

THEMATIC REPORT ON BENEFIT SHARING

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Summary information on the process by which this report has been prepared, including information on the types of stakeholders who have been actively involved in its preparation and on material which was used as a basis for the report.

During the preparation of the National Biodiversity Strategy and Action Plan report for the Republic of Mauritius (NBSAP), access and benefit sharing was included in the Agro-biodiversity thematic sector consultation that was held with the competent stakeholders. The Agricultural Services of the Ministry of Agriculture, Food Technology and Natural Resources, Mauritius Sugar Industry Research Institute, University of Mauritius, Agricultural Research Extension Unit, Food and Agricultural Research Council, Forestry Service, National Parks and Conservation Service and the Ministry of Economic Development, Financial Services and Corporate Affairs were among the main organisations that were consulted in that thematic area including access and benefit sharing.

The Draft Final NBSAP report and many other inputs in the form of information/ internal papers from the various above-mentioned organisations were used as the basis for the preparation of this thematic report.

This thematic report is based on the input given by these agencies and in particular the Agricultural Services of the Ministry of Agriculture, Food Technology and Natural Resources. It should also be noted that there is no indigenous tribal peoples practicing traditional life style living in Mauritius.

Views of Mauritius on the following issues:

Intellectual property and traditional knowledge related to genetic resources

(a) *How to define relevant terms including subject matter of traditional knowledge and scope of existing rights;*

A clear and commonly agreed definition of the various terms would be very important. However traditional knowledge is understood as knowledge derived and transmitted outside the boundaries of formal scientific/ technical discourse. It is based on practical experience and experimentation involving trial and error. Traditional knowledge is also governed by customs and social conventions making it very widely available. It does not seem to be protected legally.

(b) *Whether existing intellectual property rights regimes can be used to protect traditional knowledge;*

Very partially. Protection of knowledge, innovations and practices associated with biological resources do not seem to meet the conditions required for grants of patents or other IPRs (e.g. copyrights, trademarks and so on) under the prevalent IPR regimes, i.e. novelty, inventiveness and industrial applicability. These conventional forms of IPRs are inadequate to protect traditional knowledge that is by far largely collective. In addition, traditional knowledge being informal presents other difficulties in being recognised for the purpose of intellectual property protection such as:

- Traditional knowledge is developed over a period of time and may be retained in oral traditions for generations. The conditions of novelty and innovative step necessary for grant of patent are therefore not satisfied.
- Traditional knowledge is quite often held in parallel by farmer communities.

(c) *Options for the development of sui generis protection of traditional knowledge rights.*

As indicated earlier, there is no indigenous tribal person practicing traditional life style living in Mauritius. However, as genetic resources in Mauritius have undergone almost four centuries of adaptation, they have acquired some intrinsic properties that are specific to Mauritius. As the present IPRs offer somehow limited option for protection in the Mauritian context, the Government is in the process of development of *sui generis* for protection for traditional, authors and breeders rights in Mauritius and this shall be in line with international treaties.

On the other hand, protection of traditional knowledge may be promoted through a number of ways, such as, documentation, changes in policy, technical support/ fiscal incentives to facilitate good maintenance and innovation.

(d) *The relationship between customary laws governing custodianship, use and transmission of traditional knowledge, on the one hand, and the formal intellectual property system, on the other;*

Customary laws governing custodianship, use and transmission of traditional knowledge are very variable and there is no simple relationship with formal intellectual property system. In the case of Mauritius, the *sui generis* will cater for both.

(e) *Means by which holders of traditional knowledge, including indigenous peoples, may test means of protection of traditional knowledge based on existing intellectual property rights, sui generis possibilities, and customary laws;*

Appropriate mechanisms shall be set in place/ devised under national laws/ intellectual property laws to cater for their registration, documentation, certification marks, trade marks that can provide certainty as to their authenticity and as such ensure their protection and sustainable use of biodiversity resources.

(f) *How to ensure that granting intellectual property rights does not preclude continued customary use of genetic resources and related knowledge;*

Where patents are granted for inventions involving traditional knowledge, provisions should be made against illegal commercial exploitation. However, terms and conditions could specify/ authorise continued customary use of genetic resources at domestic level only.

Intellectual property rights and access and benefit-sharing agreements

(g) *Ways to regulate the use of resources in order to take into account ethical concerns;*

There should in place national policies and/or policy guidelines that take into account ethical concerns amongst other terms and conditions. There is also the need to have well defined protocols that ensure both sustainable use and mechanism in place to monitor / control against any abuse.

(h) *Ways to ensure the continued customary use of genetic resources and related knowledge;*

These shall be ensured through provision of financial assistance/ incentive, technical support and policy changes that encourage sustainable utilisation of genetic resources and related traditional knowledge in the national legislation.

(i) *How to make provision for the exploitation and use of intellectual property rights to include joint research, obligation to work any right on inventions obtained or provide licenses;*

By inclusion of such possibilities in national legislation that allow for joint research and sharing of benefits. There may be the possibility to establish advisory body under the national legislation comprising representatives of competent stakeholders. The advisory body will have the responsibility to advise on the modalities, terms and conditions for joint exploitation and use of IPRs. There shall also be established for the purpose of the “*sui generis*” an Arbitration Tribunal.

(j) *How to take into account the possibility of joint ownership of intellectual property rights.*

In the same line as proposed for (i), a national authority shall be established under the national legislation which shall devise and impose terms and conditions to secure joint ownership of IPR and sharing of benefits. These may include

- Granting of full ownership or joint ownership of intellectual property rights to the established national authority or where benefit claimers are identified;
- Mechanism to ensure access to the genetic resources;
- Terms and conditions for technology transfer;
- Securing involvement of research institutions (both parties), local people, benefit claimer (if any), in the exploitation and utilisation of genetic resources;
- Modalities concerning payment of monetary benefits and also sharing of non-monetary benefits either to the national authority or other benefit claimers.