Protecting Traditional Knowledge and Traditional Medicines of Indigenous Peoples through Intellectual Property Rights: Issues, Challenges and Strategies

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1. Introduction

One of the great issues of justice of our times is the validation and vindication of the rights of indigenous people under international law, the protection of their culture and lifestyles and the safeguarding of their intellectual property heritage. There are an estimated 300 million indigenous people in over seventy countries worldwide. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant groups in their respective societies. They have fought strenuously for the recognition of their identities, nationally and internationally.


A decade later, it is increasingly recognized that local, ‘traditional knowledge’ (TK) or ‘indigenous knowledge’ (IK) constitutes part of the cultural and economic wealth of both developing and developed countries.1 Greater awareness is forthcoming about the contributions that such knowledge can make to the process of scientific advancement and technological change. TK systems exist in diverse fields including food and agriculture, biodiversity conservation, nutrition and medicine. Traditional medicines (TM) still constitute the most important source of healing for much of the world’s population living in poverty and distanced from urban centers with sophisticated health systems. In this vein, the South Centre calls attention to the fact that 85 to 90 per cent of the basic livelihood needs of the world’s poor are based on the direct use of biological resources (and

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1 See W. Wendland, ‘Intellectual Property, Traditional Knowledge and Folklore: WIPO’s Exploratory Program’ IIC, Vol. 33 (pp. 485–504) for a discussion of the definition of traditional knowledge and related terms such as indigenous knowledge. See also J. Mugabe, ‘Intellectual Property Protection and Traditional Knowledge: An exploration in International Policy Discourse’, paper presented to a WIPO Seminar on Traditional Knowledge, 1998. <www.acts.or.ke>. Mugabe notes that TK is broader than IK, which is narrower in scope but subsumed in the former.
related traditional knowledge), for food, medicine, shelter, transport, and so on.\(^2\) Even in a highly urbanized environment like Singapore, “Traditional medicines are often used for preventive and rejuvenating purposes…” although it is seldom included in studies on that country’s health system.\(^3\)

In this essay we shall first set out the efforts of the international community to validate the rights of indigenous people under international law. We shall then briefly introduce the concept of traditional medicines and the potential of such inherited knowledge to contribute to the health and wealth of nations. Thereafter, we shall survey related intellectual property (IP) concepts and the challenges presented to protection of TM. Finally, efforts at the international level aimed at the protection of TM as well as related TK, folklore and genetic resources at the international level will be briefly surveyed.

### 2. Recognition of the Rights of Indigenous People under International Law

One of the great chapters of the United Nations (UN) since its establishment more than fifty five years ago relates to its efforts to bring indigenous peoples into the mainstream of international relations, to study and analyze their situation and problems in different parts of the world, to study ways and means of promoting their rights, to establish institutions for the promotion and the protection of their rights, and to develop international norms for the protection of their rights. Even before the creation of the UN, indigenous people have approached the League of Nations in 1928, followed by the Bolivian government’s attempts on behalf of indigenous peoples in 1948, which unfortunately failed to materialize into action. Convention 107 of the International Labour Organization (ILO) of 1957 was the first effort ever made to tackle in a comprehensive manner the issue of indigenous peoples. This was subsequently revised and led to Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries which entered into force on 5 September 1991.

Following the recognition of the right of peoples to self-determination, common Articles 1 of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, a turning point was reached in 1970 when the UN mandated a study on Violations of Indigenous Rights.\(^4\) It was, however, not until the 1980s that a forum for discussion was launched.

The beginning of this process was a recognition in the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities

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\(^3\) G. Chen and Q. Wang, *Patterns of Utilization of Medical Services in Singapore*, Working paper series 6–97, School of Accountancy and Business Research Center, Singapore: Nanyang Technological University, Singapore, p. 15.

\(^4\) For a history of the consideration of Indigenous Peoples at the UN see article by Erica Daes at <www.uit.no/ssweb/dok/series/n02/en/102daes.htm>.