Of Lazarus, Indigenous Knowledge Systems, and Biopiracy: How (Why) International Law Nullified, Resurrected, and Altered Indigenous Peoples

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One of the most dramatic changes in intellectual property rights (IPRs) circles in the past two decades is the emancipation of traditional knowledge systems from enforced subjugation. For more than six centuries, indigenous peoples and the knowledge systems of colonized and dispossessed peoples across the world were delegitimized and forced to languish in the depths of infamy, disrepute, and public ridicule. While western-styled IPRs system gained prominence, acceptance, and legitimacy regardless of cultural differences, it was the lot of colonized peoples and their knowledge systems to suffer multiple assaults aimed at decimating, distorting, and rubbishing indigenous peoples' knowledge. Yet, in the past quarter of a century, traditional knowledge systems, otherwise referred to as TK in this paper have witnessed some degree of positive review, especially in policy instruments of international intellectual property organizations[1] and in international agreements.[2]

The emergence of TK from the doldrums of disrepute and neglect cannot be separated from the decolonization of indigenous and colonized peoples themselves. In other words, it is not a coincidence that the formal end of colonialism and the emancipation of indigenous peoples have brought about the resurrection of indigenous peoples' knowledge from the doldrums of neglect and disrepute. Put simply, the transformation of indigenous peoples' knowledge is a direct result of the emancipation of indigenous peoples. Human beings are the bearers of culture and knowledge systems. The suppression of a people inevitably leads to the suppression of their knowledge systems. The resurrection of indigenous peoples' cultures has brought to the fore, issues concerning the exploitation of indigenous peoples' biocultural resources and knowledge.

This phenomenon also raises serious questions on how best to manage the relationship between TK and the dominant systems or narratives of intellectual property rights (IPRs). Although there are undeniable similarities between TK such as folklore and IPRs such as copyrights, the philosophical and jurisprudential divide are huge and often, radical. Unlike IPRs which tend to be discrete and narrowly focused on categories of intellectual property, TK systems traverse a wide gamut of life, cultural experiences, epistemologies and empiricisms. Thus TK systems are implicated in ecology, agronomy, agriculture, medicine, animal husbandry, music, story-telling, cloth-weaving, et cetera across several thousands of different cultures and peoples. Without any doubts, TK was not designed to fit with the structure and processes of dominant IPRs. Neither the

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[1] World Intellectual Property Organization (WIPO) ((1998-1999, Geneva, Switzerland) Draft Report, Fact-Finding Missions on Intellectual Property and Traditional Knowledge, at 28.

[2] See for example, *Convention on Biological Diversity*, (done at Rio de Janeiro on 5 June 1992), (entered into force 29 December 1993), *reprinted* in 31 I.L.M. 818 (1992).

eligibility criteria nor the juridical processes for articulation and vindication of TK rights can easily fit with dominant IPRs regimes.[3]

Given the multitudinous nature and diversity of indigenous knowledge systems, it becomes intellectually risky, if not fraudulent for generalized claims to be made regarding the nature of indigenous knowledge systems. Allegations of biopiracy have been made against researchers, bioprospectors and other entities actively scouring indigenous peoples' cornucopia for the next miracle drug.[4] The aim of this paper is to explore the historical and legal evolution of indigenous peoples' knowledge. The central argument is that there are palpable differences between IPRs and TK. The dominant economic and political powers have historically privileged IPRs over TK despite the enormous merits and contributions of the later. In the final analysis, the paper argues that states with significant stakes in the TK debate would do well to pursue regional initiatives aimed at giving legal effect to indigenous and autochthonous models for protection of knowledge. Waiting on the global community for support and guidance is neither prudent nor effective.

[3] Mgbeoji, Ikechi (2006) Beyond Patents: The Cultural life of Native Healing and the Limitations of the Patent System as a Protective Mechanism for Indigenous on the Medicinal Uses of Plants *Canadian Journal of Law and Technology* 5:1-12

[4] Mgbeoji, Ikechi (2006), *Global Biopiracy: Patents, Plants, and Indigenous Peoples*, Vancouver, British Columbia, UBC Press, (hereinafter Mgbeoji).