

Ensuring Indigenous peoples' and local communities' rights to food sovereignty – a cultural approach in international law

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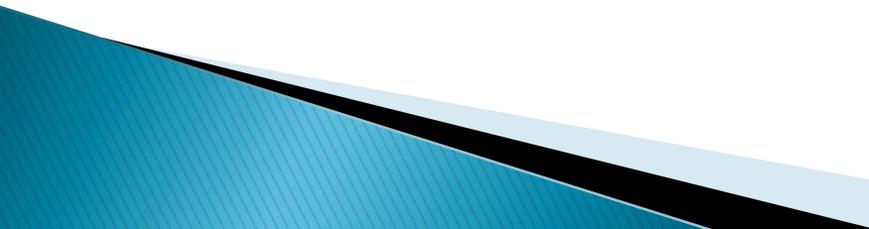
International Expert to UNESCO in the field of Intangible Cultural Heritage

Food sovereignty

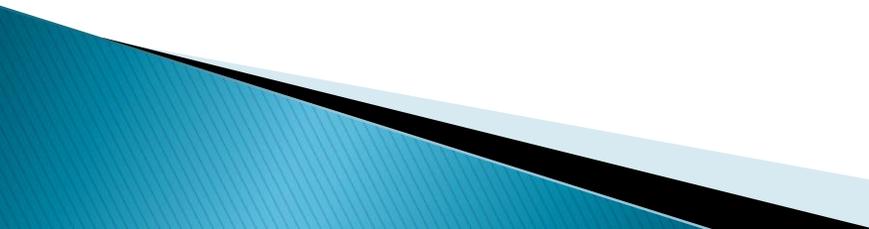
The right of peoples to healthy and **culturally appropriate food** produced through **ecologically sound and sustainable methods**, and their **right to define their own food and agriculture systems**.

- Land–resources–culture nexus
 - Biological diversity and food sovereignty linkage
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Biodiversity/cultural diversity linkage

- ▶ Preservation of cultural diversity is necessary for the safeguarding of traditional knowledge.
 - ▶ Traditional ecological knowledge is, in turn, an essential element for the preservation and conservation of biological diversity.
 - ▶ Humans and human cultures are the repositories of such traditional (ecological) knowledge
 - ▶ Traditional knowledge forms a central part of the intangible cultural heritage
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Not just a cultural issue ...

- ▶ Safeguarding intangible heritage is not just a cultural issue, but one that has great implications for maintaining sustainable ecosystems, the biological diversity that depends on them and the resources necessary for local and Indigenous communities' sustainability
 - ▶ Need to counter the economic and utilitarian measures that legal systems traditionally apply to intellectual property to render them suitable to the needs of the cultural and spiritual values inherent in biological diversity.
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The international law framework [1]

UN Convention on Biological Diversity (1992)

- ▶ Emphasises the important role played by local and indigenous peoples' traditional knowledge, innovations and practices in ensuring the sustainable use of natural resources and preservation of biodiversity.
- ▶ Article 8(j) calls on the Contracting Parties (as far as possible) to:
“Respect, preserve and maintain knowledge, innovation and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustained use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices...”
- ▶ Places an obligation on Parties to identify and eliminate policies that have a negative impact on biological diversity *through the erosion of cultural diversity* and to develop policies that promote the wider application of such traditional knowledge and practices while ensuring the consent of the knowledge – bearers and equitable benefit – sharing from such application

The international law framework [2]

Intellectual property law

- CBD Secretariat cooperation with the World Intellectual Property Organization (WIPO) to develop guidelines and principles for better protection of traditional Indigenous knowledge
- Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was established by WIPO in 2000
- TRIPS Agreement (1994) of the World Trade Organization

The international law framework [3]

Farmers' Rights to PGRs

International Treaty on plant Genetic Resources for Food and Agriculture (FAO, 2001)

- ▶ Article 5 for the conservation and sustainable use of PGRs is highly relevant to preserving traditional ecological knowledge (e.g. survey and inventory, promoting the collection of threatened PGRs and relevant associated information and supporting farmers' and local communities' efforts to manage and conserve their PGRs on-farm)
- ▶ Article 9 (1), requires Parties to recognize the enormous contribution made by local and indigenous communities and farmers to the conservation and development of PGRs
- ▶ in Article 9(2) sets out SPs' responsibility for realizing farmers' rights as they relate to PGRs and to take the necessary measures to promote these. Such measures include (a) the protection of traditional knowledge relevant to plant genetic resources for food and agriculture

The international law framework [4]

Indigenous peoples' rights:

- ▶ *1989 ILO Convention on indigenous and tribal peoples*
- ▶ *UN Declaration on the rights of indigenous peoples (2007)*
(UNIDRIP)

Article 25 of UNIDRIP:

Indigenous peoples have the right to maintain and strengthen *their distinctive spiritual relationship* with their traditionally owned ... lands... and other resources” [1989 ILO at Art.13]

Article 31 of UNIDRIP:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions...including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions... They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. [1989 ILO Art. 23(1)]

Taking a cultural heritage approach towards food sovereignty

UNESCO's Convention on Safeguarding Intangible Cultural Heritage (2003)

- “...communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage” (Preamble, sixth recital)
- ▶ Refers to “the importance of the intangible cultural heritage as a mainspring of cultural diversity and a guarantee of sustainable development” (Preamble, second recital)

Relevance of Intangible Cultural Heritage (ICH)?

ICH is defined as:

The practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. *This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history....* (Article 2(1))

The *five domains* in which ICHit can be found include “knowledge and practices concerning nature and the universe” (Article 2(2)(d))

Six pillars of food sovereignty'

- ▶ Focuses on food for people
 - ▶ Values food providers
 - ▶ Localises food systems
 - ▶ Puts control locally
 - ▶ Builds knowledge and skills
 - ▶ Works with nature
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Case 1: The *Hoodia* case (the San People of South Africa)

Concerns the commercialization of traditional knowledge about a traditional appetite suppressant in South Africa whose properties have been known to the San (Bushman) communities in southern Africa for many centuries.

In the mid-1990s, a State-funded research organization in South Africa identified the pharmacologically active component of *Hoodia*, which they named P57, and filed several patents on it in South Africa and elsewhere.

It then signed a worldwide licensing agreement for the development of *Hoodia*-related products with a British company, Phytopharm plc. Namibia (which entered into an agreement with Unilever in 2004 to produce an appetite-suppressing drug based on *Hoodia*)

In 2002, a MoU was reached between the research institute and the South African San Council: it recognized that the San were the bearers of the traditional knowledge on the human uses of *Hoodia* and established a benefit-sharing arrangement (including 6% of all royalties that the CSIR received once the drug was commercially available).

Lessons learned

This case study shows:

- ▶ Research groups and pharmaceutical companies seeking to exploit traditional knowledge for commercial gain can be encouraged towards ethical practice through media pressure even where legal protection for community-held intellectual property rights is not yet in place.
- ▶ Even where benefit-sharing agreements have been negotiated, communities will not necessarily benefit, financially or otherwise, from the commercialization of their traditional knowledge; they may also be unhappy about the results of commercialization.
- ▶ The importance of thorough consultation with the community concerned before agreements are concluded. The study also shows, however, that it is often difficult to determine who are 'the community'.
- ▶ Most of the San community were prepared to commodify their knowledge, especially as they are a socially and economically marginalized community; but they also continue to value their medicinal plant knowledge for their own symbolic, supernatural and ritual reasons. To some extent, the commercialization of the plant has changed this meaning for them

Case 2: Traditional Mexican cuisine

Traditional Mexican cuisine – ancestral, ongoing community culture, the Michoacán paradigm (inscribed on the Representative List of the 2003 Convention in 2010)



Traditional Mexican Cuisine

A comprehensive cultural model comprising farming, ritual practices, age-old skills, culinary techniques and ancestral community customs and manners.

It is made possible by collective participation in the entire traditional food chain: from planting and harvesting to cooking and eating.

It is related to traditional practices and techniques that are still in use (e.g. Nixtamalization, the milpa and chinampa) as well as special utensils including special grinding stones and stone mortars.

Recovery of traditional Mexican and Michoacán cuisine means not losing effective ancestral customs such as the generalized consumption of corn and other produce grown in the milpa.

Tools for Preserving Bio-cultural Heritage

Tools for promoting resilient farming systems and local economies

- ▶ **Community bio-cultural protocols**: to protect rights over TK, genetic resources and bio-cultural resources, and promote recognition of traditional authorities and customary laws and legal pluralism.
- ▶ **Community bio-cultural registers**: to protect rights over TK and genetic resources; and monitor and conserve bio-cultural resources
- ▶ **Bio-cultural products**: to generate income from bio-cultural resources by adding value to them and tapping markets.
- ▶ **Bio-cultural territories**: to assert collective rights to land and bio-cultural resources, and promote strong local economies.
- ▶ **Equitable partnerships**: to enrich genetic resources and TK, derive equitable benefits from their use and enhance respect for TK systems.

Source: < <https://biocultural.iied.org/tools-and-materials> >

And finally, the commercial break...

دانشگاه
پنجاب
پنجاب

دراآمدی بر حقوق فرهنگ و تنوع فرهنگ
در سیاست گذاری و حقوق بین الملل

ژانت بلیک

An Introduction to Cultural Diversity and
Cultural Rights in International Policy and
Law – with Collected Materials

Janet Blake

دکتر ژانت بلیک، عضو هیئت علمی دانشکده حقوق دانشگاه شهید بهشتی و یکی از اعضای "کمیسیون حقوق بشر، صلح و دموکراسی یونسکو" "هیئت علمی آموزش برای توسعه باندار" و "کمیته حقوق میراث فرهنگی" انجمن حقوق بین الملل (ILA) است. و از سال ۲۰۰۰ تا کنون نیز در مقام کارشناس بین المللی برای یونسکو در زمینه‌های مرتبط با استاندارد گذاری فعالیت دارد. وی با تکیه بر تجربه‌های علمی و عملی وسیع خود، و با توجه به ضرورت نگارش منبمی جامع در باره حقوق فرهنگی و تنوع فرهنگی، به‌ویژه برای کشور در حال توسعه‌ای مانند ایران، این کتاب را در چارچوبی منسجم و کاملاً علمی نوشته است و افزون بر معرفی حقوق فرهنگی و تحلیل محتوا و دامنه آن، و از منظر حقوق بشر، ایده تنوع فرهنگی و مفهوم سازی نقش فرهنگ در توسعه را تشریح کرده است.



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