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Can international law promote innovation from genetic resources and benefit sharing while recognizing the rights of traditional knowledge holders?

By Henry de Novion

Indigenous peoples and local communities have been innovating for millennia and contributing to the development of new products and processes. For international law to promote innovation, it is indispensable to promote indigenous peoples and local communities' rights to prior informed consent, to benefit sharing, and to guaranteeing their territories, culture, and existence.

Les peuples autochtones et les communautés locales innovent depuis des millénaires et contribuent au développement de nouveaux produits et processus. Pour que le droit international serve à encourager l'innovation, il est indispensable de commencer à promouvoir les droits des peuples autochtones et des communautés locales au consentement préalable en connaissance de cause, au partage des bénéfices et à la garantie de leurs territoires, de leur culture et de leur existence.

Los pueblos indígenas y las comunidades locales llevan milenios innovando y contribuyendo al desarrollo de nuevos productos y procesos. Para que el derecho internacional promueva la innovación, es indispensable empezar a promover los derechos de los pueblos indígenas y las comunidades locales al consentimiento fundamentado previo, al reparto de beneficios y a garantizar sus territorios, su cultura y su existencia.

The question on how international law can promote innovation from genetic resources and benefit sharing while recognizing the rights of traditional knowledge holders needs careful reflection, especially when considered under the discussions held by the Convention on Biological Diversity (CBD) and the upcoming discussion at the World Intellectual Property Organization (WIPO), particularly regarding traditional knowledge protection.

First, we should recall that we already have many international instruments that recognize indigenous peoples and local communities (IPLCs), and small farmers' rights, related to innovation from genetic resources and associated traditional knowledge. All of them recognize the paramount contribution of these collectivities in fostering innovation, their right to consent to access and to utilization, and their right to the fair and equitable benefit sharing arising from the utilization of genetic resources and associated traditional knowledge.

For millennia, these people were the ones undertaking innovation from genetic resources. Many modern medicines, almost all our staple foods — which feed billions worldwide — exist due to the innovation brought about by traditional science, and when I say traditional science, I mean IPLCs' science. The CBD, the United Nations International Treaty on Plant Genetic Resources for Food and Agriculture (Plant Treaty), the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement), all recognize IPLCs' and/or small farmers' role in conserving genetic resources, as well as their role as holders of relevant knowledge that not only contributes to research, development, and innovation, but also is the very basis of many modern scientific innovations.

We could simply answer the question posed by saying that we should just do our homework and assure that to promote innovation from genetic resources and associated traditional knowledge we must require prior informed consent and sharing of benefits, but more than that, we should recognize and implement the rights

of traditional knowledge holders. A good start is recognizing and implementing the rights particularly stated at the United Nations Declaration on the Rights of Indigenous Peoples.

Not just recognizing the right to prior informed consent and benefit sharing, but more importantly, the right to their traditional land and waters, the right to their language and culture, and their right to be IPLCs in IPLC territories. Because it is not a novelty that in many national circumstances IPLCs were and are deprived of their territories, forced to move out or to be relocated to other lands, which are not their original land, and forced to abandon their languages, cultures and practices to be integrated to different ones.

It is paramount for humanity to see that there is no hierarchy between knowledges; traditional and conventional sciences have the same value as a science. Traditional science has its own validation mechanisms, its own peer review, testing and replication. It should be named as a science, traditional science, and not just as knowledge, or insights.

If the patent system can recognize the importance of the work of innovators of Cartesian science, and thus protect innovation and the generation of modern technologies, it should also be able to recognize the importance of the work as innovators of indigenous peoples and local communities and be an instrument for protecting traditional science and its social technologies.

And by protection, I am not referring to protection under the terms of a legal monopoly that expires in 20 years, but protection against misappropriation, and disclosure of origin of the inventions (claimed in patent applications) is an instrument that may contribute to this.

The traditional knowledge innovation system must be protected by a *suis generis* system of intellectual property, as a system of collective, imprescriptible, and inalienable property, an intangible heritage belonging to IPLCs. And such, recognition is an important first step towards the historical reparations we all owe to IPLCs.

Moreover, If we take into account what the article "Pharmaceutical and Biodiversity", at the CBD website says, "more than 80% of modern medicines aroused from natural molecules, obtained from biodiversity" [1], and add to this what the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) says, that 85% of biodiversity is conserved in IPLC territories [2], national states should assume that the protection of territories and guaranteeing the right to these territories not only should be seen as a historical reparation, but also as a survival strategy for the human species in the face of climate change.

In this sense, without biodiversity, there are no ecosystem services, there is no fertile soil, there are no pollinators, there is no food, there is no raw material for industries. Without IPLCs, there is no biodiversity. And in a calculation of one plus one equals two, it is easy to conclude that without IPLCs and without the guarantee of their territories and their rights there will be no climate security, there will be no climate peace.

Furthermore, genetic resources being available in digital databases in the form of digital sequence information (DSI), for innovation and the generation of new products, will still be necessary for societies to consume the products that result from use of these sequences. In a context of global climate crisis, droughts, floods, famine, accelerated loss of biodiversity, environmental degradation, climate exiles, wars for water, who will be left to consume the products generated by innovation from genetic resources and associated traditional knowledge stored in data banks? Without consumers, to whom will the products be sold?

In short, guaranteeing the rights of IPLCs should be seen by international law as a survival strategy; if the rights of IPLCs are not recognized, there will hardly be biodiversity, and in the medium term, without biodiversity, we will have nowhere to get the innovation that is also indispensable for adapting to climate change. To keep promoting innovation, it is imperative to promote IPLCs' rights to their territories, culture, and existence.

References

[1] Convention on Biological Diversity (2021). Pharmaceuticals and Biodiversity: To protect ourselves we must safeguard our planet. Available from <https://www.cbd.int/article/pharmaceuticals-biodiversity-planet>.

[2] Eduardo Brondizio and others (2019). *Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. Bonn: IPBES. Available from <https://doi.org/10.5281/zenodo.6417333>.

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