be given more value as it is worthy in any given circumstance even in this period of modern sciences and rapid advances in technology. Seeking advice and lessons from our grandparents on everyday aspects of our lives, such as old recipes or medicinal cures, shows that we value their knowledge and experiences. This is also true with traditional knowledge on the protection, conservation and sustainable use of genetic resources that indigenous and local communities (ILCs) have been practicing and passing on for generations.

Traditional knowledge (TK) is defined under the Convention on Biological Diversity (CBD) as “the knowledge, innovations and practices of indigenous and local communities around the world”. Transferred to many generations from the experiences gained over centuries and adapted to local culture and environment, such knowledge may come in different forms such as stories, songs, folklore, cultural values, beliefs, rituals, community laws, local language, and agricultural practices. Traditional knowledge is “mainly of a practical nature” and may be evident in agriculture, fisheries, health, horticulture, forestry, and environmental management. Article 8 (j) of the CBD further entitles the value of TK and the role of ILCs, emphasizing their importance in relation to the objectives of the Convention.

Traditional knowledge is not the same as intellectual property right (IPR). Traditional knowledge is collectively held, and is not ‘owned’ by a single entity. Protection of TK, however, has seen far more debates than any IPR case. Discussions on TK are carefully handled; yet it is most often exploited along with the genetic resources associated with it. After years of discourses and negotiations, TK has gained more than just recognition.

Recognizing traditional knowledge in Southeast Asia

Countries in Southeast Asia have recognized the importance of TK on the conservation and sustainable use of resources, given the cultural diversity and abundance in ethnic societies in the region. Along with international policies, Southeast Asian countries have instituted national policies and laws that impact on the protection of TK in relation to biodiversity and genetic resources, and its inclusion would most often be found in intellectual property laws.

In Malaysia, TK-related provisions may be found in the Plant Variety Protection legislation, but there is no specific law protecting traditional knowledge. At the State level, however, the Biodiversity Laws in Sabah and Sarawak impact on the protection of traditional knowledge. A TK Documentation Programme is being implemented by the Sarawak Biodiversity Centre, and in 2007, a TK Digital Library (TKDL) was set-up by the Malaysian Intellectual Property Organization (MyIPO).

The Philippines recognizes the rights of indigenous peoples and their traditional expressions under Republic Act 8371, The Indigenous Peoples’ Rights Act (IPRA), and specifies under the Intellectual Property Code (RA 9283) the sui generis protection of

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2. CBD Article 8(j) states: “Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to 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 ensure the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”
3. UNEP/CBD/WG3/8/INF/5
plant varieties and animal breeds, and a system of protection for community intellectual rights.

Thailand has two legislations that impact on and provides legal protection to genetic resources: Protection and Promotion of Thai Traditional Medical Knowledge Act, B.E. 2542 (1999 AD), and the Plant Varieties Protection Act, B.E. 2542 (1999).

Brunei Darussalam has a dedicated programme documenting TK under the Museum Department of the Ministry of Youth, Culture and Sports.

Indonesia has drafted a bill on the Protection and Development of TK and Traditional Cultural Expressions.

**Traditional Knowledge in the Nagoya Protocol**

The Nagoya Protocol on Access and Benefit Sharing makes several references to TK in its provisions, most notably Article 12 – Traditional Knowledge Associated with Genetic Resources. This Article outlines the relevant provisions that Parties to the Protocol would need to comply with in relation to TK. Traditional knowledge as an essential element in ABS exemplifies the essence of the genetic resource that is being accessed – the value of the resource is as valuable as the knowledge being used for its utilization. This is where the other elements of prior informed consent (PIC) and mutually agreed terms (MAT) become instrumental: they ensure the providers of the genetic resource, in most cases the ILCs, are sought for permission and consent. They also ensure that once the genetic resource has become commercially available, ILCs will be given a share of the benefits derived from such resource.

Article 12 makes reference to the importance of PIC and MAT, as essential and necessary elements when it comes to the mechanisms and processes involved in accessing genetic resources, especially when TK associated with these genetic resources are involved. Article 12 guides Parties to support ILCs in the development of community protocols, minimum requirements for mutually agreed terms, and model contractual clauses for benefit-sharing.

Other references to TK are in Article 10, Global Multilateral Benefit-Sharing Mechanism, and Article 11.2 on Transboundary Cooperation. Both provisions indicate that, in situations where the TK is shared by one or more indigenous and local communities, cooperation between and among countries and ensuring the involvement of ILCs mechanisms should be endeavoured, and a global multilateral benefit-sharing mechanism needs to be established.

**Beyond protection and recognition**

With the countries gearing up to establish national frameworks on ABS, traditional knowledge as an essential element, and the involvement of ILCs, should be a priority. The Nagoya Protocol provides that each Party should take appropriate measures in accordance with domestic legislations. National policies that impact on TK are already in place in most countries in the ASEAN region.

Monetary and non-monetary benefits as outlined in the Nagoya Protocol should reach the community level, and such incentives should be ensured to uphold traditional and sustainable conservation practices.

With close resemblance of TK across the region, disputes are likely to arise. Article 10 and 11 of the Nagoya Protocol should be considered seriously in the crafting of national frameworks, and regional transboundary cooperation should be recognized. Regional mechanisms would need to be established in harmony with national policy measures.

The Nagoya Protocol has laid down minimum measures by which ILCs can facilitate access and benefit-sharing of TK associated with genetic resources. These measures are models of what other countries may already have been practicing, thus, it is best to learn from these good practices.

The ASEAN region is as rich and diverse in culture and biodiversity as the various models that countries have developed and practiced over time. One does not need to go far to learn. With the knowledge passed on from generation to generation, countries should be able to share these models, and learn from within.

**References**


