

# **Owning Inheritance: Ethical and Legal Implications of Traditional Knowledge Studies**

Date: December 14, 2011

Time: 14:00-17:00

Place: United Nations University - Institute of Advanced Studies

In the last twenty years or so, academics, industries, lawyers, and policymakers have become increasingly aware that locally sustained knowledge and wisdom can help enhance our coping strategies for rapidly changing environmental conditions. Hasty actions to test this hypothesis by researchers and industries have created ethical and legal problems with indigenous and local communities, especially regarding the questions as to who owns locally sustained knowledge and wisdom and to what extent researchers and industries can take advantage of local cooperation. This symposium invites experts who have worked extensively with indigenous and local communities for research. They will share their experience and reflect on the future of research related to traditional knowledge/ wisdom.

Speakers:

**14:00-14:10 Welcome and Opening Remarks**

Suneetha M. Subramanian, Research Fellow, United Nations University - Institute of Advanced Studies

**Chair: Dr. Kenichi Matsui**

**14:10-14:35 Traditional Knowledge Today: Mobilizing the Past as a Living Part of the Present and a Common Aspect of Identity**

Professor Dianne C. Newell, Director of the Peter Wall Institute for Advanced Studies, University of British Columbia

**14:35-15:00 Traditional Knowledge and Social Science on Trial: Battles over Evidence in Indigenous Rights Litigation in Canada**

Professor Arthur J. Ray, Professor Emeritus, FRSC, the University of British Columbia

**15:00-15:25 Traditional Knowledge and Transdisciplinarity**

Unnikrishnan Payyappallimana, Research Co-ordinator, Education for Sustainable Development Programme, UNU-IAS

**15:25-15:35 Coffee Break**

**Chair: Dr. Suneetha Subramanian**

**15:35-16:00      Traditional Communities as ‘Subject of Rights’ and the Commoditization of Knowledge**

Noemi Miyasaka Porro, Núcleo de Ciências Agrárias e Desenvolvimento Rural Universidade Federal do Pará

**16:00-16:25      Who Protects TK and Who Defines It?: Traditional Knowledge Study Revisited**

Kenichi Matsui, Sustainable Environmental Studies, University of Tsukuba

**16:25-17:00      Discussion**

\*This symposium was made possible by the Japan Society for the Promotion of Scientific Research B, 2010-2013 FY.

## **Abstracts of Presentations**

**Dianne C. Newell**

Traditional Knowledge Today: Mobilizing the Past as a Living Part of the Present and a Common Aspect of Identity.

**Abstract:**

This presentation weaves together three studies on Traditional Knowledge in First Nations Communities on coastal British Columbia prepared by Dianne Newell, with Dorothee Schrieber. Two of the cases concern Traditional Ecological Knowledge and the spread of industrial salmon farming in traditional territories, and the third focuses on what counts as true representations of a traditional cultural event (The Potlatch) performed today and who does (and does not) have the right to speak for a First Nations community.

**Arthur J. Ray**

Traditional Knowledge and Social Science on Trial: Battles over Evidence in Indigenous Rights Litigation in Canada

**Abstract:**

Following the 1973 landmark Supreme Court of Canada ruling in the land title claim of the Nisga'a, who live on Canada's Pacific Coast, land title and land use rights litigation has accelerated in Canada. The courtrooms have become places where elders and social science experts contest the veracity and relevancy of varied lines of historical evidence and put forward competing historical interpretations about group identities, territoriality, and economic life. I will discuss these contests from the perspective of my involvement as an ethnohistorical geography expert in support of Indigenous claimants over the past twenty-five years. I will consider how established trial procedures affect the ways the courts assess the authority of voices, shape the discourses, and determine the outcomes.

## **Unnikrishnan Payyappallimana**

Traditional Knowledge and Transdisciplinarity

### **Abstract**

Transdisciplinarity is a concept applied to address complex contemporary challenges that cannot be solved through a single or linear perspective. Often understood as a method to overcome disciplinary boundaries through a process of dialogue, it may also refer to creating an encompassing approach while being connected to disciplinary elements. It follows the philosophy of transformative or reflexive learning through contextualization or engagement with practical concerns. In the context of traditional knowledge and its relation to addressing developmental issues it takes on a somewhat different meaning. This is due to the fact that the need for such a dialogue with regard to education and research is primarily emerging from within the discipline in the background of discussions on their objective evidence and contemporary relevance.

While important for transformative and reflexive learning, the approach is equally important to engage in discussions on internal, disciplinary limitations and assumptions in the process of working together so as to arrive at a flexible, yet structured methodology. This is significant especially in the traditional knowledge areas where evidence and objectivity is linked to legal processes and regulations of practice such as in healthcare.

Though the presentation does not provide an encompassing statement or framework for transdisciplinary education or research in the field of traditional knowledge it raises questions which may trigger further dialogue.

## **Noemi Miyasaka Porro and Joaquim Shiraishi Neto**

Traditional Communities as "subject of rights" and the commoditization of knowledge

### **Abstract**

Both the ILO Convention Number 169 and the Convention of Biological Diversity led signatory State-members to recognize traditional communities as subjects of rights, and no longer as objects of tutelage. However, in States in which governments have adopted market-based decision-making to rule social life, the implementation of CBD into the national juridical order may bring new challenges. In pluri-ethnic societies in which power differentials are structurally embedded, traditional communities and enterprises exploring their genetic resources and knowledge have been, historically, unequal and opposed parties in relations of production. In current processes of benefit sharing, these unequal social actors are brought together into the juridical field to sign contracts as equal parties, as both are considered free subjects of rights negotiating in a free market. Erasing historical and structural differences, assuming equality in an unequal world will only reproduce the inequality that article 8j of CBD aimed to address. In addition, disproportional focus on the financial issues of access and benefit sharing, without consideration of the traditional ways of living, tend to favor enterprises rather than traditional communities. They may become

mere instruments to endorse “the social and environmental responsibility” supporting enterprises’ profitable purposes, in processes of “commoditization” of knowledge. Social movements led by women in the Amazon have challenged current forms of CBD implementation, affirming what is and what is not negotiable, and demanding effective conditions for previous informed consent and true choices.

### **Kenichi Matsui**

Who Protects TK and Who Defines It?: TK Study Revisited

#### **Abstract**

Since the Convention on Biological Diversity recognized the usefulness of traditional knowledge in maintaining ecological integrity, a number of ideas emerged regarding the establishment of legal framework to protect and share it with international communities. Scholars and indigenous communities have also discussed the importance of establishing ethical code or guideline. However, these ideas do not agree on the question as to who protects traditional knowledge (TK). Is it domestic law, international law, or community-based governance that is chiefly responsible for the protection of TK? This question has also raises another question as to who defines TK that is subjected to protection under law or ethical code. I will discuss these questions within a context of both developed and developing countries.