

BioTrade & Access and Benefit Sharing: from Concept to Practice

Undertaking activities on TK

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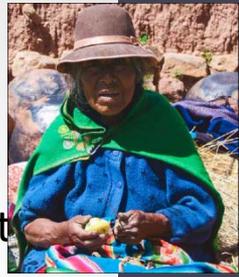
What is Traditional knowledge?

“Knowledge systems, practices, creations and innovations which have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and, are constantly evolving in response to a changing environment” (WIPO)

Main features of TK:

- Knowledge: Information and skills acquired through experience, culture and education
- Practice: it is oriented to practical solutions and survival
- Creations: linked to human cultural expressions
- Innovations: linked to new ideas, methods, or devices
- Intergenerational: created by continuous evolution and incremental additions through generations
- Diverse ownership: Hold by collective groups or individuals
- Associated to biodiversity (CBD): close relation with the habitat
- Nature: intangible (fixed or unfixed)
- Legal status: Regulated by national law and/or customary law. Public vs. private right?

Options for TK protection



Positive:

- Intellectual property (patents, breeders rights, geographical indications, collective marks or certification marks, etc.)
- Sui generis systems
 - Holistic (e.g. of indigenous peoples rights of the Philippines)
 - ABS regimes with ATK protection (e.g. revised AU model law or law and Andean Decision 391)
 - Eclectic options: exclusive rights + registers (e.g. Peruvian law on indigenous knowledge)
 - Sectoral regulations TK licenses (e.g. plant varieties regulations in India & Thailand, copyright protection provisions on folklore in Viet Nam, Chinese traditional medicine patents)
 - Compensatory liability regimes
- Customary law protocols

Defensive:

- TK database (e.g. India TK Digital Library)
- Disclosure of the prior art in patent applications
- Unfair competition actions
- Human rights, labor and environmental treaties, instruments and actions



Undertaking activities on TK and within IPLCs lands and territories (1)



ATK reduce prospecting and screening costs in R&D

- WHO (2003): 25 % of modern medicines are made from plants first used traditionally

ATK can be closely linked to native species

- but it can also be developed separately as it is an intangible component in the application of nature

BioTrade calls for respecting IPLCs rights and for the protection of ATK.

- See BT Principles 4, 6 and 7

What to look out for in BT projects, businesses and activities involving IPLCs?

- Find out how biodiversity is sourced (e.g. harvesting of wild species or cultivation of native species)
- TK is not often associated with genetic resources but to biological ones, raw materials and intangible knowledge
- Check if uses to be given to materials are linked to TK;
- Check if TK is used to orient R&D activities ?
- Lack of care may lead to political conflict and unnecessary costs



Undertaking activities on TK and within IPLCs lands and territories (2)



- **The Nagoya Protocol includes specific provisions on ATK (Articles 7, 12 and 16). Main objectives are to ensure that:**
 - PIC and MAT are also obtained when ATK is utilized,
 - Benefits from this utilization are shared with IPLCs,
 - national ATK-related legislation is respected and complied with in user countries, and
 - countries endeavour to support the development of IPLCs, community protocols, minimum requirements for MAT and model contractual clauses

However, there must be a national ATK law for all these obligations to be mandatory and effective...



Undertaking activities on TK and within IPLCs lands and territories (3)



- **Understanding TK laws**

- Be aware that the use of TK may not only be subject to special laws but to also customary law
- Triggers for GR resource use may be different than those of TK
- Also may be different for innovations than for creations
- Check for minimum conditions for PIC and MAT (different counter part than in GRs):
 - Where the activity takes place?
 - Type of information to be provided;
 - Modalities of consultations
 - Formats, language and methodologies;
 - Respects of customary practices; and
 - ILCS representation.

Traphaco SaPa - Improved business practices

- **Dzao, a Vietnamese ethnic minority, uses Che-day (ampelopsis cantoniensis) a native plant to treat digestion-related diseases and hold a TK for pre-processing and fermenting this plant before it using it as a tea or a medicine**
- Traphaco, leading Vietnamese traditional medicine company, partnered with the National Board on Science to study Che-day. In 2003, it developed Ampelop (Che-day soft capsules) to treat gastric and intestinal inflammations common in Vietnam
- **With the success of Ampelop, demand for Che-day increased by 177% between 2010 and 2012**
- To meet the demand in a sustainable way, Traphaco supported by NIMM and the BioTrade Project contributed to the **creation of a Dzao cooperative with 60 vulnerable households**



Traphaco SaPa - Improved business practices

- Traphaco signed a **supply agreement** with the cooperative and provided a training on sustainable cultivation and harvest practices + established standard procedures to ensure the quality of the supply + pre-processing ensured by the Dzao
- **ABS and ATK implications:** R&D on *ex situ* reproduction methods for native biodiversity and the use of TK for processing and fermentation may need the development ABS Agreements and licenses
- **Results:** Sustainable supply of Che-day + Dzao TK protected and valued + Doubled income for the beneficiary community (Che-day purchased with a 20% premium) + Increased awareness of Traphaco on ABS

