

VENEZUELA

Response to Question 1 : There are in our countries real -life instances in which use has been made of modern industrial property provisions to protect traditional knowledge. One example is the institution of appellations of origin, which is extensively provided for in our legal order, and which indeed has served to protect a large amount of subject matter that can be assimilated to what traditional knowledge is generally understood to be.

Examples that can be quoted are highly relevant inasmuch as it is not only geographical conditions that have influenced the recognition of the appellations of origin granted to date, but rather human intervention, detected in the conduct of activities that themselves have had a potential effect on exploitation . One such example is Cocuy de Pecaya (aliquete extracted from the agave): not only does the area in which this type of plant is grown benefit from special conditions, but there is a manner in which the communities located there traditionally extract the product, using processes that have remained unchanged for centuries.

Response to Question 2 : There is no specific, *sui generis* law that provides intellectual property protection for traditional knowledge. Nevertheless, there is in our constitutional framework a program principle according to which the intellectual property rights in the knowledge, technology and innovations of indigenous peoples is guaranteed and protected (Constitution of the Republic of Venezuela).

Response to Question 3 : At present an Industrial Property Law of Venezuela, which to a large extent complements Decision 486 —the Common Provisions on Industrial Property—is under consideration.

Also under consideration in this connection is the question whether or not model provisions on the protection of traditional knowledge should be included, or whether a special law should be enacted separately. These options are being discussed between the National Executive and the Legislature.

Response to Question 4 : The following objectives may be noted in the Constitutional provision referred to above:

to protect and guarantee the intellectual property rights of indigenous peoples;
collective benefits;
prohibition of the patenting of ancestral resources and knowledge.

Response to Question 5 : Yes.

Response to Question 6 : The expression “collective intellectual property of knowledge” is used.

Response to Questions 7 and 8 : See Response to Question 2.

Response to Question 9 : No.

Response to Question 10 : In this connection it has been stated that the subject matter in question must of necessity benefit from unlimited, retroactive protection.

Response to Question 11 : For the purposes of determining either exclusive rights or the right to remuneration, though it has been given to make rights subject to disclosure; in other words, if the knowledge has been disclosed, its holder is entitled to remuneration, and in the event of it not having been disclosed, he will enjoy exclusive rights in it as well as the right to remuneration.

Response to Question 12 : It has to be automatic.

Response to Question 13 : The rights obtained, owing to the retroactivity that they have to enjoy and their unlimited nature, cannot lapse or be revoked.

Response to Question 14 : In the course of the discussions that have taken place on the draft, the guiding principle has been not to make the protection subject to any particular time limit.

Response to Question 15 : This aspect has not been fully worked out, but there is a strong inclination towards making the protection retroactive.

Response to Question 16 : It has been stated that those entitled to enjoy the protection are the indigenous communities.

Response to Question 17 : Yes.

Response to Question 18 : Yes. See Response to Question 2.

Response to Question 19 : No exception has been contemplated in this respect.

Response to Question 20 : All the remedies and sanctions provided for in our legal order, as well as action for damages or such other civil remedies as may be appropriate.

Response to Question 21 : All the remedies and sanctions provided for in our legal order, as well as action for damages or such other civil remedies as may be appropriate.

Response to Question 22 : Though it has certainly been given to the possibility of transferring rights by licensing, but without assigning them in the fullest sense.

Response to Question 23 : Yes. The design of a structure for administering the rights granted is indeed under consideration.

Response to Question 24 : Yes.

Response to Question 25 : No.