

SAINT LUCIA

COUNTRY REPORT

Intellectual Property and Traditional
Knowledge Related to Genetic Resources

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(a) Definition of relevant terms is difficult since various interpretations may be attached to each term. Therefore there is need for harmonisation of terminology within the country and also within the region. An additional factor is the fact that St. Lucia has two 'languages'

- 1) English - the official language
- 2) Creole - mainly French dialect with a mixture of English and African words

The above sometimes creates difficulty in that some of the terms and phrases are better expressed in Creole. Creole used to be the more popular tongue decades ago and in trying to translate the Creole into English sometimes the entire meaning is lost or it does not fit appropriately.

Terms

Traditional Knowledge

Indigenous Knowledge

'Cultural' heritage

Folklore

Intellectual Property (IP)

- property rights accredited to persons over the creations of their minds. They include inventions, industrial designs, literary, artistic and scientific works, symbols, names, images and plant variety protection.

Others

Scope of existing rights under law in St. Lucia is extended to patents, trademarks, copyrights, geographical indications, industrial designs, unfair competition and in the near future, plant variety protection (new plant varieties).

It is foreseen that legislation should be enacted under the various articles of the Convention on Biological Diversity (CBD) specifically article 8 to allow for identification of holders of traditional knowledge and equitable sharing of benefits derived from the use of this knowledge.

Although it is not adequately addressed under the proposed new Plant Variety Protection (PVP) Act, farmers' rights have been recognised. It is foreseen that additional legislation may be required to ensure that indigenous communities continue to have continued access to genetic resources and traditional knowledge for their use.

- (b) Existing Intellectual Property Rights (IPR) regimes cannot be used adequately to protect traditional knowledge since most of the IPR cover only new creations.
- (c) Options for the development of a sui generis system for the protection of traditional knowledge rights include:
 - ◆ Legislation utilizing the WIPO/UNESCO "Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and other Prejudicial Actions." This Model Provisions legislation should include provisions for indigenous or local beliefs - whether they are scientific or part of our traditional practices.
 - ◆ Modified versions of copyright laws, patents, plant variety protection and geographical indications legislation to allow for the inclusion of traditional knowledge and the protection of indigenous knowledge, genetic resources and novel products using plant and animal resources and indigenous knowledge of their use.
- (d) The introduction of the formal IPR system is cause for concern for traditional knowledge holders on some issues. Whereas cultural heritage, traditional knowledge and their use has been regulated by customary law in the past, modern IPR regimes require documentation or written records and strict procedures. Now that the economic benefits of traditional knowledge are being exploited, it is imperative that holders of traditional knowledge and genetic resources in the country seek to identify and document these resources and arrange legal protection to govern the access and use of these resources including traditional knowledge. Current IPR legislation generally focuses on the protection of new innovations, though traditional knowledge and informal innovations may be used in the innovations. A lack of awareness of the legal issues and their impact on our cultural heritage may result in our indigenous knowledge being no longer accessible to us in the future or our communities being unable to benefit economically and otherwise from their use.
- (e) Holders of traditional knowledge may test means of protection by reviewing various legislation and agreements to see what will be appropriate for St. Lucia. They may then enter into agreement, or contracts with relevant parties and determine the best approach e.g.
 - ◆ Agreement between parties using the CBD guidelines
 - ◆ Formal patent or legislation governing the access and use of informal innovations using traditional knowledge.
 - ◆ Sui generis systems

- (f) In order to ensure that granting IP rights does not preclude continued customary use of genetic resources and relevant knowledge, the following steps are required:
- (i) First the country's authorities need to identify and document the genetic resources and related traditional knowledge in existence in the country.
 - (ii) The next step is to review existing and proposed legislation in the country to ensure that the rights of communities for the use of those genetic resources and related knowledge are not compromised.
 - (iii) The current legislation may then need to be modified or new legislation enacted to protect community and farmers rights including the holders of traditional knowledge and genetic resources.

Intellectual property rights access and benefit sharing agreement

- (g) Ways to regulate the use of resources in order to take into account ethical concerns. There is need to ensure that the policy makers are aware of and sensitive to the cultural heritage of the country including the areas of traditional knowledge and beliefs. Also a participatory approach and consultation involving all stakeholders may assist in addressing ethical concerns.
- (h) Ways to ensure the continued customary use of genetic resources and related knowledge:
 - ◆ Amendments of existing legislation to ensure that the rights of holders of traditional knowledge, including communities, are protected.
 - ◆ Enactment of additional legislation especially those meeting the objectives of the various articles of CBD.
- (i) How to make provisions for the exploitation and use of intellectual property rights to include joint research, obligation to work any right on inventions obtained or provide licences.

A system of comanagement is a priority. There is need for a national body or authority with legal powers to ensure equitable sharing of any economic or other benefits to be derived from genetic resources and traditional knowledge. Legal agreements or contracts between interested parties would stipulate the purposes or reasons for which those resources could be used, access to these resources and the conditions under which access would be given.

WIPO suggests the establishment of collecting societies, which would have four primary functions

- ◆ Acquisition of rights from members
- ◆ Licensing
- ◆ Collection of fees
- ◆ Distribution of royalties

- (j) The country strongly advocates the collective management approach and the establishment of bodies such as the SMMA has shown this approach to be reasonably successful.