



*Irish Centre for Human Rights*



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Institute of Advanced Studies



**NATURAL JUSTICE**



## **First Customary Law and Human Rights Dialogue**

The Irish Centre for Human Rights and Partner organisations are pleased to invite you to attend the forthcoming conference on *Customary law, Traditional Knowledge and Human Rights*, which will be held from the 18- 19 June 2010, in Galway, Ireland. The meeting is designed to provide an opportunity for in-depth examination and roundtable discussion of the challenges and opportunities for securing effective respect and recognition of customary law in the regulation of access to genetic resources and benefit sharing and protection of traditional knowledge.

speakers include:

Mattias Ahren, President Saami Council

Anthony Tuabman: Director of Intellectual Property Issues, WTO

Professor Joshua Castellino, Middlesex University

Preston Hardison, Advisor, Tulalip Tribes

Dr. Jeremie Gilbert, Middlesex University

Simon Morgan, Senior Partner, Simmons and Simmons

Professor Paul Kuruk, Samford University

Ruchi Pant, ECOSERVE

Dr. David Keane, Middlesex University

Professor Graham Dutfield, University of Leeds

Cathal Doyle, Middlesex University

Brendan Tobin, ICHR

Dr. Saskia Vermeulen, Lancaster University

## **Briefing Note**

Traditional knowledge is central to securing the cultures, livelihoods and human rights of indigenous peoples and local communities. It is also increasingly recognized as an important body of informal science with significant potential for the design and implementation of sustainable development policy, mitigation of climate change and the development of new medicinal, agricultural and other natural products. Despite its recognised importance it remains largely unprotected at the national and international level. This situation may change in the near future as both the Convention on Biological Diversity (CBD) and World Intellectual Property Organization, Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC) advance negotiations on international instruments relating to traditional knowledge.

Indigenous peoples and local communities have consistently argued that any legal regime for the protection of their knowledge should be grounded upon their own customary laws and practices. International human rights law calls upon states to give due recognition, consideration and respect for customary law in the development of law and policy affecting indigenous peoples rights to their lands, territories and resources, and also calls for protection of their rights over their traditional knowledge and intellectual property. The Working Group on Access to Genetic Resources and Benefit Sharing (WGABS) in a Draft Protocol to the CBD calls for “due consideration” of customary law, while draft elements on protection of traditional knowledge prepared by the IGC have recognised the need to give “due regard” to customary law. What is meant by “due regard” or “due consideration” is unclear. While case law would tend to suggest it must be more than a box ticking exercise, without more specific regulation, the enforcement of customary law relating to traditional knowledge and resource rights may prove difficult in the extreme.

Identifying and establishing modalities for recognition and enforcement of customary law requires consideration of practical and legal hurdles in both the country of residence of traditional custodians of TK as well as in countries in which their TK is documented, stored and used. It will also require consideration of the status of customary law; its interface with positive legal regimes; application of customary law to third parties; rules of evidence and proof of custom; procedures for its interpretation; extent to which effective remedies for breaches of rights over TK are to be found in customary law; and, the role and treatment of customary law in international judicial forums and alternative dispute resolution procedures. The manner in which these issues are addressed in national and international law will determine the extent and effectiveness of recognition and respect given to customary law and have a direct bearing upon realization of human rights in particular rights to self-determination.

With a view to promoting more informed debate of these issues ICHR and partner organizations are organising two days of presentations and discussions on customary law, traditional knowledge and human rights, on the 18 and 19 of June 2010 in Galway, Ireland. The event will bring together leading scholars, representatives of indigenous peoples and local communities, international organizations, participants in international TK negotiations, and legal practitioners. The meeting will promote roundtable discussion of opportunities and challenges facing recognition of customary

law in international and national law and policy, and identification of research, capacity development and awareness building needs and resources.

The Galway event will be held in two parts

Day one will be held as the final day of the Annual ICHR Minority Rights Summer School. This day will include a series of lectures on customary law and human rights with a focus on land, resource and knowledge rights, including case studies of customary law's role in rights protection in Africa, Asia, Europe and the South Pacific

Day two will be held in the form of a roundtable discussion with speakers providing the catalyst for discussion of four key topics, including:

1. Customary law and indigenous peoples human rights
2. Customary law and indigenous governance of natural resources and traditional knowledge
3. Customary law, Intellectual Property and the protection of rights over traditional knowledge and traditional cultural expressions
4. Opportunities and challenges for promoting legal recognition and enforcement of customary law in international and foreign jurisdictions.

At the close of the each day a rapporteur's summary of the presentations and discussions and suggestions for future work will be provided.

A follow up event is planned in Nagoya during the tenth conference of the Parties to the Convention on Biological Diversity, at which, the results of the Galway meeting will be presented for comment and discussion by invited speakers and civil society representatives. It is intended that the presentations and a summary of discussions from both the Galway event and Nagoya meetings will be published in an edited volume.

For more information please contact

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Indigenous Peoples Law and Policy Program, University of Arizona

Middlesex University

Natural Justice

Peruvian Society for Environmental Law (SPDA)

United Nations University, Institute for Advanced Studies (UNU-IAS)

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Tulalip Tribes

Simmons and Simmons