

## FFM to South America Mission to Bolivia

**Box 1:** *Bolivia FFM:  
Country Membership  
in international IP treaties.*

<u>International IP Treaties</u>	
• Paris Convention	1993
• Berne Convention	1993
• Rome Convention	1993
• Madrid Agreement.....-	
• The Hague Agreement.....-	
• PCT.....-	
• UPOV Convention	1999
• TRIPS Agreement	2000

**Box 2:** *Bolivia FFM:  
Country Membership  
in TK-related treaties and processes.*

<u>TK-related treaty/process</u>	
• UNESCO Heritage Conv.	1976
• UNESCO Cul. Property.....	1976
• ILO 169	1991
• IUPGR – FAO	Yes
• CBD	1994
• UNCCD	1996

The FFM to Bolivia took place from November 17 to 19, 1999, in the cities of La Paz and Tiawanaku. The Interim Mission Report, which lists the persons and entities contacted, can be found in Annex 4.

The presentation of the information in this section is organized under the following headings: Methodology; Genetic Resources and Associated Medicinal Knowledge; Folklore and Handicrafts; Cultural Heritage; and Implementation of Bolivia's International Obligations in the Field of Intellectual Property and Other Institutional Matters.

### Methodology

The FFM to Bolivia was a natural sequence to the FFM to Peru, given the cultural and historical similarities between the indigenous communities of the two countries. Since the first part of this chapter has already covered general issues and concepts of TK in the context of the Andean region, this part focuses on specific aspects of the concerns of indigenous communities in Bolivia as regards intellectual property protection of TK. Four main areas have been identified: genetic resources and associated medicinal knowledge; folklore and

handicrafts; cultural heritage; and implementation of Bolivia's international obligations in the field of intellectual property and other institutional matters.

## Genetic Resources and Associated Medicinal Knowledge

Bolivia has a number of different geographical settings, from the dry high plateau in the center and north of the country, to the rain forests in the northeast. This geographical contrast has generated a very rich biological diversity, which the indigenous communities have learnt to use in a sustainable manner along many generations. In managing biological resources indigenous communities have modified a large number of them so as to increase their output and resistance to adverse factors; indigenous communities have also acquired vast knowledge on the practical utilization of those resources.

There is a general concern involving intellectual property rights in biological resources. Indigenous communities in Bolivia have contributed to improve varieties of quinoa, which is a very important food staple in the region. The notice that researchers from a United States university had obtained a patent in the U.S. for a variety of *Apelawa* quinoa (an asexually reproduced variety), which had allegedly been developed by indigenous communities, gave rise to complaints against "biopiracy". Apparently the patent has been cancelled for the lack of payment of maintenance fees, yet the concerns did not vanish. The same claims were made regarding *la evanta* and *el yagué*, local plants with therapeutic properties. Participants stated the fear that patent protection for plant varieties modified by indigenous communities of Bolivia in foreign countries would probably impair their capacity of exporting agricultural products derived from those varieties. On the other hand, there was a risk that further improved varieties would be developed in countries like the United States and later imported into Bolivia at higher prices.<sup>1</sup>

Even though the economic risks of importing improved varieties are nonexistent due to the fact that indigenous communities may always utilize the original ones, the concern with unauthorized research on and commercial use of plant and animal varieties developed in Bolivia is shared by all communities.

On the other hand, the risk of losing biodiversity is a serious threat to traditional agriculture. In Bolivia traditional farmers have developed knowledge concerning the use of more than four hundred varieties of potatoes. The eventual introduction of genetically modified varieties might propagate uncontrollably and alter the traditional characteristics of local varieties.

Indigenous communities in Bolivia have developed extensive information on the practical application of genetic resources, in the field of agriculture and medicine. The community of the Kallawayas, of *Provincia Bautista de Saavedra*, department of La Paz, is particularly renowned for the medicinal knowledge that its shamans developed and preserved for many centuries, to the point they were known as "the doctors of the Incas." The expectations of indigenous communities in this area are two-fold:

### Intellectual Property Needs and Expectations #1

- Protection against unauthorized use

### Intellectual Property Needs and Expectations #2

- Integration into the formal system of health care

protection and preservation of knowledge, so as to enable sharing of the benefits arising from their utilization; and integration of that knowledge into the formal system of health care.<sup>2</sup>

Indigenous communities are not familiar with mechanisms of intellectual property protection, but they have a sense that it is necessary to protect its economic and spiritual value by some means of appropriation. Even from a historical perspective such sense has always existed. Indigenous communities have had a tradition of sharing general knowledge with other communities, but specific pieces of information, in particular those associated with religious practices and beliefs, have always been kept confidential. This explains why some communities have developed and maintained a higher degree of knowledge or expertise in some specific areas.

Protection of traditional knowledge would, therefore, promote confidence in holders, and encourage them to transfer it to others, including researchers and companies from industrialized countries, so that new practical applications of genetic resources could be developed and disseminated.

At the same time, indigenous communities, which for so long have relied on traditional medicine, not only for preventive purposes, but also with curative effects, would like to have it integrated into the national system of health care. What traditional communities expect, in this context, is that citizens receive government support when seeking assistance from traditional medicinal knowledge holders. Furthermore, the government has been asked to promote capacity building in remote communities, so that medicinal knowledge holders can be trained to provide efficient and safe assistance to patients. Courses on traditional medicine should also be incorporated into the curricula of medical schools.<sup>3</sup>

Indigenous communities in Bolivia have also developed vast knowledge and experience in agricultural management. Continued selection of seeds, improvement of irrigation and soil conservation methods have permitted traditional farmers to obtain an adequate agricultural output which has permitted the communities to reach a balanced and sustainable agriculture in spite of a difficult and extremely diverse environment. On the other hand, plant varieties with tested or potential applications in food, agriculture and medicine were being described and, for the first time, the indigenous persons who held the knowledge on their use were being identified as authors.<sup>4</sup> Documentation, however, raises some problems as discussed below.

## Folklore and Handicrafts

Indigenous communities in Bolivia have developed a very rich folklore in all areas, and particularly in music and literature. Techniques of manufacturing and decorating textiles have also reached a very high level of sophistication and artistic conception.

The participants in meetings with the WIPO Mission invariably claimed that traditional music was the subject of misappropriation by unauthorized third parties which not only used it but modified its essential characteristics. Indigenous communities had developed different types of rhythms according to each specific agricultural season. At the beginning of each season, a different type of music would be performed in festivities and rituals. Traditional music, therefore, had a spiritual dimension that was being lost, as urban artists (foreign and nationals artists alike) were incorporating it into modern compositions. The most obvious example of such mischaracterization was that currently, compositions were performed at any

time of the year, irrespective of their spiritual connection with a particular season. Ironically, urban musicians were entitled to copyright protection. Indigenous communities, the true authors of authentic indigenous music, were not.<sup>5</sup>

Multiple legal problems that arise from traditional textiles were identified throughout the mission, but three in particular are noteworthy. Firstly, some textiles have been used for generations as objects of cult. Losing the material objects, therefore, means losing important elements of traditional culture. Since many sacred textiles have been stolen and smuggled to foreign countries, efforts have been made in order to locate and repatriate them.<sup>6</sup>

Secondly, indigenous communities have a strong feeling that the lack of mechanisms for the appropriation of creative efforts in the area of textiles has impaired the possibility of their obtaining an adequate remuneration for their labor. Textiles that take days, if not weeks, of intensive, complex and creative work are sold on the market at extremely low prices. A legal mechanism that could ensure protection against copies and imitations would enable artisans, who are mostly women, to capture an adequate compensation for their efforts, thus helping alleviate the extreme poverty many communities live in.<sup>7</sup>

**Intellectual Property Needs and Expectations #3**

- ❑ Location and repatriation of stolen sacred textiles

**Intellectual Property Needs and Expectations #4**

- ❑ Adequate remuneration of the labor of artisans (mostly women)

**Intellectual Property Needs and Expectations #5**

- ❑ Protection against free copying of techniques, patterns and designs

Thirdly, there is a general feeling of the unfairness of a system that allows persons, including foreigners, who have no connection whatsoever with the culture of Bolivian communities, to freely copy motives, drawings and styles of both profane and ritual textiles. Traditional communities should enjoy rights in their creations so that they could reap the benefits thereof, while preserving values, traditions and beliefs.

**Cultural Heritage**

Knowledge, traditions, culture, beliefs, arts, all these are aspects of the cultural heritage of indigenous communities which are received from the previous generations, transformed and enriched, and assigned to the next generations. Although the cultural heritage of Bolivian communities has multiple manifestations, its apex

is viewed by the Aymara community as being the buildings of Taypiqala-Tiwanaku, which they do not view as ruins but as their sacred *Wak'a*, a sacred place with religious meaning.<sup>8</sup>

A huge effort by some organizations, such as the *Taller de Historia Oral Andina (THOA)*, has been dedicated to document, preserve and disseminate cultural traditions through radio broadcasts, video tapes and publications.<sup>9</sup> Preservation of the cultural heritage of Bolivian indigenous communities encompasses a process that THOA has designated as “reconstitution of the *ayllus*”, which means the assumption of a cultural identity and a work of administrative organization at the local level. The work concerning organization has relied mainly on the establishment of titles to the lands occupied by the communities. However, it is

not forgotten that a relevant portion of the cultural heritage of communities consists of traditional knowledge. The adoption, both at the national and international levels, of mechanisms of intellectual property protection of such knowledge, therefore, is seen as a relevant tool for the conservation of the cultural heritage of indigenous communities.

## Implementation of Bolivia's International Obligations in the Field of Intellectual Property and Other Institutional Matters.

Bolivian legislation has had provisions on protection of traditional knowledge since 1992. The Copyright Act dedicated three articles (articles 21 through 23) to the protection of folklore and handicrafts. In addition, articles 58 through 62 established a paid regime for works authored by Bolivian citizens in public domain, including folkloric and traditional works of unknown authorship.

It is clearly understood by Bolivian authorities, however, that copyright protection for traditional knowledge is not sufficient, given that a relevant part of that knowledge, including genetic and other biological resources, has industrial applications, the protection of which must also be based on a concept of industrial property.

Most obligations of Bolivia under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), of the World Trade Organization (WTO), have been implemented, even before the expiry of the transitional periods, through the adoption of legislative measures at the level of the Andean Community, of which Bolivia is one of the five members. Decision nr. 344 (covering patents, trademarks, geographical indications and unfair competition) is revised so that minor adjustments be made in order to make it TRIPS-compliant. Moreover, the Andean Community has established a common regime on access to genetic resources (Decision 391<sup>10</sup>), which has direct implication on protection of biodiversity-related traditional knowledge and sharing of benefits derived therefrom.

An Intergovernmental Working Group has been established to revise the laws of Bolivia with the view to implement TRIPS obligations.

On the other hand, the authorities of the government of Bolivia are aware that there is the need for an instrument dealing with protection of traditional knowledge. The strategic option has been to develop a national proposal and submit it to the Andean Community so that a uniform regional approach can be developed. With that in view, some activities have been undertaken, such as a survey of the situation of traditional knowledge in the low lands of Bolivia. A similar survey in the high lands was being organized. Both surveys are of relevance to the framework provided for by the eight transitional provision of Andean Decision Nr. 391, on Access to Genetic Resources. Furthermore, a national seminar on the "Protection and Rights of Traditional and Peoples' Cultures in Bolivia", sponsored by the national and the local governments, had taken place at Oruro, on December 3 to 5 of 1998.

### **Copyright Act (Nr. 1322) of April 13, 1992:**

- Protection of folklore and handicrafts (through systems of national heritage (paid public domain) and works of applied art, respectively) [articles 21, 22 and 23]
- National heritage and paid public domain [articles 58, 59, 60, 61 and 62]

Government authorities were also fully aware that traditional knowledge and genetic resources can be protected only where they are adequately documented. Documentation, however, raises specific problems arising from the lack of legal mechanisms to protect such knowledge. Documentation, in the sense that it implies disclosure, impairs an eventual intellectual property protection that is based on novelty or secrecy, such as patents, plant varieties, industrial designs and trade secrets. On the other hand, such concerns could not prejudice the continuation of documentation efforts, such as the urgency of the task, given that knowledge was being lost at a very rapid pace. There was, therefore, the need for striking a balance between the urgency of documenting and the need to preserve the possibility of acquiring rights.

### **Summary of Intellectual Property Needs and Expectations**

- ❑ Protection against unauthorized use.
- ❑ Integration into the formal system of health care.
- ❑ Location and repatriation of stolen sacred textiles.
- ❑ Adequate remuneration of the labor of artisans (mostly women).
- ❑ Protection against free copying of techniques, patterns and designs.

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<sup>1</sup> Discussion with CONAMAQ – *Consejo Nacional de Ayllus y Markas del Qullasuyu*, on November 18, 1999.

<sup>2</sup> Bolivian traditional care providers founded in 1984 the Bolivian Society of Traditional Medicine (*Sociedad Boliviana de Medicina Tradicional* – SOBOMETRA). In 1987 the Bolivian Institute of Kallawayá Traditional Medicine was created by a Presidential Decree. SOBOMETRA has established cooperation agreements with some governmental agencies, such as the Ministry of Social Security and Health Care and the Ministry of Planning and Coordination.

<sup>3</sup> Interview with Dr. Walter Alvarez Quispe, President of SOBOMETRA, on November 18, 1999.

<sup>4</sup> Interview with Mrs. Teresa Ortuño Limariño, of the *Herbario Nacional de Bolivia, Instituto de Ecología*, on November 19, 1999.

<sup>5</sup> Another irony noted by participants was that sometimes poor indigenous persons were caught by authorities selling pirated cassettes and records on the streets of La Paz, and the pirated goods seized. The irony was that most of the seized materials contained folk music interpreted and performed by urban artists, when the real authors, the indigenous communities, had never been compensated. Meeting with

<sup>6</sup> Interview with Ms. Christina Bubba Zamora, of *Movimiento Cultural para Seguir Sembrando para Seguir Soñando*, in La Paz, Bolivia, on November 17, 1999. The efforts of Ms. Bubba Zamora regarding the restitution of ritual textiles to Bolivian communities have been internationally recognized. In 1998 she received the *Premio Rolex a la Iniciativa*.

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<sup>7</sup> Meeting with Discussion with CONAMAQ – *Consejo Nacional de Ayllus y Markas del Qullasuyu*, on November 18, 1999.

<sup>8</sup> Meeting with the Mallcus of Tiawanaku, on November 19, 1999.

<sup>9</sup> Meeting with the THOA, on November 19, 1999.

<sup>10</sup> The main provisions of Decision 391 are described in the section of this chapter dedicated to Peru.