8. CHALLENGES OF TRADITIONAL KNOWLEDGE PROTECTION IN THE CENTRAL ASIAN STATES: PERSPECTIVE AND EXPERIENCE OF THE KYRGYZ REPUBLIC

Zhyldyz Tegizbekova*

ABSTRACT

The paper discusses challenges of traditional knowledge protection in the Central Asian region comprising Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan. It highlights trends in these countries towards protection of traditional knowledge on international, regional and national levels and gives a brief overview of recent developments in the Kyrgyz Republic. Because Central Asian communities have common traditions, customs, traditional skills and knowledge, their governments should strengthen joint efforts to promote effective protection mechanisms holistically. Unfortunately, there are no special regional tools to protect and preserve genetic resources, traditional knowledge, and expression of culture. Currently, only the Kyrgyz Republic is in the process of developing a legal and administrative structure for the protection of traditional knowledge. This paper provides recommendations for the successful protection and harnessing of traditional knowledge for the benefit of the five Central Asian States.

Keywords: *traditional knowledge, sui generis, local communities, protection, development, the Central Asian States, the Kyrgyz Republic*

1. INTRODUCTION

Central Asia has an ancient history and strong traditional culture. The countries of the region have a common political and economic history, geographical location, and a predetermined similarity of traditions and customs of the peoples of Central Asia.

Today, protection, conservation, and preservation of traditional knowledge, as well as the support of local communities for commercialization of their products, are one of the most important issues in the region. All five States are members of the United Nations, World Intellectual Property Organization (WIPO), and Commonwealth of Independent States (CIS). All States have ratified the Convention on Biological Diversity (CBD) and UNESCO Conventions; only some have ratified the Nagoya Protocol on Access to Genetic Resources and Benefit-sharing (Nagoya Protocol). Within the CIS, all Central Asian states (except Turkmenistan) have signed the Agreement on Cooperation in the Area of Legal Protection of Intellectual Property and have established the Interstate Council on Legal Protection of Intellectual Property.

However, up till now, there is no joint plan on maintaining traditional knowledge protection policies at the regional level. At the national level, only the Kyrgyz Republic has special traditional knowledge regulations.

2. CENTRAL ASIA'S CULTURE AND TRADITIONAL KNOWLEDGE

Central Asia has a long cultural and economic history, a rich heritage, and many local communities that hold ancient traditional knowledge.

The five Central Asian republics (Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan), gained independence in 1991. The current population of Central Asia is over 72 million people living on around 3,926,790

*Zhyldyz Tegizbekova, PhD in Law is an Associate Professor and a Deputy Head of the Law School at the AlaToo International University in the Kyrgyz Republic, and currently a Fulbright Professor at the DePaul University in Chicago, USA (2018-2019). Her areas of research and teaching are International Trade Law, Intellectual Property Law, Human Rights and Legal Anthropology with an emphasis on traditional knowledge systems. She has more than 30 publications, including articles, manuals and textbooks. In 2016, Zhyldyz won the annual national Award named after Rakhat Achilova for her book “Customary Law of the Kyrgyz People”. Zhyldyz has worked on international and national projects, as well as experienced the legal practice. For over the last three years, Zhyldyz worked as a Legal Expert of the Security Council under the President of the Kyrgyz Republic.

km² (1,516,141 sq. miles).[1] Their inland location creates common environmental conditions, such as a continental and arid climate, and leads to similar land use practices. Rich land and mineral resources determine agricultural and industrial specialization of their economies.[2] The nomadic way of life and agriculture in the dried-up territories has had a strong influence on the development of traditional ways of life of the Central Asian people, as well as on the existing types of traditional knowledge, cultural expression and ways of using local genetic resources.

Central Asia is rich in various forms of traditional knowledge. Kazakhstan is famous for its harness, dombura (Kazakh lute), cradles, traditional treatment methods, zhal-zhaya shubat (traditional foods) and the methods of making them. Kyrgyzstan has the traditional methods of making soap. Tajikistani traditional knowledge consists of a medicinal herb said to cure 1000 diseases, 'Khazor ispand', traditional embroidery on women's clothing known as Chakan, and the grape dessert Shirini. Uzbek traditional knowledge consists of recipes of national dishes, issirik (a medical herb), Karakul farming, dried pitted and halved apricots, khanatlas (Silk tissues with the national ornament), and carpets.[3] Turkmenistan is famous for the Turkmen carpets with special ornaments and colours, as well as for their traditional knowledge in cultivating a special breed of Turkmen horses.

The five States gained their independence only after the collapse of the Soviet Union. Within the framework of the Soviet Union, some traditional knowledge was lost. However, after its collapse in 1991, the national identity revival of each state, with the process of studying and restoring ancient positive traditions, customs, cultural expressions and traditional knowledge of the nationalities, has begun. In addition, interest in genetic resources of Central Asia has greatly increased. Today, each Central Asian State rewrites its history again, studies its ancient cultural origins, and engenders its cultural identity. Unfortunately, these processes do not occur within the framework of regional cooperation, but instead have occurred separately.

However, in connection with existing history, geographical location, climate, mixed cultures and nomadic way of life, it is necessary to talk about the common cultural and historical ties of the countries of Central Asia. In addition, it should be noted that due to close contacts between the countries of Central Asia, some traditions, cultural expressions, and traditional knowledge belong to several local communities of the region at the same time, and in the future, it would be hard to determine their identity without corresponding regional agreements and cooperation on this issue.

3. INTERNATIONAL REGULATION OF TRADITIONAL KNOWLEDGE

According to the Draft Agenda of the 38th World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO Committee) session on 10-14 December 2018, the Draft Articles on the Protection of Traditional Knowledge will be discussed again along with the definition and criteria of 'traditional knowledge'.[4] According to the proposed Draft Articles, the definition has become broader than the previous version of traditional

[1] 'Population of Central Asia' (Worldometers.info, 2018) <http://www.worldometers.info/world-population/central-asia-population/> accessed 14 November 2018.

[2] Gulnur Bekturova and Olga Romanova, *Traditional Land Management Knowledge in Central Asia: Resource Pack* (S-Print 2007) 8.

[3] Traditional Knowledge Division and the Department for Transition and Developed Countries, 'Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition' (WIPO 2013) <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_transition_9.pdf> accessed 15 August 2018.

[4] Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore, 'The Protection of Traditional Knowledge: Draft Articles' WIPO/GRTKF/IC/38/4 (WIPO, 2018) <http://www.wipo.int/meetings/en/details.jsp?meeting_id=46446> accessed 7 October 2018.

knowledge definition.[5] The proposed definition contains notions of national and social identity of indigenous peoples or local communities in the creation, support, and preservation of traditional knowledge:

> 'Traditional knowledge is knowledge that is created, maintained, and developed by indigenous [peoples], local communities, [other beneficiaries], and that is linked with, or is an integral part of, the national or social identity and/or cultural heritage of indigenous [peoples], local communities; that is transmitted between or from generation to generation, whether consecutively or not; which subsists in codified, oral, or other forms; and which may be dynamic and evolving, and may take the form of know-how, skills, innovations, practices, teachings or learnings.] [6]

In December 2018, the 'Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions' will be reviewed. According to this document, traditional knowledge should be considered in both a broad and narrow sense. Traditional knowledge, in a broad sense or *lato sensu*, includes the intellectual and intangible cultural heritage, practices and knowledge systems of traditional communities, including indigenous and local communities.[7] Traditional knowledge in the narrow sense refers to knowledge as such, in particular, the knowledge resulting from intellectual activity in a traditional context, and includes 'know-how, practices, skills, and innovations.'[8]

The experts in the analytical report for the 38th session of the WIPO Committee admit that despite the proposed definitions in the above documents, 'there is no internationally accepted definition of traditional knowledge' as such.[9] 'The existing and proposed definitions of traditional knowledge derived from other international instruments refer to related concepts': Art 8(j) of the Convention on Biological Diversity, Art 7 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol), Art 9.2(a) of International Treaty on Plant Genetic Resources for Food and Agriculture, Art 31 of the United Nations Declaration on the Rights of Indigenous Peoples, and para 12 of the Interlaken Declaration on Animal Genetic Resources.

While states and international organizations are discussing terminology applicable to traditional knowledge, indigenous people and local communities suffer from knowledge misappropriation and face difficulties for its protection. Today, a sufficient number of international agreements deal with aspects of conservation, preservation and safeguarding traditional knowledge within their specific policy contexts: the Convention on Biological Diversity, the

---

[5] Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore, ''The Protection of Traditional Knowledge: Draft Articles' WIPO/GRTKF//IC/28/5' (WIPO, 2014) <http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_5.pdf> accessed 4 June 2018 ("Traditional knowledge as including …know-how, skills, innovations, practices, teachings and learnings of indigenous [peoples] and [local communities] that are dynamic and devolving, and that are passed on from generation to generation").

[6] The Protection of Traditional Knowledge: Draft Articles Art.1 (n 4).

[7] Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore, 'Glossary of Key Terms' WIPO/GRTKF/IC/38/7 (WIPO, 2018) <http://www.wipo.int/meetings/en/details.jsp?meeting_id=46446> accessed 3 November 2018.

[8] WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-99), 'Intellectual Property Needs and Expectations of Traditional Knowledge Holders' (Wipo.int, 1999) <http://www.wipo.int/publications/en/details.jsp?id=283&plang=EN> accessed 2 November 2018.

[9] Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore, 'The Protection of Traditional Knowledge: Updated Draft Gap Analysis' WIPO/GRTKF/IC/38/6 (WIPO, 2018) <http://www.wipo.int/meetings/en/details.jsp?meeting_id=46446> accessed 5 November 2018.

Nagoya Protocol, the UNESCO Conventions, the UN Convention to Combat Desertification, the World Health Organization Primary Health Care Declaration of Alma Ata, the International Treaty on Plant Genetic Resources for Food and Agriculture, etc.

Since not all States are members of the above agreements, and some States do not create their own conceptual policy on traditional knowledge issues, a creation of a single international instrument to protect traditional knowledge is still a complicated procedure. In order to speed up solutions for traditional knowledge protection at international levels, it is necessary to cooperate at regional levels, as it has been done in African States in the form of the Swakopmund Protocol adoption.

4. HOW TO PROTECT TRADITIONAL KNOWLEDGE IN CENTRAL ASIA: A BRIEF OVERVIEW OF RECENT DEVELOPMENTS

According to WIPO, traditional knowledge can be an important economic component of the market of developing states:

> Traditional knowledge and traditional knowledge expressions have economic potential, forming a basis for creation and growth of culture-related enterprises and industries in the holder communities.[10]

Scholars also believe that the preservation, protection, and promotion of the traditional knowledge, innovations, and practices of local and indigenous communities are of key importance for the development of a country. The rich endowment of traditional knowledge plays a critical role in health care, food security, culture, religion, identity, environment, sustainable development, and trade.[11] Unfortunately, Central Asian governments are very slow to raise issues of traditional knowledge protection within the framework of official discussions or regional cooperation.

There are numbers of reasons why some Central Asian States have not yet instituted systems for protecting traditional knowledge. Countries may not have seen the need to do so. For instance, because they had not identified any traditional knowledge to protect, because misappropriation did not appear to be a problem, or because it was not clear who would benefit from protection. Traditional knowledge has not been recognized as a subject for intellectual property protection because it is regulated by other legislation on, for example, cultural heritage or biodiversity.

A. TRADITIONAL KNOWLEDGE UNDER THE INTERNATIONAL OBLIGATIONS OF THE CENTRAL ASIAN STATES

The Central Asian states are members of a number of international agreements on the protection of traditional knowledge. All five countries became members of WIPO in 1991. Unfortunately, delegations of the Central Asian countries are trying to follow a 'policy of silence' at sessions and meetings of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO Committee). It is difficult to find official notes, speeches or comments of representatives of these countries on traditional knowledge issues. Only the answers of the Central Asian States to the WIPO Survey on the implementation of traditional knowledge in the national legislation have been found.[12]

All five countries of Central Asia are members of the Convention on Biological Diversity 1992 (CBD). In 1995-1996, the Central Asian states ratified the CBD. Member-States are obliged to provide the national reports on the

[10] Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition (n 3).

[11] Romesh Kumar Salgotra and Bharat Bhushan Gupta (eds.), *Plant Genetic Resources and Traditional Knowledge for Food Security* (Springer 2015); Janewa OseiTutu, 'A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law,' (2011) 15 Marq. Intellectual Property Law 147.

[12] WIPO, 'Survey Summary Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition' (WIPO, 2013) <https://www.wipo.int/publications/en/details.jsp?id=4108> accessed 15 August 2018.

CBD implementation. The Central Asian states have adopted national biodiversity strategy and action plans on the national level. However, traditional knowledge issues remain unresolved despite international obligations of states under Article 8 (j) of the Convention, which requires Parties to respect, preserve and maintain traditional knowledge.

Some countries, like Turkmenistan, only proclaimed measures to research specific traditional knowledge of local communities. Paragraph 23 of the National Plan on CBD of Turkmenistan refers to the need to revive local traditional pasture management methods. The Fifth Report on the CBD of Turkmenistan declares that the deep traditions and knowledge of the Turkmen people on careful, sustainable nature management are supported. However, the Report does not provide measures as to how traditional knowledge should be preserved and safeguarded.[13]

The Agenda of the National Strategy on CBD of Kazakhstan consists of some points on the usage of indigenous knowledge of the local population in the conservation of biological diversity. Paragraph 2.11 of the National Strategy, regarding traditional knowledge, clarifies the need to study the cultural heritage, customs and traditional knowledge of the Kazakh people, in particular regarding their nomadic way of life and cattle grazing, rather than preserving, protecting or commercializing such knowledge.[14]

In 2015, according to the National Report on Target 18 of CBD, the Government of Kazakhstan admitted that:

> 'Currently, the national legislation lacks the target support of traditional knowledge, innovations, and practices of indigenous and local communities that are relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources.'[15]

In Tajikistan, the National Report, the National Strategy and the Action Plan on Preservation and Rational Use of Biodiversity until 2020 conduct the same provisions. The 2015 National Report on CBD of Tajikistan defines that the statewide principles of biodiversity development, wherever possible, must be based on local traditions and knowledge. The National Strategy for the implementation of CBD of Tajikistan has identified a number of activities on the development of legal and administrative measures up to 2020.[16]

The 2015 National Report on CBD of Uzbekistan does not contain special measures for traditional knowledge protection. However, it indicates the traditions of biodiversity, pasture resources and usage of genetic resources as objects of monitoring for further study.[17]

The Kyrgyz Republic is the only country in the region that has implemented Article 8 (j) of the Convention and

[13] Convention on Biological Diversity, 'Country Profiles: National Plan on CBD on Biological Diversity protection 2018-2023 of Turkmenistan, Fifth Report of Turkmenistan on the implementation of the decisions of the United Nations Convention on Biological Diversity at the national level (CBD 2015) <https://www.cbd.int/countries/?country=tm> accessed 25 October 2018.

[14] Convention on Biological Diversity, 'Country Profiles: National Strategy, Action Plan on Conversation and Sustainable Use of Biological Diversity in the Republic of Kazakhstan' (CBD, 2015) <https://www.cbd.int/countries/?country=kz> accessed 25 October 2018.

[15] Convention on Biological Diversity, 'Country Profiles: Fifth National Report on Progress in implementation CBD of Kazakhstan' (CBD, 2015) <https://www.cbd.int/countries/?country=kz> accessed 20 October 2018.

[16] Convention on Biological Diversity, 'Country Profiles: Fifth National Report on Biodiversity in Tajikistan, National Strategy and Action Plan on Preservation and Rational Use of Biodiversity until 2020 in Tajikistan' (CBD, 2015) <https://www.cbd.int/countries/?country=tj> accessed 20 October 2018.

[17] Convention on Biological Diversity, 'Country Profiles: Fifth National Report of Uzbekistan on Conservation of Biodiversity' (CBD, 2015) <https://www.cbd.int/countries/?country=uz> accessed 22 October 2018.

adopted the *sui generis* measure to safeguard traditional knowledge.[18] The National Strategy on biodiversity conservation priorities of the Kyrgyz Republic until 2024 indicates two key actions: (1) review the existing traditional knowledge and technologies; and (2) develop regulatory and administrative measures to protect the rights of local communities.[19]

Thus, countries of the region, within the framework of their international obligations under CBD, have created national mechanisms to protect the environment, preserve biodiversity and improve the ecological system. Indeed, the obligations under Article 8 (j) of CBD and the Target 18 of the Biodiversity Strategy are still in the stage of implementation in the States, except the Kyrgyz Republic.

Despite ratification of the Nagoya Protocol, National Strategies and Action Plans for conservation of biodiversity in Kazakhstan and Tajikistan contain only research measures on traditional knowledge and genetic resources. Therefore, the issues of benefits sharing, access to traditional knowledge and genetic resources remain open and unregulated. Tajikistan ratified the Nagoya Protocol in 2013, and Kazakhstan and Kyrgyzstan in 2015. Uzbekistan and Turkmenistan are currently not members to the Protocol.

The Central Asian states are members of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO Convention). Kazakhstan ratified the Convention in 2011, the Kyrgyz Republic in 2006, Tajikistan in 2010, Turkmenistan in 2011 and Uzbekistan in 2008. The duties of traditional knowledge preservation and protection are indicated by the UNESCO Convention. However, the Central Asian countries, except the Kyrgyz Republic, have not developed domestic instruments on safeguarding traditional knowledge.

All Central Asian States have ratified the 1966 International Covenant on Economic, Social and Cultural Rights (Covenant), which contains an article on the right of indigenous peoples to preserve their traditions and culture. However, the launching of official discussions among the States on traditional knowledge under the Covenant would be considered more as a tool of the collective or cultural rights promotion rather than the protection of local communities' rights within the Intellectual Property system.

B. ADVANTAGES OF TRADITIONAL KNOWLEDGE PROTECTION THROUGH THE COMMONWEALTH OF INDEPENDENT STATES (CIS)

All Central Asian states became members of the Commonwealth of Independent States (CIS) in 1991. Within the framework of the CIS, the States have implemented several agreements, strategies, and programs and have established an Interstate Council on Legal Protection of Intellectual Property (CIS IP Council) in order to cooperate for further Intellectual Property progress.

The Central Asian states are members of the 2010 Agreement on Cooperation in the Area of Legal Protection of Intellectual Property (CIS-IP Agreement). According to Article 1 of the CIS-IP Agreement, participating states must cooperate in the field of legal protection of intellectual property.[20] The Agreement does not contain provisions regarding traditional knowledge, although the CIS-IP Agreement has a reference to Article 2 of the WIPO Convention, dated on 14 July 1967, to clarify a definition of 'intellectual property.'[21]

[18] Convention on Biological Diversity, 'Country Profiles: Fifth National Report of the Kyrgyz Republic' (CBD, 2013) <https://www.cbd.int/countries/?country=kg> accessed 12 October 2018.

[19] Convention on Biological Diversity, 'Country Profiles: National Strategy on Biodiversity conservation priorities of the Kyrgyz Republic till 2024' (CBD, 2013) <https://www.cbd.int/countries/?country=kg>accessed 12 October 2018.

[20] Agreement on Cooperation in the Area of Legal Protection of Intellectual Property and on Establishment of Interstate Council of Legal Protection of Intellectual Property of August 13, 2011, art 1, WIPO Lex No. TRT/CISLPIP/001 (2011) <https://wipolex.wipo.int/en/treaties/textdetails/14624> accessed 24 May 2019.

[21] ibid, art. 2.

The CIS IP Council adopted the Plan of Measures Against Infringements of Intellectual Property; however, neither the decisions of the CIS IP Council nor the CIS Economic Development Strategy until 2020 provides measures on the prospects for safeguarding traditional knowledge in the light of the intellectual property system.

Apparently, the lack of regulation indicates the policy of CIS member-states regarding the place and role of traditional knowledge in the intellectual property system. Although, the possibility of considering issues on traditional knowledge within the framework of the CIS IP Council is stipulated by its Regulation (paragraph 1.1.), which refers to the coordinating role of the IP Council and cooperation among states. It means that cooperation opportunities on traditional knowledge issues are nevertheless envisaged within the framework of the existing CIS agreements and institutional mechanisms.

C. NATIONAL LEGISLATION OF THE CENTRAL ASIAN STATES

The regulations of Tajikistan, Uzbekistan, and Turkmenistan do not reflect 'traditional knowledge', 'traditional cultural expressions' or other similar definitions.

The national legislation of Kazakhstan does not clarify a definition of traditional knowledge, but there is a term of 'traditional cultural expressions'. Article 2 of the 1996 Law on Copyright and Related Rights of Kazakhstan defines a term of 'creations of folk arts' that can be considered as a synonym of 'folklore':

> Creations of folk arts mean any creations, including characteristic elements of the traditional artistic heritage (folk tales, folk poetry, folk songs, instrumental folk music, folk dances, and plays, artistic form of folk rituals, etc.).

Domestic legislation of the Kyrgyz Republic provides definitions of 'traditional knowledge' and 'folklore'. For example, Article 1 of the 2009 Law on Culture of Kyrgyzstan declares:

> Folklore is a set of creations based on the traditions of the cultural community, created and preserved by the people of Kyrgyzstan or by individuals, recognized as a reflection of traditional values, worldview, and features of the nature of the artistic heritage of Kyrgyzstan, its cultural and social identity.[22]

An analysis of the states' legal frameworks show that the Central Asian domestic regulations do not consider traditional knowledge or traditional knowledge expressions as a subject matter protected by intellectual property rights system. For example, all five Central Asian countries unanimously state that 'works of folk art' are not subject matter protectable by the intellectual property regime.

Article 3 of the 2006 Law on Copyright and Related Rights of Uzbekistan clarifies a definition of 'works of popular art':

> 'Works of popular art means fairy tales, songs, dances, works of decorative-applied art and other results of art and amateur national creativity, not having a concrete author.'[23]

Article 8 of the 2006 Law on Copyright and Related Rights of Uzbekistan defines that works of popular art are not protectable by the copyrights law system.

The 2012 Law on Copyright and Related Rights Copyright of Turkmenistan defines a performer as an actor, singer, musician, dancer or another natural person, who acts, sings, reads, recites, dances, interprets, plays a musical instrument or by other way performs the work of literature or art (including expressions of folklore). Article 7 of the 2012 Law on Copyright and Related Rights of Turkmenistan states that 'expressions of folklore' are not within the

[22] Law on Culture by the Parliament of the Kyrgyz Republic, art. 1 (2009).

[23] Law of the Republic of Uzbekistan No. LRU-42 of July 20, 2006, on Copyright and Related Rights <https://wipolex.wipo.int/en/text/222470> accessed May 24, 2019.

intellectual property subject matter and are not protectable by its regime.

Article 7 of the 1998 Law on Copyright and Related Rights of Tajikistan, Article 8 of the 1998 Law on Copyright and Related Rights of the Kyrgyz Republic, and Article 2 of the 1996 Law on Copyright and Related Rights of Kazakhstan reflect the same provisions of law that 'works of folklore are not subject matter of the copyright law protection.'

Most countries of the region do not have any specialized state bodies for protection of traditional knowledge, and IP offices of the Central Asian States do not have a deal concerning traditional knowledge according to their official websites. Only the IP Office of the Kyrgyz Republic has a special division for traditional knowledge.

In Central Asia, legal and administrative frameworks for traditional knowledge preservation and safeguarding are still in progress. Though there is a lack of specialized legislation in the States, there are some regulations addressing certain issues relating to traditional knowledge and traditional knowledge expressions. Unrelated to intellectual property regulations, regulations addressing issues of traditional knowledge and expressions thereof in Central Asian states are as follows: the 2009 Law on the Protection and Use of Objects of Cultural Heritage of Uzbekistan; Article 54 on traditional medicine and people's medicine of the Code on the health and the health care system of Kazakhstan; the Law on Culture of the Kyrgyz Republic, etc.

D. PROSPECTIVE MEASURES AND RECOMMENDATIONS

Today, Central Asian states have not yet developed a common regional concept of traditional knowledge preservation and safeguarding. However, there are a number of possible mechanisms and frameworks for the regional legal protection of traditional knowledge in Central Asia.

1) Regional political or policy level declaration with guidelines and best practice recommendations. This document would contain a common concept and recommendations for the protection of traditional knowledge in the IP system and within the framework of the *sui generis* system. The CIS IP Council could adopt the Declaration in the framework of the States' cooperation.

2) Model law or other forms of legislative guidance adopted at the regional level. This document may be adopted within the framework of the CIS IP Council or through the states' cooperation in accordance with the CBD Strategic Plan. The 1967 Tunis Model Law on Copyright for Developing Countries, the 2002 Pacific Regional Model Law for the Protection of Traditional Knowledge and Cultural Expressions, or the 1982 UNESCO-WIPO Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and other Forms of Prejudicial Action could be used as examples.

3) Regional programs to support local community capacity building relating to traditional knowledge. In order to implement Article 8 (j) of CBD, the states could adopt a number of joint programs for protecting rights of local communities and preserving traditional knowledge in Central Asia. Moreover, the legislation of the states consist of special measures on the need for regional cooperation on traditional knowledge protection. According to the Strategic Plan on CBD of Turkmenistan, one of the goals is to strengthen regional and international cooperation in order to exchange experiences and implement a biodiversity strategy and action plan on CBD.

In Central Asia, the CBD projects have already been implemented. For example, the Central Asian Transboundary project on biological diversity conservation of Tien–Shan has been held among three States: Kazakhstan, the Kyrgyz Republic, and Uzbekistan. Two regional projects were as follows: the project on the development of the National Action Plan to Combat Desertification and the Project on the conservation of biological diversity of the Caspian Sea and its coastal zone.

3.1) Legal mechanisms unrelated to intellectual property development. The Central Asian states could adopt special programs for traditional knowledge protection measures unrelated to the IP system. Appropriate legal mechanisms, not related to IP, could be adapted and supplemented to promote and enhance the protection of traditional knowledge in the region. Such mechanisms could include

legislation on culture, intangible cultural heritage of folk arts and crafts, on local communities, unfair competition, trade practices, and customary law.

4) Regional special agreement including sui generis instruments and IP law. After developing a common concept of the role of traditional knowledge in Central Asia (the Special Agreement on Traditional Knowledge), taking into account specifics of the region and common traditional knowledge of local communities and peoples, should be adopted as the most effective measure of protection. The 2010 Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore could serve as an example for binding regional cooperation.

5. PROTECTION OF TRADITIONAL KNOWLEDGE IN THE KYRGYZ REPUBLIC

The Kyrgyz Republic is a member of the WIPO, the World Trade Organization, the Eurasian Patent Organization, the International Union for the Protection of New Varieties of Plants, and the CIS. The Kyrgyz Republic has joined 23 multilateral international treaties in the field of intellectual property, as well as a series of bilateral agreements. The Kyrgyz Republic has acceded to CBD, the Nagoya Protocol, TRIPS, UNESCO Conventions, etc.

The Kyrgyz Republic is the only country in the region that has accepted the *sui generis* mechanism into national legislation. The legislation of the Kyrgyz Republic on traditional knowledge consists of the Constitution of the Kyrgyz Republic, the 2007 Law on the Protection of Traditional Knowledge (Law on Traditional Knowledge),[24] and the 2009 Law on Culture and other regulations. Traditional knowledge protection falls within the domain of the State Service of Intellectual Property and Innovation under the supervision of the Government of the Kyrgyz Republic (IP Office).[25]

Today, the Kyrgyz Republic actively promotes traditional knowledge protection at regional and international levels. At the 58th series of meetings of WIPO Member States in 2018, Kyrgyzstan presented a stand on the traditional knowledge of the Kyrgyz people. In September 2018, the IP Office of the Kyrgyz Republic organized a regional seminar on the protection of traditional knowledge and traditional cultural expression:

> In modern society, along with the latest technologies and inventions, the knowledge that our ancestors have owned since ancient times is increasingly used. For example, traditional folk medicine, the secrets of pet care, knowledge about the healing properties of plants and their use in medicinal or cosmetic purposes.[26]

According to the IP office data, traditional knowledge could be divided into knowledge related to:

1) National cuisine, including traditional cooking methods of horse sausage 'chuchuk', fermented mare's milk 'kymyz', soft drink made from cereal grains 'maxym', the low-alcohol beverage from cereal grains 'Bozo', and others, as well as methods for storage and preservation of food;

2) Habitat and household items (construction of the yurt, and child's cradle 'beshik');

3) Material culture and decorative arts (interior and exterior yurts, traditional clothes, equestrian equipment, manufacturing felt products);

[24] Law on the Protection of Traditional Knowledge of the Kyrgyz Republic, No. 116, adopted on 31 July 2007 (2007) <http://cbd.minjust.gov.kg/act/view/ru-ru/202149/20?cl=ru-> accessed 29 August 2018.

[25] Government of the Kyrgyz Republic, Regulation on the State Service of Intellectual Property and Innovations under the Government of the Kyrgyz Republic, No. 131 of 19 February 2012.

[26] Adil Kerimov, 'At the Third World Nomad Games the Kyrgyz patent will Hold An International Seminar on The Protection of Knowledge (April.kg, 2018) ,http://www.april-turkmenistan.com/ru/article/na-iii-vik-kirgizpaten-provedet-mezhdunarodniy-seminar-po-ohrane-tradicionnih-znaniy> accessed 21 October 2018.

4) Pastoral knowledge (biodiversity conservation, pasture rotation, migrations to distant pastures, treatment of animals);

5) Traditional medicine; and

6) National games and folklore (epics, tales, proverbs).

In September 2018, the IP Office of the Kyrgyz Republic stated:

> 'From 2009 to the present, 60 applications have been submitted for the registration of traditional knowledge.'[27]

According to the IP Office's statistics, 28 traditional knowledge applications were registered, but only eight of them are in public access.[28]

Table 1. **Examples of the registered traditional knowledge in the Kyrgyz Republic**

	Traditional knowledge	**Year**	**Applicant**
1	'Bekjan' (milk product)	2011	Mr. Suleiman Kaypov
2	'Kyrgyz Ozolonu' (traditional method of meat products storage)	2016	Mr. O. Djaanbaev
3	'Mindaba' (National Kyrgyz drink)	2014	Mr. Sultek Kobokov
4	'Oroloo, Shili Orolo, Bogozhuroloo, Aydargaloo' (traditional methods of horse fixing)	2013	Kyrgyz National Agrarian University
5	'Ordo' (traditional national game)	2013	Specialized Children and Youth Sports School
6	'Shakar' (traditional method to produce the soap)	2011	Jaamat (community) 'Bugu ene'
7	'Tash Cordo' (traditional method of cooking meat in a special stove)	2011	Mr. Raiymbek Jusupbekov
8	'Toguz-Korgool' (traditional national game)	2009	'Toguz Korgool Republic association' NGO

A. LEGAL FRAMEWORK OF TRADITIONAL KNOWLEDGE PROTECTION

The Legal Regime on traditional knowledge in the Kyrgyz Republic has two types of protection:

1. Defensive protection, providing a set of rules to ensure that third parties do not gain illegitimate or unfounded traditional knowledge rights; and

2. Positive protection, which concludes the following measures: 1) Acknowledging control of custodians over traditional knowledge; 2) Ability to deny/authorize access and use; 3) Prevention of Misappropriation; and 4) Prior Informed Consent, including the conditions of use Benefit Sharing.

Article 2 of the Law on Traditional Knowledge gives the following definition:

> Traditional knowledge shall mean knowledge, methods, including usage of genetic resources in different fields of the human activities, which have

[27] ibid.

[28] Kyrgyz Patent, 'Information on Registered Traditional Knowledge' (Patent.kg, 2018) <http://patent.kg/en/tradicion-znan/information-trad-znan/> accessed 1 November 2018.

> been transferred from one generation to another eventually in a certain order and meaning.[29]

The Law on Traditional Knowledge also provides a definition of genetic resources as including:

> all fauna and flora of terrestrial, marine and any other origin, which may be used by the owners of traditional knowledge to obtain specific practical outputs in any field of the human activities.[30]

Indeed, the Law states that the usage of genetic resources and the order of access to genetic resources should be regulated by other domestic acts (Article 1).[31]

The Law on Traditional Knowledge does not regulate 'expressions of folklore' and 'national handicraft arts' (Article 1), and does not provide the definitions. In the 2009 Law on Culture of the Kyrgyz Republic, a definition of 'folk arts and crafts' is unclear and unregulated.

According to Article 7 of the Law on Traditional Knowledge, registration of knowledge is indefinite, but Article 13 defines that the Certificate of Registered Traditional Knowledge is valid for ten years. The traditional knowledge holder must renew the Certificate every ten years. Therefore, the term of traditional knowledge registration and term of the Certificate of a registered knowledge are different, which creates an inconsistency in the provisions of the Law on Traditional Knowledge.

The uniqueness of traditional knowledge regulation in the Kyrgyz Republic lies in a wide range of traditional knowledge holders. Not only the local community, but individuals and legal entities can also be traditional knowledge holders. Moreover, according to this definition, the Law on Traditional Knowledge does not make a distinction between citizens of a country and foreigners, or between local and foreign legal entities.

In the accordance with Article 2 of the Law on Traditional Knowledge:

> Local community is a community of citizens of the Kyrgyz Republic permanently residing on the territory of an administrative-territorial unit, united by interests under their responsibility to solve issues of local significance independently through representative and executive bodies of local self-government.[32]-

In spite of a definition proposed by the Law on Traditional Knowledge, the domestic legislation of the Kyrgyz Republic contains a specific term, 'local community' according to the local specifics, which defines it as 'Jamaat':

> Jamaat is a form of local government representing a voluntary association of the members of local communities living within one street, block or any other territorial formation of a village or city to take the responsibility for making common decisions on matters of local importance.[33]

A variety of the registered traditional knowledge holders (applicants) is clearly visible in Table 1.

B. PATENT AND TRADITIONAL KNOWLEDGE

Patenting subject matter representing traditional knowledge shall not be allowed in the Kyrgyz Republic. When patenting subject matter created on the basis of traditional knowledge, materials of the application must reveal of the origin of the traditional knowledge used as prior art or as a prototype. The applicant shall indicate the source of making traditional knowledge available to the public.

Traditional knowledge usage with the purpose of invention shall be determined by an agreement between the Traditional Knowledge holder and owner of a patent for an invention. Under the agreement, two key provisions should

[29] Law on Traditional Knowledge (n 24), art. 2.

[30] ibid.

[31] ibid, art 1.

[32] ibid, art 2.

[33] Law on Jamaats (Communities) and Their Associations by the Parliament of the Kyrgyz Republic, art 1 (2005).

be determined: 1) remuneration for traditional knowledge usage to the holder of the registered traditional knowledge; and 2) mandatory payments to the Fund for development of local communities or to the State Fund for development of the system of traditional knowledge usage. The payment to the Funds shall be not less than 20% of the total agreement amount.[34] Those Funds should be established by the State, and would be supported by financial transfers collected from the usage of traditional knowledge. However, it is still not entirely clear how the provision of the Law on Traditional Knowledge will be implemented, since the Funds have not been created.

In order to prevent illegal patenting of subject matters created on the basis of traditional knowledge and use of associated genetic resources, the IP Office is creating the traditional knowledge database, which shall be used during examination of subject matter to be patented. In 2018, the IP Office of the Kyrgyz Republic informed:

> Around one thousand traditional knowledge were already included into the official database.[35]

C. CHALLENGES AND PERSPECTIVES

The Kyrgyz Republic adopted the legal framework and effective mechanisms for the protection of traditional knowledge, but some measures have not been implemented. According to the National Report, the Government admitted that the obligations of the Kyrgyz Republic under Article 8 (j) of CBD were only partially fulfilled:

> The Law on the protection of traditional knowledge is adopted, but it is poorly implemented, and local communities do not participate in the implementation processes.[36]

Consequently, the Law on Traditional Knowledge contains a number of unclear or contradictory provisions. For example, a term of traditional knowledge registration is indefinite, but a Certificate of Registered Traditional Knowledge is issued only for 10 years, which may cause a subsequent litigation. The Law on Traditional Knowledge does not regulate and protect folklore and folk arts and crafts; however, it is often difficult to distinguish traditional knowledge from applied folk art. An extensive range of traditional knowledge holders raises many questions. The provision regarding an agreement between the traditional knowledge holder and owner of a patent for an invention is also in doubt: who will monitor the procedure of concluding an agreement? How will a mandatory payment (20% of an agreement) go to the Funds?

Some provisions of the Law on Traditional Knowledge need adequate financial support for its implementation. For example, two Funds of local communities and traditional knowledge should be established and supervised by the state in accordance with Article 3 of the Law on Traditional Knowledge. However, neither the Intellectual Property Development Program nor other support programs provide measures for the Fund's establishment. Unfortunately, the State Program for the Development of Intellectual Property in the Kyrgyz Republic for 2017-2021 does not contain any measure for the promotion and development of traditional knowledge.

In order to implement the provisions of the Law on Traditional Knowledge, certain mechanisms have been included in the Plan of Measures for the implementation of the State Program for the Development of Intellectual Property and Innovation in the Kyrgyz Republic for 2012-2016:

> 1) A database on traditional knowledge creation;
>
> 2) Collecting information on traditional knowledge and conducting training among the local communities in the regions of the country; and
>
> 3) Identification and preservation of traditional knowledge.[37]

[34] Law on Traditional Knowledge (n 24) Art 14.

[35] Adil Kerimov (n 26).

[36] Country Profiles: Fifth National Report of the Kyrgyz Republic (n 18).

[37] Government of the Kyrgyz Republic, 'Plan of Measures on the Implementation of the Objectives of the State Program for the

Unfortunately, the State Program for the Development of Intellectual Property in the Kyrgyz Republic for 2017-2021 does not contain any measure for traditional knowledge protection.[38] Despite this, civil society, local NGOs and society centers are involved in traditional knowledge preservation activities. Together with experts, NGOs, institutes and universities, the IP Office conducted several field researches on a medical topic (traditional medicine, physiology), as well as on national games and social traditions of the Kyrgyz people.[39]

In order to give more legality to traditional knowledge, the Government of the Kyrgyz Republic has to come up with an appropriate and effective framework to implement the adopted *sui generis* instrument.

First, the traditional knowledge regulation should be revised, definitions should be developed, and a term of registration, a creation of two Funds and some other provisions of the Law on traditional knowledge should be amended. All registered traditional knowledge could be open to the public.

Second, the traditional knowledge database (a precautionary protection against biopiracy), and the traditional knowledge digital library development should be completed.

Third, in order to establish coordination and interaction in the State–Science–Business system, national initiatives and programs to support community capacity building relating to traditional knowledge should be adopted.

Fourth, the IP Office of the Kyrgyz Republic, with the support of civil society and scholars, should increase the importance and significance of traditional knowledge through information campaigns and field research activities.

Fifth, the Kyrgyz Republic has to make an effort to establish a regional legal tool. The regional mechanism is an urgent requirement for providing protection in all five States because domestic measures cannot protect some traditional knowledge due to its widespread nature, leading to trans-boundary misappropriation.

6. CONCLUSION

Presently, the process of globalization has contributed to the disappearance of a lot of knowledge being passed from generation to generation. The growth of population on the planet, climate change, natural landscapes, flora, and fauna made the world's scholars turn to traditional knowledge in search of possible answers to these challenges.

We must consider traditional knowledge, the cultural heritage of our region, as having value, including social, cultural, spiritual, economic, scientific, intellectual, and educational meaning, and recognize that traditional knowledge is the basis for development of innovation and creativity for the benefit of the Central Asian people. The task for all five States is to preserve the valuable knowledge and skills of our ancestors, and to promote their dissemination and application in all areas of life of the Central Asian people, for sustainable development of the region.

Development of Intellectual Property and Innovation in the Kyrgyz Republic for 2012-2016' (2011).

[38] Government of the Kyrgyz Republic, 'The State Program of Intellectual Property Development in the Kyrgyz Republic for 2017-2021' (2016).

[39] Rural Development Fund, 'Traditional Knowledge' (Rdf.in.kg, 2018) <http://rdf.in.kg/en/category/traditsionnye-znaniya/> accessed 1 November 2018 ("Rural Development Fund is non-governmental policy and rese arch organization to conduct research, develop policy recommendations, and implement activities in the field of traditional knowledge").

BIBLIOGRAPHY

Bekturova G and Romanova O, Traditional Land Management Knowledge in Central Asia: Resource Pack (S-Print 2007)

Convention on Biological Diversity, 'Country Profiles: National Plan on CBD on Biological Diversity protection 2018-2023 of Turkmenistan, Fifth Report of Turkmenistan on the implementation of the decisions of the United Nations Convention on Biological Diversity at the national level (CBD 2015) <https://www.cbd.int/countries/?country=tm> accessed 25 October 2018

Convention on Biological Diversity, 'Country Profiles: National Strategy, Action Plan on Conversation and Sustainable Use of Biological Diversity in the Republic of Kazakhstan' (CBD, 2015) <https://www.cbd.int/countries/?country=kz> accessed 25 October 2018

Convention on Biological Diversity, 'Country Profiles: Fifth National Report on Biodiversity in Tajikistan, National Strategy and Action Plan on Preservation and Rational Use of Biodiversity until 2020 in Tajikistan' (CBD, 2015) <https://www.cbd.int/countries/?country=tj> accessed 20 October 2018

Convention on Biological Diversity, 'Country Profiles: Fifth National Report of Uzbekistan on Conservation of Biodiversity' (CBD, 2015) <https://www.cbd.int/countries/?country=uz> accessed 22 October 2018

Convention on Biological Diversity, 'Country Profiles: Fifth National Report of the Kyrgyz Republic' (CBD, 2013) <https://www.cbd.int/countries/?country=kg> accessed 12 October 2018

Convention on Biological Diversity, 'Country Profiles: National Strategy on Biodiversity conservation priorities of the Kyrgyz Republic till 2024' (CBD, 2013) <https://www.cbd.int/countries/?country=kg>accessed 12 October 2018

Government of the Kyrgyz Republic, 'Plan of Measures on the Implementation of the Objectives of the State Program for the Development of Intellectual Property and Innovation in the Kyrgyz Republic for 2012-2016' (2011)

Government of the Kyrgyz Republic, Regulation on the State Service of Intellectual Property and Innovations under the Government of the Kyrgyz Republic, No. 131 of 19 February 2012.

Government of the Kyrgyz Republic, 'The State Program of Intellectual Property Development in the Kyrgyz Republic for 2017-2021' (2016)

Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore, 'The Protection of Traditional Knowledge: Draft Articles' WIPO/GRTKF/IC/38/4 (WIPO, 2018) <http://www.wipo.int/meetings/en/details.jsp?meeting_id=46446> accessed 7 October 2018

Intergovernmental Committee on Intellectual Property, Genetic Resources, 'The Protection of Traditional Knowledge: Draft Articles' WIPO/GRTKF//IC/28/5 (WIPO, 2014) <http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_5.pdf> accessed 4 June 2018

Intergovernmental Committee on Intellectual Property, Genetic Resources, 'Glossary of Key Terms' WIPO/GRTKF/IC/38/7 (WIPO, 2018) <http://www.wipo.int/meetings/en/details.jsp?meeting_id=46446> accessed 3 November 2018

Intergovernmental Committee on Intellectual Property, Genetic Resources, 'The Protection of Traditional Knowledge: Updated Draft Gap Analysis' WIPO/GRTKF/IC/38/6 (WIPO, 2018) <http://www.wipo.int/meetings/en/details.jsp?meeting_id=46446> accessed 5 November 2018

Kerimov A, 'At the Third World Nomad Games the Kyrgyzpatent Will Hold an International Seminar on the Protection of Knowledge' (April 2018) <http://www.april-turkmenistan.com/ru/article/na-iii-vik-kirgizpaten-

provedet-mezhdunarodniy-seminar-po-ohrane-tradicionnih-znaniy> accessed 21 October 2018

Kyrgyz Patent, 'Information on Registered Traditional Knowledge' (Patent.kg, 2018) <http://patent.kg/en/tradicion-znan/information-trad-znan/> accessed 1 November 2018

OseiTutu J, 'A Sui Generis Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law,' (2011) 15 Marq. Intellectual Property Law

Rural Development Fund, 'Traditional Knowledge' (Rdf.in.kg, 2018) <http://rdf.in.kg/en/category/traditsionnye-znaniya/> accessed 1 November 2018

Salgotra R and Gupta B, Plant Genetic Resources and Traditional Knowledge for Food Security (Springer 2015)

Traditional Knowledge Division and the Department for Transition and Developed Countries, 'Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition' (WIPO 2013) <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_transition_9.pdf> accessed 15 August 2018

WIPO, 'Survey Summary Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition' (WIPO, 2013) <https://www.wipo.int/publications/en/details.jsp?id=4108> accessed 15 August 2018.

WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-99), 'Intellectual Property Needs and Expectations of Traditional Knowledge Holders' (WIPO, 1999) <http://www.wipo.int/publications/en/details.jsp?id=283&plang=EN> accessed 2 November 2018.

Worldometers, 'Population of Central Asia' (Worldometers.info, 2018) <http://www.worldometers.info/world-population/central-asia-population/> accessed 14 November 2018