

# **Towards a Holistic Approach to Indigenous Knowledge Protection: UN Activities, ‘Collective Bio-Cultural Heritage’ and the UNPFII**

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## **IIED, Andes (Peru) and Call of the Earth<sup>1</sup>**

Over eleven UN agencies are carrying out activities on the protection, preservation and promotion of traditional knowledge, within their particular mandates and spheres of competency. While many valuable activities are underway, it is evident that there are also gaps in their alignment with indigenous peoples’ perspectives, needs and aspirations. Indigenous peoples have expressed the need for the protection of their traditional knowledge to be holistic, human rights-based and developed with their full participation.

This paper reviews a number of UN agency activities to develop policy and standards for the protection of traditional knowledge. It assesses the extent to which they reflect the perspectives and priorities of indigenous people, and identifies the gaps that need to be addressed. It also explores the concept of ‘Collective Bio-Cultural Heritage’ as a means to address the gaps in UN processes, and identifies recommendations for the UNPFII, which is mandated to advise UN agencies on indigenous issues.

In September 2005, the UNPFII convened a Technical Workshop on Indigenous Traditional Knowledge in Panama to review the various UN agency activities on IK and promote a coordinated and holistic approach, with indigenous participation. The Workshop made a number of recommendations, including that: “the UNPFII should encourage the further elaboration of the concept of ‘collective bio-cultural heritage’ as the framework for standard setting activities on indigenous traditional knowledge”.

It also recommended that the Inter-Agency Support Group in Indigenous Issues, with assistance from the Forum Secretariat, should develop a matrix of indigenous knowledge activities of UN agencies, for the purpose of “enabling the Forum to develop strategies to fill gaps in indigenous traditional knowledge policies”.<sup>2</sup>

## **Indigenous Perspectives on the Protection of Indigenous Knowledge**

Many indigenous peoples are concerned about the misappropriation and misuse of their traditional knowledge by outsiders without their permission and without respect of their customary laws. ‘Biopiracy’ cases are increasing, where indigenous knowledge and resources are privatised by others through intellectual property rights, used in ways that run counter to indigenous worldviews and culture, and with no benefits for the ancestral rights-holders. Trade agreements of the WTO and the

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<sup>2</sup> Report of the Technical Workshop on Indigenous Traditional Knowledge (Panama City, 21-23 September 2005)

proliferation of Free Trade agreements is accelerating the privatisation and commercial use of indigenous knowledge and resources. These problems are sometimes national but also have a strong international dimension. Hence an international response is needed to protect indigenous peoples' rights over their traditional knowledge, which has sufficient strength to ensure compliance by countries and users of indigenous heritage worldwide.

Furthermore, traditional knowledge is rapidly disappearing, with growing pressures of globalisation undermining indigenous culture and lifestyles and taking over their traditional lands and resources to make way for commercial ventures (mining, plantations etc), and with protected areas alienating indigenous lands. Loss of lands is a key factor driving the loss of cultural diversity and traditional knowledge.

Indigenous peoples have called for approaches for protection of their rights over IK to be holistic, reflecting their holistic worldviews, where knowledge is inextricably linked to traditional territories, resources and culture. All components of indigenous heritage, including knowledge, expressions of culture, biodiversity and traditional territories, are an integrated and interdependent whole, requiring equal protection. Protection of rights over culture is not seen as separate from territorial rights and the right to self-determination. The fragmentation of heritage and heritage rights is a major threat to its continued existence.<sup>3</sup> Similarly, they have called for protection to be comprehensive, to address the multiple threats to their knowledge, resources, territories and culture and ensure the continuation of their heritage for future generations.

Indigenous peoples have stressed the need for a human rights based approach to IK protection, recognising that the right of indigenous peoples' control and management of their traditional knowledge is part of their long-standing demand to the right to land and natural resources and self-determination. They have emphasised the protection of their collective rights, since traditional knowledge tends to be owned collectively; as opposed to using IPRs that often protect individual rights, and do so exclusively for commercial purposes. Private property frameworks run counter to indigenous worldviews, values and customary laws which safeguard IK/resources and ensure free access to these essential resources.

Another critical demand of indigenous peoples is their full participation in processes dealing with the protection of their traditional knowledge and heritage, from the development of international standards and legal regimes, to initiatives at local level. As expressed by the late Darrell Posey, "Protection of traditional knowledge can only be adequate if it is conserved, maintained and enhanced in situ as part of the lands, territories and cultures of indigenous peoples."<sup>4</sup>

## **Analysis of the Gaps in UN Agency Activities**

### **1) Common Themes**

There are some common concerns relating to UN agency policy and standard-setting

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<sup>3</sup> Indigenous Perspectives, Volume VI, Nos 1 & 2: "Traditional Knowledge, Biodiversity and Indigenous Peoples", Journal of Tebtebba Foundation

<sup>4</sup> Dr Darrell Posey (1996). Traditional Resource Rights. IUCN Biodiversity Programme

activities on traditional knowledge, some of which are inherent in the nature of the UN system. These can be summarised as follows:

*Lack of Effective Participation:* In the majority of UN fora, Member States are the sole decision makers, and there is no obligation for the views of indigenous peoples to be taken into account. Although efforts have been made to enhance the presence of indigenous peoples in some UN fora, their participation in decision-making is still limited. As the Technical Workshop in Panama noted, UN agencies could and should do more to promote the effective participation of indigenous peoples and integration of their perspectives in their work.

*Fragmented Approach:* There are many different agencies each addressing a particular aspect or a component of indigenous knowledge and cultural heritage. In many cases, they focus narrowly on the intangible or intellectual aspect of knowledge systems. As such, the policies and standards being developed do not reflect the holistic worldviews of indigenous peoples, or provide effective and comprehensive mechanisms for protecting indigenous knowledge systems, and ensuring their continuation. The inter-connections and mutual dependence of biodiversity, culture, knowledge and landscapes, and their role in sustaining indigenous health, food and economic systems and spiritual wellbeing, are not sufficiently addressed.

*Human rights are missing:* With the exception of those with specific mandates on human rights, UN agencies dealing with traditional knowledge have not addressed the most critical issue for indigenous peoples with regard to their knowledge – that their human rights are respected. These rights include indigenous rights to territories and resources, collective rights, rights to their cultural values and practices and the right to self-determination, including customary legal systems and the principle of free, prior and informed consent (FPIC). Given that their mandates focus on biodiversity, genetic resources, IPRs etc., they do not see human rights as part of their remit.

*Weak Implementation and Enforcement:* Those UN agencies with a human rights mandate, which are taking a holistic approach and actively engaging indigenous peoples, are largely developing ‘soft’ law standards which do not have legal rigor or mechanisms to ensure compliance. Those instruments and conventions which do have a legal character are not widely ratified and weakly implemented and enforced.

## **2) Specific Agency Initiatives**

- **UNEP/CBD – Convention on Biodiversity**

The mandate of the Convention on Biodiversity is to promote the conservation and sustainable use of biodiversity, and the equitable sharing of the benefits arising from the use of genetic resources. Article 8(j) requires Parties to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities relating to biodiversity, encourage equitable benefit sharing from the use of such knowledge, and promote its wider application with the approval and involvement of the holders of traditional knowledge.

The Working Group on Article 8(j) has promoted valuable standards, for example, the Akwe Kon Guidelines on sacred sites and indigenous lands and waters; an ethical code on respect for biodiversity-related knowledge, innovations and practices; and

guidance for the development of sui generis systems based on customary laws. It has provided an important forum for indigenous perspectives to be voiced, emphasising the link between the maintenance of traditional knowledge and continued stewardship by indigenous communities of their traditional lands and waters, customary use of biodiversity, and the right to FPIC.

However, there appears to be a lack of commitment to the Working Group on Article 8(j) on the part of governments, as evident from the recent low attendance by Parties and slow progress – more efforts are focused on the ABS Working Group (see below). Other important CBD provisions, notably article 10 (c ), which aims to protect and encourage customary use of biological resources in accordance with traditional cultural practices, and 17.2 which deals with the repatriation or return of information to communities, have not received much attention from CBD Parties.

The CBD recognises the sovereign rights of states over natural resources and the authority of states to decide over the use of genetic resources. Although the principle of national sovereignty is important in promoting equitable benefit-sharing with Southern countries, it is generally interpreted as government *ownership*, with the rights of other actors, notably indigenous and local communities, often unclear or unrecognised. The CBD only requires PIC of State Parties for access to genetic resources, and not of indigenous and local communities. Thus, it separates rights over natural and genetic resources, which are ‘owned’ by the state, and rights to traditional knowledge which are ‘owned’ by indigenous and local communities.

In some countries, ABS laws have recognised the rights of communities, but in others they have not, thereby undermining the rights of local custodians over their biodiversity resources, particularly given the obligation on States to facilitate access to genetic resources. The ABS framework effectively facilitates access by outsiders to community resources, as opposed to facilitating access by communities to ex-situ resources, many of which originate from their traditional territories. Addressing customary laws and traditional resource rights in this framework would imply a requirement for PIC of indigenous communities for use of bio-genetic resources collected from their territories, a reciprocal or two-way access framework which also facilitates access by communities, and an emphasis on safeguarding access to resources for customary use by communities. Thus, if enshrined in a binding international regime as it currently stands, the ABS framework could have serious consequences for the rights of indigenous peoples.

The Working Group on Access to Genetic Resources and Benefit-Sharing (ABS) has been mandated to negotiate an international regime on ABS and traditional knowledge protection *in collaboration with* the Working Group on Article 8(j), which is fairly open to indigenous participation. However, the process is being conducted within the ABS Working Group, with no mechanism for ensuring the effective participation of indigenous peoples.

#### **Key Gaps**

- Addresses traditional knowledge and genetic resources separately
- Asserts national sovereignty and control over genetic resources, without recognising the rights of indigenous communities to genetic resources

- Does not recognise indigenous rights to traditional territories and self-determination
- Customary laws are not addressed in the ABS framework
- TK issues are addressed within a paradigm of ‘property’
- Lack of participation of indigenous peoples in the development of an international regime on ABS and traditional knowledge protection
- The Working Group on Article 8(j) lacks government commitment

### **UN FAO – Treaty on Plant Genetic Resources**

The main objectives of the FAO Treaty on Plant Genetic Resources for Food and Agriculture, which entered into force in June 2004, are the conservation and sustainable use of plant genetic resources for food and agriculture and equitable sharing of benefits derived from their use, for sustainable agriculture and food security. The Treaty has adopted the same ABS framework as the CBD, recognising national sovereignty over natural resources and providing facilitated access to genetic resources in return for benefit-sharing. It recognises farmers’ rights, and requires governments to take measures to protect and promote farmers’ rights, including by: protecting traditional knowledge related to plant genetic resources; promoting farmers’ rights to share equitably in the benefits from the use of genetic resources; and promoting farmers’ right to participate in national level decision-making on conservation and sustainable use of genetic resources.

However, the Treaty does not elaborate practical mechanisms for protecting farmers’ rights, or require the FPIC of farmers for access or use of their varieties. In addition, it only covers a limited number of genetic resources included in the annex, which are mainly commercial rather than traditional varieties. And as with the CBD’s ABS framework, the FAO Treaty separates genetic resources from the customary laws of indigenous communities that govern their access and use, and ensure continued access to these resources for food security, health, poverty reduction and cultural and spiritual life.

At local level, there is a fluid dynamic between wild and cultivated genetic resources in indigenous innovation processes and the creation of diversity. Having two separate conventions dealing with genetic resources, means that these important linkages are not explicitly addressed. Furthermore, much of the detail of how the Treaty is to be implemented will be determined by Member states alone, since there is no mechanism for the participation of indigenous peoples in the General Assembly which is the decision-making forum of the FAO Treaty.

### **Key Gaps**

- Separates rights over genetic resources and traditional knowledge
- Asserts national sovereignty and control over genetic resources, without recognising farmers rights over genetic resources and rights to PIC
- Does not recognise indigenous rights to traditional territories and self-determination
- Customary laws are not addressed in the ABS framework
- Facilitates external access to community resources (and not vice versa)
- Lack of participation of indigenous peoples in the policy process

## **WIPO - World Intellectual Property Organisation**

WIPO is the UN agency responsible for promoting and harmonising intellectual property rights worldwide, including patents, copyright and trademarks. Its Inter-Governmental Committee (IGC) on Genetic Resources, Traditional Knowledge and Folklore, is mandated to develop standards on the intellectual property aspects of access to genetic resources, and protection of traditional knowledge and expressions of folklore. The IGC has focused in particular on the use of IPR standards for the protection of traditional knowledge. It is developing Policy Objectives and Principles for traditional knowledge protection.

While the IGC has promoted valuable attention to traditional knowledge protection, being situated within an IPR body, and composed mainly of representatives from national patent offices, it has a distinct leaning towards IPR models. In many cases IPRs are not appropriate for protecting collective rights of indigenous peoples over their traditional knowledge and run counter to indigenous worldviews. Even though the recognition of customary laws is amongst the issues being discussed, a number of parties continue to emphasise the need for protection of traditional knowledge to be consistent with IPR standards.

The IGC, and the policy objectives it is developing focus narrowly on protecting traditional knowledge, without also addressing the rights of indigenous peoples over bio-genetic resources, lands, culture and customary laws. The definition of traditional knowledge in the policy objectives and principles does not recognise traditional knowledge embodied in traditional varieties, or rights over associated indigenous bio-genetic resources, natural resources and territories. The policy focuses on misappropriation in economic terms, as opposed to culturally offensive use or hinderence of customary use. Furthermore, it emphasises national sovereignty over natural resources, consistency with ABS frameworks, and decision-making by national authorities.

The IGC is also working on the disclosure of origin of genetic resources and traditional knowledge in patent applications, whose promotion in other WIPO committees that deal with patents could be an important step. But discussion so far has centred on proof of compliance with national ABS regimes and disclosure of the country of origin, and not the community of origin.

### **Key Gaps**

- Promotes intellectual property solutions, designed to protect industrial and commercial inventions, which separate traditional knowledge from the cultural and spiritual values that establish its collective ownership, and do not respond to the very different worldview, needs and context of indigenous peoples
- Separates rights over traditional knowledge, genetic resources and folklore
- Does not recognise indigenous rights over genetic resources, traditional territories and self-determination
- TK issues are addressed within a paradigm of 'property'
- Decisions are made by governments and IPR experts - indigenous representatives are not participants in the decision-making process
- Policy objectives and principles vest decision-making in national authorities

## **UNESCO - Educational, Scientific and Cultural Organization**

UNESCO has developed a number of important international conventions relating to the protection of cultural and intellectual heritage. The Convention for the Safeguarding of Intangible Cultural Heritage, which came into force in April 2006, aims to safeguard oral traditions and expressions, including language, performing arts, social practices, rituals and festive events, and knowledge and practices concerning nature and the universe. It is however focused only on intangible heritage as opposed to taking a holistic and human rights based approach.

The UNESCO World Heritage Convention, on the other hand, focuses on the protection of both cultural and natural heritage, and recognises the inter-linkages between landscapes, culture, traditional knowledge and biodiversity. It recognises 'cultural landscapes' which are associated with a traditional way of life, often reflect techniques of sustainable land use and a specific spiritual relation to nature, and recognises their role in maintaining biodiversity.

While these are valuable instruments, their development at international level and their implementation at international, national and local level is largely controlled by national governments as opposed to indigenous peoples and local communities. Thus they fall short of indigenous peoples demands for self-determination, and control of their natural resources, landscapes and cultural and intellectual heritage, in accordance with their own legal systems.

### **Key Gaps**

- Policy development and implementation mechanisms are mainly controlled by national governments
- Lack of attention to indigenous participation, resource control and self-determination

## **UNCTAD – UN Conference on Trade and Development**

UNCTAD is primarily concerned with furthering the trade and development objectives of its member states, particularly developing countries. Its Secretariat has facilitated capacity building on TK protection for its member states, including workshops involving indigenous experts and the development of a toolkit of policy options. It also participates in the TK policy processes of other UN agencies (eg. WIPO, CBD). UNCTAD seeks to promote an integrated approach to 'protect, promote and preserve' traditional knowledge. The Secretariat has emphasised the importance of such an approach in order to promote community-based development, rather than focusing only TK protection as an IPR issue; and that it implies the 'preservation of communities' (eg. by addressing economic factors causing out-migration). It has also highlighted the need for TK protection to be based on the PIC and customary laws of communities.

Despite this important work, the interests and rights of indigenous communities are not a priority for UNCTAD as a whole, since these are often not among the development and trade priorities of southern governments. And while UNCTAD's approach emphasises the promotion and preservation of TK, it has not promoted or endorsed the recognition of indigenous rights over associated bio-genetic resources and territories. As a trade and development organisation, UNCTAD could give more

attention to indigenous peoples' needs, given that they are amongst the most disadvantaged groups in society.

#### **Key Gaps**

- Main focus on national trade and development priorities of southern governments, with limited attention to the needs of indigenous peoples
- Lack of recognition of indigenous rights over bio-genetic resources and traditional territories
- Main emphasis on promoting TK for market-based trade, less emphasis on traditional economies

#### **OHCHR/UN-WGIP – Guidelines on Protection of Indigenous Cultural Heritage**

The UN-Working Group on Indigenous Populations is developing revised standards on the protection of the cultural heritage of indigenous peoples, with the particular aim of creating a distinct category of rights for indigenous cultural heritage. The Draft Guidelines explicitly recognise the human rights aspirations of indigenous peoples, with the right to self-determination, recognition of customary laws, the principle of FPIC forming key elements of the guidelines. The underlying criteria recognise that indigenous peoples' cultural heritage is intrinsically linked and connected with their traditional territories, lands, waters and natural resources, and that indigenous peoples' control over traditional territories and resources is thus essential to the protection of their cultural heritage and its transmission to future generations. They acknowledge that the right of states to sovereignty over natural resources, as expressed in the CBD, is conditioned by the right of indigenous peoples to freely dispose of their natural wealth and resources.

The guidelines also provide a broad definition of cultural heritage, which includes both tangible and intangible components: traditional lands and waters, natural resources and bio-genetic resources such as medicines, plants, seeds, and traditional knowledge concerning nature, as well as cultural expressions. However, the provisions pay particular attention to the protection of cultural expressions, such as art and literary works, and are less comprehensive in dealing specifically with the protection of rights over bio-genetic resources and related traditional knowledge. While they recognise the holistic character of cultural heritage, they do not aim to protect indigenous peoples' rights over their traditional territories and resources, or elaborate provisions in this regard.

#### **Key Gaps:**

- Strong focus on protection of cultural expressions, but less attention to rights over traditional knowledge and bio-genetic resources
- Lack of attention to the protection of rights over traditional lands and territories

#### **OHCHR/UN-WG on Draft Declaration on the Rights of Indigenous Peoples**

The Draft Declaration on the Rights of Indigenous Peoples is considered the most complete and representative statement of principles and demands for indigenous rights because of its broad and long consultation process with indigenous leaders. It stresses indigenous peoples rights to (inter alia):

- Self-determination, representation and full participation

- Full ownership, control and protection of their cultural and intellectual property, including special measures to control, develop and protect sciences, technologies and cultural manifestations, human and other genetic resources, seeds, medicines, knowledge of the properties of flora and fauna and oral traditions;
- Ownership and control of the lands, territories, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used.
- Full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources.
- Conservation, restoration and protection of the total environment and productive capacity of their lands, territories and resources
- Free, Prior and informed consent (ie. FPIC).
- Just and fair compensation for any activities that have adverse environmental, economic, social, cultural or spiritual impact.
- Collective as well as individual human rights
- Restitution of traditional lands, territories and resources, and cultural, intellectual, religious and spiritual property, taken without their free and informed consent, or in violation of their laws, traditions and customs.

The draft declaration provides a holistic and comprehensive instrument on the rights of indigenous peoples' to self-determination, culture, intellectual heritage, natural resources and territories. It is a critical instrument for safeguarding the fundamental rights of indigenous peoples. However it is quite general and does not elaborate mechanisms for protecting traditional knowledge. It is yet to be adopted, with negotiation between UN-Member States is still ongoing.

**Key Gaps:**

- Soft law instrument with limited scope for ensuring implementation and compliance
- Does not elaborate comprehensive provisions to protect rights over traditional knowledge

**UN- ILO - Convention 169 on Indigenous and Tribal Peoples**

The International Labour Organisation is a standard-setting specialised agency of the United Nations system which aims to improve living and working conditions. ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries entered into force in 1991. It calls on governments to develop systematic actions to protect the rights of indigenous and tribal peoples, including their social, economic and cultural rights, customs, traditions and institutions. It emphasises the right of indigenous and tribal peoples to decide their own priorities for development as it affects their lives, beliefs, institutions and spiritual well-being; calls for due regard to of customary laws of the peoples concerned; and for their participation in decisions that affect them. ILO 169 also recognises the need to respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with their lands and territories, in particular the collective aspects of this relationship.

While the Convention provides a key instrument in the protection of indigenous peoples' human rights, including cultural rights, it does not specifically address the protection of traditional knowledge. And although it is reflected in the Constitutions

of some countries and has assisted indigenous peoples to assert their rights in a national context, it has only been ratified by 17 countries.

**Key Gaps:**

- Does not specifically address the protection of traditional knowledge
- Not widely ratified and implemented

**UN - Human Rights Conventions**

A number of human rights conventions also provide useful instruments for the protection of indigenous peoples rights, but in many cases they have not been ratified and/or implemented by governments. In addition, existing human rights legislation is mainly directed at individual rights. Perhaps the most important are:

*Universal Declaration of Human Rights:* Acknowledges the right to collective as well as individual ownership of property; the right to manifest religion or belief in teaching, practice, worship or observance; and the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

*International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR):* All peoples have the right to self-determination; and all peoples may, for their own-ends, freely dispose of their natural wealth and resources, without any obligations arising out of international economic cooperation. In no case may a people be deprived of its own means of subsistence.

**Key Gaps**

- Lack of implementation and enforcement mechanisms
- Do not elaborate mechanisms for the protection of rights over indigenous knowledge
- Tend to be directed at protecting individual as opposed to collective rights

**The concept of “Collective Bio-Cultural Heritage”**

While a number of valuable initiatives are underway, there are also significant gaps in the policy processes of UN agencies, such as the CBD and WIPO. These agencies address traditional knowledge separately from traditional resources and territories and customary laws, deal with TK issues within a paradigm of property, and marginalize the ancestral rights-holders from decision-making. As a result, some indigenous communities and organisations have started exploring a more responsive and constructive approach – using the concept of ‘Collective Bio-Cultural Heritage’. The Peruvian based NGO Andes, together with IIED and Call of the Earth Llamado de la Tierra are currently exploring and promoting this concept.<sup>5</sup>

Having emerged from a community context, the concept of collective bio-cultural heritage reflects the holistic worldview of indigenous peoples. It addresses

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<sup>5</sup> See also Aroha Te Pareake Mead, paper for the UNPFII Technical Workshop in Panama: “Emerging Issues in Maori Traditional Knowledge: Can these be addressed by United Nations Agencies?”

biodiversity and culture together, rather than separating them; recognises collective as opposed to individual rights; and places them in the framework of ‘heritage’ as opposed to ‘property’. It explicitly recognises that the heritage of indigenous peoples includes biological resources and traditional territories, and not only TK and culture.

Collective Bio-Cultural Heritage is defined as the: “Knowledge, innovations and practices of indigenous and local communities which are collectively held and inextricably linked to traditional resources and territories, local economies, the diversity of genes, varieties, species and ecosystems, cultural and spiritual values, and customary laws shaped within the socio-ecological context of communities.”

The concept emphasises the need to protect rights not only to traditional knowledge itself, but to all the inter-linked components of traditional knowledge systems – including bio-genetic resources, landscapes, cultural and spiritual values, and customary laws and institutions. It therefore sets out a framework to develop mechanisms to protect traditional knowledge which are holistic and based on human rights, including rights to land and natural resources, and the right to self-determination. The concept also emphasises the need for the restitution of rights over indigenous heritage which has been taken away.

Collective Bio-Cultural Heritage offers much potential for addressing the gaps in existing initiatives on TK protection at international, national and local levels. It identifies core elements, which could provide the basis for a common international policy, while allowing flexibility for approaches to be adapted to diverse local needs and contexts.

At local level, the establishment of indigenous-managed Community Conserved Area – or ‘Indigenous Bio-Cultural Heritage Areas’ - offer a means to protect indigenous knowledge in situ, as part of indigenous culture and territories. Using this model, the protection of indigenous knowledge is achieved through: the recognition of collective land rights, which itself provide a positive *sui generis* mechanism; the strengthening of community based management of natural resources, biodiversity and knowledge; strengthening of cultural and spiritual values; strengthening of customary laws and institutions; and strengthening local economies and poverty reduction. Thus, protection of CBCH provides a means of preventing the loss of TK as well as protecting indigenous rights, under a system of community stewardship. It establishes not only rights, but also the *responsibility* of indigenous peoples to conserve their heritage and transmit it to future generations. Furthermore, it emphasises development processes that are based on local knowledge and leadership, and are endogenous, as opposed to externally driven.

Andes (Peru) together with Quechua farmers are using this concept as a guiding framework to shape a range of responses for TK protection. These include the establishment of an Andean Potato Park as an Indigenous Bio-Cultural Heritage Area; development of a Web-based multimedia community biocultural register (using an open-source software), and protocols for researchers; application of geographical indications and collective trademarks to biocultural products; an agreement for

repatriation of, and reciprocal access to, potato varieties with a gene bank; and an inter-community agreement for equitable benefit-sharing based on customary laws.<sup>6</sup>

The above definition of Collective Bio-Cultural Heritage was developed at a Workshop on Traditional Knowledge Protection and Customary Law, in Peru, May 2005, which was hosted by IIED and Andes and attended by indigenous and NGO partners from India, Peru, Panama, Kenya and China<sup>7</sup>. However, the concept and definition builds on a whole body of work - by communities such as Quechua farmers in the Potato Park, anthropologists such as Darrell Posey's work on Traditional Resource Rights, and various indigenous fora, such as the Guidelines for the protection of indigenous heritage developed by Erica Daes of the UN-WGIPs. The term 'bio-cultural heritage' has already been used in various discussions. For example, the first session of the UNPFII recommended that a technical workshop be convened, to, inter alia, consider elaborating a sui generis system for the protection of indigenous bio-cultural heritage, genetic resources and traditional knowledge. Thus, it is not a new concept, but represents a renewed effort to promote holistic approaches for the protection of indigenous peoples' heritage.

## **Recommendations for the UNPFII**

Given its mandate, the UNPFII has a critical role to play in promoting a holistic and human rights based approaches to the protection of indigenous knowledge across UN agencies. The concept of Collective Bio-Cultural Heritage could provide a useful basis for addressing the gaps in UN agency activities and promoting a coordinated approach. We therefore propose the following recommendations for the UNPFII:

- 1) The UNPFII should encourage and promote the further elaboration of the concept of 'collective bio-cultural heritage' as the framework for policy and standard setting activities on indigenous traditional knowledge
- 2) The Forum should request UN agencies and member states to review their policy, law and standards on traditional knowledge, genetic resources and cultural heritage, with the effective participation of indigenous peoples, in order to develop holistic and human rights based approaches to protect the Collective Bio-Cultural Heritage of indigenous peoples.
- 3) In particular, the Forum should request the CBD, FAO and WIPO to respect human rights standards in their work on IK protection, including the development of an international regime on ABS and IK. The CBD, FAO and WIPO should be requested to recognise the rights of indigenous and local communities to decide over the use of biological and genetic resources that originate from their territories, and their right to self-determination.
- 4) The Forum should also request WIPO to fully recognise the customary laws of indigenous communities in the development of policy for traditional

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<sup>6</sup> For more information, see Graham Dutfield forthcoming: "The Potato Park as a Sui generis system for the protection of traditional knowledge". See also reports from the project 'Protecting Community Rights over Traditional Knowledge' <http://www.iied.org/NR/agbioliv/index.html>

<sup>7</sup> Protecting Community Rights over Traditional Knowledge: Implications of Customary Laws and Practices. Research Planning Workshop, Cusco, Peru, 20-25 May 2005. [http://www.iied.org/NR/agbioliv/bio\\_liv\\_projects/protecting.html](http://www.iied.org/NR/agbioliv/bio_liv_projects/protecting.html)

knowledge protection, and not require consistency with IPR standards which run counter to the worldviews and customary laws of indigenous peoples.

Given that the UNPFII is the only UN agency whose mandate focuses specifically on the well-being of indigenous peoples, and given that it has the full participation of indigenous representatives, the Forum should consider initiating a process to develop a system, or a binding international treaty, for the protection of Indigenous Bio-Cultural Heritage. Such a system or treaty should bring together the different UN agencies working on IK, build on the valuable policy standards already developed, and be based on a bottom-up process of indigenous participation in all geographical regions. For this purpose, a special working group could be established within the Forum.