



Trade Notes

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Traditional Knowledge of local communities is based on collective efforts of their language, social and cultural values, and natural resources within their environment. It is used as intangible property to sustain the community's culture, as well as the Genetic Resources necessary for its survival. To date, the existing intellectual property regimes are not adequately extended to the holders of Traditional Knowledge and associated Genetic Resources. Research scientists have taken advantage of this to access and utilize a community's Traditional Knowledge and associated Genetic Resources to publish, make commercial products and films without recognition of the source community. This bulletin provides various options and existing mechanisms that communities can use to protect their Traditional Knowledge and associated Genetic Resources in the Kenyan context.

Protecting Traditional Knowledge and Associated Genetic Resources in Kenya: What A Community Needs To Know

By Fredrick Otswang'o

1. Introduction

For many years, communities have used Traditional Knowledge (TK) and associated Genetic Resources (GR) as a part of their very cultural and social identities, well-being, sustainable development and intellectual and cultural vitality¹. Article 8(j) of the Convention on Biological Diversity (CBD) to which Kenya is party obliges members to respect, preserve and protect Traditional Knowledge of local communities and associated Genetic Resources. In addition, Article 69(10) (c) of the Kenyan Constitution requires the State to respect the environment by protecting and enhancing IP in, and indigenous knowledge of, biodiversity and Genetic Resources of the communities of Kenya.

A community² comprises of groups of peoples, tribes and casts who claim a historical continuity and cultural affinity with societies endemic to their original territories that developed prior to exposure to the larger connected civilization associated with the Western culture. For majority of the 42 communities or tribes in Kenya, TK is inseparable from their ways of life and their environment, natural resources, cultural values, spiritual beliefs and customary legal systems.

Traditional Knowledge (TK) refers to the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. In Kenya, TK encompasses Indigenous Knowledge (IK) often held by indigenous communities and intangible knowledge³ held by a local community. TK is created and held by individuals, a family, clan, tribe or whole community and at times by several communities. TK is embedded in Traditional Knowledge systems, which each community has developed, maintained and passed on from one generation to the other in its local context. It is

1. Traditional Knowledge Booklet, WIPO Publications: www.wipo.int

2. In this bulletin, community encompasses local community, indigenous community and minority tribes residing in rural areas and practicing traditional lifestyles.

3. Under the Kenyan Environmental Coordination & Management Act, 1999, TK is referred to as intangible knowledge held by a local community.

evolving all the time as individuals and communities take up the challenges presented by their social and physical environment. Unfortunately, TK is being eroded at a higher rate than it is being passed on to the next generation partly due to the changing life styles and partly due to the influence of Western culture.

Genetic Resources (GR) are defined as genetic material of functional heredity that is of actual or potential value⁴. They encompass all biological materials that are capable of self-replication, including seeds, genes, tubers, propagating vegetative material, sperms, eggs and whole microorganisms capable of binary fusion. They cover resourceful parts of plants, animals, microbes and their derivatives and form an important part of biological resources, which are conserved and utilized by communities. GR is directly linked to the community's TK for survival and day-to-day activities.

Kenya has signed and domesticated several international conventions relating to conservation and sustainable use of Genetic Resources and has developed regulations to govern Access to Genetic Resources and Benefit Sharing. However, there is massive loss of Genetic Resources due to overexploitation, biopiracy and climate change.

Despite the strong practical component of TK and associated Genetic Resources (GRs), the community's TK has not received due recognition and protection it deserves in Kenya and many other countries. The effect has been continuous access and misuse of the community's TK and related GRs by others without due compensation or sharing of the benefits with the community. In Kenya, cases of biopiracy and misuse of Traditional Knowledge and associated GRs have been documented and include; the process of weaving Chiondo, genetic material of Kikuyu grass, Maasai footwear design, genetic material of Maasai Sheep, manufacturing method of the Luo Nyatiti musical instrument, microbial genetic material of the Ruiru Dam *Actinoplanes sp.* bacteria strain⁵ among others. The purpose of this bulletin is to highlight the basic concept of Traditional Knowledge and associated Genetic Resources. It is also to provide a simplified version of options and mechanisms of both formal and informal framework that a community can use to protect its Traditional Knowledge and associated Genetic Resources in Kenya. The bulletin is based on a series of field awareness creation workshops for local communities on intellectual property and biodiversity conservation in various parts of Kenya that was organized and conducted by the Institute of Economic Affairs in collaboration with the Kenya Industrial Property Institute (KIPI) and Kenya Wildlife Service (KWS) from March to June, 2010.

2. The Concept of Traditional Knowledge and Associated Genetic Resources

The concept of Traditional Knowledge and associated Genetic Resources was first muted in 1992 during the signing of the Convention on Biological Diversity (CBD). This concept is mentioned in Article 8(j) and related provisions of CBD which requires the Parties to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, to promote their wider application with the approval and involvement of the holders of such knowledge, and encourage the equitable sharing of the benefits arising from the utilization of Traditional Knowledge. Furthermore, Article 10(c) of CBD requires Parties to “protect and encourage customary use” of their TK. Article 15 of the Convention requires Parties to put in place legislative or policy measures to ensure access to Genetic Resources and fair and equitable benefits arising from utilization of Genetic Resources. Nationally, Article 69(1) (e) of the Kenyan Constitution requires the State to protect Genetic Resources and biological diversity and to utilize the environment and natural resources for the benefit of the people of Kenya⁶.

Often, indigenous or Traditional Knowledge systems contain a rich understanding of plant, crop, tree species, herbal medicines, animal breeds, and local ecological and Genetic Resources. They may also include useful technologies and adaptations to local environments that may require recognition, protection and ownership just like modern technologies. TK is closely associated with GR in both traditional and modern settings. Therefore, access to Genetic Resources requires intervention of the community providing the knowledge or resources for equitable sharing of the economic and other advantages that their utilization generates.

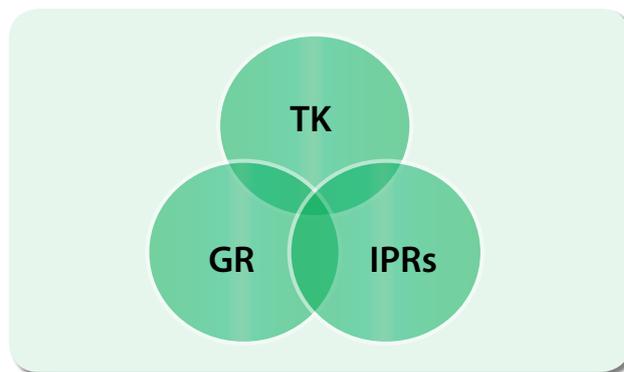


Figure 1: Demonstration of the Relationship between TK, GR and IPRs

4. Article 2 of the Convention on Biological Diversity
5. Eldmonds, 2004 – Out of Africa

6. Article 69(1)(h) of the Kenyan Constitution



TK and GR form the total cultural complex of traditional healing and are difficult to separate. Further, failure to link TK and associated GR with intellectual property regimes may not give appropriate recognition and may only cause dissatisfaction and conflicts both within and outside the community. As such, recognition, protection, access and benefit sharing of community's TK is always associated with GR.

3. Possible Options and Mechanisms for Protecting a Community's Traditional Knowledge and Associated Genetic Resources

Communities can use the following options and mechanisms to protect their Traditional Knowledge and associated Genetic Resources:

3.1. Intellectual Property Options

Intellectual Property (IP) is a legal concept which deals with creations of the human mind or ingenuity. Intellectual Property Rights (IPRs) is an industrialized tool for awarding corporate or individuals exclusive rights as a reward for creative, social or technological contributions in the society. The regimes seek to promote the open disclosure and free exchange of valuable information and technology for human well-being. Specific regimes that can be used by communities in Kenya to protect their IP in TK include patents, utility models, industrial designs, collective trademarks, plant breeders' rights, copyright and trade secrets.

3.1.1. Patents and Utility Models

The first option that a community can use to protect TK-based inventions is by patents. A patent is a certificate or document issued to an inventor by the government giving him/her exclusive rights to authorize other people to utilize his/her invention. In Kenya, patents are issued by the Kenya Industrial Property Institute (KIPI) under the Industrial Property Act, 2001. Patents provide a legal monopoly over the use, production, and sale of an invention, discovery, or innovation for a period of 20 years from the date of application. In order for an invention to be patentable, a patent examiner must make sure that it is new, involves an inventive step (be non-obvious) and applicable in an industry. For Communities, TK patents can be used to protect technical inventions involving a new product (such as traditional medicinal compositions) or process of making a product (such as washing, warming, cooling and making portions for an herbal concoction). However, patents might not represent the best option for

IP rights protection for TK and associated GR because of stringent criteria, limited period of protection and the requirement for full disclosure of (making public) the invention.

Utility models (UM) are petty patents that protect inventions that are relatively obvious to people in the art. UMs are also granted at KIPI under the same Act of Parliament except that the knowledge may lack or consist of a less-detailed inventive step. UM lasts for ten years and its cost is about half that of a patent. However, the knowledge or idea must still be new and industrially applicable (useful in the industry). In Kenya, UMs are more suitable options for the protection of TK related herbal compositions, food supplements and processes of their production. Several Traditional Health Practitioners (THPs) have already filed their applications to protect their IP on indigenous claims to traditional herbal medicine under the UM system⁷. KIPI has established a TK Unit to specifically deal with the protection of TK and related issues.

3.1.2. Plant Breeders' Rights

In Kenya, TK related landraces and local farmers' knowledge on distinct, uniform, stable and new or discovered wild varieties of plants that are of commercial value can be protected at the Kenya Plant Health and Inspectorate Service (KEPHIS) under the Plant Breeders' Rights (PBRs) regime stipulated in the Seed and Plant Varieties Act, Cap. 326 of Laws of Kenya. The Act is in compliance with UPOV 1978 and has provisions for protection of farm-saved seeds for propagation by the farmer in the subsequent seasons. A Plant breeder is given a plant variety protection certificate which is valid for 25 years for trees and vines and 20 years for other plants. Under the criteria for a plant variety protection the variety must be: distinct from existing, commonly known varieties, sufficiently uniform, stable and novel (often referred to as DUS requirements). Using their landraces, indigenous and local agricultural innovation systems which can contribute to protection of community and farmers' rights, local community farmers can collaborate with plant breeders and jointly develop and own new varieties.

3.1.3. Trade Secrets

Most community's TK will be safely protected under the Trade Secrets (TS) system. TS protect undisclosed knowledge through access confidentiality agreements, which may involve paying royalties to knowledge holders for access and the use of their knowledge. However, the knowledge must have commercial value, must not be in the

7. U.N. 2000. Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices. United Nations Conference on Trade and Development, Commission on Trade in Goods and Services, and Commodities Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices. TD/B/COM.1/EM.13/2.



public domain and must be subject to reasonable efforts to maintain secrecy. The best example of IP protection under TS is the formula for Coca Cola beverages. TS is one of the best modes of IP protection for the community's Traditional Knowledge and associated Genetic Resources as they are kept within the community. Usually, TS have no legal protection except in cases of "breach of confidence and other acts contrary to honest commercial practices"⁸." In Kenya, a Trade Secret is enforceable in courts. Local communities must note that the knowledge considered as a Trade Secret can be used by anyone if the knowledge is leaked into the public domain, is independently discovered by another individual, or is reverse engineered.

3.1.4. Trademarks and Collective Marks

Trademarks are protected at KIPi under the Trademark Act, Cap. 506 of Laws of Kenya. The Act defines a Trademark (TM) as "a word, phrase, symbol or design, or a combination thereof that identifies and distinguishes the source of the goods of one party from those of others." Unlike patents, TM is valid forever so long as it is renewed every 10 years from the date of application. Protected trademarks must be distinct and avoid confusion of goods in the market. TM such as KIMBOTM identifies the cooking fat with Unilever Ltd. In Kenya, collective marks can be used to register goods or products originating from a registered group or local community that is trading in similar goods such as *Turkana Aloe soap* TM.

3.1.5. Industrial Designs

Traditional Knowledge based designs can be protected at KIPi as Industrial Designs (IDs) under the Industrial Property Act, 2001. IDs protect new shapes, patterns and aesthetic (artistic or visual) designs and are renewable twice every 5 years. Examples of TK based IDs are: Maasai foot wear, traditional chairs, Luhya Sukuti and Mijikenda *Kikoyis*.

3.1.6. Copyright and Related Rights

In Kenya, copyright and related rights are protected under the Copyright Act, 2001 that is administered by the Kenya Copyright Board (KECOBO). The Act provides for automatic protection of expression of new ideas in form of literary or artistic works. It protects authors of new books and journals; producers of films, music and CD ROMs; publishers of books, actors of films, performers and dancers of music and folk songs. Local communities can take advantage of the copyright regime to protect their artistic and literary creations; especially those who participate in the expression of folklore such as traditional folk songs, dances, sculptures and style of expression of various traditional life styles. Copyright lasts for the life of the creator and 50 years after his/her death. Rights related to copyright protects exclusive economic rights of those who assist the original authors in performing, dancing, singing or publishing a story or book and lasts for life and 25 years after death.

3.2. Sui Generis TK Protection Systems

Scholars have argued the existing IPRs protection mechanisms were tailored for the Western mode of creativity and reward, and may be inadequate for protecting indigenous and local community collective Traditional Knowledge innovations and associated GR. As such, the debate is rife in various international forums to find alternative mechanisms that are specific to TK protection to complement the existing IP systems. These mechanisms are referred to as sui generis which literally means "of its own kind" and consists of a set of nationally recognized laws. In Kenya, such systems can be grouped as follows:

3.2.1. Draft National Policy on Protection of TK, GR and Folklore

The Kenyan government has developed a draft national

Table 1: Various Types of IP Regimes in Kenya.

S.No	IP Regime	Components	Period In Years	Approx. Fees In Kshs.	Govt Office
1	Copyright	Literacy and Artistic Works e.g. Music, Books	50 yrs after death	600 ⁹	KECOBO
2	Patents	Inventions e.g. new product and processes	20	18,000.00 ¹⁰	KIPi
3	Trademarks	Distinctive Marks, Signs and Logos	Forever	14,000.00	KIPi
4	Industrial Designs	New authentic Shapes and Appearances	15	9,000.00	KIPi
5	Utility Models	Minor Inventions sans inventive step e.g. traditional herbal formulations	10	9,000.00	KIPi
6	Plant Breeders Rights	New Varieties of Plants e.g. discovery of commercial variety	20 or 25		KEPHIS

Source: KIPi Patent Registry, 2010.

KECOBO-Kenya Copyright Board; KIPi-Kenya Industrial Property Institute; KEPHIS-Kenya Plant Health Inspectorate Service.

⁸ World Trade Organization. 2002. Trading into the Future: The Introduction to the WTO, IP Protection and Enforcement. www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm

⁹ Although copyright is not subject to any form of registration, KECOBO has introduced an administrative fee of Kshs. 600 to keep a register of genuine creators.

¹⁰ Patent fees Kshs 18,000.00 include search (2,000), application (3,000), examination (5,000), publication (3,000), maintenance (2,000) and grant (3,000).

policy on protection of TK, GR and Folklore which proposes to institute a sui generis system that will create legal rights that recognize TK and associated Genetic Resources in order to preserve the knowledge and promote access and benefit sharing. Under a sui generis system, and as called for by the CBD, WIPO¹¹ administered treaties, any person interested in gaining access to a community's biological resources or knowledge for scientific, commercial or industrial purposes would need to obtain the Prior Informed Consent (PIC) of the indigenous peoples who possess the knowledge in question unless the knowledge is already in the public domain.

In addition, the draft policy proposes inclusion of Disclosure Requirements (DRs) in IP applications to complement sui generis system. DRs refer to a set of conditions proposed by an international community to be disclosed in intellectual property applications (such as patent applications) whose subject matter relates to Genetic Resources and associated TK. Under DRs, patent applicants will be required to disclose the source of origin of Genetic Resources and related TK being used in their invention and provide evidence that measures for benefit sharing with providers of Genetic Resources have been put in place. DR is an important element of the proposed international treaty on access and benefit sharing mechanisms at the CBD-COP¹² meetings and is assumed to be vital in providing means for access and benefit sharing, reducing biopiracy and misuse of community's TK.

3.2.2. NEMA Access Permit

The National Environment & Management Authority (NEMA) developed the Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing Regulations that were gazetted under the Legal Notice 160 of 2006 (simply referred to as ABS Regulations). The ABS Regulations were established under section 53 of the Environmental Management & Coordination Act (EMCA), 1999 that is enforced by NEMA. Community's TK and GR can be protected using the Access Permit (AP). AP is a certificate that allows a person to access Genetic Resources. The ABS Regulations require any person who intends to access Genetic Resources and intangible knowledge (associated Traditional Knowledge (TK) to apply for the access permit from NEMA and submit:

1. Prior Informed Consent (PIC) from the resource providers including the community,
2. Research Clearance Permit from the National Council for Science and Technology (NCST),

3. Signed Material Transfer Agreement (MTA) by all parties, and
4. Appropriate access fees.

In addition, the Regulations provide for conditions of access, deposit of a sample or holotype, monetary and non-monetary benefits sharing measures and reporting mechanisms. As owners of some of the Genetic Resources, communities may invoke provisions of the ABS Regulations and issue Prior Informed Consent (PIC) to users of GR.

3.2.3. Access Permit and Licences

In Kenya, several government agencies issue permits and licences for research, access and export Genetic Resources. Such permits can incorporate protection of a community's TK and associated GR, and can also spell out measures for benefit sharing with communities. For instance, the Kenya Forest Service (KFS), Kenya Wildlife Service (KWS) and National Council for Science and Technology (NCST) use their respective legislations to issue permits or licences (which may act as Prior Informed Consent) to researchers to access Genetic Resources and related TK of communities on behalf of the communities. In addition, a community may apply the customary law, Chief's Act or any other law of the land to issue PIC. This is so because there is no formal model of PIC in Kenya. Different stakeholders and resources use institutional MTAs. Resource owners have not been able to come up with guidelines for PIC.

3.3. Contractual Agreements

Other legal mechanisms that a community can utilize to protect their TK and associated GR are Contractual Agreements (CAs). Contractual Agreements refer to legally binding documents between parties and are the most common and efficient benefit-sharing mechanism tools.¹³ They can be used by a community to protect their Genetic Resources and associated TK by outlining and enforcing access and benefit-sharing agreements, as well as trade secrets. They can be used to explain or clarify parties to the agreement, duration of the agreement, knowledge included in the agreement, uses of the knowledge, restrictions placed on the knowledge's use, IP ownership, restrictions placed on confidentiality and specifics for benefit sharing. The most commonly used CAs are:

1. Confidentiality (also known as non-disclosure agreements),
2. Exclusive license agreements,

11 WIPO is World Intellectual Property Organisation based in Geneva, Switzerland.

12 COP refers to Conference of Parties to CBD. COP 10 will be held in Nagoya, Japan in October, 2010.

13 MTAs are the best agreements so far for transfer of genetic material from the provider to the user for non-commercial purposes. For specific language and sample contracts, see Gollin MA. 2002. Elements of Commercial Biodiversity Prospecting Agreements in Biodiversity and Traditional Knowledge: Equitable Partnerships in Practice (ed. SA Laird). Earthscan: London.

3. Non-exclusive licensing agreements, and
4. Material transfer agreements.¹⁴

Material Transfer Agreements (MTAs) are commonly used by research institutions while exchanging biological material. There is no model for MTA that communities can use but it is possible to develop their MTAs for the purpose of transfer of Genetic Resources and associated Traditional Knowledge.

3.4. Customary Laws and Practices

Communities can apply Customary Laws (CLs) and practices¹⁵ in the regulation and protection of TK and related GR. CLs can be used to address various aspects of TK and associated GR, Prior Informed Consent, access, sanctions and compensation in case of misappropriation, dispute settlement and enforcement. These subject matters have been dealt with under Customary Laws and practices from time immemorial and are still true today. Most Customary Laws and practices that administer TK and related GR continue to exist outside the formal law and institutions. However, a lot of research is required in the operation and enforcement of this realm of the law.

3.5. Other Mechanisms

3.5.1. Traditional Knowledge Documentation

A community can use the following documentation methods to protect its TK and associated GR from biopiracy and misuse through documenting the knowledge using the following methods:

1. Publication in Journals as Prior Art

Communities can publish or collaborate with scientists to protect their TK and associated Genetic Resources in magazines, trade or scientific journals, newsletters, newspapers, and web sites, books, fliers or brochures as prior art (old knowledge) and post them on the internet or place them in a library at a university for access by the public. This is part of a defensive disclosure mechanism that is commonly used by local communities in India. Under the Kenyan patent law, prior art includes oral disclosure or a publication printed either in the Kenya or a foreign country describing the invention or discovery and dated more than one year before a patent's filing date. If a community publishes its TK, no one can claim a patent on it because it will have been known by the public.

2. TK Community Registries

Community's TK and associated Genetic Resources

can be documented either in the traditional methods of publication in scientific, academic, technical, and business journals or in the electronic publication through the Internet¹⁶. TK can be documented or recorded in either:

- a) Public community registers, or
- b) Private community registers.

Communities can use public community registries in form of print media and journals in collaboration with scientists from say, the Kenya Medical Research Institute (KEMRI) to place information in the public domain which serves as prior art or *defensive disclosure mechanism*. When information is in the public domain, no one can file claims in form of a patent at KIPIT. Today, a typical form of public community registry is a computer database and the Internet.

Communities that do not want to disclose their TK to other people without PIC may utilize private community registries for TK and related GR that is not yet in public domain. Members of Kaya Rabai of the Mijikenda community in Coast Province have collaborated with the Kenya Forestry Research Institute (KEFRI) and International Centre for Insect Physiology and Ecology (ICIPE) to establish private community registers for their biocultural knowledge¹⁷. Private registries are most effective as a mechanism for cultural preservation of knowledge and as a tool for access and benefit-sharing, licensing and technology transfer agreements. A private registry can serve as a catalogue for knowledge that can be licensed to outside parties for research and product development.

4 TK Protection and Community Set Up in Kenya

How have communities organized themselves in protecting their TK and associated Genetic Resources? Answers to this question may vary from one community to the other. In terms of effectiveness in protecting their TK and associated Genetic Resources, the present community organisational structures are inadequate.

Generally, the community set in Kenya is based on the colonial demarcation of tribal boundaries which is based on languages, social, culture and geographical ethnicity. However, in some parts of the country such as Right Valley and Trans-Nzoia it possible to get a community with mixed tribes, culture and languages. Every community has its unique identity based on their

¹⁴ Brascoupe S and H Mann. 2001. A Community Guide to Protecting Indigenous Knowledge. Indian and Northern Affairs Canada, June.

¹⁵ Customary laws and practices cut across every aspect of social life including transaction and management of property, crimes, marriages and divorce, sanctioning and enforcement in the community.

¹⁶ Countries like India have established Traditional Knowledge Digital Libraries (TKDLs).

¹⁷ Doris Mutta, (2000), Kenya Forestry Research Institute (KEFRI) and Peter Muniyi, International Centre of Insect Physiology and Ecology (ICIPE)

language, social and cultural values, and natural resources within their environment. Kenya has highly diverse and numerous ethnic groups within 42 communities or tribes which comprise various people whose situation, cultures and pastoralist or hunter-gatherer lifestyles are generally marginalized and set apart from the dominant political and economic structures of the nation.

Between March and June, 2010, the IEA partnered with several government bodies and visited: OSIENALA (Friends of Lake Victoria) in Gwasi, Kakamega Environmental Conservation and Education Programme (KEEP) near Kakamega Forest, Ufanisi Conservation Group (UFCG) in Malindi and local community herbal practitioners from Baringo District.

In Kenya, most communities have not formed and registered Community-Based Organizations (CBOs). Those that have formed CBOs such as OSIENALA, KEEP and UFCG, do not have sustainable management structures that can support effective protection of IP in TK and associated Genetic Resources. Although some communities have organized cultural and social hierarchy, most of them do not have formal organizational structures that could be approached by researchers, bioprospectors or any other visitor to the territory for Prior Informed Consent (PIC) and benefit sharing negotiations. Most communities lack registered Community-Based Organisations (CBOs) with members, officials and patrons governed by well constituted rules and regulations. As such, it is easy for visitors to enter and access Genetic Resources and associated Traditional Knowledge without proper access permit or PIC. Most communities are not aware about IPRs, ABS, PIC, MTAs, Access Permit and other formal measures and mechanisms they should take in order to protect their TK and related GR. They lack the capacity to file patents and other IP applications. They are not aware about the existence and the roles of government IP offices and do not know how to protect their knowledge. However, KEEP collaborates with local or international research organisations, resource managers and industry for commercial or educational purposes (as shown in Box 1 below).

Box 1: Case Study: Kakamega Local Community Natural Products

In Kakamega District, communities living around Kakamega Forest have formed and registered Kakamega Environmental Conservation and Education Programme (KEEP) to not only create awareness and build capacity on management of the forest resources but also provide leadership and guidance

to visitors to the forest with their consent. KEEP works with various government organizations, public universities, research institutions, natural resource managers and NGOs to conserve forest biodiversity, use the resources in a sustainable manner and ensure that its local communities' affiliates benefit from these resources. For instance, KEEP has collaborated with International Centre for Insect Physiology and Ecology (ICIPE) and Kenya Forestry Research Institute (KEFRI) under bioprospecting agreements to cultivate, process and commercialize natural products from *Mundia Whytei* in the name of MONDIA TONICTM that is registered as a trademark at KIPI. MONDIA TONICTM is a medicinal powder product that is used as an appetizer, vigour booster and cure for Prostrate Cancer. Roots of *M. Whytei* are very popular with the Luhya community of Western Kenya.

In most cases, individuals within a community prefer to protect their knowledge under secrecy. However, those who apply this method do not use Contractual Agreements. Even if they used contractual agreements, majority of them do not know salient details of the system such as confidentiality agreements, breach of contract and so forth. Some communities are forced to keep off visitors due to lack of trust. All the communities that were visited did not have proper systems of issuing PIC, MTAs and other contractual agreements. Visitors are usually given forest guides at a negotiated fee which is not shared amongst the community. The information and knowledge passed on to the visitors is not documented making it difficult to follow up.

4.1. What the Community Needs to Know

Communities should utilize the existing IP and other mechanisms to protect their TK and associated GR. This will give them an upper hand in negotiating for research and commercial licensing agreements. Besides IP regimes, there are other options that a community could use to protect TK and GR. Local communities should establish community structures such as CBOs, NGOs or self-help groups that will enable them to protect, own and manage IP on behalf of the members. The community needs to exploit the available options and mechanisms to protect their IP in TK and associated Genetic Resources. Such options are varied depending on the nature of TK and the goal of protection. Some might be cumbersome and expensive. Documentation of community IP in public registries and scientific journals is vital in exposing them to the international community for contacts and deal making but at the same time it might expose them to knowledge on biopiracy. Private community registers can



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serve as informal databases for use as references to prevent loss of Traditional Knowledge and associated Genetic Resources.

Where possible, communities should sign collaborative agreements with research organizations and resources managers for R&D and ex-situ conservation of their resources, respectively. This will not only build their capacity but also provide direct revenue and opportunity for co-ownership of IPRs. All material leaving the community must be accompanied with MTAs that spells out the dos and don'ts. Any person visiting the community for research or commercial venture must be given Prior Informed Consent signed by the chairman or the appointed community elder in liaison with a relevant government organization. A simple agreement of MoU must be negotiated and signed between the community representative and the visitor.

5. Conclusion

The concept of Traditional Knowledge and associated Genetic Resources is not very clear in some quarters including international forums. No single option or mechanism can be applied in isolation. A mixture of several mechanisms including IP and non-IP mechanisms are required for effective community's management and protection of IP rights associated with their GR and TK.

In order to address this challenge, it will be necessary to gazette and adopt the national draft policy on Traditional Knowledge, Genetic Resources and folklore, institute an effective sui generis system that will properly recognize and protect TK and associated Genetic Resources, fully implement the ABS Legal Notice No. 160 of 2006 by employing the best practices, and continue to lobby for the conclusion of the international regime on access and equitable benefit sharing that will provide disclosure requirements in IP applications.

In addition, there is dire need to create awareness to communities on various options of protecting their TK and associated GR. Currently, majority of the community structures are not well organized to handle protecting of the TK and associated GR. It is therefore imperative that the communities are encouraged to form self-help groups, community based organizations or non-governmental organizations. In the short-term, the existing mechanisms of IP rights protection in the country will need to be effectively utilized in order to confer adequate protection of TK related innovations and benefit sharing in the country. However, in the longer term, changes to both the domestic and global IP regimes might be required to strike a balance between the protection of TK and provision of equitable benefit to the originators of TK. There is a need to look at the broader public interest and consider access, development and distribution of resources against equitable benefit sharing, sustainable development and conservation of biodiversity.