

Some Field Notes on Traditional Knowledge as Intellectual Property

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Paper presented for the conference "Can Oral History Make Objects Speak?", Nafplion, Greece. October 18-21, 2005.

Draft Version: Please do not quote without the permission of the author. All names of mvett troubadours and their native villages, with the exception of well-known historical and public figures, have been altered for the sake of their protection. Any resemblance between these fictional names and actual persons living or dead is entirely coincidental. All quotes in French have been translated into English by the author. I would like to acknowledge the mvett troubadours I worked with in Cameroon and Gabon: Akiba abui bon bi mvett! Professor Philippe Laburthe-Tolra, Université René Descartes, Paris V provided invaluable guidance in the course of my work on the mvett. Finally, I would like to thank Daniel Papuga, President of ICME, who encouraged me to write this paper and made my participation in the Annual ICME Conference possible.

Ladies and Gentlemen, Mesdames et Messieurs, just about a year ago, Alissandra Cummins, in her presidential acceptance speech at the ICOM General Conference in Seoul, envisioned closer working relationships between ICOM and WIPO. In her editorial, in the latest issue of ICOM News (no. 3/2005), she again noted the need to develop closer relations between ICOM and WIPO. Due to the responsiveness and effectiveness of Daniel Papuga, ICME was among the first International Committees, if not the first, to respond to the call of ICOM's President. In May 2005, ICME became officially accredited to participate in the WIPO IGC process on *Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*. Less derogatory in the opinion of some, the latter is also referred to as *Traditional Cultural Expressions*, or TCEs. Through Wend Wendland's admirable keynote this evening, we now know a great deal more about the policy development, norm-building and acronyms currently taking shape in Geneva. Wend's paper, and its excellent

responses, has raised a number of significant questions relating to the obvious overlaps between the issues debated in WIPO and the subject matter of ICME. This paper suggests one way ICME could contribute to the on-going work on TK and TCEs in WIPO. It is intended to supplement Wend's presentation, by providing a local perspective on the terms of reference in the global IGC process. I will venture to the traditional knowledge holders themselves to explore what the ownership notions of *traditional knowledge* (TK) and *traditional cultural expressions* (TCEs) might look like on the ground among the Fang in Gabon, Western Equatorial Africa. In the next twenty minutes, I will try to answer the following vexed IGC questions from the perspective of an ethnographer conducting field research: What makes TK into TK? To whom, if anyone, do or should TCEs belong as private, collective, communal or public property?

One of Holland's highly estimated writers, Jan Brokken, portrays the Fang traditional knowledge system known as the *mvett* in the following way: "You should hear the whole mvett, Ibinga said. Because in the mvett it says: We see everything on man's earth//we see the light//we see the darkness//and the mvett is the light in that darkness.... The mvett, is our Odyssey" (Brokken 1997). The state of ethnographic research on this oral tradition largely agrees with the Dutch writer. The American anthropologist James Fernandez compares the mvett epic with the Beowulf in the Anglo-Saxon tradition (Fernandez 1982); the French anthropologist Pierre Alexandre considers the mvett "the most original expression not only of Cameroonian and Gabonese, but indeed of African culture" (Alexandre 1974); Pascal Boyer at Paris-Nanterre asserts that "The Fang epics called *mvett* constitute one of the most brilliant genres of African traditional knowledge, remarkable for their richness in style and themes" (Boyer 1988). The first documentation and recording of the mvett was made in the first decade of the 20th century, by the German ethnographer Günther Tessmann. A pioneer in field research, he had equipped his expedition with some of the first instruments designed for the tropics to fixate indigenous knowledge: a wax cylinder phonograph and a *Stegemann* camera. This allowed him, in 1913, to publish the first known photograph of the mvett in his monumental *Die Pangwe* (Tessmann 1913).

My first encounter with the mvett was on one of my treks in Southern Cameroon just south of the *Ntem* River, close to the Gabonese border. In the village of *Muila*, I found Fabrice Makobe, who was rehearsing his repertoire of mvett epics in the *aba'a* – the men's traditional council house. From Fabrice, I learned about the Fang migration histories during which the instrument had been conceived and invented by the warrior and musician Oyono Ada Ngomo. Fabrice told me that the character cast of the epic had been drawn from the legendary battles and adventures during the Fang flight from the *Mvele*. The people of *Engong* were the people of iron. These characters were born as immortals. Their opponents, the mortals, resided in the land of *Ok•*. I asked Fabrice about who owned these stories about the land of Engong and *Ok•* today. He told me that it all depended upon the level of initiation of a player. To simplify, the mvett consisted of three principal initiation levels. To each level belonged a certain Fang vocabulary associated with a performative genre, which would only be known to the initiated. The lowest ranking of epics depicted sexual conquests performed in a satirical vein. Sometimes these bards would perform with a classical Spanish guitar, entertaining at weddings or broadcasting on national radio. The intermediary level required initiation by a full-fledged master of the art. This apprenticeship could last several months and involved considerable monetary and human sacrifices. The initiate would learn the epics of philosophical proverbs, legends about historical characters, translations of Bible stories and Fang genealogies with commentaries. The mvett bards performing at the highest ranking level of initiation told the epics about the characters of the *Ekang Nna* lineage, who reside in the land of Engong. These immortal characters are no Sunday school heroes, but capable of flying on elephant tusks, pulling out iron cords from their chests and setting fire to whole villages with rainbows. Each level of initiation in the mvett holds the monopoly on the genre repertoire associated with performances at that level. A player would violate Fang customary law, if he were to reveal the secrets of an epic to someone not initiated at that level. In sum, what we have here is an advanced incorporeal property regime, governed by the social institution of initiation.

Intrigued by the storytelling of Fabrice, I asked him where to go to learn more. He told me that Oyem in the Crystal Mountains was considered the Fang “capital” and center for the mvett. When I first came to Oyem, I was told that I had come to the right place to learn about the mvett, because the master bard of Gabon, Tsira Ndong

Ndoutoume, resided in *Adjougou*, a residential borough of Oyem. Much to my surprise for a supposedly living oral tradition about the hidden things, the informant told me that I could buy Tsira's book about the mvett in the local bookshop. In this book entitled *Le Mvett épopée fang* (Ndoutoume 1983 [1970]), the first literary mvett epic ever published, Tsira tells the story of the Fang migration where the mvett was born, in roughly the same way as Fabrice had told it to me in the village of *Muila*. Tsira's literary epic read as a fantastic tale about the hero *Obame*. His mission was to unlock the secret of the possession of metal in the land of Engong – the people of iron. If he succeeded, this would extinguish all metals on the face of the earth, thereby eradicating warfare. In the course of Obame's mission, we hear about seductive women sent out to trap him, poisonous substances made to kill him and witchcraft experts trying to blur his vision. We hear about spectacular fights in the skies, underwater and inside mountains between the immortal warriors from Engong vigorously protecting their secret and the mortal warriors from Ok• trying to unravel it. After what Fabrice had told me in *Muila*, I was of course quite surprised to find what supposedly looked like a mvett epic associated with the highest level of initiation circulating in print in the public domain in Oyem. I therefore sought out Tsira to learn more about his mvett.

The walls of Tsira's living room were plastered with framed photographs of him as a young mvett virtuoso, testifying to a long performing career in colonial and postcolonial Gabon. However, Tsira told me that he was almost deaf now, and that he had dedicated the rest of his life to consecrate the mvett in writing. When I asked him if he hadn't violated an oral tradition by doing that, he admitted that I was right. But he had his reasons. He told me that when he was employed in the Ministry of Education right after Independence in 1960, one of his agenda items was to depict Fang folklore in a true and accurate manner. He believed that the mvett epics were as rich and profound as the Bible, the Koran or the Illiad. However, in 1970 the Bantu civilization was not renown for any epics of this magnitude and power. The mvett remained a story yet to be unveiled to the world at large. Moreover, Western scholars had distorted, misrepresented and failed to understand the mvett epic due to the insurmountable barriers of the extremely complicated Fang language, the lack of written sources, and the secret-sacred nature of the initiation and the epic itself. "My written Ekgang epic about the mission of Obame," Tsira said "is a modest Fang

contribution to a world library of master storytelling. Like other profound books of wisdom, produced by the world's great civilizations, it is about how to establish peace in the minds of men." Unfortunately, he was not certain that the ears of the West had listened to his mvett. Tsira told me that the Freemasonry in France had invited him to arrange an entire conference in Paris on the mvett. He had bluntly rejected it, because they had completely misunderstood what the mvett was all about. It was not a search for occult powers. Nor had the mvett anything to do with esoteric wisdom of the sort the French society seemed to assume. The mvett was simply objective knowledge about the creation of the universe, or the *Atarega*. *Atarega* means literally "beginning" in Fang, but within the mvett tradition it implies a notion of a non-terrestrial creation of life: "The first principle of the *Atarega* is termed *Eyo*. In the beginning *Eyo* was surrounded by nothingness. Time, space and substance did not exist. *Eyo* took the color of gold and the color of copper and mixed them. He obtained a lightning egg, called *Aki Ngoss Eyo*. The egg began to turn red and then white due to changes in pressure in the stratosphere. The egg expanded limitlessly and exploded into indefinite sparkling particles, which brought the galaxies into existence. A hurricane of heat and steam went in all directions and formed the milk way, visible at night in Oyem between April and May" (Ndoutoume 1993). Tsira looked up and gave me the book he had been reading out loud from: "You see, Western Quantum Physics and Big Bang theory have only recently begun to catch up with what we mvett bards have known for centuries."

My point here is not so much to raise the exhausted academic question of invented versus inherited traditions, or the authenticity of tradition itself. Rather, Tsira's exposition of Fang traditional knowledge should give pause to those in the IP playing field who construe "traditional knowledge" as pre-modern and as fundamentally different from western rational and scientific knowledge forms. Moreover, Tsira's work reminds us that the contemporary indigenous discourse on control over scholarly research and representation needs to be understood as a problem of postcoloniality.

"Did you know that the first time the word 'democracy' was ever uttered on the African Continent, was in a mvett session?" the young mvett virtuoso, Seraphin Ndolo asked me. Every Saturday, he played his mvett at the *Place d'Indépendance* in Oyem. Seraphin took great pride in being a mvett troubadour. His sessions were well

attended with men, who sat lined up on each side of the aba'a and stroke up the rhythm with bamboo sticks. During performance he wore a black French beret with the feathers from the African grey parrot, giving him the command of words. The bundle of furs he wore on his left arm consisted of dwarf antelope, giving him night vision and the tiger cat, giving him endurance. He told me that he had inherited these furs from his master during initiation. Here he is performing an mvett epic about Mvé Ndong, whose mission was to exterminate corruption in the land of Engong. As preparation for his mission, Mvé Ndong was sent to the most prestigious academies. At the age of fifteen he had obtained all the diplomas he possibly could and there was nothing left for him to learn. To accomplish his mission he engaged in several spectacular battles with the Minister of Defense, but in vain. Corruption continued to flourish in the land of Engong. Then Mvé Ndong returned to *Mimbayom*, the village where he was born. In the aba'a of his native village he discovered what they did not teach in the prestigious academies: that the true virtue of governance is to serve with modesty and humility in the close company of men. He was now reinvigorated and prepared to accomplish his mission. The villagers told him to find the clan of darkness named *Ye Djibi*, where the Minister of Defense lodged...and on and on the epic goes...This session lasted well into the night, but in the interest of "European time," as Seraphin called it, I will have to cut a long tale short here.

After I had been working for some weeks with Seraphin, he showed up one morning with an entire team: Driver, Manager, Assistant and Accountant. Seraphin said that he had come to discuss the copyright conditions of our ongoing work on the mvett. His team was certain that the film industry in Europe could make a film in the genre of *Star Wars* on the basis of the mvett script. As the appointed driver of the team said: "The epic cycle of the mvett is just like *Star Wars*: A never-ending war between mortals and immortals in an imaginary space, where the force is with the good and against the evil." Seraphin told me to take care not to disclose my notebooks with his mvett recitations to anyone else in the field and we signed an agreement about prior informed consent. When I later visited Seraphin in his native village outside Oyem, I was to learn more about his anxieties about misappropriations of the mvett. He showed me a photo of his initiator Zwè Nguéma, standing in the aba'a with his mvett. He told me that this photograph was the only compensation his master had received for the epic he gave to Herbert Pepper and the *Musée de l'Homme* in Paris. Seraphin

claimed that ‘the mediocre Tsira Ndoutoume stole my master’s knowledge of the mvett and put it in books, which made Tsira a millionaire. Tsira’s mvett is plagiarism and every single epic has been stolen from my master.’”The obvious point here is that misappropriations of “traditional knowledge” cannot be reduced to a property relation between the West and the Rest. Claims to misappropriations occur on the ground in local networks of property relations entangled with modernity at large.

What does it take to get IP and TK right? Let me return to the questions posed at the outset: What makes TK into TK? WIPO’s own fact finding missions on IP and TK conducted in 1998-9 arrived at the following answer: “TK is created, originated, developed and practiced in a traditional setting and context by traditional knowledge holders..From WIPO’s perspective, expressions of folklore are a subset of and included within the notion of traditional knowledge” (OMPI 2001:25-6). WIPO’s definition of TK seems apt, but it does not fully capture the mvett. The WIPO definition implies that TK is a unified body of traditional knowledge held by *n* number of members in a traditional setting. The mvett material presented here indicates that “traditional knowledge” is a body of knowledge, which shares some basic features, but it is far from being a consensual field of knowledge. It is highly contested and best understood within local networks of property relations encompassing many “locals”. Moreover, Tsira and Seraphin as traditional knowledge holders remind us that “traditional knowledge” is perhaps more contemporary than traditional, clearly entangled in postcolonial realities of representation. This presentation has shown that even though the mvett is embedded in a local setting, it is a setting with a global media horizon.

To whom, if anyone, do or should TCEs belong as private, collective, communal or public property? In Western legal thought you cannot own an idea, but you can own entitlements to the tangible expression of an original idea. Western copyright regimes are governed by this philosophy. In Fang customary law, this division between the intangible and tangible realm does not exist. An “owner” of a mvett song is the bard who has the right to sing or perform a set of epics associated with his level of initiation. A mvett performer is someone who holds his epics in trust for future generations of mvett bards. This implies that absolute, collective, and communal ownership does not exist in the mvett tradition. What we have is a regime of

incorporeal ownership, which is strictly individual. One lesson to draw from the material presented here is that preconceived notions about indigenous properties of property as “collective” or “communal” might lead to imprecise definitions of TCEs.

To wrap up, I hope I have shown that when Tsira textualized the mvett he violated the Fang incorporeal property regime. However, according to Western copyright law, this textualization was exactly what created a legal property right in the mvett epic. Thus, within Fang customary law intangible words have a reality which is recognized and protected, whereas within Western copyright regimes intangible words first retain reality and protection in their written form. In the case of the mvett, it seems that commercial misappropriation of a TCE was made possible by the very advent of a Western copyright regime. As I have shown, this problem of interface between Western legal thought and Fang customary law hinges on the ontology and properties of the spoken word. With respect to the mvett, the commonly cited questions in the IP discourse on “traditional knowledge” such as “what constitutes an author” and “what qualifies as an original independent creation” all turn on the very conception of a word.

This leads me to a conclusive note on one of the key policy questions WIPO is currently facing: Is the protection of TCEs afforded by current IP systems adequate or is a new *sui generis* instrument needed? This paper has demonstrated that the existing Western copyright regime is blind as to precisely what needs protection in Oyem. In the case of the mvett, this blindness is not due to particular indigenous alterities, such as those commonly referred to under the rubrics of indigenous “holistic world views,” “exclusive orders of collectivity,” or “forms of communal ownership.” The case in Oyem is simply stated, that Fang customary forms of knowing and owning spoken words are incommensurable with Western copyright philosophy. Existing IP regimes seem a long way from being able to provide protection in this case, because Western legal thought cannot properly embrace what it cannot define: the intangible. In order to grapple with this new subject matter under purview of the law, it seems to me that a *sui generis* instrument is what is needed.

From my own participation in the WIPO IGC process in Geneva, it is clear that WIPO is in the process of recognizing a novel subject matter of Western law. WIPO’s efforts to bring “traditional knowledge” under the rubrics of global standards of intellectual property represent a noble and admirable aspiration in the history of

Western legal thought. I hope my presentation has shown that the development of a new *sui generis* instrument for the protection of “traditional knowledge” needs to include advice not only from the leading minds in copyright law and thoughtful indigenous rights activists, but also from the scholarly and institutional expertise found in bodies such as ICOM/ICME. Thus, I will close on the note that I hope Alissandra Cummins’s editorial in *ICOM News* will be followed up by action. Thank you very much for your attention!

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