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Traditional Knowledge in the European Context

Tobias Kiene (Iddri)

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tuelle). Il était organisé par le programme Savoirs naturalistes locaux de l'Iddri, à Genève, le 24 avril 2006.

Après avoir décrit le rôle que joue l'IGC dans la protection des savoirs locaux, le document présente plusieurs initiatives de

protection et de valorisation des savoirs locaux en Europe et propose de développer, au sein de l'IGC, une approche européenne fondée sur les expériences existantes.

Pour toute information, merci de contacter : selim.louafi@iddri.org

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Within the great variety of regional cultural traditions in Europe, local knowledge and practices have been playing a vital role. For centuries, European traditional rural societies have been preserving their own systems of knowledge, especially about natural resource management and agriculture. This knowledge has been gaining growing interest in the last few decades, and several initiatives have already been undertaken in Europe for its documentation and preservation. The intellectual property aspects in these knowledge and practices fall within the mandate of WIPO's Intergovernmental Committee on Traditional Knowledge, Folklore and Genetic Resources (The IGC).

In general terms, "traditional knowledge" means the "content or substance of knowledge resulting from intellectual activity in a traditional context". While there is no widely acceptable definition that could apply to all the diverse forms of existing traditional knowledge, illustrative or descriptive characterizations are usually chosen instead, containing elements like its traditional context, transmission between generations or dynamic and evolving nature. The concept of traditional knowledge does not only comprise indigenous knowledge, meaning knowledge held and used by communities, nations and peoples that are indigenous, but applies also to other forms of knowledge developed in a traditional context.

Sharing the same characteristics like other forms of traditional knowledge, European local knowledge is not taken into account by the current intellectual property rights system.

Since its establishment in 2000, the IGC has undertaken a wide range of activities in order to address the shortcomings and future possibilities of the legal protection of traditional knowledge in the intellectual property rights system. The "policy objectives and core principles", the elaboration of which was started in the sixth session, set the directions for a future instrument for the protection of traditional knowledge. Articles 3, 4 and 5 clarify the minimum traditional linkage between traditional knowledge and its holders in order to be eligible for protection under the provisions. As explicitly stated, they do not seek to define the diverse and holistic conceptions of traditional knowledge in one singular and exhaustive definition, but to make clear the scope of traditional knowledge in a descriptive way. Amongst others, the provisions mention as policy objectives the prevention of the grant of improper intellectual property rights to unauthorized parties, the conservation, preservation and safeguarding of traditional knowledge and the promotion of community development and legitimate trading activities. With regard to the European context, the protection of local knowledge could play a role in a large variety of areas, such as biodiversity, sustainable development, scientific research, agriculture, rural development, trade, culture and food quality.

Local Knowledge in Europe

It is mainly in the areas of biodiversity and agriculture that the contribution of traditional practices and traditional knowledge, expressed by the richness of European landscape and foodstuff, is being given renewed interest in Europe. For centuries, local communities in Europe have been using their practical knowledge to develop and maintain complex ecosystems, unique agroforestry systems and highly diversified local plant varieties and animal breeds, the diversity of which, together with traditional production methods, has also led to a variety of local agricultural foodstuff. At the same time, this local knowledge is not stable, but the result of continuing adjustments to nature and to the needs of the local community. Being an example for European original agroforestry systems, orchard meadows have been created over the centuries by local farming communities, primarily in France and southern Germany. Due to local ecological knowledge about the land and the needs of the different species and know-how like grafting techniques, orchard meadows can be considered as unique ecosystems, home to hundreds of

varieties of fruit trees and are habitats to hundreds of species (10 of the 35 species of breeding birds counted in Alsace for example can only be seen in the regional orchards).

Like other forms of traditional knowledge as being discussed within the IGC, European local ecological knowledge is characterized by the human interaction with the environment over centuries, thus a strong link between man and nature, by the conservation mentality of local communities and as being “holistic, inherently dynamic and constantly evolving through experimentation and innovation, fresh insight and external stimuli.” As for the socio-cultural context, it forms a dynamic part of the lives of the local communities holding it and is handed down through generations by cultural transmission and learning through practice. Hence, the European local level has also gained growing interest by the social sciences in the last few decades; ethnologists began to explore local practices, means of transmission and tradition of local communities in remote rural areas and small villages.

In the Cévennes National Park, local ecological knowledge linked to natural resources contributed to the conservation of a highly diverse ecosystem: Situated in the south of France, the Cévennes National Park shows an extraordinary biodiversity: Its diverse climates (oceanic, continental and Mediterranean), the composition of the soil (granite, limestone and schist) and the range of altitudes (from 400 to 1.700m) all favoured these ecosystems being home to more than 2.200 reported plant species and more than 2.400 reported animal species, representing 50% of the French fauna and flora on 0,6% of the national territory. Its variety of ecosystems includes forests, moor land, steppes and meadows and its vegetation ranges from sub-alpine in the higher land, where some plant species typical of the polar circle can be found, to warm rocky valleys on the Mediterranean side with plant species that are usually located in the sub-tropics. In 1985, it has been declared a UNESCO “World Biosphere Reserve”.

The Cévennes are a remarkable example with regard to the work of the IGC, because this national park is inhabited by more than 40.000 people, essentially farmers and livestock breeders, who have been maintaining their traditional knowledge systems over centuries, forming an important part of their cultural identity. Working in the care of the protection of the ecosystem while preserving their own lifestyles, the local community has developed its own names and classification systems, which are being studied by scientists, for example different names in the local dialect for different types of wetlands, or for different kinds of grass. Through traditional agricultural practices, open land like meadows or prairies are being maintained, thereby making the Cévennes National Park home to a large number of threatened plants and to 48 indigenous plant species. The local community of the Cévennes define themselves through this system of knowledge, practices, know-how and innovations and generate, preserve and transmit it in a traditional and intergenerational context.

A good example for local knowledge used in traditional production of agricultural foodstuff is the “Bregenzerwälder Bergkäse”, a traditionally produced Austrian hard cheese. The Bregenzerwald is a region located in Vorarlberg, the westernmost state of Austria between Switzerland, Lake of Constance and the Arlberg region, with its own dialect and own cultural traditions. For hundreds of years, local farming communities have been traditionally producing cheese in the alpine dairies of this region, using raw milk from non-silage fed cows. The traditional practices and skills involved in the processing of regional natural resources have become a distinctive element of the cultural identity of the local community of the Bregenzerwald. Their traditional and intergenerational context is especially strong in the production of a special type of this cheese (“Alpkäse”) in small alpine dairies in the highest parts of the region (“Alp” in the regional dialect), where the cattle is fed during the summer.

These are not more but two examples which show that local communities in Europe are holding considerable local ecological knowledge and local practices in the fields of biodiversity and agriculture, safeguarding cultural heritage with long traditions. This traditional knowledge is being covered by the “policy objectives and core principles” developed by the IGC.

European initiatives concerning TK

A bundle of measures has already been taken in Europe to preserve and protect this local knowledge, partly in combination with the protection of genetic resources.

In the field of biodiversity conservation, local knowledge and practices are being more and more reconsidered by researchers in Europe. It is important to emphasize in this context that although local knowledge might be inextricably linked to loads of genetic resources, measures taken for the conservation of genetic resources are different from protection means of local knowledge and practices.

Apart from being fundamentally dealt with in the Convention on Biological Diversity (CBD), it is WIPO's IGC which is therefore working on issues relating to registries and databases concerning genetic resources. Among the many databases that have been established under the CBD within the European Union, only a few are taking into account the contribution that has been made by local communities.

In Europe, local ecological knowledge and practices are primarily being exploited in the area of local agricultural foodstuff. Several initiatives in this field build on a combination of protection and promotion of local knowledge and use the various tools that exist in the intellectual property system for these purposes.

One of the first and largest databases on regional specialities has been initiated in Bavaria, southern Germany. In order to be registered in this publicly accessible database, a regional speciality must meet three criteria that are all characteristics of traditional knowledge as discussed within the IGC: It must have been produced or cultivated in the region for a minimum period of time, its production and processing must have a close link to the geographical area and the speciality must be identified with Bavaria or a certain part of it, thus forming part of the identity of the local community. Specialities are therefore always seen in the broader context of the tradition they are belonging to, as a result of traditional production and preparation methods in a specific local culture. Each entry in the register therefore includes a detailed description of the history, of production methods, local ingredients or raw material and the area, where the speciality is traditionally manufactured. Established in the 1990s, the database contains until now more than 200 entries of products and production methods, ranging from traditional preparation of fish and vegetables to cheese production and beer brewing.

Besides aiming at a positive protection of the agricultural products and foodstuff, the Bavarian register is a defensive intellectual property tool for the underlying local knowledge and traditional know-how, whose extensive description is a requirement for registration. It is important to ensure that databases of this type meet the existing industrial property documentation standards and other relevant standards for the documentation of local and traditional knowledge as being discussed in the IGC. The Bavarian register as well as the Austrian and Swedish registers have been or are being developed with regard to these possible future international standards of data specification.

A similar approach of protecting an agricultural product or foodstuff while valuing the elements of traditional know-how and practices during the registration process is being taken by the register of traditional specialities of the European Union, which requires the product to be produced from traditional raw material, be characterised by a traditional composition or a traditional production and/or processing method. Due to the lack of specific information in the publicly accessible database concerning the traditional knowledge necessary for registration, its scope of serving as a defensive protection tool for these elements is however limited.

Besides other intellectual property tools like (collective) trademarks, geographical indications are being widely used within the European Union to promote local ecological knowledge and practices related to agricultural products in order to enhance their commercial value. The added value by traditional knowledge is considered during the application procedures and in the regular quality controls of the product and production methods. Being present in the academic literature since the 1990s, the potential of geographical indications in terms of promoting traditional knowledge are currently also examined outside the European Union, especially in developing countries.

The only specific legislation measure concerning local and traditional knowledge that has been developed so far within the European Union is the sui generis law of Portugal. It has been

established in view of Member States obligations under the Convention on Biological Diversity to adequately protect their biological diversity and aims at preserving and maintaining Portugal's natural and cultural richness. Having therefore been written primarily as a law of biodiversity protection as regards the conservation, legal safeguarding and secure interchange of certain plant genetic resources, the Portuguese stand-alone *sui generis* law also takes into account the contribution made by farming communities and gives them specially tailored exclusive rights in their traditional knowledge as such, besides regulating access to registered plant material and traditional knowledge and sharing the benefits arising from their use.

Concerning traditional knowledge, the aim of the Portuguese law is to recognize, preserve and maintain knowledge, innovations and practices of the local (farming) communities embodying traditional lifestyles relevant for the conservation and sustainable use of plant agrobiodiversity and to promote their wider application with the involvement of the holders. It provides for a register that combines the objective of conserving both landraces and traditional knowledge. In order to be eligible for registration, traditional knowledge must be associated with the utilization of (certain kinds of) plant material, having been developed by local populations in a non-systematic manner and form part of the cultural and spiritual traditions of those populations. The law mentions for example knowledge about methods, processes, products and names associated with plant material falling under the law. Traditional knowledge must be identified, described and deposited in order to be registered in the register of plant genetic resources and thus be granted protection.

The owner of thus registered knowledge, which can be any public or private entity representing the interests of the region from where such knowledge originated, has amongst others the right to object to the commercial use, reproduction or imitation of the knowledge and the right to transfer or licence his right in the knowledge. Following principally a positive protection approach by giving the owner of the registration rights in the traditional knowledge, the Portuguese register will also contain elements of defensive protection: Besides the publication of registered knowledge in the registration bulletin that could be used for defensive protection strategies, the holders of traditional knowledge may choose to keep their knowledge confidential, so that the publication will only mention the existence of the knowledge and a designation of the plant varieties to which it relates. Accordingly, the protection granted will be more limited.

All these examples show that traditional knowledge exists in the European Union and that various initiatives have already been put into practice for its protection, preservation and promotion. The European Union is therefore affected by the debates on traditional knowledge within WIPO's Intergovernmental Committee on Traditional Knowledge, Folklore and Genetic Resources.