

**INDIGENOUS KNOWLEDGE SYSTEMS, INTEGRITY OF THE COMMONS  
AND  
EMERGING REGIMES OF INTELLECTUAL PROPERTY RIGHTS  
IN  
A GLOBALISING WORLD'**

**BEING PRESENTATION BY**

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**THEME: THE COMMONS IN AN AGE OF GLOBALISATION**

**INTRODUCTION**

The human factor overwhelms the firmament of everyday processes. It is central to driving procedures and routines and without it, stagnance rules. Development of human capital, as a resource factor within the scheme of everyday activity, is therefore fundamental. In this content, the manner of development of the human resource touches on the quantity of human resources available in various social contents.

Knowledge systems from the very narrow perspective from which I come, simply imply methods of intellectual and behavioural development. It is the method that defines the end. Over the ages, man has inhabited and exploited the earth as much as he possibly can. He has dominated his environment and more often than not, successfully lived the kind of

life that he desired. Generations of humanity have continued in the same trail, each effecting methods handed down by fathers and those before them. But human and social development has always been contextualised. Each community of people have had methods original to them, primed by generational repetition, and reinforced by functional application. These methods have been passed on by various means, and in many cases have become institutional behavioural paragrins. They often define the course of societal behaviour and pattern, either seasonally or through a time continuum. More than all, most communities owe their very existence to these methods. The idea of commonage for such communities, is interlocked with methods such as these.

It is against this background that the new world order projects itself. An order in which the pace of development has been phenomenal, and the ways of old abandoned like stale wine. This may be logically rationalized, because the human spirit is restless in pursuit of progress, and change is the greatest inevitable. But then, the question: at what expense? It has never made sense to throw away the baby with the bathwater, and it cannot start now.

Schemes for the co-existence of methods therefore are of utmost importance, and ought be resolutely pronounced. Commonalty is promoted by acknowledging to each, what it is due. These are fundamentals to which we must strive; this is the challenge we face.

## **ADVOCACY FOR THE RELEVANCE OF INDIGENOUS KNOWLEDGE SYSTEMS (IKS)**

The frenetic pace of scientific and technological innovation has no doubt cast a heavy pall on the relevance of IKS. The argument for many, is for IKS only to be referred to within the content by historical perspectives. Gloria Emeagwali observes that ‘most of the technological creations of Africa are assigned to artistic designations. Africans find some of their artistic and technological achievements confined to fine art museums. The scientific and technological processes underlying the creation of various inventions are deliberately trivialised’. That is not good enough. I submit that IKS are in our world, as important as the extant regimes of knowledge acquisition. Each has its role and such should be respected.

In projecting the discussion, values are a central theme. For me, they constitute the kernel from which skill and methods may either develop and thrive, or otherwise. The value system of a community therefore goes a long way in determining the path development or skills can be taken. Unfortunately, the relevance of values has been breached by an age in which through borders have been broken and distances bridged, people have become more anonymous and less interactive. Each man is becoming in a manner of speaking, an island. But we can begin to tame this decline, and revive the innate conviviality of mankind. That is my thought today.

## **ART, LITERATURE, FOLKLORE, MUSIC**

Art dominates the life of the traditional African, even if not elaborately defined. It comes through in abstract terms to imbibe itself in the individual’s concept of self and community, and invariably, is the principal medium of the informal education our ancestors were used to. In the traditional Ibo society of Eastern Nigeria, music and literature are entwined and become one, finding expression as folklore. The routine of the regular day is structured in sequences that are as productive as they are enjoyable and educative. From the early hours of business when the women have to sweep the compound and the girls have to fetch water from the stream, when the men head for the farms or go to lay their traps, each is attended to as dutifully as possible, each activity interspersed with songs and rhythms.

The uses inherent in iron have been passed on over the years in Ibo land. Awka, which is the capital of present day Anambra State in Nigeria, was home to the most prodigious of blacksmiths. It is interesting to note that virtually everything could be sculpted from the furnances of the blacksmith: spears, hoes, machetes; chairs, tables, tripods; even artwork of the most sublime dimensions. The methods were developed over generations, till perfected. But the important thing here is the system of transfer of knowledge, skill and methods from father to son, and down the line. Respect was the bedrock of education, you had to listen and obey to learn. Sons learnt the trade dutifully from blacksmith fathers. Apprenticeship was hallowed and followed through as elaborately as a secondary school or college. The methods may not have had the sophistication that exists today, but

they were thorough. Yet somehow, the indigenous communities that popularized this technology are little known and unrecognized.

The Tiv people of today's Benue State in Central Nigeria have as heritage, the technology of textile. They weaved and still do, textile materials that resonate in twin hues of black and white. How they came about the technology is not familiar to me, but today they remain as originators of that fabric. They however have not been able to reap the benefit of that heritage. You find it mass-produced in other parts of the world and not even acknowledges as from Tiv origins. I will come to that later.

What I find very interesting is the continuation of the technologies in the two instances I have highlighted and in numerous other little communities around the world. It all comes back to the sanctity of values and pre-eminence of discipline. These engender respect, love and harmony, which is the ideal base for the transfer of knowledge. This is substantially lacking in today's philosophy.

Beyond the fundamentals already dealt with, and the fact of existence of home-grown techniques of the people, it becomes necessary to venture advocacy for the protection of these knowledge systems wherever they occur, for a number of reasons, chief of which is the integrity of the commons.

## **INTEGRITY OF THE COMMONS**

It is important to appreciate the essence of the commons, as being rooted in the very idea of humanity. The community tree starts from man and wife, then children, grandchildren, uncles, aunts, cousins, and on. From there a community of people emerges, with common origins, common mores and values, common language. The sustenance and continuity of this community is achieved through shared aspirations, and goals, respect and pride in their history and resulting integrity in whole concept of commonalty.

The knowledge systems of a community are an integral part of its identity and character, and if not protected will very likely lead to gradual extinction. It must be conceded that many indigenous communities, especially within Africa, retain elements of distinctiveness in their history. But going by extant practices, policies and trends, the situation is more of circumstantial than voluntary. Thus in Nigeria, it is still the case that more than 250 language and 350 ethnic groups live together, but with separate identities. Yet many parents undertake to de-emphasise the local language and elevate English or French. It has been stated that if a language dies, a knowledge system partly or completely dies with it. On the flip side, scattered over Africa, ethnic nationalities abound, each taking pride in its shared beliefs and traditions albeit often extremely. I must say that salutary as understanding of common heritage may be, it is no excuse for violence, bloodletting and the kind of program witnessed in Africa in recent years. But that is a story for another day.

Of significant importance in appreciating the whole essence of integrity of the commons, is the whole concept of biodiversity.

With colonization of African States and resulting infusion of western values and ways, things have changed seemingly irreparably. Subjugation, conquest and humiliation have left many an African with a less than complimentary opinion of himself and his society. It is therefore understandable that systems of knowledge indigenous to the African people can so easily be swept away. It is also not helped by the gaping disparity in extant information media, which sees European and American values and ways awash all screens and radios, disgorged to a people unsure of their appropriate identity. No doubt this trend, to me, seems more deliberate than accidental on the part of the west, but that again, is another story. It then falls on the very same indigenous communities of Africa to find the way out of the forest. Unfortunately the necessary leadership to do this has been lacking. In the premises, we find ourselves in this situation where the things that make us, us, that define our very existence, are being gradually, but steadily extinguished. The question then is, what do we do?

First is sensitization in the nature of what we are doing here. It however has to be more wide-reaching, more elaborate. Confidence building through such sensitization would go a long way in plugging the void that gives rise to our complex. More importantly, our educational curricula need to be remodeled to suit the knowledge systems which are indigenous to us. It is a fact that for example in Nigeria, and other West African countries, the curriculum is modeled often the British. While the British element may be important to facilitate the student's worldview, it certainly ought not predominate. It is therefore of utmost importance that our original educational methods feature in the system. This is particularly so at the nursery and kindergarten level. It is disheartening that the nursery rhymes we know as kids, which our children are being taught, are European. Yet, within the vastness of our folklore, lie stories and rhymes that excite, educate and ennoble.

The traditional practice was that after the day's work and dinner in the evening, the children gather under the moonlight playing games, drumming and singing. An older relative or other person usually comes later, gathers the kids round and tell tales of heroism and adventure, with the inevitable background music. The tales told hold lofty morals and shape the mentality of the growing child. This is an educational system that could be modified to fit with the extant practice.

The option outlined above would of course be subsumed in a wider government involvement which aims at checking casual factors to the erosion of indigenous knowledge systems. Going through the African continent, it is obvious that the metropolitan areas are few and often far-flung. Many troop to the cities in search of their dreams; yet is it in these cities more often, that the tides ride against indigenous knowledge systems. However, an even greater number reside in the country sides and rustic villages, in the hills and valleys that house the wealth of our cultural practices and indigenous knowledge systems. Ordinarily it is from these areas that hope of consolidation of extant, and regeneration of dying knowledge systems will emerge. But the reality and the ground is not comforting. While governments spend money planning the cities, these vital areas are forgotten, only occasionally remembered during

electioneering. The result is that the commons, in their various commonages, suffer lack and dream of the cities.

Provision of basic amenities in these areas would reduce the need to emigrate; in turn, generational turn-over of indigenous knowledge systems is sustained. More specialized study of indigenous knowledge systems will be facilitated for scholars in the areas. More than anything else, the integrity and sense of identity of the commons will be elevated.

While the advocacy for the promotion of indigenous knowledge systems continues, one is wise to the truth that we are in an age of science, of speed, and of space. Changing times are a reality. It is conceded that many a modern method has eased the rigors of our daily schedules, and in all honesty, it is not ideal that we go back to the rustic styles of our ancestors. Globalisation has meant that we can now traverse the globe not just in jumbo aircraft, but from our little homes and hamlets, through the internet; we can conference with colleagues dotted severally at extreme points of the earth at the same time, we can buy and sell across borders, our differences are more and more being narrowed; and it does seem that the idea of a global union, a global government, is no longer one cognizable only in utopia.

## **BUILDING BRIDGES**

The enumerated features of globalisation, some may argue, are symptomatic of progress. But it equally ought to be understood, that there may not be much wisdom in linear movement without more. Mankind must learn to give and take; the universe is a balanced one, and so should be our ways. There is a lot of value in our indigenous ways, which can be married to emergent trends. The greatest challenge of globalisation is the achievement of a traditional renaissance. Knowledge is power. It is interesting that the most enthralling literature today is still found in works of centuries gone by. Elevating our indigenous knowledge systems to the status of extant systems is an option that ought not be hard-sold.

It has been suggested that that different types of knowledge systems be distinguished with a view to building bridges between local or indigenous knowledge vis-à-vis formal scientific knowledge. 'Both formal and informal science are capable of producing abstract as well as practical knowledge, although the latter tends to produce more of the practical kind.' In achieving this balance still, it is equally important to recognize that globalisation as already described, does not fully conduce to the heritage and integrity of commonage. The whole essence of commonage is greatly diluted by fiery embers of the globalisation inferno. Care therefore has to be taken that vital heritages are not lost that the bonding, the friendships, the shared values of the commons are not completely ruined by the roller-coaster that globalisation is.

In the context of these circumstances, I would join in making a case for the protection of indigenous knowledge systems, which is the critical element that confers integrity on the commons, under the wider prism of intellectual property. It would be necessary to

consider the extant regimes of intellectual property, so as to determine how indigenous knowledge systems, as a common heritage, may be protected.

## **PROTECTION FOR IKS**

First question is whether IKS are protectable, to which I answer in the affirmative. Article Two of the Berne Convention on Protection of Literary and Artistic Works, states that

*the expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of expression...*

The schemes for the protection of IKS would naturally be subsumed under those for intellectual property protection, unless of course an entirely new subject, 'Indigenous Knowledge Protection', is created. Intellectual Property refers to creations of the mind, which include inventions, literary and artistic works and symbols, names, images, and designs used in commerce. It is divided into two categories, Industrial Property, and Copyright. Industrial Property deals with inventions i.e. patents, trademarks, industrial designs and the like. Copyright includes literary and artistic works such as novels, poems, plays, films, musical works, drawings, paintings, photographs, and architectural designs.

At first blush, it does seem that this very definition of Intellectual Property may preclude the protection of indigenous knowledge systems, since IP deals with creations *of the mind*. Indeed it is a serious plank on which proponents are pushing for a distinct scheme for its protection, to which I will come presently. But since copyright falls under intellectual property, it may be argued that indigenous knowledge systems be 'copyrighted'.

Copyright generally, is the exclusive right to control the reproduction, publication, performance, production, distribution, broadcast or adaptation of a work. In the context of indigenous knowledge systems, it should be the systems of knowledge acquisition or methods of doing things, which are original to the community in question, that would be under the exclusive control of the community.

The problem that would be encountered, as I stated earlier, is that of authorship. Copyright, and other forms of intellectual property protection, are directed to protect individual inventors. The question then is, who are the inventors or authors of the various indigenous knowledge systems round the world? It is a difficult question to deal with, and I am certain, no immediate answers are forthcoming. In the premises, will it be possible to protect indigenous knowledge systems of an entire community under the same scheme by which an individual is protected? I think not.

Before now, efforts have been undertaken towards the protection of traditional knowledge, example of which is folklore of the commons. The following is a historical review of such efforts downloaded from the UNESCO website:

*Following the request by the Bolivian Government in 1973 inviting the Director-General of UNESCO to examine the possibility of protecting folklore within the framework of the [Universal Copyright Convention](#), a wide-ranging international debate organized by UNESCO and WIPO highlighted the need to protect folklore in respect of its content and to ensure its legal protection when exploited for social purposes. The work on the identification, preservation, conservation and promotion of folklore, undertaken by UNESCO alone, culminated in 1989 in the adoption of the [Recommendation on the Safeguarding of Traditional Culture and Folklore](#) by the General Conference of UNESCO at its 25<sup>th</sup> session. The work relating to legal protection, conducted jointly by UNESCO and WIPO, led, after regional consultations, to the adoption, by an expert committee meeting in 1982, of Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, which gave rise to an extensive information and consciousness-raising campaign.*

*Examination of the question of legal protection at international level led to the adoption, by a UNESCO/WIPO committee of experts in December 1984, of a draft international instrument. In the absence of a consensus within the Intergovernmental Committee of the [Universal Copyright Convention](#) and the Executive Committee of the [Berne Convention](#) on the occasion of their joint session in April 1985, no further action was taken in regard to this draft.*

*The action taken by the two organizations, and particularly by UNESCO, in promoting the implementation of the [1989 Recommendation](#), alerted developing countries widely to the need to safeguard this heritage as an identifying feature, essential to these countries, a resource for promoting cultural and economic activity, and an important component of the heritage of humankind. UNESCO has prepared and disseminated methods for identifying and preserving this heritage designed to sustain the safeguarding measures taken by developing countries, and has developed an ongoing programme in support of action by Member States in this field since 1990.*

*The study of the international protection of folklore was reintroduced into the international debate in February 1996 on the occasion of the meetings to prepare the WIPO treaties of December 1996. That initiative culminated in the UNESCO/WIPO World Forum on the Protection of Folklore held in Phuket, Thailand, in April 1997.*

*It was in pursuance of the Plan of Action adopted by the Phuket Forum that UNESCO and WIPO embarked upon the organization of new regional consultations aimed at promoting the legal protection of folklore, initially at national and regional levels, in order to establish, on solid bases, the future consensus in favour of international protection. Concomitantly, UNESCO has carried on action to promote the identification, conservation and preservation of traditional and popular culture within the framework of the implementation of the [1989 Recommendation](#).'*

*At the African Regional Consultation on the Protection of Expressions of Folklore held in March 1999, options of protection were canvassed, and what came through was the need*



for a ‘*sui generis*’ system of protection to be developed. An apposite suggestion is that of Professor Nkieta, who observed the interaction between traditional and popular culture in Africa, and stressed the need to organize the status of the preservation and legal protection of folklore through an approach that does not penalize such interactivity but at the same time involves local communities, public authorities at national level, as well as regional cooperation among African states, while maintaining a window of opportunity for international cooperation.

This is a position with which I perfectly align, in view of my earlier elaborations on the need for balance in the world order. Of course some nations such as Nigeria already have legislation protecting folklore.

Section 28 of the Copyright Act of Nigeria provides:

- (1) Expressions of folklore are protected against –
  - (a) reproduction;
  - (b) communication to the public by performance, broadcasting, distribution by cable or other means;
  - (c) adaptations, translations and other transformations,when such expressions are made either for commercial purposes or outside their traditional or customary context.

It goes on to exempt from the right so conferred, the doing of any of the acts by way of fair dealing for private and domestic use, education, illustration and such other utilizations that are incidental expressions of folklore.

An interesting aspect of the legislation is the definition given to ‘folklore’:

*‘a group oriented and tradition based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, or by imitation or by other means including –*

- (a) folklore, folk poetry, and folk riddles;*
- (b) folk songs and instrumental folk music;*
- (c) folk dances and folk plays;*
- (d) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, handicraft, costumes and indigenous textiles.’*

But even this interesting legislation is not ideal. This is because the right seems to inhere in the Nigerian Copyright Council, without whose consent any of the expressions of folklore not permitted in the act cannot be legally utilized. **Section 29 states:**

*‘Any person who without the consent of the Nigerian Copyright Council, uses an expression of folklore in a manner nor permitted by section 28 of this Act shall be in breach of statutory duty and be liable to THE COUNCIL (emphasis mine) in damages,*

*injunctions and any other remedies as the court may deem fit to award in the circumstances.'*

The protection is therefore not really extended to the indigenous community from which the aspect of folklore in question may have originated. Indeed, the community, if it wants to utilize its folklore for any of the uses not permitted under the law, will have to seek the consent of the Council, and if not, may be liable to damages!

## **CONCLUSION**

The Commons is the most enduring of the heritages of mankind. The speed of changing times have removed most from the many pleasures within the earth's bowels. Yet there remain committed communities for whom the indigenous knowledge systems are a way of life and a continuing ideal; for whom the concept of The Commons is the only one they can understand and live by; for whom time, space and life are defined in the simple ordinaries of nature. It is for these that we have to work, and for others who do not understand.