

**INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL
PROPERTY AND GENETIC RESOURCES TRADITIONAL
KNOWLEDGE AND FOLKLORE**

Seventeenth Session
Geneva, December 6-10, 2010

**WIPO INDIGENOUS PANEL ON THE ROLE OF THE PUBLIC DOMAIN CONCEPT:
EXPERIENCES IN THE FIELDS OF GENETIC RESOURCES, TRADITIONAL
KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS: EXPERIENCES
FROM SOLOMON ISLANDS**

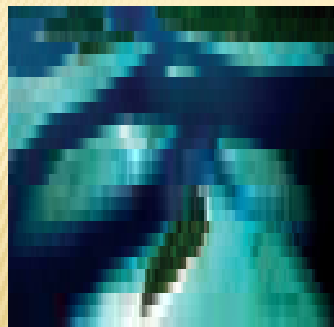
Document prepared by

Mr. Francis Waleanisia
Ministry of Culture and Tourism,
Honiara, Solomon Islands

**THE PUBLIC DOMAIN DEBATE IN
TRADITIONAL KNOWLEDGE &
EXPRESSIONS OF CULTURE
SOLOMON ISLANDS EXPERIENCE
IGC MEETING GENEVA 5 – 6TH DECEMBER, 2010**

Francis Waleania
Ministry of Culture & Tourism
PO Box 1682
Honiara
SOLOMON ISLANDS

**WHERE THE HELL IS SOLOMON
ISLANDS?**



- REGION – Pacific
- POPULATION – 500,000(est)
- LAND MASS – 29,000 sq.Km
- LANGUAGES - 70
- ETHNIC GROUPS – Melanesian, Polynesian and Micronesian
- CUSTODIAN: Share of Pacific Ocean

OUTSET COMMENTS ON PD

- ✘ Realise the threat posed by the public domain factor.
- ✘ Realise the need to address it;
- ✘ Realise the complexities of the issues involved.
- ✘ We are just being thrown into the debate for the first time. It will take time for us to properly understand the complexities and how we can make sense of them all.
- ✘ The draft TCE Bill seeks to address some of these issues. We are depending on these meetings and WIPO to improve on what we have been doing.
- ✘ Our efforts are being realised because of assistance provided by WIPO through SPC/PIFS.

LOCAL VIEW ON PUBLIC DOMAIN

- PD is alien to our cultures;
- All TKEC is vested in a person or tribe and upon the following basis:
 - By blood ties to the group;
 - To serve a specific purpose defined by the gods as useful for the continued survival of the community;
 - Eg. The Aralaia tribe in Langalanga is responsible for food security hence all TKEC related to fishing is kept within that tribe and is taught to the young generation of that tribe.
 - The rituals associated with fishing are only held by the high priest of that tribe and only handed to hand picked replacement but most times, the eldest son.

LOCAL VIEWS ON PUBLIC DOMAIN CONTD...

- Eg. 2 – Traditional chants for entertainment for men are made through a ritual where the tune and the lyrics actually come through telipatic communication between the high priest and the gods. No one else can extract the tunes or words.
- The song however is sang for all men's enjoyment within the shrine area.
- Eg. 3 - fish breeding and so on are important and must be refined and kept within the group.

LOCAL VIEW ON PUBLIC DOMAIN

- All TKEC has some connection to a specific geographical location.
- All TKEC are created to serve a specific purpose important to for the continued existence and survival of the community. For example, the Aralaia tribe cited above must perform use their TK to ensure the tribe continues to live on the sea resources for as long as they survive. Thus knowledge in conservation, environment,
- Exist in the community for as long as the community exists.

WESTERN INFLUENCE & ISSUES

- Money economy and concepts of ownership are adding new dimensions to the community perspectives thus today in Langalanga, young children of other tribes try to write chants or create portions outside of the customary rules mentioned above.
- Association of a monetary value to a TKEC and the gains in charging a price for the use of TKEC;
- Governments struggle to involve the 70% of the population living in traditional communities with no secure income.

WESTERN INFLUENCE & ISSUESCONTINUE

- Developments at the international level leading to change in perceptions (Eg this meeting);
- The attractions of the private ownership argument.

NB: EVIDENCES OF SOCIETAL
STRUCTURESEVOLVING HENCE CANT
BE IGNORED BY LAW.

TKEC DEVELOPMENTS IN SOLOMON ISLANDS

- **APPROACH:**
 - Scoping Studies on both IP, TKEC policy and law;
 - Review and identification of existing IP and related laws;

- **FUNDING:**
 - Through external sources and agencies including WIPO, Trade Com through PIFS, SPC.

OUTCOMES OF DEVELOPMENTS

- **REVIEWS REVEALED:**
 - Need for stand alone TKEC policy;
 - Inadequate Legislative protection for TKEC rights;
 - Evidence of misappropriation of TKEC.

- **FOLLOW ON LEGISLATIVE WORK:**
 - Drafting of Traditional Cultural Expression Bill 2010 (sui generis approach);
 - Industrial Property Bill 2010;
 - Amendments to Copyright Act 1998;
 - Amendment to Customs & Excise Act, Research Act & Others applicable.

OUTCOMES CONTINUE

- **CURRENT AND ON GOING:**
 - On going consultation Bills with WIPO;
 - Preparations or further review and consultations by stake holders;
 - Work in progress for and Industrial Property law for Patents, Designs and Trademarks;
 - Work in progress for amendment of the Copyright Act 1988;
 - Possibility of exploring creation of other necessary laws focussed on preservation of cultural heritage

NB: FOCUS TO BE ON TCE BILL ONLY

KEY ELEMENTS OF THE TCE BILL

- Definitions;
- Scope of Application;
- Establishment, functions and powers of a Cultural Authority to administer applications for right to use TCE and to oversee processes;
- Vesting of powers on Minister, the Cultural Authority and Provincial Authorities to perform necessary functions and set necessary rules for effective implementation of the Act;
- Establishment of rights in TCE and exceptions;
- Transitional Provisions;
- Reciprocal enforcement Arrangement;
- Penalties and Courts Jurisdictions.

HOW PD IS ADDRESS IN TCE BILL?

- (1) DEFINITION:
 - Non exhaustive list of general and clear definitions for TK, EC, Sacred Secrets etc;
 - Clear classification of the types of TCEs available;
 - Clear criteria for qualification for legal protection; (Eg. Art 3 of Pacific Model on Protection of ecological traditional knowledge sets criteria involving (a) intention to make public, (b) proof of permission and (c) knowledge of possible gains, (d) clear understanding of risk of losing TK for good, (e) extent parting would have on spiritual cultural integrity of owners) (Other examples also noted)

HOW PB ADDRESSED IN TCE BILL CONTINUE

- (2) POWERS FOR MINISTER WHICH INCLUDE:
 - creation of Regulations, Ordinances (Provincial Governments), Protocols and Administrative mechanisms useful for assessing nature of TKEC, where PD material or not, appointment of experts to assess nature.
 - Delegation of SICA functions to Provincial Government authorities;
 - Creation of compulsory licensing when necessary;
 - Resolution of disputes upon appeal;
 - Any other act necessary to advance the purposes of the law.

HOW PB ADDRESSED IN TCE BILL CONTINU

- (4) SOLOMON ISLANDS CULTURAL AUTHORITY powers and functions include:
 - Receiving and processing of applications for use of TCE;
 - Setting standards and protocols;
 - Coordinating activities at provincial level - (NB. TKEC and owners and holders exists largely in Provincial areas;
 - Setting assessment criteria for different types of TCEs. (based on customary norms and practices of communities under the jurisdiction of the provincial governments).
 - Performing any other activities necessary to advance purpose of the law.

HOW PB ADDRESSED IN TCE BILL CONTINUE

- (5) BEYOND JURISDICTION/TREATY:
 - Any TKEC right recognised under a Treaty or Convention is recognised and enforceable in Solomon Islands;
 - NB: Has the effect of defusing the argument that TKEC can be public domain in another jurisdiction;
 - Complimentary to this is the development of a draft text of a TREATY for TKEC for the Melanesian group of countries in the South Pacific. This is the linkage to the like provision in the national law.
 - Limitation – will apply only to 4 member countries.

OVERLAP OF LAWS

- The clear definitions also should lead to TKEC falling under other laws such as Trade Marks and Patents being addressed under those regimes;
- Also, there maybe need to create other laws specific to Cultural Heritage which could also be useful.
- NB: Still to explore these options.

ISSUES & CHALLENGES AHEAD

- Need for involvement of a lot more Solomon Islanders to increase professional capacity in the field;
- Need for developments at international level to be made known to the people at grass root levels;
- Need a lot of awareness to follow enactment to make stakeholders understand the law and the enabling environment it provides commercialisation of TKEC.
- Drumming up political will;
- Need to stocktake on what we have to be certain on what the law is protecting;

THREATS TO EXPRESSIONS OF CULTURE

- + Unauthorised recording of traditional music, chants etc,
 - + Unauthorised photographing of traditional performers, settings taboo sites;
 - + Unauthorised photographing of art and craft not protected under Copyright Act,
 - + Unauthorised copying of styles.
- + **NB:** See report by Terry Jenky, Solomon Islands Festival of Pacific Arts, IP Scoping Study, 4th June 2010 for detailed discussions.

EXAMPLE OF MISAPPROPRIATION OF TCE



- Band – Deep Forest
- Song – Sweet Lullaby
- Recorder under UNESCO project for preservation
- Owner – People of Baegu, Malaita Province.
- The owners of the song were never consulted nor did they receive any money from the sales.

THREATS TO TRADITIONAL KNOWLEDGE

- TRADITIONAL KNOWLEDGE MISAPPROPRIATION:
 - Use of TK to enable registration of Patents over under Western IP regimes;
 - Use of TK to advance research into usefulness of biological resources for medicinal purposes;
 - Cost of litigation.
 - Lack of appreciation for usefulness of TK

EXAMPLE OF MISAPPROPRIATION OF TK FOR MEDICINAL PURPOSES



Mature *Canarium* plant, Vanuatu (Thomson & Evans, 2006)

- Example 1 - US Patent NO. 6395313 registered in USA, South Africa and Australia.
- Ngali nut (*Canarium indicum*) oil used by people of Choiseul Province to relief Arthritic pain.

• **NB: Currently more than 20 Patents over based on SI TK**

POTENTIAL THREATS TO ONE RICH
BIODIVERSITY, WAY OF LIFE AND
CUSTOMS AND TABOOS



TAGIO TUMAS

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