

PANAMA

Response to Question 1 : There have been no such examples.

Response to Question 2 : Law No. 20 of June 26, 2000, regulated by Executive Decree No. 12 of March 20, 2001, entitled "Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples, for the Protection and Defense of their Cultural Identity and their Traditional Knowledge, and Other Provisions."

Response to Question 3 : It came into force on June 27, 2000, on being promulgated in Official Gazette No. 24,083.

Response to Question 4 : Protection and defense of the collective intellectual property rights and the traditional knowledge of indigenous peoples in relation to their creations, such as inventions, models, drawings and designs, innovations contained in images, figures, symbols, graphics, petroglyphs and other material, in addition to the cultural elements of their history, music, art and traditional artistic expressions that are suitable for commercial use, afforded by means of a special system of registration, promotion and commercialization of their rights, with a view to enhancing the socio-cultural values of indigenous culture and doing social justice to those peoples.

2. The cultural heritage of indigenous peoples may not be the subject of any form of exclusive rights in favor of third parties not authorized under the intellectual property system, such as copyright, industrial design and trademark rights, and the rights in geographical indications and other subject matter, except where the application is made by the indigenous people themselves.

Response to Question 5 : Yes. Among others: Law No. 35 of May 10, 1996 "Enacting Provisions on Industrial Property"; in its Article 14 it specifies that "The following (...) are not considered inventions for the purposes of this Law: (...) aesthetic creations and artistic or literary works." Law No. 15 of August 8, 1994, on Copyright and Neighboring Rights, and Enacting Other Provisions, provides in its Article 3 that "The author is the original owner of the moral and economic rights in the work as recognized by this Law. In the absence of proof to the contrary, that person shall be presumed to be the author whose name, signature or identifying mark appears as such on the work." Panamanian copyright law protects the unpublished works of authors whom may be identified; however, the collective rights in the traditional knowledge of the indigenous and local communities of Panama are ancestral. Apart from that, traditional knowledge does not meet the novelty requirement required by the patent system and specified in Law No. 35.

Response to Question 6 : Collective rights of indigenous peoples in their creations, traditional knowledge, cultural heritage, innovations and practices.

Response to Question 7 : Collective indigenous rights: indigenous cultural and intellectual property rights that relate to art, music, literature, biological, medical and ecological knowledge and other subject matter and manifestations that have no known author or owner or date of origin, being the heritage of an entire indigenous people.

Comment: Work is currently proceeding on a draft law for the protection of the collective rights of local communities, which broadens the definition as follows: they are the

intellectual property right of indigenous peoples and local communities the subject matter of which is art, music, literature, biological, medical and ecological knowledge, rituals, games, cultural expressions, traditional science and technology, gastronomy, cultural traditions, beliefs and other aspects of the cultural heritage that are not dissociable from the cultural identity of a whole community.

Response to Question 8 : Indigenous peoples have developed knowledge that has been handed down and perpetuated throughout generations in Panama. That knowledge embodies an intellectual effort and is a contribution to society. It is well known to all that this scientific and biological knowledge, traditional medicine, art, culture, music, agriculture, traditional know-how and other subject matter of the cultural heritage is currently at risk of improper exploitation by persons and/or companies seeking to commercialize it, and that it is precisely that commercial exploitation based on it that is going to deter the creators of such knowledge and manifestations owing to the non-existence of national provisions with which to prevent it.

All this traditional knowledge constitutes the identity of an indigenous people. Panama is a signatory of the Convention on Biological Diversity, and as a Contracting Party is bound to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local peoples that contribute to traditional lifestyles. That was the motivation for the enactment of special legislation to protect the collective rights of those peoples, and thereby to promote the preservation of biological diversity and the sustainable use of biological resources. Finally, all that knowledge is in everyday use by indigenous peoples and local communities. The provisions on collective and certification marks contained in Law 35 of 1996, which require the inclusion with the application for registration of rules for the use of the traditional knowledge or cultural manifestation, will be applied.

Response to Question 9 : Genetic resources.

Response to Question 10 : Collective intellectual property rights of indigenous peoples.

Response to Question 11 : Exclusive rights, with the proviso that they may be the subject of exclusive third-party rights where therequest is filed by the indigenous peoples themselves.

Response to Question 12 : Yes.

Response to Question 13 : Whether rights have been granted on the basis of false or inaccurate information.

Response to Question 14 : No.

(ii) As soon as registration of the collective right has been granted by the Registry.

Response to Question 15 : The Law provides that rights accorded previously under the relevant legislation shall be respected and shall not be affected.

Response to Question 16 : The Traditional Indigenous Congress(es) or Authority (Authorities) of the indigenous peoples are entrusted with representing them and complying with the requirements laid down in the Regulations under the Law. The Regulations provide that there can be traditional knowledge of indigenous peoples in the form of creations shared

between members of two or more communities, in which case the benefits accrue to both or all of them collectively.

Response to Question 17 : Yes.

Response to Question 18 : Yes. The Regulations under the Law provide that the collective rights of an indigenous people shall not prevent that people from continuing to exercise the rights within the indigenous community that hold the traditional knowledge, neither shall they affect the right of present and future generations to continue to make use of the collective knowledge and develop it.

Response to Question 19 : Law No. 20 of June 26, 2001, provides that traditional indigenous knowledge (*Naöbe-Bugle*) is excluded from it when acquired by non-indigenous communities by operation of customary law but in respect of which those communities cannot claim the collective rights recognized by the said Law.

Response to Question 20 : In cases not provided for in either customs legislation or industrial property legislation, infringements of the Law are punished with fines ranging from 1,000 to 5,000 dollars, depending on their seriousness. In the event of a repeat offense, the amount of the fine is doubled. These sanctions provided for in the Law are applied in addition to the seizure and destruction of the materials used to commit the infringement.

Response to Question 21 : Appeals against registrations have to be filed in person with the representatives of the General Congress or Traditional Indigenous Authorities. There is no evidence of appeals having been filed.

Response to Question 22 : Under the Law and its Regulations, the owners of rights do have the right to assign their rights by licensing the use of registered collective rights. There is no provision for the grant of compulsory licenses.

Response to Question 23 : Law 20 of 2001 sets up the Department of Collective Rights and Expression of Folklore within the Industrial Property Registry of the Ministry of Commerce and Industries (MICI), through which the collective rights of indigenous peoples and local communities will be granted.

The foregoing was ratified by Resolution No. 3 of July 31, 2001, of the Ministry of Commerce and Industries, which brought about the creation of the Department.

Response to Question 24 : Yes. Law No. 20 of 2001 provides that the provisions on collective and certification marks contained in Law No. 35 of 1996 shall be applicable in so far as they do not conflict with the rights provided for in Law No. 20 itself. The application for registrations should (1) include rules of use, which, in addition to the identifying particulars of the applicant authorities, should specify the grounds on which use of the collective rights may be denied to a member of the indigenous people, and (2) include a favorable report by the competent administrative body on the rules of use.

Response to Question 25 : Yes. No protocol.

As for what is to be protected, yes, because it does have to determine the subject matter for which protection is sought.

Response to Question 26 : Law No. 20 itself helps the holders of traditional knowledge, as it provides that the services of an attorney are not required for dealings with DIGERPI.

No payment is required.

The Department of Collective Rights and Expressions of Folklore has the following functions among others: (a) promotion of the program for intellectual protection of traditional knowledge and expressions of folklore, and (b) technical support and training in the intellectual protection of traditional knowledge and expressions of folklore for the benefit of peoples possessing traditional knowledge and expressions of folklore.

Response to Question 27 : Every indigenous people is governed by the Traditional Congresses or Authorities.

In the case of the Kuna people there are three districts created by law which are governed by Congresses:

Kuna Yala district
Madungandí district
Wargandí district

There is also a Kuna people known as Ta Kar Kun Yala, which lives in provincial lands.

It is important to point out that much of their traditional knowledge consists of shared creations, and it has been suggested that peoples of Kuna origin, on applying for registration, should file a resolution jointly with one of the Congresses representing them. That would be for just one of their creations that require urgent registration. In spite of all of them being available, they have failed to meet. There are a number of reasons for this, namely the fact that the areas are far from each other, that there is a lack of resources, that they all have other priorities and that they do not see clearly what advantages there could be for them. The Law applies only to the registration of the collective rights of indigenous peoples.

The submission of the Law Protecting the Collective Rights of Local Communities to the Legislative Assembly is awaited.