

Workshop on
Benefit sharing
Legitimising the Commodification of Nature and Knowledge
Notes

Date: 14/05/08, 11.35-16.00

Speakers: Farida Akhter (UBINIG, Bangladesh)
Ushakumari Jayakumar (Thanal, India)
Mariam Mayet (African Centre for Biosafety/ ACB, South Africa)
Alejandro Argumedo (ANDES, Peru)

Facilitation: Jacob Nelliathanam

Introductory note by Farida Akhter

Farida shared that in their (UBINIG's) work with farmers, they learned a lot about the tremendous knowledge of farmers. Whereby this knowledge is "moving on", growing and on-going from generation to generation, and belongs to the culture. Thus, privatisation of knowledge has no space in this system.

In Bangladesh it is said that Benefit Sharing is the same as if you kill my cow and give me a pair of shoes!

It is also a human rights issue to preserve the knowledge of women. Women are the ones who have preserved the knowledge. Farida then quoted from the Women and Biodiversity Declaration that was endorsed in Bangladesh in March 2008:

"Not only is the present corporate-sponsored, government-supported global pattern of production and consumption destroying biological resources, but is also continuing to the destruction and misappropriation of the biodiversity-related knowledge of our grandmothers, mothers, sisters and daughters, our midwives, women healers, farmers and artisans. Privatisation of both this women's wisdom and the living matter to which it is linked is putting trade concerns over and above the real needs of peoples.

Farida emphasised that talking about patents means also talking about trade (concerns). And accepting ABS means to accept capitalism.

This misappropriation of local resources and knowledge is justified by a new ideology, the ideology of privatization. A new international order is being built on the basis of this ideology, the foundation of which is so-called Intellectual Property Rights (IPRs). This ideology has no room for women's traditional knowledge. Every time a woman is removed from her territory, a part of our culture and knowledge dies.

Farida propounded that 'if our culture dies, everything dies'.

In contrast with the enormous support from the authorities for foreign investment and export-oriented industry, traditional practices, which have been guaranteeing the health and the nutrition of millions of poor people for centuries, receive very little support."

Farida argued that 'communities have to be kept alive also because we cannot fight only on papers.'

Jacob commented that while the CBD was initially to conserve and to be reflected in the livelihoods of people, it is now only about commercialisation.

Presentation by Usha: Biopiracy in Kerala – Benefitsharing for whom (Case Study of the Kani-TBGRI deal) (please see also PowerPoint presentation and Thanal research paper)

Usha presented the case of the Kani people, a tribe in the South-Western Indian state of Kerala. While the benefit sharing deal with the Kani received the United Nations Equator Initiative Prize 2002 during the Earth Summit in Johannesburg, Usha pointed out various flaws and problems with regard to the benefit sharing agreement between the Kani and the TBGRI (Tropical Botanical Garden and Research Institute, Kerala)

Ecological Conflicts

- ❖ What happens to the plant which is endemic to the region
- ❖ Also many animals consume the plant (Eco-system value)
- ❖ Kanis' only used fruit and not the plant, TBGRI recognised the properties in full plant – and suggested extraction of leaves, leading to uprooting
- ❖ when extraction became an issue, they tried to get the Kani to cultivate but it failed (climate etc. & slow grower)
- ❖ But extraction in (the neighbouring state of) Tamil Nadu
- ❖ Deal only with a few villages (3-4)

Social Conflicts

- ❖ Use by the tribe is legal but extraction and trade are illegal, which led to conflict with the forest department
- ❖ Illegal collection happens in the neighbouring state of Tamil Nadu, benefits goes to others - presently Rs. 150 (€2.5) for a kg of leaves
- ❖ the plant is neither food nor medicine according to the Kani and it was known only to one family and not to the whole community.
- ❖ Mallan and Kuttimathan who were the first informers and belong to the same family, fell apart in the “benefit-sharing” process.
- ❖ Many elders and women in the community are unhappy with this process, and they believe that knowledge is sacred and should not be sold
- ❖ Money in Trust was used for construction, buying vehicle etc. and Kani families have not benefited

Cultural Conflicts

- ❖ Kani's have their own healing system and approach to biodiversity which is fundamentally different from the modern health care system.
- ❖ Neither Biodiversity nor Knowledge are a property in this paradigm

- ❖ KIRTADS (Kerala Institute for Research, Training and Development of Scheduled Castes and Tribes) very critical of this deal, suggested that the drug should be produced by tribals themselves.
- ❖ They even drafted a bill for the protection of Intellectual property of Kanis.
- ❖ But IPR is a concept unknown to the Kani traditions
- ❖ Community as such may not possess all the knowledge – some just belong to some individuals and some to families and some to the community. They believe that certain knowledge should be kept secret. Yet there are no ownership and IPRs.

Economic Conflicts

- ❖ Benefit sharing deal not discussed and negotiated with Kanis' but thrust upon them
- ❖ No prior-informed consent when deal was signed with AVP. Only two members informed about deal
- ❖ The benefits are minimal – Only Rs. 500,000 as license fee and Rs. 50000 (8000 + 800 Euro) as royalty of sales in the last 10 years
- ❖ Prize money of USD 30,000 has not come to the Trust
- ❖ More and more medicinal and nutritional properties are being discovered, from researches across the world, but Kanis' are totally kept in the dark about this.

Ethical Conflicts

- ❖ Patent on Jeevani taken by TBGRI. Kani tribe not involved. 'Charity'-approach, not equal
- ❖ The TBGRI-AVP deal also does not recognise the stakes of the Kani
- ❖ The informants have not been acknowledged as co-inventors
- ❖ Any claim of the Kani community on Arogyapacha is still not a legally valid one.
- ❖ The whole benefit sharing process is only a unique case of a "benevolent" gesture from the scientists
- ❖ Attempted trade mark registration for Jeevani in US and later Jeevani Jolt trademark registered (by Nutri Science Innovations)

The CBD doesn't really respect knowledge but is only interested in knowledge related to biodiversity and property).

Furthermore, Usha explained that while the aim is to have a legally binding framework in the CBD till 2010, the Indian government now wants a comprehensive documentation, and a digital database. While the government's argument is that once the knowledge is digitalised, India could protect it because it would own it, Usha said that it was a very worrying undertaking. She explained that they don't believe/ trust the process, and that as soon as you have a register, misuse would be easy.

Question: in Mexico they have the same problem. You don't want to register. How to let the world know that it is yours?

(postponed to later)

Finally Usha stated that there should be support of communities for the conservation work they are doing. Since the communities know how to use the plants, they will conserve it.

Comment: Future paradigm should be based on customary laws of communities. Promotion of (further) development of the knowledge.

Presentation by Miriam: Knowledge Not for Sale - Umckaloabo: the Patent Challenges

(please see also PowerPoint presentation and ACB briefing paper)

Miriam presented the case of 2 Pelargonium species whose medical properties are known in South Africa for millennia, and which are now used by the German company Schwabe in their medicine Umckaloabo. Schwab holds 2 patents. Miriam pointed out that Schwabe is funding IUCN (International Union for Conservation of Nature) and WWF.

The women dominated community saw the depletion of biodiversity. After a longer process, ACB was asked by the community to challenge the patents.

Schwabe, which works through a South African company, holds two patents: one on the extraction method (simple ethanol extraction!) which is very clever, since through this they control of the trade. The second patent is for AIDS related diseases, whereby the community has been using the Pelargonium species traditionally for a wide variety of viral and bacterial infections and inflammation.

Miriam also pointed out that, while mostly wild plants are used, the harvesting is now illegal. But it is the poor women who get around 50 Euro cents per day who might get arrested.

She emphasised that there is also an obligation of the governments of Germany, Switzerland and others to bring justice (e.g. because Germany allows import of roots).

Furthermore, she said that social aspects are also part of the CBD. And that CBD was in force, so company had to get PIC (Prior Informed Consent) but did not.

Comment: We should discuss what is useful, what is not useful in CBD.

Demands of the community are:

1. Revocate patents (do not want compensation)
2. Violated CBD (no PIC) => you have to give it all back and restore environment
3. Government support for community initiatives. Own manufacturing/production

Miriam described that the community people were laughing when they were told about patents. While the community has no problem with (own) commodification as such they do not want patents. They also do not want Benefit Sharing but a livelihood from the use of the plants through their own manufacturing, but not till extinction. Raw materials should not be sent to the North.

Presentation by Alejandro: Inter-community Agreement on Benefit Sharing - Customary Laws and Equity in a Quechua Farming Community *(please see also PowerPoint presentation)*

Alejandro stated that the CBD is a war, and it brings biopiracy. This can be seen simply by looking at the situation in 1992, and today. Furthermore, the third objective of the CBD ('Benefit Sharing for conservation') has totally failed. Indigenous people and communities have been sharing for millennia, but not for money.

He explained that there are many cases of biopiracy (in Peru) and that 'it is very frustrating' and that you need a lot of effort 'to put out fires we didn't provoke'. So instead of fighting locally, ANDES went to the International Potato Centre (Centro Internacional de la Papa, CIP), and asked our potatoes back'.

ANDES facilitated an agreement between 6 indigenous communities and the CIP, whereby CIP returned whereby the communities received back potato varieties, which they cultivate in the 'Potato Park' (Repatriation of genetic resources). The Potato Park is established as an Biocultural Heritage¹ (BCH) area, it is based on collective land tenure, and managed by customary laws and intuitions.

The agreement operates with a 'reverse' ABS paradigm, in which the genetic resources are in the hands of the local communities (versus ownership by the government or companies). Any benefit sharing must follow own rules based on customary laws. E.g. in the system of organisation 'Ayllu', streams, stones etc. are all part of community, mountains are gods or can become ministers. Thus, there are close linkages between spirituality, traditional knowledge, customary laws, landscapes, and natural resources. Any agreement has to encompass that to make it working.

The customary laws in the Andean region has three key principles (and in which for example patents do not fit): Reciprocity ('exchange/ sharing in equal measure'), Duality (everything has an opposite, so e.g. behaviour can not be individualistic), and Balance (balance/harmony in society and nature)

Alejandro pointed out that customary laws can be recognised according to national law.

¹ Collective Biocultural Heritage: Knowledge, innovations and practices of indigenous peoples and local communities which are often held collectively and inextricably linked to traditional resources and territories; including the diversity of genes, varieties, species and ecosystems; cultural and spiritual values; and customary laws shaped within the socio-ecological context of communities.

Part II

Questions

[Criteria of award? ...Oscars of poverty]

-> *Registration/ Documentation*

Documenting with the communities only possible? s. DDS

Usha: For community ok; Documentation is ok, but questions is: for whom? But not like government (50 pages for 1 knowledge)

Nambi Arivudai, Swaminathan Foundation: In India: plans for Peoples Biodiversity Register. Documentation is necessary to protect

Alejandro: - When traditional knowledge is negotiated at WTO, the communities have no say. They want to use the knowledge for profit. Documenting is only successful if the involved institutions are strong. Knowledge is dynamic, documents are freezing it. We have to see the national interests versus the community interests.

Miriam: We need to respond to (digital) documentation by governments. The European (Patent) Law gives patents on knowledge, marketing. Digitalising of traditional knowledge is popping up all over Africa. States have failed to protect traditional knowledge. New laws will not help.

Jacob: CBD becoming TRIPS compliant

Andreas: EU did not even implement CBD (e.g. in patent law)

How can the movement work together / alert each other?

knowledge is the public domain, cannot be appropriated

TK in Germany

Andreas: Economic interests and available documents against patents

[Marketing of traditional knowledge/ publicly available knowledge] Disclosure of origin

- Miriam: - not all theft is patents
- cases commercialise (without PIC)
Putting TK in the public domain is very dangerous.
Public domain takes away rights of communities.

Problems in the South

Alejandro: The Biocultural Heritage concept means complex relationships, no separation of material and knowledge; tangible and not tangible. Resources are collectively owned, no concept for negotiating with companies. The public domain as paradigm is something most communities agree with (scientists, etc.)
- develop tools of protection

- also databases but not in public domain
 - for our benefit
 - RIGHTS OF KNOWLEDGE HOLDERS
 - Reciprocity: principle of sharing in community (-> dynamic)
- ↳ everyone can benefit, nobody profits

Usha: Communities want control; collective ownership versus individual ownership.

Miriam: Challenge of patents because we have to bring our resources home. Make decision of usage. Decide on benefits.

Community says: no place for the company in this/here.

We control. but have to utilize?

the communities will produce, not the companies.

Jacob: National interest. Sovereign rights.

Community rights/ sovereignty part of national sovereignty

Debieet: will never happen

Alejandro: It may happen. We have a community gene bank. The FAO International Treaty on Plant Genetic Resources for Food and Agriculture), and others say that CIP shall not demand legal ownership of the germ plasm (such as cultivars of native potato).

Community can become a partner under FAO.

Develop agreement among communities ("like CBD") to guarantee free-flow of seeds (also vis-à-vis challenges like climate change, etc.)

- Principles of "no patents", "no ownership", and "reciprocity"

Karsten: How do we get there?

Debieet: Legal framework

land rights (problems of access, law)

xxx: develop an agreement between communities (no GMOs, no patents)

Jacob: Treaty to share the genetic common

share between neighbouring communities (you give me a favour, I give you a favour)

Jacob: Use Rights of Indigenous Peoples, Farmers Rights

xxx: IPR, etc. versus traditional knowledge

↳ Europe: if the knowledge disappears, big problem (climate change, etc.)

Alejandro: Companies benefit from seed laws, etc..

We should find a different approach, go beyond patents, etc. / Think outside the (CBD/TRIPS) box.

Knowledge is dynamic. Focus should be on how to protect that.

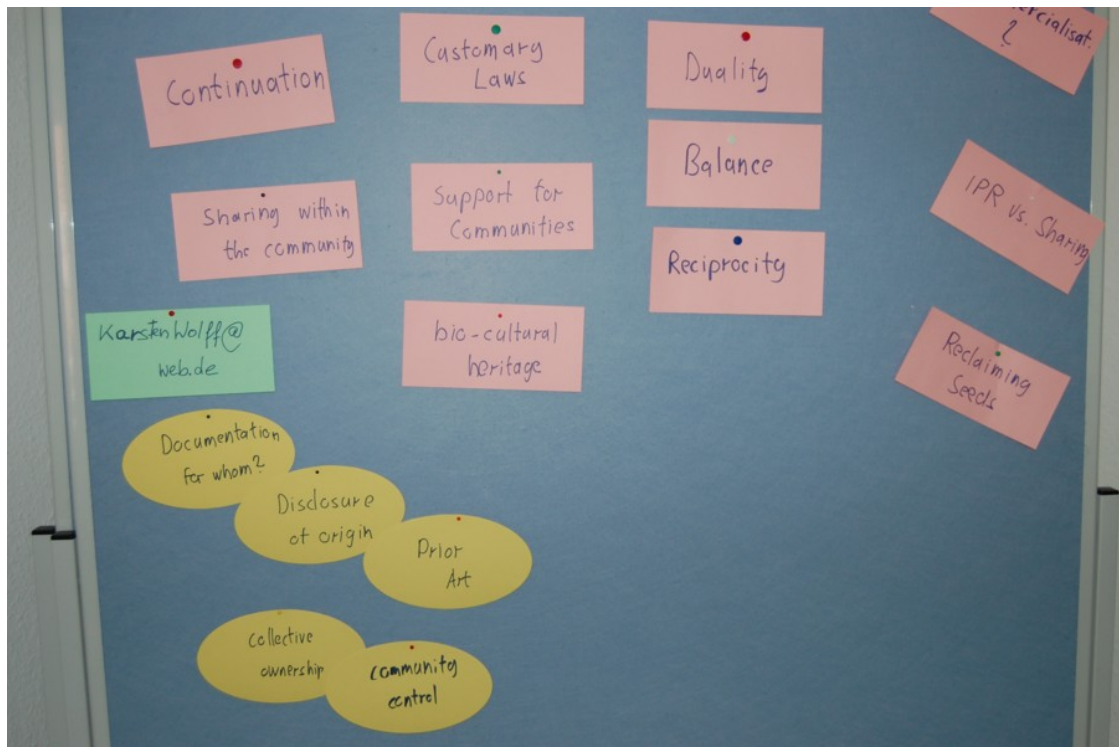
They don't take into account traditional knowledge, but GMOS, etc. (Green Revolution failed but knowledge is there for millennia).

- Governments don't respect the communities but now they want knowledge

Alejandro: - Dichotomy: 1. community knowledge and resource management; 2. individual patents.

- "Robber asking permission" ; System / PIC always favouring companies

Miriam: -continue the discourse; outside the legal framework; open forum at ACB website



Summary of important discussion points / issues for the future:

- ↪ Do we want documentation, and how?
- ↪ Should knowledge be put in public domain?
- ↪ What do we want from CBD?
- ↪ Development of new approach/ paradigm/ way of thinking, discourse outside of CBD, TRIPS, etc. box. Possibility of customary law, rights of communities, support for communities.

Follow-up meeting 16/05/08 (Key points)

- * Communities have a right to say No, to choose.
- * Communities must be protected; We have to seek to position Southern regulators to protect them
- * PIC should not be related to ABS
- * Production in and for the local community <-> Small communities cannot produce / manufacture <-> We should empower communities to enable them to produce.

- * Government should support local people to make some profit out of biodiversity (for local market)
- * Sharing knowledge is not the same as trading knowledge
- * Different types of knowledge (family owned – community owned) <-> But knowledge will go with the family

- * Why do we want the poor communities to remain poor? Traditional healers for example must be acknowledged / legalised
- * South African acknowledges healers but they are asked to disclose knowledge and government encourages private institutions / research institutions to patent, otherwise the government will patent in order to trade off.
- * Government research institutions are facilitating biopiracy

- * Indigenous people are essential for our survival.
- * “Future of humanity is the hands of indigenous communities”.
- * Individuals can be manipulated (to sell TK), but not whole communities.
- * (Over-)exploitation by companies (versus management by communities for millennia).
- * Ultimately, everybody will loose. (lost biodiversity and knowlwdge, have to pay more)
- * Communities are not even featured, except as labour
- * continuation of practices as primary objective

- * Documentation should not be in isolation, but connected to the culture of the communities
- * Documentation in public domain, give back to communities
- * In gene banks no value; keep knowledge alive. Not in isolation but as part of culture / tradition
- * some sacred knowledge should not be documented
- * We need an iconic symbol, such as apology for taking away the knowledge (e.g. like the apology by the Australian government to the Aborigines)
- * Give back seeds, plants, etc. to the community, repatriate some species as a start