



# BULLETIN of the Working Group on Traditional Resource Rights

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## WGTRR Update

Thank you to all those who have joined the Working Group or who wrote after receiving the first Bulletin. We are sorry that this second publication has taken longer to come out than we intended but the period since last spring was more unsettled than we had expected.

Much of our time last year was spent pursuing funding, and although this is still not secure, we are able, thanks to the Nuffield Foundation, the Earth Love Fund, and WWF-I, to think more about our objectives and less about security. We are also grateful to the Oxford Centre for the Environment, Ethics & Society and Mansfield College, Oxford, for providing us with office space and support. The interdisciplinary nature of OCEES means that the cross-disciplinary approach of the Traditional Resource Rights Programme has a sympathetic base in Oxford which complements our contacts with our members and collaborators around the

world. We have included reports from OCEES members on some of the events that took place in the last six months. WGTRR were very pleased that Aroha Mead came from New Zealand to take part in the first of the OCEES Head to Head debates on the role of indigenous peoples as conservationists.

We have also been lucky to have volunteer help from three Oxford graduates, Terri Willard, Sara McFall, and Susie Hussey, who set up a survey to determine the principles, policies and practices needed by 'indigenous and local communities embodying traditional lifestyles' to maintain control over their knowledge and resources. Terri has also reactivated the GreenNet conference and is transferring our address lists onto Access. With the help of Pat Berhau our library is also once again being catalogued and put onto Endnote, so our advisory function will be more efficient in future.

This spring the MSc students at the

Oxford Forestry Institute have been attending a series of lectures organised by Darrell Posey entitled, 'Ethnoecological Perspectives on Forests & Forestry', which adds the human context to forest management, essential at a time when the Intergovernmental Panel on Forests is examining the requirements of Article 8j of the CBD in the maintenance of forest biodiversity. The expansion of Farmers' Rights to include those peoples living in forests, fishers, pastoralists and others dependent on natural resources for their day-to-day livelihoods, is a central issue this year with the FAO Fourth International Technical Conference in Leipzig in June, and the World Food Summit in Rome in November, as well as the third Conference of the Parties to the CBD in Buenos Aires also in November. We hope to bring you more information on these processes in the next Bulletin during the summer.

*Kristina Plenderleith*  
Editor

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## JAKARTA JITTERS

My academic colleagues look at me in shock and horror: many have suspected for years that I am nearly 'over the top', but my post-Jakarta mutterings left them convinced I had completely lost any semblance to sanity. The reason: my claims that COP2 (the Second Conference of the Parties to the Convention on Biological Diversity) was exciting and even — dare I put it in print — intellectually stimulating.

It may be argued that UNCED, followed by the CBD and CSD, are exercises in futility. But the 'processes' that have surrounded these global efforts are anything but futile: they have brought together an unprecedented variety of people to discuss biodiversity, equity, benefit-sharing, and sustainability. Never before have such an array of scientific and technical specialists, environmentalists, activists, Indigenous and local leaders, politicians, and diplomats gathered to discuss the future of the Planet. That is a bit of romantic spin on the 'process', since

*continued overleaf...*

# Implementing Traditional Resource Rights

Knowledge and traditional resources are central to the maintenance of identity for indigenous and local communities embodying traditional lifestyles. Therefore, retaining control over these resources is an essential part of their struggle for land and territory. Effective links between external forces and local communities are likely to be through the development of *sui generis* system(s) that must first protect indigenous and local communities and ensure their *control* over land, territory and resources *before issues of access and transfer can be discussed*. Equitable benefit sharing from the wider use and application of the knowledge, innovations and practices of indigenous peoples and local communities, as well as the biogenetic resources conserved on their lands and territories, can then be negotiated. Adequate and effective protection and benefit-sharing mechanisms inevitably require a shift from economic or ecological-determined legal and political frameworks to a rights-driven system.

## What are Traditional Resource Rights?

The term Traditional Resource Rights (TRR) has emerged to define the many 'bundles of rights' that can be used for protection, compensation, and conservation. The change in terminology from Intellectual Property Rights (IPR) to Traditional Resource Rights reflects an attempt to build on the concept of IPR protection and compensation, while recognising that traditional resources — both tangible and intangible — are also covered under a significant number of international agreements that can be used to form the basis for a *sui generis* system. 'Traditional resources' include plants, animals, and other material objects that may have sacred, ceremonial, heritage, or aesthetic qualities. 'Property' for indigenous peoples and local communities frequently has intangible, spiritual manifestations, and, although worthy of protection, can belong to no human being. Indigenous and traditional communities are increasingly involved in market economies, and are seeing an ever-growing number of their resources traded in those markets. Even so, for many, privatisation or commoditisation

of their resources is not only foreign, but incomprehensible or even unthinkable.

TRR is an *integrated rights* concept which recognises the inextricable link between cultural and biological diversity, and is guided by human rights principles including: basic human rights; the right to self-determination; collective rights; land and territorial rights; religious freedom; the right to development; the right to privacy and prior informed consent; environmental integrity; intellectual property rights; neighbouring rights; the right to enter into legal agreements; rights to protection of cultural property, folklore and cultural heritage; the recognition of cultural landscapes; recognition of customary law and practice, and; farmers' rights. These rights are mutually supportive and entirely consistent with the Convention on Biological Diversity since the destiny of traditional peoples largely determines, and is determined by, the state of the world's biological diversity. Significantly, they are consistent, too, with the requirements of GATT/WTO and FAO/IUPGR. Some of these rights and the international agreements which support them are identified on page 4.

## How can Governments implement the TRR process

In its provision for the setting up of *sui generis* systems the TRIPs chapter of GATT offers national governments the opportunity to bring together their human rights commitments with undertakings on biodiversity conservation, sustainable development and global trade. For example, the TRR concept can be effected by identifying guiding principles for legislative processes, and by formulating the basis for practical instruments and mechanisms that guarantee protection, benefit sharing, and political and financial support for indigenous and local communities.

Ways in which practical instruments and mechanisms can be provided include the development of instruments such as Material Transfer Agreements, Information Transfer Agreements, or contracts and covenants, and mechanisms that embody TRR principles. A positive step would be the establishment of an *Ombudsman's Office* that would not only

advise indigenous and local communities on the protection of their resource rights and on benefit sharing, but represent them in their complaints relating to infringements of their resource rights.

Financial and political support for indigenous and local communities can also be provided through new guidelines for policies and projects funded by governments. To protect traditional resources all such projects and policies should be planned and implemented in collaboration with indigenous and local communities affected. This will require the development of new guidelines and laws for defining and implementing prior informed consent, as well as pushing for the expansion of Farmers' Rights in FAO/IUPGR and TRR in WTO and the CBD.

Governments may also provide political and financial support for indigenous and local communities' own initiatives to guarantee protection of traditional resources such as:

- self-demarcation;
- community biodiversity registers and knowledge databases;
- community-controlled research.

The success of all these instruments and mechanisms depends upon effective leadership from indigenous peoples and local communities, along with the use of their cultural (cognitive) categories, traditional knowledge, and local criteria to carry out their own inventories, evaluations, monitoring, impact assessments, and development programmes. External support will require development of more effective tools for intercultural dialogue, information exchange, technology training, awareness-raising, and education, as well as interdisciplinary collaboration between human, natural and social sciences.

Graham Dutfield