

**First WIPO Interregional Meeting on South-South Cooperation on Intellectual Property (IP) Governance; Genetic Resources, Traditional Knowledge and Folklore (GRTKF) and Copyright and Related Rights**

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**Topic 2: National Experience in the Protection of TK, TCEs and GR**

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To speak of national experiences in the protection of Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources is to acknowledge that they exist and need and qualify for protection.

In the area of Intellectual Property this protection is only available for creations of the mind. This means that to obtain a protection for a Genetic Resource we are actually looking at a derivative or an extract and would be seeking a Patent.

To properly address the topic an overview of Jamaica is necessary to contextualize who we are (Usain Bolt and the London Olympics aside) and what it is that we are seeking to protect.

Jamaica is a nation of approximately 2.8 million people, who are at present celebrating 50 years of independence. Jamaica, referred to by the original inhabitants the Tainos, as ‘XAYMACA’ – which means, ‘land of wood and water’, a nomenclature that is still accurate centuries later in a country of eleven thousand four hundred and twenty five (11,425) square kilometers of which approximately ; thirty percent (30%) is considered forest ( the wood) and the water reflected in our limestone aquifers from which eighty-four percent (84%) of our fresh water is obtained, thus making us an attractive destination for cruise ships which top up their water supply from our resources.

Jamaica has the unique distancing of being rated fifth in terms of endemic plants, in islands of the world and this biodiversity is reflected in the endemic flora and fauna found in our forests.

As a people it may be argued that we reflect every tribe and nation; from the Europeans who colonized, specifically the Spaniards from 1494, who arrived here due to a navigational error, to the British who arrived in 1655 and stayed until 1962, to the Africans who were brought as forced labourers, also referred to as slaves, the runaways from the Spanish and British plantations who were called Maroons and who successfully negotiated a Peace Treaty in 1739 with the British while the slave trade was still in its primacy is significant. The trade in enslaved Africans did not end until 1807 and slavery was not abolished until 1838, which then saw the bringing of indentured servants in 1845 from India and in 1854 from China. In the early twentieth century we had the further arrival of the Jews, however there has been a presence of Jews in Jamaica fleeing persecution in Europe and seeking to share in the wealth to be had from the colonies of the New World, and the Arabs from the Middle East who were fleeing persecution and or seeking a better life, out of all these persons evolved a nation of people who when asked what is your race would sometimes respond JAMAICAN. A reflection of our Motto emblazoned on our Coat of Arms, ‘**Out of Many one People**’.

A people that has embraced the diversity of races and the influence of Christianity, Judaism, Islam, Hinduism and Rastafarianism and other forms of worship to develop a distinctive culture.

The majority of our population is of African descent and most Jamaicans without being sometimes aware of the origin practice African traditions in the food we eat, our folklore, and our customs and in our local language. The use of herbal medicines and the planting and the reaping of crops based on the phases of the moon are still common practices that reflect the diversity of our culture.

**The United Nations Law of the Sea Headquarters** situated in downtown Kingston, benefitted from this Traditional Knowledge. The ceiling in a number of the rooms is made from bamboo and although the building was erected in the 1980's the bamboo is still in pristine condition – why? It was cut at the correct phase of the moon and so has not turned to dust.

This knowledge is also reflected in the making of baskets and other items of Craft from the Sisal Plant and the production of Wicker furniture from the Philodendron Plant.

Our extensive use of plants and animals is also reflective of the different cultures and traditions and even now in the 21<sup>st</sup> century is not unusual for an animal or bird to be sacrificed when a building is being erected, the sprinkling of the blood and the offering of alcohol to appease the spirits.

From the British - A tradition of Laws and the English Language

Protection: Jamaica is signatory to a number of Treaties and has several pieces of legislation designed to protect our flora and fauna including:

1. Ratification of the Convention on Biological Diversity, which includes recognition of fair and equitable benefit sharing arising from the use of genetic resources;
2. The Endangered Species Protection Conservation and Regulation of Trade Act;
3. The Animal Disease and Importation Act. (Limits countries from which animals may be imported into Jamaica);
4. The Public Health Act;
4. The Plant Quarantine Act and
5. The establishment of specialized agencies and bodies tasked with protection of our TK, TCE's and CR;
6. The Scientific Research Council which houses the largest in-vitro germ plasma collection of Banana in the Western Hemisphere;
7. The National Environment and Planning Agency;
8. The Jamaica National Heritage Trust;

9. **The Institute of Jamaica** which includes: The Natural History Museum of Jamaica, the Museum of History and Ethnography, the Jamaica Music Museum, the National Gallery of Jamaica and the African Caribbean Institute of Jamaica/Jamaica Memory Bank.

The Memory Bank engages in the continuous recording of the oral history of Jamaica, including genealogical research, social history research requiring eye witness's accounts; biographies; confirmations and or expansion of existing historical accounts, creation of new historical accounts of previously unknown events, for example, the use of medicinal plants. The procedure includes: An applicant/visitor completes a form to obtain access and last but by no means least.

The Natural History Museum of Jamaica, which investigates and documents the linkages between our culture and the physical and biological heritage of the island houses specimen collections and data relating to the rich biological diversity and natural history of Jamaica.

10. **The Jamaica Intellectual Property Office**, whose role includes but is not limited to: (1) advising the Minister in our case, the Minister of Industry Investment and Commerce, on matters relating to the administration of Intellectual Property; and (2) Promoting the progressive development of intellectual Property in Jamaica and carrying out functions relating to I.P.

The implementation of these functions means that the Office (JIPO) examines carefully, applications for Trade Marks and Designs that appear contrary to best practices.

We have also issued **Practice directions** that advise members of the public who are not members of certain local communities that they may not use the symbols, words and images, associated with those communities as registered Trade Marks or Designs.

There is also the omnibus provision of being contrary to **public policy** that is used to prohibit registration that is not equitable. These are some of the protection mechanisms in place. However, despite these measures, individuals consistently seek permission to use well known TK and TCEs, for personal gains.

In the case of GR the **Jamaica Memory Bank** has indicated that they have received requests for information on the use of 'medicinal' plants.

One of the most famous examples of the use of a Genetic Resource in Jamaica surrounds the use of an extract from the particular GR to obtain a medication to treat a disease of the eyes. To simplify the matter the local inventors would not agree to the terms and conditions of the international pharmaceuticals company and so the benefits that could have been obtained by all parties,(the inventor, the pharmaceutical company and those affected by the ailment) have been severely limited.

## **CARIBBEAN COMMUNITY (CARICOM)**

The Council for Trade and Economic Development (COTED) of CARICOM is committed to the protection of intellectual property rights within the community and this is recognized in the **Revised Treaty of Chaguaramas** that states in:

### Article 66 Protection of Intellectual Property Rights

“(c) the identification and establishment by the Member States of mechanism to ensure

- the preservation of indigenous Caribbean culture and
- the legal protection of the expression of folklore, other traditional knowledge and national heritage particularly of indigenous populations in the Community.”

## **World Intellectual Property Organisation (WIPO)**

In terms of national experiences, the work of the World Intellectual Property Organization (WIPO) cannot be forgotten including the hosting in collaboration with the Government of Jamaica a Regional (CARIBBEAN) meeting in 2008 Traditional Knowledge and Traditional Cultural Expressions experts in Kingston, that addressed the charge from the 2006 Ministerial Meeting held in Barbados included in Article 66 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy.

The result of the 2006 and 2008 meetings being the:

- Establishment of a **working group on TK, TCE and GR** and the;
- production of a **policy paper**,

The policy paper is to be reviewed by the Ministers with responsibility for Intellectual Property at a meeting scheduled to be held in 2012, the outcome of the review being the agreement to proceed to the expected outcome being a legal instrument, possibly a Regional Treaty on how to treat the subject area (TK, TCEs and GR), the work being done in the Caribbean reflecting or running parallel to the work of the WIPO Intergovernmental Committee on the subject.

Recognition that as a developing state, it is critical that we have mechanisms in place to facilitate access and benefit sharing but also to promote the importance of the subject area. This means that we need to focus on public education because without knowledge there is an absence of recognition of the importance of the subject area and the need for controlled protection and use.

## Sources

- United Nations Development Programme in collaboration with the National Environment and Planning Agency (NEPA) and the Institute of Jamaica, Jamaica Biodiversity Add on Project Annual Report
- Report on the Establishment of a Regional Framework for the Protection of Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources in the Caribbean Region
- Institute of Jamaica African Caribbean Institute of Jamaica/Jamaica Memory Bank ACIJ/JMB – Director, Bernard Jankee interviewed.
- Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy
- World Intellectual Property Organisation information and publications on GRTKF