

Cultural rights for Zimbabwe's Sui Generis Legislation

Emphasizing symbolic practice related to traditional medicinal knowledge

Throughout two decades of development activity, reports on the “crisis” of desertification, food scarcity, and economic inefficiency have been challenged by local counter-narratives which show local people uniquely engaging in their environment in ways that deny the relevance of economic incentives (Lansing 1995; Leach and Mearns 1996; Appadurai 1990).

Recently, the Food and Agricultural Organization (FAO) characterized plant genetic resources as the “heritage of mankind” (Cullet 2001) in order to globalize conservation of them. Likewise, the World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) legislation has enabled biotechnology companies to enclose aspects of this heritage within intellectual property rights (IPR) in ways that primarily fuel international industry. As a result, the local cultural practices related to biological resources have been dismissed as inefficient or discussed as barriers to development. This may begin with the fact that the relationship between territorial cultural practices, biological resources, and intellectual properties has not been made explicit. The author has found the following distinctions helpful:

Biological resources (plants, minerals and animals): are the natural sources of medicinal, agricultural, cosmological, veterinary and ecological utility. Their presences helps balance

the overall ecological and social health of specific territorial environments. They are also the substrates of cultural resources, practices and traditional knowledge systems.

Cultural resources (practices): are the inherited territorial (customary and non-customary) practices that follow local systems of production, circulation and reproduction of the environment — natural and social — which characterizes them. They continue to evolve in conjunction with individuals and the territorial environment. They are also the substrates of intellectual resources.

Intellectual resources (capital): are products that have been abstracted, derived or synthesized from prior cultural or biological resources. In order to receive protection, cultural or biological resource had to have been transferred from their original territorial environment and are 1) either

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transported (as impersonal information bytes) to a new milieu so that they may be reckoned “novel;” or 2) components of them are reduced, standardized, and miniaturized for mass reproduction and distribution to be deemed “commercially applicable.” Hence, they are synthesized or abstracted to receive an intellectual property right (IPR).

In regional, territorial and national contexts it becomes clear that there can be no intellectual properties (even related to plant genetic resources) without the reproduction of cultural knowledge and practice.

Hence, significant initiative on the part of developing countries has brought unique (*sui generis*) national legislation to facilitate both international and local interests in accessing, keeping, using, sharing and valuing biological, cultural and intellectual resources simultaneously (Seattle Ministerial Meeting of the WTO 2000). The African Union (AU) has been especially concerned with maintaining the unique relationship between plant genetic resources and cultural practices and has subsequently handed down the *African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources* (African Model Law 2001) as a guide for its member states in developing National *Sui Generis* Legislation. However, because National *Sui Generis* Legislation (in accordance with Trade-Related Intellectual Property Rights Article 23(b) of the World Trade Organization) counters globalizing initiatives it has little to no international aid. Hence, it is being drawn up without the participation of local communities who access, keep, use, share, and value biological and cultural resources in customary and non-customary ways.

Research question

Because the requisite institutional reforms of WTO membership create new needs in developing countries such as Zimbabwe, development practitioners might effectively aid national development by working in conjunction with the national goal to create *Sui Generis* Legislation. This could be done most effectively by taking an anthropological study of how repertoires of knowledge exist *a priori*¹ local conditions first. Based on this qualitative data, an analysis of the cultural practices that both vitalize and sustain traditional knowledge systems should follow. The author endeavored to do this with one repertoire of knowledge in Zimbabwe, Traditional Medicinal Knowledge (TMK), by exploring how it is accessed, kept, used, shared, and valued in both customary and non-customary ways. Subsequently, this has helped her

develop several recommendations for Zimbabwe’s own National *Sui Generis* Legislation.

Methodology

With a cognizance of cosmopolitan movements and high activity border zones, the author’s fieldwork was carried out in three varied locales: 1) in the capital of Harare where a variety of Bantu linguistic traditions from sub-Saharan Africa meet in creolized forms commonly exchanged through English, 2) along two border areas — in Zimbabwe’s Eastern Highlands that straddles Mozambique, and to the North going to the wetlands that seep across to Zambia, and 3) in the central high-grass, *veld*, region of Zimbabwe where Shona² customary traditions are still strongly reproduced.

The overall study and analysis was made with key informants, oral traditions, oral histories, participant-observation in ritual and medicinal plant use, former ethnographic studies completed by anthropologists, as well as the official discourse of a national association of traditional healers. The author spoke to traditional healers (*n’angas*), healers’ assistants (*makumbi*), spirit-mediums (*svikiros*), plant (*muti*) merchants, elders, chiefs and their councilors, rural district officials, and urbanite Zimbabweans. All of these interviews were conducted, with the help of a translator, in Shona.

Findings

In Zimbabwe, the natural substrates of TMK are conceived of both as magic³ and as medicine (*mishonga*). Yet, these substrates manifest as a magic and/or a medicine only when they are wielded by an individual possessing an entire repertoire of practices, rituals, divinations, symbols and acute timing based on a familiarity with the social, cultural, environmental and physical milieu (the *hun’anga*).⁴ In addition to the individual practitioner, the individuals who comprise the greater social field validate by their own consecration whether the magic and medicine become effective (*kushanda*).

Access to the full repertoire of ancestral TMK (*vadzimu hun’anga*) begins when the juvenile kin of an elder family healer selects one among their descendants to assist them in their practice (Chavanduka 1997; Reynolds 1996). While the apprenticeship demands hands-on practice with TMK – identifying, collecting and preparing plants; identifying, understanding and healing illnesses — it also requires lessons in the greater customary, symbolic and social

milieu. The sum of the extended apprenticeship is the attainment of invaluable intuition (*mapipi*) related to the relationships and cultural codes that direct an entire TMK system. For Zimbabweans, the elders (as well as the deceased ancestors) are the key to continuing access to and inheritance of TMK through special dreaming (*kurotswa*) and ritual divinations (*kusvikirwa*) where the knowledge is revealed as a gift (Frommer 2002).⁵

Hence, while a general familiarity with traditional medicinal plants is possessed by many within the local community, only selected and trained individuals gain enough familiarity with TMK to know with certainty what combination of plants, rituals, charms, divinations and diagnoses are effective under what conditions. As a result, different lineages and bodies of TMK have evolved — some more specialized, customary, effective or powerful than others, depending on the different territories or situations.⁶

Symbolic and social capital

While innovation in TMK is necessary to meet the changing needs of local Zimbabwean communities, it is not economic incentives that fuel this process. Traditional healers who have been specially selected to access and keep the ancestral knowledge finds themselves entrusted with a duty in which they are expected to share and cure before remuneration is even considered.⁷ Further, it is not required that the insights, intuition, and innovation of a personal practice be shared in order to gain remuneration because healers are valued first as cultural authorities, second as practitioners, and third as practicing scientists. Hence, traditional healers receive a different type of payment — that of community consecration (symbolic capital).⁸ The highest authority and rewards are given to those healers who appropriately revere the TMK (*kuchengetera*) and demonstrate respect for the customary rituals, healing, figures, symbols, proverbs, and narratives that are used to enrich and illuminate the entire social field.⁹ For instance, in addition to healing, *mishonga* is used symbolically to give impetus to culturally ordained responses, rituals, and activity that may manipulate any set of factors in the environment, e.g., for success in business, politics, winning arguments, extending influence, or settling disputes. Because these practices exist in a realm where they are accepted, spoken of, and understood they become “*kushanda*,” or, effective. However, just because these practices are “cultural” and rely on the traditional codes does not mean they are not scientific or innovative. In fact, one of the strengths of these practices lies in their flexibility in diag-

nosing and healing each problem or illness individually. As a result, careful customization (opposed to a standard set of diagnoses) yields many opportunities for innovation and advancement in practice.

Non-customary practices

Presently, however, several non-customary practices that appropriate the physical substrates of TMK (*mishonga*) also neglect the importance of the cultural and ritual matrix that may spark individual insights and innovation. As Zimbabwean merchants, scientists and a trade union of traditional healers have begun to remove the physical *mishonga* for product development and distribution, the entire reproduction of TMK practices (*hun'anga*) as well as the entire cultural symbolic system is threatened. Further, when these non-customary practices are linked with foreign pharmaceutical companies, the focus on product development weakens the emphasis on ancestral gift and heritage and thereby also the expectations of duty and responsibility with respect to the local communities who rely on these practices (Wyneberg 1999; 2000). Because TMK has always had a degree of collective sharing, unconsecrated and non-customary practitioners have been able to take liberties with the *mishonga* in ways that have begun to breed local misuse, misdiagnoses, and fraud.¹⁰ As a result of these divergent practices, an estrangement between traditional healers and their communities is settling in to such an extent that the entire reproduction of cultural practices and relationships that fuel innovation within the traditional medicinal knowledge system is threatened.

Prognosis

Nonetheless, Zimbabwe has a changing and evolving culture. Recent years have seen specific customary figures from the distant past (*PasiChigare*) or from the “Liberation War”¹¹ used to encourage the tourism industry. In theory, new local practices cannot be conceived of as not “cultural” simply because they do not flow directly from the orthodox tradition. Hence, so as to not conscript and freeze the processes that reproduce culture as a resource, both customary practices and non-customary practices must have legislation to support and protect traditional medicinal knowledge as part of the social service sector.

Conclusion

While industrial countries believe that IPR for intellectual resources fuels innovation through reward, the value-added to biological resources by cultural resources has symbolic engines that move it. The singular focus in development circles on protecting “plant genetic resources” overlooks the relationship between it and other resources and denies that cultural resources are crucial for the continued health, reproduction, and innovation in each type of resource.

The author’s findings show that TMK is accessed, kept, and used by individual practitioners in order to share it effectively and to attain full valuation in the surrounding community combats the assumption in development circles that TMK is primarily a collective resource. It is important to look past this assumption, which is married to the expansion of an intellectual property rights regime, especially since this has served to justify the alienation between individuals, families and communities and their cultural and biological heritage.

While plant genetic resources have been called a “green-gold” in recent years, in reality it is has been the access to territorial cultural resources (based on customary and non-customary practices with local medicinal plants) that have yielded the pharmaceutical applications receiving protection as intellectual property (Wyneberg 1999; 2000). Therefore, cultural (customary and non-customary) practices related to biological heritage need a system of protections that enhance a capacity to keep relationships, social systems, social/symbolic matrices that reproduce territorially important knowledge alive. The author has outlined how this may be done in accordance with the United Nation’s International Covenant on Social, Economic and Cultural Rights (1966) in more detail for Zimbabwe.

¹ A prior, or “*a priori*” right is recognized for local communities in the African Union’s Model Law (2001).

² Shona is a national language of Zimbabwe from the Bantu heritage. The importance of doing fieldwork in a territorial language is illustrated in the discovery of concepts unique to Bantu tradition that can not be easily translated into English without casting doubt on their non-superstitious reality, e.g., charm, magic,

³ Magic, according to Leach (1976) is an index of the possible. While the cause of an identified effect is not verified, the potential effects still have very real implications for believers. In the author’s research this includes an affirmative belief that banal empiricism may be transcended with ritual and *mishonga*.

⁴ The customary and the cosmological, the magical and the spiritual, the bureaucratic and the modern all of these may represent simultaneous realities, sub-realities and hyperrealities for Zimbabweans who traverse the beliefs, practices and ways of individuals inhabiting rural, customary, urban, scientific, entrepreneurial, spiritual and magical realms and communities.

⁵ A special phrase, gift of the ancestors, (*chipo vadzimu*) indicates the special rules pertaining to a heritage and gift as opposed to a commodity. Anthropologists such as Marcel Mauss, Bronislaw Malinowski, and Annette Weiner, have all written about the engines and rules of gift giving. Common to each analysis is the emphasis that these special items do not follow economic rationale but are rather tied into social and symbolic status acquisitions.

⁶ The author’s research found that the “*godobori’ n’anga* is said to have the most customary appeal and therefore the most powerful wielding of *mishonga*. Further, she found some patterns suggesting distinctions between regional, family, childbirth, environmental and magic *mishonga*.

⁷ Often, a token or a delayed reimbursement is satisfactory.

⁸ In recent years, development officials have begun to pay more attention to symbolic capital (Bourdieu 1977). Yet, that this capital is a convertible form that can encourage particular products, services and values or even efficiency in the absence of monetary input has not to date received adequate credit in the development of individuals, practices or societies. Symbolic capital is also most evident vis-à-vis ones position in a family.

⁹ This helps build status and power for that family, clan (*dunhu*) and/or totem (*mutopa*).

¹⁰ I write about the case of the African Potato (*Hypoxesis hemicallidae*) in my published research: *The Cultural Right to Traditional Medicinal Knowledge in Zimbabwe* (2002) McGill University.

¹¹ The second *Chimurenga*, the Liberation War, was fought for Zimbabwe’s independence from the British Colonial government.

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