



Open A.I.R. Briefing Note 2014

Managing benefits from traditional knowledge (TK)

South Africa's Kukula healers

Pooling knowledge for collaboration, protection and benefit-sharing

ABOUT OPEN A.I.R.

Managed by the IP Unit in the University of Cape Town Faculty of Law and by the University of Ottawa Faculty of Law, with additional hubs in Egypt, Nigeria and Kenya and teams in 14 African countries, the **Open African Innovation Research and Training Project (Open A.I.R.)** is investigating ways in which innovation and intellectual property (IP) can combine in African settings in ways that (1) maximise networked, collaborative knowledge governance; (2) balance objectives of openness and protection; and (3) enhance the livelihoods of small-scale entrepreneurs.

OPEN A.I.R. VIDEO CHANNEL

To see Kukula healer Rodney Sibuyi and Open A.I.R. researcher Britta Rutert discuss the knowledge governance practices of the Kukula healers, go to Open A.I.R.'s Afrinnovation YouTube channel, www.youtube.com/user/Afrinnovation. This channel also provides videos on other Open A.I.R. research outputs.



Photographs: © Britta Rutert

BUSHBUCKRIDGE, SOUTH AFRICA – The Kukula traditional health practitioners of Bushbuckridge possess valuable knowledge about the healing properties of local plants (pictured below right) – and this knowledge has been handed down to them from their ancestors.

Some of the knowledge must by custom remain secret, within a single family or small group of healers. But there is much knowledge that the healers are willing to share – with other healers and even with the outside world – provided they can benefit appropriately and not become victims of biopiracy (commercial use of biological knowledge without permission from, and compensation to, the knowledge-holders).

Seeking to better control the future of their traditional knowledge (TK), roughly 80 Kukula healers came together to create the Kukula Traditional Health Practitioners' Association, through which they have pooled their TK (creating a "TK commons") and created a representative body to manage their interests.

Supported by an NGO called Natural Justice, the Kukula Association has developed a bio-cultural community protocol (BCP), which governs use of the healers' knowledge – use by members of the association and by outside stakeholders. Through this BCP, the healers are sharing their healing expertise amongst themselves and at the same time ensuring

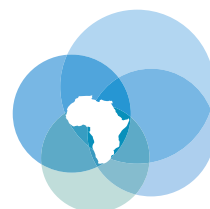
the TK is documented so that it will not be lost upon the death of a particular elder. And, explains Kukula leader Rodney Sibuyi, when an outside entity sees potential commercial value in exploitation of an element of the non-secret, documented Kukula TK, "they can come to us, and then we can share the knowledge with them" – on terms beneficial to the members of the Association.



Already the Kukula Association (pictured on top) has entered into one such arrangement, whereby a South African cosmetics firm was provided with some Kukula TK under a legal agreement guaranteeing financial benefit to the healers should the firm succeed in commercialisation of a product based on the TK.

This Kukula case study is covered in the Open A.I.R. book *Innovation and Intellectual Property: Collaborative Dynamics in Africa*, available at www.openair.org.za/content/open-air-publications.

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Contact information for Hub Coordinators is available at www.openair.org.za.

RECOMMENDATIONS

To African TK-holders

- establish a representative association for holders of your TK, and a formalised legal structure that can enter into legally binding agreements with outside stakeholders
- document your TK to ensure its preservation, and determine which elements must remain secret and which can be shared with outside stakeholders
- ensure that access agreements with outside stakeholders benefit your association and the communities where association members live and work

To African national policymakers

- involve TK-holding communities in policy consultations
- ensure your country is a signatory to the Nagoya and Swakopmund Protocols (see "TK's policy-legal context" below)
- ensure your domestic policies and laws provide for TK-holders to control access to, and to benefit from exploitation of, their knowledge
- support TK documentation projects initiated by TK-holding communities

TK'S POLICY-LEGAL CONTEXT

An international instrument seeking to combat biopiracy is the 2010 Nagoya Protocol on Access and Benefit-Sharing, which is an extension of the Convention on Biological Diversity (CBD) of 1992, www.cbd.int. At African level, an intellectual property instrument seeking to ensure equitable distribution of the benefits of TK is the ARIPO Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, www.aripo.org.

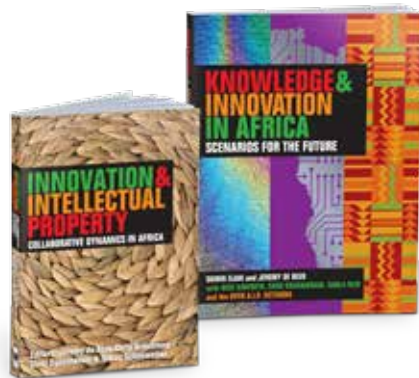
FURTHER READING ON TK

Natural Justice: Lawyers for Communities and the Environment, www.naturaljustice.org

UN Educational, Scientific and Cultural Organisation (UNESCO) *Best Practices on Indigenous Knowledge*, www.unesco.org/most/bpindi.htm

World Intellectual Property Organisation (WIPO), "Traditional Knowledge", www.wipo.int/tk

MORE OPEN A.I.R. PUBLICATIONS



Open A.I.R.'s books (pictured above) and Briefing Notes are available for free download at www.openair.org.za/content/open-air-publications.

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