

# The SDGs and Gender: The Case of Indigenous and Local Women's Traditional Knowledge

Ghazaleh Jerban

## Key Points

- The gender aspects of traditional knowledge (TK) protection highlight the important link between intellectual property (IP) rights, TK, women and sustainable development. Indigenous and local women's TK is not only distinct and relevant, but also crucial for accomplishing the United Nations Sustainable Development Goals (SDGs).
- National governments and international organizations dealing with TK should pay attention to gender aspects of the issue. Policies and initiatives that ignore gender aspects of TK can have serious implications for the survival and development of Indigenous and local communities (ILCs) and TK itself as a dynamic and living body of knowledge.
- The economic significance of TK and its trade value make it an enabler of sustainable development and women's economic empowerment, especially in light of the World Trade Organization's recent Declaration on Trade and Women's Economic Empowerment.

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## Introduction

The Oubli berry is a West African fruit of the climbing plant Oubli. The West African people of Gabon originally discovered and nurtured the plant, which was traditionally used by breastfeeding mothers to help their nursing infants during the process of weaning. The harvested plant was also a source of income for many Gabonese women. A researcher from the University of Wisconsin observed the practice and brought it to the attention of the university. The researchers from the University of Wisconsin obtained various patents for isolating and reproducing the protein Brazzein, which is 500 to 2,000 times sweeter than sugar and is used as a natural, low-calorie sweetener. Yet there was no recognition for or benefit sharing with the Gabonese people. Ever since, the protein has been reproduced in the laboratory, at large scale, low cost and using artificial materials, which eliminated the need to cultivate and collect the plant in Gabon. This led to a major drop in the price of Brazzein for those who traditionally harvested the Oubli berry, and many Gabonese women thus lost their source of income.<sup>1</sup>

The Oubli berry example of Gabonese women draws attention to the interrelationship between the protection of TK (as one of the most contentious topics in the international IP regime), gender and sustainable development. The cross-cutting nature of TK has resulted in various groups getting involved with the issue in

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1 Pádraig Carmody, *The New Scramble for Africa* (Cambridge, UK: Polity Press, 2011).

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## About the Author

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international fora, each advancing its own set of interests, which in turn has created a complex regime of multiple international instruments dealing with the protection of TK.<sup>2</sup> Despite the existence of these instruments, the status of legal protection for TK remains unclear, mainly due to the qualifying language used in these instruments and their deferral to national legislation.<sup>3</sup> While many governments have already devised national legislation for the protection of TK, the limited reach of domestic laws means that international protection of TK is still a necessity to prevent the cross-border misappropriation of TK.

The World Intellectual Property Organization's (WIPO's) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is engaged in a series of text-based negotiations to develop one or more international legal instruments to effectively protect various forms of TK, including traditional cultural expressions (TCEs) and TK associated with genetic resources (GRs). The IGC represents a key forum to negotiate TK and, despite its slow progress, as a strategic platform it has potential for shaping policy and advancing the development imperative through empowering ILCs as stakeholders in TK.<sup>4</sup>

However, the IGC negotiations have moved forward without attention to the specific needs, constraints and interests of women in the issue and therefore without any sign of gender sensitivity. More specifically, the three draft articles developed by WIPO for the protection of TK, TCEs and TK associated with GRs make no reference to women and their role in the TK system.

This lack of gender sensitivity in the IGC negotiations occurs even as women's traditional role as custodians of biodiversity and practitioners of TK is mentioned in the Convention on Biological

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2 See Laurence R Helfer, "Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking" (2004) 29:1 Yale J Intl L 83.

3 See Aman Gebru, "The Global Protection of Traditional Knowledge: Searching for the Minimum Consensus" (2017) John Marshall Rev Intellectual Property L 17 at 42.

4 See Chidi Oguamanam, "Ramifications of the WIPO IGC for IP and development" in Daniel F Robinson, Ahmed Abdel-Latif & Pedro Roffe, eds, *Protecting Traditional Knowledge: The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* (New York: Routledge, 2017) 339.

Diversity (CBD).<sup>5</sup> Specifically, the Preamble of the CBD affirms the vital role of women and their TK in the conservation and sustainable use of biological diversity and calls attention to “the need for the full participation of women at all levels of policy-making.” Moreover, despite the wide discrepancy between strong gender equality commitments and their weak implementation, one of the broad objectives of international law is the elimination of discrimination against women, and the issue of Indigenous and local women’s TK should not be an exception.<sup>6</sup>

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## Where Do Women Stand in the TK System?

Women play a critical role as practitioners and curators of TK.<sup>7</sup> Although the specific roles vary across countries and cultures, there are many examples showing that due to division of labour, the TK held and practised by Indigenous and local women is different from that held and practised by men.<sup>8</sup>

Considering the crucial — albeit unappreciated — role of women in the TK system, the introduction of an IP protection mechanism in this area will have significant consequences for women. Such mechanisms, depending on their underlying assumptions about gender and women’s proper role in development and the distributive consequences of IP rights, may have serious implications for Indigenous and local women and their contribution to the TK system.

The Beijing Declaration of Indigenous Women<sup>9</sup> and the Manukan Declaration of the Indigenous Women’s

Biodiversity Network<sup>10</sup> clearly warn that the current IP regime threatens Indigenous women and the livelihood of their communities by depriving them of control over their knowledge and resources. The United Nations Permanent Forum on Indigenous Issues also highlights the misappropriation of TK taking place under the current IP regime as an issue of concern for Indigenous women.<sup>11</sup> This is mainly because women and men have particular needs, interests and aspirations and make different contributions to the TK system. Therefore, policies and initiatives that ignore gender aspects of TK can have significant consequences for the survival and development of ILCs and TK itself as a living body of knowledge. In other words, understanding the role of gender and the way it impacts TK governance systems within ILCs is critical to preservation and dissemination of TK. Failure to recognize and document Indigenous and local women’s TK may result in losing this knowledge forever.

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## Indigenous and Local Women’s TK in the Context of the SDGs and Trade

While attempts to increase the number of patent applications filed by women inventors (as compared to their male counterparts) can be considered as a strategy for equalizing power and decreasing gender disparity within the IP regime, a more fundamental shift in views is required to make the IP regime gender inclusive. To date, the IP regime has contributed to the marginalization of women’s work and creativity by failing to cover areas of practice in which female engagement is high. TK is one such area where communal, collective and group endeavours engaged in by Indigenous

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5 *Convention on Biological Diversity*, 5 June 1992, 1760 UNTS 79, 31 ILM 818 (entered into force 29 December 1993).

6 *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS, ILM 19(1) (entered into force 3 September 1981).

7 Krishna Pidatala & Aisha Rahman Khan, “Women & Indigenous Knowledge: a South-South Perspective” (2003) World Bank IK Notes No 63.

8 See e.g. Patricia L Howard, *Women and Plants: Gender Relations in Biodiversity Conservation and Management* (New York: Zed Books, 2003).

9 UN Fourth World Conference on Women, Huairou, Beijing, China, 4–5 September 1995, NGO Forum, *Beijing Declaration of Indigenous Women*, online: Indigenous Peoples Council on Biocolonialism <[www.ipcb.org/resolutions/htmls/dec\\_beijing.html](http://www.ipcb.org/resolutions/htmls/dec_beijing.html)>.

10 Indigenous Women’s Biodiversity Network, Manukan, Sabah, Malaysia, 4–5 February 2004, *Manukan Declaration*, online: Indigenous Peoples Council on Biocolonialism <[www.ipcb.org/resolutions/htmls/manukan.html](http://www.ipcb.org/resolutions/htmls/manukan.html)>.

11 UNESCO, Permanent Forum on Indigenous Issues, 3rd Sess, Supp No 23 at 12–14, UN Doc E/C.19/2004/23, online: <[www.un.org/en/ga/search/view\\_doc.asp?symbol=E/C.19/2004/23](http://www.un.org/en/ga/search/view_doc.asp?symbol=E/C.19/2004/23)>.

and local women have been excluded from the protection and reward system of IP rights.<sup>12</sup>

Although they are an important starting point, recent efforts to encourage more female registrants of IP rights do not sufficiently address the lack of gender sensitivity in the current IP regime. More fundamental changes are required for women to effectively engage in the IP regime and not be merely a simple majority of registrants. In addition to increasing the number of women inventors and authors who participate in and benefit from the current IP rights system as equals with men, the IP regime should include the significant contributions made by Indigenous and local women in the form of TK, as it plays an important role toward realization of the SDGs.<sup>13</sup>

The link between TK, gender and sustainable development can be clearly traced in various SDGs. For example, among the targets of SDG 2 (on zero hunger),<sup>14</sup> Target 2.5 highlights the issue of fair and equitable sharing of benefits arising from the utilization of GRs and associated TK. In line with Target 2.5, Indigenous and local women's contributions and interests should inform any benefit-sharing agreement, and the dissemination of benefits within the community. Indigenous and local women should be part of the free, prior and informed consent (FPIC) process for access to GRs and associated TK because maintaining control over their TK and resources is essential to supporting their families.

Some other examples can be seen under SDG 5 on gender equality and the empowerment of women.<sup>15</sup> Target 5.4 specifically addresses the issue of unpaid domestic work. Most TK held by women is developed, practised and performed in the context of domestic work. This work remains unpaid and is considered to be in the public domain, thus women's TK contributions are not rewarded. In

fact, the current value framework is incapable of capturing the value of Indigenous and local women's contributions and considers them as non-work.

Moreover, due to a lack of gender-disaggregated data, quantitative and qualitative data showing women's contributions and specific roles in TK systems are difficult to obtain. The details regarding Indigenous and local women's contributions are not included in labour force data, which has a tendency to underreport the significance of women's economic activities in labour markets, mainly because the majority of these activities take place in the informal sector.<sup>16</sup>

Target 5.5 of the gender equality SDG, on ensuring women's full and effective participation at all levels of decision making, makes it clear that integrating a gender perspective into the development of the IGC's TK-protection mechanism should not be merely optional. Rather, the IGC should address gender equality as both a cross-cutting priority issue and a standalone issue. Individual activities by WIPO intended to encourage and increase participation of women in the current IP rights system, while critical, should not remain siloed. Rather, they must be linked to and replicated in the work program of all WIPO committees and bodies to reinforce the integrated nature of the SDGs.

Inevitably, the SDG targets dealing with gender equality and women's empowerment should resonate within the IGC, informed particularly by the trade value of TK. The increased commercial use of TK in a variety of sectors — such as agriculture and the pharmaceutical and creative industries — as a result of globalization, makes the issue of Indigenous and local women's TK an international point of interest. The World Trade Organization's Declaration on Trade and Women's Economic Empowerment, signed by 120 countries in Buenos Aires in December 2017, is applicable to women's TK and its increasing value in global trade.<sup>17</sup>

For instance, according to Indian Commerce Secretary Rita Teotia, India's traditional medicinal

12 For more information about feminist critiques of IP and how feminine forms of creativity have been excluded from the IP rights system, see e.g. Shelley Wright, "A Feminist Exploration of the Legal Protection of Art" (1994) 7:1 *Can J Women & L* 59.

13 UN, "Transforming our world: the 2030 Agenda for Sustainable Development", online: <<https://sustainabledevelopment.un.org/post2015/transformingourworld>> [UN, "SDGs"].

14 UN, "SDGs", Goal 2: "End hunger, achieve food security and improved nutrition and promote sustainable agriculture", online: <<https://sustainabledevelopment.un.org/sdg2>>.

15 *Ibid*, Goal 5: "Achieve gender equality and empower all women and girls", online: <<https://sustainabledevelopment.un.org/sdg5>>.

16 See e.g. Heather Gibb, "Gender Dimensions of Intellectual Property and Traditional Medicinal Knowledge" (2007) UNDP Asia-Pacific Regional Centre in Colombo: UNDP Asia-Pacific Trade and Investment Initiative.

17 World Trade Organization, *Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017* [Buenos Aires Declaration], online: <[www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/genderdeclarationmc11\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf)>.

plants and their products account for an estimated US\$1.2 billion in annual exports.<sup>18</sup> This means TK creates substantial wealth and, where women are ensured the sharing of benefits in their TK, it has the potential to narrow the existing gender income gap.

Women can benefit if trade policies lead to a reallocation of production toward sectors with high female contribution; one example is TK-based production. Trade policies should pay special attention to sectors covered by TK in which Indigenous and local women have a comparative advantage in production. Unfortunately, while women play a major role in TK-based production, they face many challenges to participating in local and global markets. This is because they are at a disadvantage in a number of areas, one of which is the recognition and protection of their TK, an issue that needs to be tackled by the IGC in a well-structured and gender-sensitive way.

A rise in export-oriented and TK-based production can increase women's income and therefore lead to their empowerment. In industries where women and TK are two defining elements, such as the Persian handwoven carpet industry, which employs a workforce of 80 percent women, a gender-sensitive TK-protection mechanism, combined with progressive trade policies, can lead to female carpet weavers' economic empowerment. With the support of IP protection, the profile of a locally focused, women-owned, TK-based production can become more open to international trade, which potentially leads to national products taking a more significant position in export markets and enjoying a larger share of global markets. Female TK holders' enhanced capacity to participate in international trade will consequently boost their ability to have a positive influence on themselves, their families and their communities.

The ongoing IGC negotiations should take note of this huge potential in designing future protective mechanisms in order to put female TK holders at the forefront and help them to thrive. Recognition and protection of gender-specific TK is the first step toward connecting Indigenous and local women entrepreneurs to global value chains. In fact, recognizing and protecting TK

held by women globally is a way to breathe life into the Buenos Aires Declaration and the 2030 Agenda. It will show a well-intentioned step toward empowering women economically.

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## Recommendations

- Recognizing and legally protecting the TK held by Indigenous and local women is an important step in realizing sustainable development. TK can and should act as an enabler of sustainable development in ILCs through recognition of IP rights,<sup>19</sup> with Indigenous and local women as its agents.
- To the extent that the marginalization of Indigenous and local women's knowledge follows from their own marginalized positions, it cannot be assumed that merely including Indigenous and local women's perspectives in the IGC negotiations will be enough. What is required is not only to carefully and sensitively uncover Indigenous and local women's TK, but, more importantly, to investigate the politics of knowledge production that has led to the double marginalization of Indigenous and local women's TK through both the unprotected status of TK (as opposed to modern science) and the gender of its holders.
- The existing international commitments on women's empowerment, backed up by international instruments such as the SDGs, the Convention on the Elimination of All Forms of Discrimination Against Women and the Beijing Declaration and Platform for Action,<sup>20</sup> should be taken into account and addressed in any future IGC outcome. More specifically, the IGC needs to carefully examine how Indigenous and local women are likely to be able to use any future regulatory mechanism in order to avoid their further marginalization by adversely affecting their agency over their TK.
- Legal mechanisms can and should be used for Indigenous and local women's empowerment

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18 Catherine Saez, "Developing Countries Weigh Restarting Talks for TRIPS Amendment on Biological Resources", *Intellectual Property Watch* (29 March 2017), online: <[www.ip-watch.org/2017/03/29/developing-countries-weigh-restarting-talks-trips-amendment-biological-resources/](http://www.ip-watch.org/2017/03/29/developing-countries-weigh-restarting-talks-trips-amendment-biological-resources/)>.

19 Freedom-Kai Phillips, "Intellectual Property Rights in Traditional Knowledge: Enabler of Sustainable Development" (2016) 32:83 *Utrecht J Intl & European L* 1.

20 Fourth World Conference on Women, *Beijing Declaration and Platform for Action*, adopted at the 16th plenary meeting (15 September 1995).

as envisioned in the 2030 Agenda. Institutional safeguards should be designed to prevent favouring male claims over TK and to ensure that Indigenous and local women are part of the FPIC process. Their interests should be taken into account when access and benefit-sharing agreements are negotiated and during dissemination of benefits within the community.

- Women's TK should be documented to be protected from misappropriation. Proposals such as using a gender tag<sup>21</sup> in libraries and databases that document TK (such as India's Traditional Knowledge Digital Library) aim at developing a system of labelling for TK that is primarily held by women. Unfortunately, in one of WIPO's recent publications on TK, "Documenting Traditional Knowledge: A Toolkit,"<sup>22</sup> there is no mention of gender and how it should inform TK documentation efforts.

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## Conclusion

For the ongoing negotiations at the IGC to be holistic and adopt a good-faith approach toward gender equality and the incorporation of the SDGs, it is critical that the IGC incorporate gender aspects of TK. Simply put, gender equity is not an issue that can be incorporated into a TK-protection mechanism as an afterthought, once all the technical niceties have been worked out. Rather, it needs to be addressed in the initial stages of law making and policy formulation. The fundamental challenge, however, is to avoid the false recipe of "add women and stir"; rather, it should be "add and alter."<sup>23</sup> A gender-aware TK instrument within a sustainable development-oriented IP paradigm would allow Indigenous and local women to contribute to the governance of what is rightfully their cultural heritage, thus leading to their empowerment. It requires affirmative action to guarantee the participation

of Indigenous and local women in TK governance and to ensure their enjoyment of their rights.

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21 Terra L Gearhart-Sema, "Women's Work, Women's Knowing: Intellectual Property and the Recognition of Women's Traditional Knowledge" (2009) 21:2 Yale J L & Feminism 372.

22 WIPO, *Documenting Traditional Knowledge: A Toolkit* (2017), online: <[www.wipo.int/publications/en/details.jsp?id=4235](http://www.wipo.int/publications/en/details.jsp?id=4235)>.

23 Dorothy Q Thomas, "Conclusion" in JS Peters & Andrea Wolper, eds, *Women's Rights, Human Rights: International Feminist Perspectives* (New York: Routledge, 1995) 359.



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