

The protection of indigenous medical knowledge: a critical analysis

by

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*"We shall not cease from exploration
And the end of all our exploring
Will be to arrive where we started
And know the place for the first time."*

- T.S. Elliot

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The creation of a global marketplace, which offers an economic connection unparalleled in world commerce, has markedly increased the importance of indigenous knowledge, since cultures long forgotten are reintroduced into Western spheres where Capitalism dominates.

Indigenous knowledge as an instrument of development has to date not received the needed attention in developing countries in general and in Africa in particular. The capacity of this region to absorb information and its cultural traditions hold the key to a tremendous future. In tomorrow's world, cultural assets like indigenous medical knowledge, may well have greater value than financial assets.

Indigenous knowledge particularly with regards to indigenous medicine and conservation management of biodiversity, is crucial towards the solving of the conundrums of twenty first-century life. In view of this, the recognition and protection of indigenous peoples' rights in their knowledge, innovations and practices relating to biodiversity are assuming an increasing urgency.

With the emergence of the New South Africa, sharing of indigenous knowledge within and across communities can enhance the process of cross-cultural understanding and may provide a basis for problem-solving strategies for local, poor communities.

The potential economic impact of indigenous knowledge is vast. However, this means that this tacit knowledge system must be captured and translated to a codified form that is beyond oral tradition.

This study concentrates on the problems resulting from the exploitation of indigenous medical knowledge and the inadequacy of current legislation to protect indigenous people's knowledge of natural resources. The importance of this study lies in the fact that it concentrates exclusively on the protection by means of appropriate legislature of indigenous medical knowledge from a South African or an African perspective as a potential economic resource.

An extensive literature search on the importance (social, cultural and economic) of indigenous knowledge and biodiversity in Third World Countries was conducted and the lack of legislative regimes on intellectual property in South Africa and other African countries in comparison with International intellectual property law was evaluated. Possible harmonization of problems associated with current laws and possible solutions regarding appropriate legislature and practical proposals based on social justice are offered.

Sinopsis

Beskerming van inheemse medisinale kennis: 'n kritiese analise

deur

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Noudat lank vergete kulture weer aan Westerse sfer waar Kapitalisme oorheers blootgestel word, het die skep van 'n wêreldwye mark met ekonomiese verbintenisse ongeken in wêreldhandel, die belangrikheid van inheemse kennis weer merkbaar laat toeneem.

In ontwikkelende lande in die algemeen, en meer spesifiek in Afrika, het inheemse kennis as 'n middel tot ontwikkeling tot op hede nie die nodige belangstelling ontlok nie. Die kapasiteit van hierdie wêrelddeel om inligting te absorbeer, tesame met sy kulturele tradisies, behou egter die sleutel tot 'n opwindende toekoms. In die nabye toekoms mag kulturele bates soos inheemse medisinale kennis dalk selfs van groter waarde wees as finansiële bates.

Inheemse kennis spesifiek met betrekking tot inheemse medisyne en bewaringsbestuur van biodiversiteit, is krities in die uitdagings daar gestel deur 'n een-en-twintigste eeu bestaan. In die lig hiervan, word die kwessie van die erkenning en beskerming van inheemse bevolkingsgroepe se regte ten opsigte van hul kennis, innoverings en praktyke rakende biodiversiteit al meer dringend.

Die ontwikkeling van die Nuwe Suid-Afrika beteken dat mededeling van inheemse kennis binne en tussen gemeenskappe die proses van kruiskulturele begrip kan bevorder en selfs 'n basis vir probleemoplossingstrategieë vir plaaslike, arm gemeenskappe kan lewer.

Die potensieël ekonomiese impak hiervan is oneindig. Dit beteken egter dat ontasbare kennis vasgevang en vertaal moet word in 'n verstaanbare vorm wat mondelingse tradisie oorbrug.

Die studie fokus op probleme wat vloei uit die uitbuiting van inheemse medisinale kennis en die onvermoë van huidige wetgewing om inheemse bevolkingsgroepe se kennis van natuurlike hulpbronne te beskerm. Die belangrikheid van hierdie studieveld berus op die feit dat dit eksklusief fokus op beskerming van inheemse medisinale kennis as 'n potensieël ekonomiese hulpbron, deur middel van toepaslike wetgewing, vanuit 'n Suid-Afrikaanse of Afrika perspektief. 'n Uitgebreide literatuurstudie rakende die belangrikheid (sosiaal, kultureel en ekonomies) van inheemse kennis en biodiversiteit in die Derde Wêreld Lande is gedoen. Verder is die afwesigheid van wetgewende intellektuele eiendomsregimes in Suid Afrika en ander Afrika-lande in vergelyking met Internasionale intellektuele eiendomsregime geëvalueer. Moontlike harmonisering van probleme geassosieer met huidige wetgewing en moontlike oplossings met betrekking tot toepaslike wetgewing word gegee en praktiese voorstelle, gebaseer op sosiale reg, word gemaak.

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“It is our duty to proceed from what is near to what is distant, from what is known to what is less known, to gather the traditions from those who have reported them, to correct them as much as possible and to leave the rest as it is, in order to make our work help anyone who seeks the truth and loves wisdom.”

Abu'l-Rayan Muhammed al-Biruni, 973-1050 AD ¹

“I am talking about societies drained of their essence, cultures trampled underfoot, institutions undermined, lands confiscated, religions smashed, magnificent artistic creations destroyed, extraordinary possibilities wiped out...”

“I am talking about millions of men [and women] torn from their gods, their land, their habits, their life, - from the dance, from wisdom...”

Aime Cesaire, Discourse on Colonialism ¹