

IPSP089 - Legal Aspects of Traditional Knowledge and Biodiversity

Assignment 1: 781450

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NOTE

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1 Question 1 [50]

[2]–[10]

1.1 Compare and contrast the terms “traditional knowledge” and “indigenous knowledge”. In your answer state whether the *maca* plant falls within these definitions. (10)

Traditional knowledge systems, creations, innovations, or cultural expressions refer to *literary, artistic or scientific works, performances, scientific inventions or discoveries, designs, marks or symbols*, that have evolved in response to a changing environment and are inherited from one generation to another within a particular group of people or their territory.

Although there exists no universally accepted formal definition for indigenous peoples, ‘indigenous knowledge’ is synonymous with and in fact a subset to, ‘traditional knowledge’ in terms of its scope, transmission and diversity. Whilst their distinction is indeed subtle, ‘traditional knowledge’ held by indigenous people, denotes ‘indigenous knowledge’.

For example, knowledge disseminated through traditional means amongst the Khoisan peoples of Southern Africa, constitutes ‘indigenous’ or ‘traditional knowledge’. In contrast however, the information passed down through traditional means, by colonial Dutch settlers in the Cape can be described as ‘traditional knowledge’, but **not** ‘indigenous knowledge’.

Given that the maca has long been valued for its ability to enhance fertility in humans and livestock, it does indeed constitute ‘traditional knowledge’. Moreover, given that indigenous peoples have used it the same way for generations, as a potato-like food source, as well as a supplement for livestock, appreciated not only for its rich protein and vitamin content, but for its sexual performance and fertility enhancement, such use also constitutes ‘indigenous knowledge’.

1.2 How has knowledge been protected customarily? (10)

Informal regimes relied on mechanisms based on non-systematic and undocumented rules, obligations and rights, that are enforced either by elders or religious leaders. These regimes are ‘self-legitimised’ within and across the community through the accrual of consensus to abide by and adhere to these laws and rules.

Generally speaking customary law is not recognised by legal institutions outside of the relevant communities where they were originally established. The culture and history of a people are preserved by the community elders and leaders, who are also responsible for determining eligibility and allocation of various arts to be practised amongst the community’s artisans, as well as dispute resolution.

1.3 What are the problems confronting rights holders (in our case the people in Junin Peru)? (10)

Many existing legal frameworks are inadequate at resolving or determining a common denominator between the economic interests of commercialisation, and the traditional interests of the people of Junin, Peru. Generally speaking, the lack of representation in litigation, coupled with inadequate protection has resulted in the dismissal and disrespect of the indigenous people of Peru, who *arguably should* have enjoyed the conferral of intellectual property rights in relation to the ‘indigenous knowledge’ regarding the uses of the maca, and again *arguably should* have control over its exploitation by others.

Globalisation has given rise to a reluctance of younger generations to learn the traditional and cultural practices. Coupled with the absence of willing heirs and participants, means that there is significant risk of loss of the traditional and indigenous knowledge regarding the maca, should it be inadequately documented and ill-preserved.

Generally speaking modern society holds a prejudiced view, denigrating traditional knowledge as ‘primitive’. This lack of appreciation for such knowledge, stems from the indigenous people traditionally exploiting the effects of the maca plant, without describing them in terms of the molecular and chemical reactions of modern biochemical interactions. This has seen two United States patents granted for the chemical components, specifically the methods of extraction from the active ingredients of the maca plant, and not the plant itself.

1.4 What is WIPO’s role in protecting traditional knowledge? (20)

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References

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- [8] S. Geyer, “Towards a clearer definition and understanding of "indigenous community" for the purposes of Intellectual Property Laws Amendment Bill 2010: An exploration of the concepts "indigenous" and "traditional",” *PER / PELJ*, vol. 13, no. 4, 127–143, 2010, ISSN: 1727-3781.
- [9] Patents Act No. 57, 1978.
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