

# WIPO



**ORIGINAL:** English  
**DATE:** February 2010

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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

**INTELLECTUAL PROPERTY DEVELOPMENT PLAN  
FOR THE REPUBLIC OF SEYCHELLES**

**REPORT ON THE NEEDS EVALUATION**

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## **LIST OF ABBREVIATIONS**

ARIPO	African Intellectual Property Organization
CISAC	International Confederation of copyright societies
COMESA	Common Market for Eastern and Southern Africa
DFID	Department for International Development
EPA	Economic Partnership Agreement
EU	European Union
RG	Registrar General
IP	Intellectual Property
IPDP	Intellectual Property Development Plan
IPR	Intellectual Property Right
IPRs	Intellectual Property Rights
PCT	Patent Cooperation Treaty
SACS	Seychelles Authors and Composers Society
SADC	Southern Africa Development Cooperation
SBC	Seychelles Broadcasting Corporation
SIBA <sup>1</sup>	Seychelles International Business Authority
SCCI	Seychelles Chamber of Commerce & Industry
SENPA	Small Enterprises Promotion Agency
TRIPS	Agreement on Trade Related Aspects of Intellectual Property
UNDP	United Nations Development Program
USAID	United States Agency for International Development
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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<sup>1</sup> Pursuant to the Financial Services Authority Act 2013, the SIBA was replaced by the Financial Services Authority (FSA).

## ACKNOWLEDGEMENT

I would like to express my deepest thanks and gratitude to WIPO for giving me the opportunity to take part in the IP needs assessment mission as well as for the unfailing and continued support.

I would also like to thank Mrs. Melanie Stravens, Director General, Mr. Ziyaad Ibrahim, Director and the staff of the Trade Division of the Ministry of Finance for arranging office space, organizing visit programs and meetings, providing with valuable materials and making available transport. The service of the driver Mr. Ryan, who was always in time, has been valuable.

I am extremely grateful to the senior Government officials, who allotted time from their busy schedule and all the stakeholders that were willing to provide information and express their views and needs. Had it not been for the generous support of all these people, the mission would not have ended with success.

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## DISCLAIMER

The views and opinions expressed in this Report are solely those of the author and do not necessarily represent the views of the Government of the Seychelles, WIPO or any other organisation or person discussed in this paper.

## INTRODUCTION

A team comprising of WIPO experts Messrs. Serman Chavula, former CEO of the Copyright Society of Malawi (COSOMA) and Getachew Mengistie, IP law Consultant and Attorney and former Director General of the Ethiopian Intellectual Property Office undertook an intellectual property system evaluation and needs assessment mission between January 11 and 21, 2010 in Mahé, Seychelles.

The objectives of the mission were to:

- a) Assess the current IP system, identify weaknesses, constraints and opportunities and
- b) Make concrete proposals with the view to defining specific needs-oriented activities and projects for implementation within the IPDP<sup>2</sup> to enhance Seychelles's capacity to create, protect and make strategic use of IPRs and assets as a power tool for economic growth and development.

The mission undertook a desk research based on the WIPO Terms of Reference<sup>3</sup>. The Consultant examined relevant Government policies, the patent, trademark and customs laws, various background documents provided by the stakeholders and made available on the web sites such as WIPO, WTO and appropriate Government Agencies of Seychelles.

The mission worked in close cooperation with officials and staff of the Ministry of Finance, Trade Division. Meetings were held with senior officials of various ministries, Government agencies, heads of enforcement authorities, members of the academic community, representatives of the private sector, CEO of an IP user company and a practicing Trademark Attorney.<sup>4</sup> The persons met provided useful information and expressed their views and needs.

The mission had its first meeting with the members of the IP task force, explained the objectives of the needs assessment and outlined the expected results. At the end of the mission, a Stakeholders Meeting was organized where preliminary findings and recommendations were presented and discussed for validation and further inputs.<sup>5</sup>

This report aims at giving a brief overview of the country, providing the findings and recommendations of the mission. The report consists of five chapters. The first chapter provides background information on the country; the second chapter discusses strengths and limitations of the existing intellectual property Policy, legal and institutional framework. The third chapter deals with the use of the IP system and highlights the problems related to IP awareness and enforcement, The fourth chapter discusses the status of membership of Seychelles to international IP treaties and lists out potential international partners. The Fifth

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<sup>2</sup>The IPDP seeks to address the need for establishment of effective, efficient and development oriented IP systems to support national development efforts of the country and comply with the requirements of international treaties to which the country is or will be a party.

<sup>3</sup> Summary of the terms of reference is attached as Annex II to this report.

<sup>4</sup> The list and address of persons contacted is attached as Annex III to this report.

<sup>5</sup> The list of members of the IP task force as well as the participants of the wrap-up meeting is attached as Annex IV to this report.

Chapter explains the identified sector for the pilot project. Under each of the chapters needs were identified and measures that may be taken in the short, medium and long term recommended. Details of the identified needs and the proposed activities are summarized in a Matrix, which is attached to the report.<sup>6</sup>

## CHAPTER ONE BACKGROUND INFORMATION

The Republic of Seychelles is an archipelago in the Indian Ocean consisting of 116 islands. It has 455 sq. km land, 491 sq. km coastline and a population of 87,476 estimated in July 2009. The country shares common borders with Madagascar and Mauritius. The closest point from Seychelles to a major continental land mass is the coast of Mombasa, Kenya, which is 1800 km away from the main island of Mahé.

Seychelles obtained independence in 1976. It has a diverse and multi ethnic population. The population has ethnic groups of African, European and Asian origin. Creole, French and English are the national languages.

Seychelles has a very narrow economic base dominated by the tourism and fisheries sectors. Tourism is the main pillar of the economy accounting for 21%, followed by fisheries sectors, which accounts for 20% of GDP. The manufacturing, off shore and agriculture sectors account for 10%, 5% and 2.3% of the GDP respectively.

The United Nations classifies Seychelles as an upper-middle income economy. The per capita income, which was \$7,600 (Seven thousand six hundred US dollars) in 2007, is one of the highest in Africa.

The economy is extremely vulnerable to external shocks. The country does not only depend mainly on tourism but also imports close to 90% of consumables, primary and secondary inputs, which have been affected by an increase in the price of oil. The dependence on tourism makes the economy extremely vulnerable in that any decline in tourism would result in a fall in its GDP, a decline in foreign exchange receipts and budgetary difficulties.

Cognizant of the weakness and vulnerability of the economy, the Government is striving to broaden the economic base. It set up Seychelles International Trade Zone (SITZ) in 1995 and is promoting the financial sector as the third pillar of the economy.

The Government has embarked on liberalization of the economy, which resulted in an increase in the share of the private sector in the economy. The public sector was dominant until 2000. Following the privatization of state owned enterprises and the change on emphasis on the facilitation and regulatory role of the Government, the role of the private sector in the economy has increased. In 2008, the private and the public sector employed 56% and 44% of the national work force respectively. This shows a decrease of 4% of share of the public sector compared to 2002.

The Government adopted a ten-year national development strategy in 2007. The strategy, which is known as Strategy 2017, aims at doubling the per capita income and a reduction of public debt from 146% to 60% by the year 2017. In order to achieve this, the

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<sup>6</sup> See Annex I.

Government is committed to create favourable conditions to increase wealth generation by private businesses and individuals, curtailing its role as an economic actor and focus on operating as an economic facilitator, allowing Seychellois and international businesses to benefit from an increasingly business-friendly economic environment, streamlined regulatory structure and capable human resource base.

Seychelles is a member of the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), and the Indian Ocean Commission (IOC). The country has also signed the interim EPA Agreement with the EU in September 2009

## CHAPTER TWO

### IP Policy, Legal and Institutional Framework

#### 2.1. IP Policy & Strategy

The country has policies and strategies that recognize the importance of intellectual property or which have objectives that may be supported by intellectual property. The ICT<sup>7</sup>, Cultural<sup>8</sup> and Craft policies<sup>9</sup>, for instance, clearly spell out the need for the protection of intellectual property rights. Examples of policies and strategies that may be harnessed by intellectual property include Strategy 2017, which aims to double the GDP in 2017<sup>10</sup> and identify tourism as a major sector as well as the 1996 Industrial Policy<sup>11</sup>, the investment code and the National Policy for the Promotion and Development of Cottage Industries<sup>12</sup>.

The existence of the aforementioned policies and strategies is very positive. However, there is a need to put in place a comprehensive intellectual property Policy and strategy that may address a range of issues and help the integration of IP into national development strategies and plans.

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<sup>7</sup> One of the five areas that the Policy focuses on includes providing “for the creation of an enabling legal and regulatory environment that ensures the growth and development of the ICT sector”. This includes the enactment of laws addressing issues including intellectual property.

<sup>8</sup> One of the objectives of the 2004 Cultural Policy is to “Protect, safeguard, and develop the moral, ethical, and spiritual values of Seychellois culture and dignity, including the protection of intellectual property, and the cultural, as well as the natural heritage of Seychelles”.

<sup>9</sup> The craft Policy provides that “Artisans will be encouraged to register their trademarks and copyrights to protect their products. Government will streamline the procedures for registering copyrights, trademarks and patents”.

<sup>10</sup> To achieve the goals of the strategy, the Government is committed to create economic conditions conducive to increase wealth generation for private businesses and individuals. Intellectual property plays a useful role in stimulating the creation of wealth and providing a favourable environment to local inventive, creative and innovative activities as well as the transfer of technology. Intellectual property would thus complement the grand development strategy and vision of the Government.

<sup>11</sup> The Policy includes that the Government shall “create the enabling environment for private sector entrepreneurship”. Intellectual property protection would complement the Policy by creating conducive environment that would stimulate local inventive and innovative activities and promote fair competition and trade.

<sup>12</sup> The Policy states that Government using its role as facilitator will “strive to assist cottage industries with access to other factors of technology including...appropriate science and technology...” The IP system plays a role in facilitating the transfer of technology and will thus complement the Policy.

The Ministry of Finance Trade Division is responsible for the IP Policy. However, the Trade Division has not yet formulated a national IP Policy. This could be attributed to inadequate staff and lack of trained personnel.<sup>13</sup>

There are Institutions such as the University of Seychelles that are engaged in R&D activities. However, these institutions lack an institutional IP Policy and Management Unit. The Vice Chancellor of the University highlighted the need and sought for assistance to formulate a Policy and set up an IP Management Unit.

Intellectual property is cross sectoral in nature. There is a need to ensure Policy coherence and coordination. Cognizant of this fact, the Ministry of finance set up an IP Task force,<sup>14</sup> to facilitate the WTO accession process and coordinate position during the negotiation of the accession process. This is a very positive step. However, the task force is *ad hoc* in nature with a specific mandate and does not include representatives of all stakeholders.<sup>15</sup> Members of the task force are not, in all cases, high-ranking officials hence Policy decision and ensuring Policy coherence and coordination might be very difficult.

There is thus a need to put in place a national IP Policy Coordination Body consisting of representatives of key stakeholders and higher officials to enable it to effectively discharge its responsibilities such as policy making, coordination and overseeing the implementation of the IP Policy. Experience of other countries reveal that such a body is an Intellectual Property Council consisting of top Government officials such as Prime Ministers, Ministers or State Ministers of relevant Government bodies as well as leaders of the private sector, academia and research and development organizations.

#### **RECOMMENDATION:**

- The Government may consider, with the assistance of WIPO to:
  - undertake a Sector-specific IP audit,
  - articulate a National IP Policy and Strategy that may help guide the generation protection and exploitation of IP assets in the country and ensure integration of IP in national development policies, strategies and plans,
  - build capacity in IP Policy issue analysis and crafting of national position,
  - set up an IP Policy coordination body based on international best practice that takes into account the specific needs and position of the country
  - develop institutional IP policy and establish IP Management Unit at the Seychelles University and National Heritage Institution, which is entrusted with the responsibility of protecting and managing national heritage and negotiating with parties that require access to such heritage<sup>16</sup> and assist business establishments, upon request, in the development of institutional IP Policy and setting up of IP management units

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<sup>13</sup> None of the staff of the Division has IP training. The Director General of the Division expressed the need to expose every staff to the concepts and background of IP, which could be made possible using the WIPO distance learning program and short term training programs and in depth and specialized IP training to three to four staff of the Division

<sup>14</sup> See Annex – for members of the task force

<sup>15</sup> The Chamber of Commerce and Industry, for example, is not a member of the task force.

<sup>16</sup> The Department of Culture expressed the need for such a Policy in dealing with requests of access to expressions of folklore and cultural heritage.



## 2.2 IP Laws

Seychelles has laws that protect Patents and Trademarks. The patent law was enacted in 1901 and revised in 1925, 1933, 1958, 1960, 1967, 1975 and 1976. The Trademark decree was promulgated in 1978 and amended in 1991.

The existence of these legislations is a strength. However, the Intellectual property legal framework is not yet comprehensive and the existing laws suffer from gaps and limitations.

There are elements of intellectual property that need the enactment of new laws to cater for the development efforts of Seychelles and meet the requirements of the TRIPS Agreement. These include geographical indications, undisclosed information, plant variety protection; and lay out designs. Stakeholders expressed that the country is endowed with biological resources and traditional knowledge and highlighted the need for protection of traditional knowledge. There is thus a need to enact new laws governing the elements of intellectual property to comply with the TRIPS agreement as well as meeting the needs of the country and the stakeholders.

The existing laws suffer from limitations and need revision. Examples of the gaps and shortcomings of the Patent Act and the Trademark Decree are identified under each of the headings below.

### 2.2.1 The Patent Act

The Patent Act, which was transplanted by the British during the colonial period and amended at different times, provides protection for inventions. According to section 4 of that Act, any person whether a citizen of Seychelles or not, can make an application for a patent. The Registrar may refer any application to an examiner, who shall ascertain whether the nature of the invention has been fairly described; the application, specification and drawings have been prepared in the prescribed manner and the title sufficiently indicates the subject matter of the invention.<sup>17</sup>

The law does not define the requirements of patentability<sup>18</sup> and does not have a provision that exclude certain subject matters from patent protection. The office does not therefore perform substantive examinations before deciding to grant or not to grant a patent.

The law has provisions that may be difficult to implement or inconsistent with the requirements of the TRIPS Agreement and lacks schemes of protection that may help to meet the needs of the country. These include the following:

- (a) Section 38 of the Act is an example of a provision that may be difficult to implement. The provision states that the court may certify the validity of the patent in patent

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<sup>17</sup> See section 6 of the Act.

<sup>18</sup> Article 27 (1) provides that “Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.” These requirements, which are commonly found in the Patent laws of a number of countries, are known as criteria of patentability. Failure to meet any of these criteria will result in the invalidation of a patent.

infringement cases.<sup>19</sup> Such certification may be difficult when the validity of the patent is challenged, for instance, on the ground that it is not new, does not involve inventive step and is not capable of industrial applications or on the basis that the invention is excluded from patentability. Unlike patent laws, which commonly provide for and define these requirements as well as excluded subject matters, the Patent Act of Seychelles is silent. Suppose a defendant in a patent infringement suit, show that the invention is not patented or revoked abroad and that he should not be held liable, the court will face a difficulty in disposing of such cases because of the gap in the law.

- (b) Article 4 (1) provides that any person whether a citizen of Seychelles or not may make an application for a patent. However, the law accords special treatment to holders of patents granted by Britain. It requires the Registrar of Patent to register patents granted in the United Kingdom.<sup>20</sup> Such a discriminatory treatment is not in line with the TRIPS agreement. Stakeholders expressed that the preferential treatment is the legacy of colonialism and is unacceptable.
- (c) Article 20 (1) provides that a patent will be valid for a period of 14 years beginning from the date of grant. Such a period may be extended for an additional period of 7 years under certain circumstances.<sup>21</sup> This is not in line with Article 33 of the TRIPS agreement that provides that patents shall be protected for a period of 20 years.
- (d) The law does not provide with adequate remedy against infringement of a patent and is inconsistent with the requirements of the TRIPS agreement. The law does not have provisions dealing with criminal remedy and boarder measure. More over the civil remedy available under the Act is limited in scope and does not include compensation for damage suffered by the patentee.<sup>22</sup>
- (e) The law has elaborate provisions on Non-voluntary license under sections 26 and 32. Section 32 confers a broad power on the authorization of the use of a patented invention by a Government department or any person for the service of the country free of any royalty or other payment to the patentee.<sup>23</sup> The grounds for non-voluntary license are

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<sup>19</sup> The article states that “in an actions for infringement of a patent, the court may certify that the validity of the patent came in question, and, if the court so certify, then in any subsequent action for infringement, the patent in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses, unless the court trying the action certifies that he ought not to have the same.”

<sup>20</sup> Article 55 states that “ Any person being the grantee of a patent in the UK or any person deriving his right from such grantee by assignment, transmission or other operation of the law may apply with in three years from the date of issue of the patent to have such patent registered in Seychelles, where any partial assignment or transmission has been made all proper parties shall be joined in the application for registration”.

<sup>21</sup> A patentee may apply for extension of his patent six months before the expiry of the patent. The President of the Republic may extend the patent for a further term of seven years or fourteen years in exceptional cases. (see Section 20(1) and Section 29(1))

<sup>22</sup> The only provision that provide limited civil remedy is article 37. This Article provides that “in an action for infringement of a patent the court may, on the application of either party make such order for an injunction, inspection, or account and impose such terms and give such directions respecting same and the proceedings there on as the court may see fit”.

<sup>23</sup> Section 32 (1) provides that “ Notwithstanding anything in this Act, any Government department, and any person authorized in writing by a Government department may make, use, exercise and vend any patented invention for the services of the Republic “in accordance with the provisions of section 32. Sub section 2 of section 32 provides that “If and so far as the invention has before the priority date of the relevant claim of the complete specification been duly recorded by or tried by or on behalf of a Government department otherwise than in consequence of the communication thereof directly or indirectly by the patentee or any person from whom he derives title, any use of the invention by virtue of this section may be made **free of any royalty or other payment to the patentee.**”

broad and the denial of payment or compensation to the patentee in case of use for the republic is inconsistent with the Article 31 of the TRIPS Agreement.<sup>24</sup>

- (f) The law does not include scheme of protection reflecting the needs of the potential users as well as the specific situation of the country. The Act does not, for example,:
- i. protect industrial designs, which resulted in the misappropriation or misuse of industrial designs used by small enterprises and the crafts sector, and
  - ii. Provide for utility model protection that may help to protect minor inventions and innovations, which may be available to local inventors and innovators than patents in countries such as Seychelles.

### 2.2.2 Trademark Decree

The 1978 Decree as amended in 1991, provides for protection of trademarks used or intended to be used in relation to goods and services. The law also accords protection to certification marks.

Any person may file an application for registration of a trademark or a certification mark with the Registrar General's office. When an application is accepted, the Registrar publishes a notice regarding the application of a trademark in the monthly official gazette inviting lodging of opposition against the registration of the mark with in two months beginning the date of publication of the notice in the Gazette.<sup>25</sup>

In the absence of opposition or the rejection of an opposition, the trademark will be registered and the Registrar will issue certificate of registration. A registered trademark will be

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<sup>24</sup> Article 31 requires that when un authorized use is allowed by the law of a member country, the conditions that should be complied with include the following :

- (a) authorization of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the Government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the Government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (d) such use shall be non-exclusive;
- (e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances; and
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization.

<sup>25</sup> Please see a copy of the sample Gazette attached to this report.

valid for a period of seven years and may be renewed for 14 years with possible extension from time to time.<sup>26</sup>

The registration of a trade mark gives the proprietor of that mark the exclusive right to use it in relation to any goods or services.<sup>27</sup> The Law defines acts that constitute acts of infringement of a trademark right<sup>28</sup>. It also specifies acts that are not considered as trademark infringement.<sup>29</sup>

The Decree does not comply with some of the requirements of the TRIPS agreement. These may be explained by taking two examples. The TRIPS agreement requires that member countries:

- (a) Accord protection to well known marks even if not registered in the member state.<sup>30</sup> The decree does not have a provision to this effect, and
- (b) To provide for civil and criminal remedies as well as boarder measures in the event of infringement of rights. The first Schedule of the decree defines the exclusive rights of a trademark owner and the acts that may constitute infringement of trademark rights. It does not have provisions dealing with remedies. One will thus be forced to seek for remedies and invoke them, if any, using the civil and criminal laws. The civil and criminal remedies, if any, that may be available in civil and criminals codes are uncertain, will be general in nature and may not be adequate to effectively enforce IPRs as required under the TRIPS agreement.

Unlike trademark laws of other countries, which are Acts promulgated by the law making body, trademarks are protected by a Decree in the Seychelles. Stakeholders expressed that the law should not be a Decree but an Act. There is thus a need to enact a Trademark Protection Act taking in to account new developments, the requirements of the TRIPS Agreement and treaties that the country may accede to in the future.

The Attorney General expressed that, when revising the law and developing new ones, there is a need to consider the laws and experiences of common law island countries such as Mauritius and the Caribbean countries. He also affirmed the willingness and readiness of his office to push with the enactment of revised and new IP laws to strengthen the national IP System.

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<sup>26</sup> See section 17 (1) & (2).

<sup>27</sup> See section 6 and the first schedule of the Decree.

<sup>28</sup> See section 1 (1) of the First Schedule of the Decree provides that a trade mark is “infringed by a person who, not being proprietor of the trade mark or registered user thereof using by way of permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of business, in relation to any goods or services in respect of which that trade mark is registered, and in such a manner as to render the use of the mark likely to be taken either-

- a) as being use as a trademark; or
- b) in a case in which the use is the use upon the goods ( or services) or in physical relation thereto or in respect of services, or an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as registered user to use the trademark or to goods ( services) with which such a person as a foresaid is connected in the course of business.”

<sup>29</sup> See section 1 (2), (3) & (4) of the First schedule

<sup>30</sup> Article 16 (2) of the TRIPS agreement provides that “Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark”. Section 24 of the Trademark decree provides only with the registration of well known marks as defensive marks.

## RECOMMENDATIONS

- The Government may consider, with the assistance of WIPO to:
  - Revise the Patent Act and promulgate a Trademarks Act, to address the aforementioned problems, taking into account the:
    - development objectives of the Government of Seychelles<sup>31</sup>,
    - the requirements of the various international IP treaties to which it is a party and envisages to be a party,<sup>32</sup> and
    - flexibilities available in international intellectual property conventions and treaties such as the TRIPS Agreement and
  - Enact new laws governing plant varieties, geographical indications, undisclosed information, lay out designs and traditional knowledge to comply with the TRIPS Agreement requirements and meet the needs expressed by the stakeholders
- The huge potential for international businesses, including licensing, international expectations and implications should be adequately considered when revising the existing IP laws and enacting new laws as recommended above.

### 2.3 IP Administration

There are several Government bodies entrusted with IP Policy formulation, negotiation of trade agreements that include IP issues, involved in the administration of IP laws and managing rights of IP owners in Seychelles. These include:

- a. The International Trade Division of the Ministry of Finance,
- b. The Registrar General's Office
- c. Division of Culture under the Ministry of Culture dealing with copyrights, and
- d. Seychelles Society of Authors and Composers.

The existence of institutions dealing with IP matters is a strong point in Seychelles. However, the institutions are weak. They are understaffed, lack adequately trained human power and inadequately equipped. Attempt is made below to show the strengths and weaknesses of the trade Division and the Registrar General's office. Challenges facing the Copyright Office and the Collecting Society are addressed by the report of Mr. Chavula.

The Trade Division of the Ministry of Finance is responsible for formulating intellectual property policy, negotiations of trade agreements such as the Economic Partnership Agreement (EPA) with the European Union and the WTO agreements. It serves as a focal point and

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<sup>31</sup> This may include incorporating a utility model and industrial designs scheme of protection to protect minor inventions and industrial designs made by Seychellois and which may not meet the stringent requirements of patentability to be protected using patents

<sup>32</sup> This may include the Paris Industrial Property Convention and the Patent Law treaty to which Seychelles is a party and Madrid Trade mark registration Agreement and Protocol, which stake holders expressed that Seychelles should accede to.

Secretariat of the Intellectual Property Task Force. The Division is understaffed and has only four professionals. None of the existing staff has had training in the field of intellectual property. The Head of the Division indicated the need for an introductory training program that would expose all the staff to intellectual property and in depth training to three or four staff in IP Policy analysis, formulation, review and negotiation.

The Division is equipped with ICT infrastructures such as computers and access to the internet. The existence of such facility can be used to take advantage of the Distance Learning program offered by the WIPO Academy and address to a certain extent the training needs of the Division.

The Registrar General's office, which is accountable to the Attorney General's office, is responsible for the registration of companies, associations, title deeds and administration of the patent and trademark laws. It receives and processes patent and trademark applications, register trademarks, cause Patents to be issued<sup>33</sup>, and renews patents and trademark registration. The office consists of three staff supervised by the Registrar General. None of the Staff has adequate training in the field of IP. Staff exposure to IP is limited to attendance of short term training program and workshops organized by WIPO and ARIPO for a maximum period of fifteen days.<sup>34</sup>

The office has computers and internet connection. It has managed to automate the trademark operation with the support of WIPO. The automation of the operation of trademarks has helped in increasing the quality of the service of the office. However, the trademark automation is partial in that the logo images for the figurative marks are not part of the database. Search on figurative marks is made manually. Although the number of patents filed with the office is small<sup>35</sup>, there is a need to automate the patent procedures and processes. Such automation will enable the office to enhance the quality of its services, cope up with the increase in application that may follow the revision of the laws and the decision to accede to the relevant international treaties.

The Registrar General and the staff of the office informed the Mission that:

- a. The need for automation would soon be met with the support of WIPO based on the needs assessment report of the WIPO mission carried out in June last year:<sup>36</sup> and
- b. Training of staff would be critical and extremely *essential* with the developments that may follow after the revision of the laws and accession of international treaties such as the Madrid Agreement.

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<sup>33</sup> Section 17 of the Patent Act provides that letters patents are granted by the President of the Republic

<sup>34</sup> One of the staff had participated in patent drafting training program. This was the longest training period-which was fifteen days.

<sup>35</sup> According to the Registrar General and her staff on average less than fifty patent applications are filed in a year.

<sup>36</sup> The Consultant saw some of the equipment sent by WIPO. The automation project may form part of the short term activities that may be addressed in the IPDP.

Stakeholders suggested that the present fragmentation of the administration of IP and the problems related to inadequate capacity of the different Government bodies could be met effectively by establishing a single IP office. Such a measure would help to:

- a. streamline the fragmented administration of the different elements of intellectual property, facilitate effective use of the limited resource,
- b. strengthen the infrastructure and human resources of the IP Office and enable to enhance the quality of its services as well as to play a more meaningful role in the development efforts of the country,
- c. have effective communication with regional and international organizations such as ARIPO, WIPO, and WTO, which deal with intellectual property as a package.
- d. organize and render IP advisory and support services to local creators, inventors, innovators, small business establishments, higher learning and research institutions,
- e. undertake policy studies, develop policy proposals for consideration by the IP Policy Coordinating Body, follow up developments in the field of intellectual property at regional and international level and advise the Government on national positions or measures that may be taken, and
- f. Set up an IP data bases that may be made accessible to the police and the customs office and officers when dealing with intellectual property infringement cases.

## **RECOMMENDATIONS**

- The Government may, with the assistance of WIPO, consider:
  - Establishing a single IP office, which may be known as Seychelles Intellectual Property Office ( here in after referred to as “SIPO”) to streamline the fragmented administration of IP based on best international practice,
  - Deciding the transfer of the staff involved in IP administration at the Trade Division, Registrar General’s Office and the Copyright Unit in the Ministry of culture as well as equipment and facilities that were used by the Office in handling IP matters,
  - Develop an appropriate organizational structure and establish IP support services such as the IP information, advisory and support unit that may play a role in supporting the efforts of researchers, inventors and SMEs by making available relevant technological information contained in patent documents
  - Designing and implementing capacity building programs in cooperation with other partner or donor organizations. The human resource capacity building program may include on the job training, attachments, use of training opportunities offered by WIPO, WTO, ARIPO and similar organizations and study tours,
  - Equipping the SIPO with facilities such as IT that may help to access on line patent information from databases, IP information and documentation to enable it discharge new responsibilities such as rendering support to local creators, inventors, business, academic and research establishments and creating IP awareness.

## CHAPTER THREE

### USE OF THE IP SYSTEM, IP AWARENESS & IPR ENFORCEMENT

#### 3.1 Use of the IP System

Trademarks are the most used form of industrial property rights in the country. The current volume of trademarks is nearly 9,000 of which about 8,400 are registered. The office receives over 450 trademark applications per year. Patent filings are limited to 20 to 22 applications per year.

The beneficiaries or users of the IP system are foreigners. All the applicants of patents and the patent holders are foreigners. No resident has to date applied for, and obtained a patent. The bulk of trademark users are foreigners; the majority of trademark applications (over 90%) are by foreigners.

The low level of use of the industrial property system by the residents may relate to a number of factors including lack of awareness. An example is the logo<sup>37</sup> developed by the Small Enterprises Promotion Agency but not protected as certification mark under the existing law.

SEnPA developed a nation brand, which is designed to differentiate local craft products and prevent the use of the name Seychelles in products that are not produced locally and to improve competitiveness in the global market.<sup>38</sup> Nevertheless, the agency failed to register the logo in and outside the country. There is thus a possibility of misappropriation and misuse of the logo, which may defeat the objective behind the program, damage the good will and reputation of the craft products of Seychelles and affect entry into the export market in the future.

Stakeholders reported some cases of misappropriation and misuse of IP assets. These include the following:

- a. An American registered and owned “Seychelles.com” as a domain name and the ownership of the name was reclaimed after two to three years negotiations<sup>39</sup>,
- b. David Scholastique, a national of Seychelles, composed a song, which was misappropriated by BONNY M that transformed the song into a musical hit, which was popular in the 1970’s. Mr. Scholastique and Seychelles have not received any remuneration.
- c. The name Seychelles is used in marketing products manufactured elsewhere such as footwear and beauty products in foreign markets<sup>40</sup>,

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<sup>37</sup> See Annex- for the logo.

<sup>38</sup> The Craft Policy provides the main objective the logo as “to market the distinguished products from the country, thus protect the reputation of local crafts as well as promote them nationally and internationally as it is expected that with globalization where goods will gradually be imported/ exported freely, it is vital to differentiate between local and imported products through labelling”.

<sup>39</sup> The domain name is now registered in the name of the state by WIPO.



- d. “*Coco de mer*”- the name and unique shape of a fruit that is only found in Seychelles is being exploited to market mass produced handicrafts made in other countries in and outside of Seychelles.

In spite of the above, there are success stories regarding the use of intellectual property in the business sector. These include an enterprise that protected “TAKAMAKA Bay” mark under different classes including the use of the trademark for alcoholic beverages in Seychelles. The Company produced rum and sells it in and outside Seychelles. The Company exports its product to Austria, Germany, England, Australia, Chile and Argentina. It has a plan to export the product to other potential market places such as Dubai.

The Company has registered its trademark in Europe and the mark is protected in 27 countries of the European Union. This is very positive. There is, however, a need to protect the trademark and the brand in other export destination countries or countries that are deemed potential markets.

The CEO of the company is aware of the relevance of intellectual property and the danger of failing to protect its IP assets in other countries but expressed that the cost of registering trademarks abroad was excessive and burdensome<sup>41</sup>. This problem is worsened by the absence of support services such as advisory and information services in the country and the non membership of the country to some of the international treaties that may enable local business establishments to secure protection in designated countries with a single application. These include the Madrid System (Agreement and Protocol) and the Banjul Protocol administered by ARIPO

## RECOMMENDATIONS

- The Government may consider to :
  - Accede to the Madrid System concerning the International Registration of trademarks,
  - Register “*Made In Seychelles*” brand developed by SEnPA as a certification mark in Seychelles and major import countries or countries with potential export,
  - Set up IP help desk in SIPO and designate focal units in public and private organizations such as SEnPA and SCCI to render advise and support potential users in protecting their IP assets,

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<sup>40</sup> This seems to relate to taking advantage of the reputation and good will of Seychelles, which is known as an environmentally pristine paradise.

<sup>41</sup> The Consultant explained that the cost should be seen in light of the period of protection for trademarks, the benefits that registered trademark will result in improving competitive position, enhancing brand value and preventing unauthorized use that may damage reputation and good will. He further explained the regional and international routes such as the Madrid and ARIPO route that may reduce cost.

### 3.2 IP Awareness

The level of awareness of IP by Rights holders or potential users such as businesspersons, researchers and academic staff of the University; politicians, Government officers, and members of the IP enforcing agencies such as judges, public prosecutors, police and customs officers as well as the general public is low.

There have been limited activities to raise IP awareness. These include the attempts made by the Registrar General's Office, the Copyright Office, Seychelles Authors and Composers Society (SACS) and the Seychelles Broadcasting Corporation (SBC) to raise awareness on IP through few seminars organized in cooperation with WIPO at different times and broadcasting programs involving IP.

These efforts had insignificant impact in that they were not target-oriented and focused on general issues such as the importance of IP protection; they were *ad hoc* in nature and organized only when there was donor support. They need to be better planned, coordinated and sustained. None of the Government offices mandated to deal with intellectual property has an IP outreach program and strategy.

There have been positive steps and developments that may contribute to enhancing IP awareness of different players. These include the steps taken by the Seychelles Broadcasting Corporation (SBC) and the University of Seychelles. SBC has been playing exemplary role by entering in to a license agreement with SACA to use copyrighted material in broadcasting programs<sup>42</sup>. The willingness it has shown and the efforts it has made to promote IP are encouraging. The CEO of SBC expressed his organization's commitment in popularizing IP and indicated the need for assistance in training journalists and making IP promotional materials available.

The Seychelles University with the support of the University of London incorporated a module on intellectual property in its LLB Curriculum.<sup>43</sup> It also offers an introduction to IP during the orientation program of new entrants to the University. There is, however, a need to strengthen the IP course and support the orientation program. The Vice Chancellor of the university sought for assistance in:

- a. reviewing the IP curriculum, training an instructor in the field of IP,
- b. making available IP teaching and reference materials to instructors and students of the university, and
- c. providing documents and tools that may be used during the orientation program.

The above endeavours and measures are encouraging. However, much remains to be done. A large number of stakeholders expressed the need to increase the level of IP awareness. Such a need should be addressed on a priority basis in view of the commitment of the Government of Seychelles to strengthen the IP system and use it as a tool for development. The development and integration of IP policies in to national development strategy and plan, the

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<sup>42</sup> It has been paying 96,000 rupees annually since the time of conclusion of the License agreement. It is the only organization that has entered in to a license agreement and continues to pay royalty.

<sup>43</sup> The Course will be offered to third year law students.

streamlining of IP administration, the revision of existing IP laws and putting in place new laws will be meaningless unless there is a reasonable level of awareness of intellectual property.

## RECOMMENDATION

The Government may consider, with the assistance of WIPO, to:

- a) design and implement target oriented IP outreach strategy and action program,
- b) make IP popularization one of the mandates of SIPO
- c) organize colloquium for parliamentarians and top officials of the Government,
- d) assist in reviewing the IP curriculum and strengthening the effort of the University in teaching IP to law students and orienting students,
- e) provide distance learning opportunity to the staff of the University and the journalists of the SBC,
- f) Provide in depth specialized IP training to selected staff of the University and SBC corporation
- g) Make available IP teaching and reference materials to the University,
- h) Provide with IP promotional materials such as the WIPO comic books and allow their translation in Creole,
- i). Organize short term training program to the staff of public and private bodies such as SEnPA and Chamber of Commerce and Industry, which may play a role in sensitizing potential users of IP.

### 3.3 IPR Enforcement

Stakeholders expressed that counterfeiting and piracy are problems in Seychelles. However, no data is available or study made to determine the magnitude and impact of the problem<sup>44</sup> as well as the source of counterfeit and pirated goods.

The Copyright Act, unlike the Patent Act and the Trade Mark Decree, has provisions dealing with the civil and criminal remedies against infringement of copyright.<sup>45</sup> The Criminal and civil codes may fill the gap in the patent and trade mark laws and provide with criminal and civil remedies against infringement of patents and trade marks.

There are Government bodies such as the Supreme Court, the Attorney General's Chambers and the Police that are entrusted with enforcement. The Supreme Court has the jurisdiction to deal with patent and trademark infringement cases<sup>46</sup>. The Attorney General's Chambers is involved in advising and drafting IP laws, enforcing IPRs and overseeing the Registrar General's office. The Police has the responsibility of dealing with criminal offences.

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<sup>44</sup> Artists and crafts people have complained that the problem of piracy has affected local creativity and business.

<sup>45</sup> See Sections 21 and 22 of the Copyright Act.

<sup>46</sup> Section 2 (2) of The Patent Act and Section 3 (1) of the trademark decree define, for the purpose of the laws, "Court" as meaning the Supreme court.

Despite the existence of relevant laws and institutions dealing with enforcement of IPR as well as the claims of the stakeholders that counterfeiting and piracy are serious problems, no IPR infringement case is brought before the enforcement agencies. This may be due to a number of factors including the size of the local market, which foreign right holders might consider very small, and lack of awareness of the right holders on how to enforce their right in case of infringement.

The current situation will change with the ongoing liberalization and opening up Policy of the Government, the revision of the existing IP laws and the enactment of new ones that may result in increasing use of the IP system and the awareness program that may be implemented during the period of the IPDP.

The Chief Justice of the Supreme Court, the Attorney General and the Police Commissioner highlighted the problem of lack or inadequate awareness of IP by members of the enforcement agencies, understood the potential of increased IPR infringement and recognized the need for enforcement of IPR. They seek for assistance in:

- a. training judges and facilitating access to judicial decisions made abroad,
- b. Creating and strengthening IP awareness of Judges, public prosecutors and police officers through workshops, seminars, colloquium that will be organized on a regular basis,
- c. Providing in depth and specialized IP training to one or two public prosecutors and police officers ,and
- d. Developing an IP curriculum that may be incorporated and offered in the police academy.

The TRIPS Agreement requires member states to provide for border measures against goods that infringe intellectual property rights. Although there are laws dealing with trademark, patent, copyright and customs, none of them provides for border measures.

The customs officers acknowledge the responsibility that the customs authority may have when the country joins the WTO. The Office would like to receive assistance in the incorporation of provisions on border measures in the customs law as well as building human resource capacity to discharge the new responsibility. The Deputy Commissioner of the Customs Authority underlined the need for specialized training that will enable customs officers to identify infringing goods from genuine ones.

There is therefore a need to:

- a. revise the customs law or the exiting IP laws to provide for boarder measure and ensure that new IP laws that may deal with IP elements that are not yet protected in the country to incorporate such remedies,
- b. consider new developments such as the ongoing endeavour to develop an Anti-Counterfeiting Trade Agreement (ACTA) and the model law developed by the World

Customs Organization when revising the laws and drafting new IP laws to provide effective border measure against infringement of IPR, and

- c. train custom officers and equip the office with the necessary facilities to effectively discharge the new responsibility of fighting infringement of IPR at the Boarder.

### ***Recommendation***

The Government, with the assistance of WIPO, may consider to:

- a) provide for adequate civil and criminal remedies against infringement of IPR while revising the existing IP laws or the customs law and enacting new IP laws,
- b) develop an IP module that may be incorporated in to the curriculum of the police academy and offered to new entrants or the existing staff through in service training program,
- c) equip the enforcement agencies with the necessary infrastructure,
- d) train members of the enforcement agencies through, for example, taking advantage of the distance learning program offered by WIPO Academy
- d) ) promote linkage and collaboration with the private sector and ensure involvement of the right holders in identifying infringing products from the genuine one,
- f) organize colloquium for judges during the time of recess of the court,
- g) organize short, medium and long term training programs for members of the enforcement agencies,
- h) equip the supreme court and the Attorney General's office with ICT facilities to facilitate access to on line IP cases. Examples of web sites that provide access to foreign judgments include [www.wolii.com](http://www.wolii.com) and [www.auslii.com](http://www.auslii.com),
- i) Establish linkage and cooperation with similar bodies in other countries, regional and international organizations dealing with enforcement of IPRS.
- j) Initiate and enter into a cooperation agreement with international organizations that may organize or support training programs by making available financial resources, experts, training materials etc
- k) Establish cooperation with business and Industry associations such as the business software alliance that are willing to support intellectual property rights enforcement training projects
- l) Sensitize the general public on the importance of respecting IPR and the adverse impact of infringing goods. Effective enforcement of IPR can be done by denying or narrowing the size of the market and the demand for infringing products

## CHAPTER FOUR

### MEMBERSHIP OF INTERNATIONAL IP TREATIES & EXISTING & POTENTIAL PARTNERS

Seychelles is a member of:

- a. The World Intellectual Property Organization (WIPO) since March 2000,
- b. The Paris Industrial Property Convention and Patent Cooperation Treaty since November 2002,
- c. The World Customs Organization (WCO), Common Market for Eastern and Southern Africa (COMESA) and Southern African Development Community (SADC)<sup>47</sup>.

Seychelles is in the process of acceding to the WTO. It submitted the memorandum of Foreign Trade Regime. A working party is established and the country has already begun receiving questions from the member states. Seychelles expects to take advantage of the fast track route and accede to the organization in a short period of time. The country is a potential member of ARIPO and has been participating in the Administrative Council session of the Organization as an Observer.

In addition to the above, there are potential international partner organizations that may render support in strengthening the effort to consolidate the national IP system and ensure the use of IP as a tool for development. These include:

- a. The Commonwealth<sup>48</sup>,
- b. Africa Development Bank,
- c. United Kingdom Department for International Development (DFID),
- d. UNCTAD and
- e. European Union- Trade Com facility.

The fact that the country is party to various IP conventions, member of Trade/Development organizations, the existence of potential partner organizations is very positive. However, there is a need to do more. Stakeholders have expressed the need for the country to accede to the following international IP agreements:

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<sup>47</sup> These organizations are involved in IP matters. WCO has drafted a Model law on Border enforcement. COMESA and SADC require putting in place a mechanism in compliance of the TRIPS agreement. For example, Article 24 of the Protocol on Trade in the treaty establishing the Southern Africa Development Community (SADC) states that “Member States shall adopt policies and implement measures within the Community for the protection of Intellectual Property Rights, in accordance with WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.”

<sup>48</sup> The Secretariat, in collaboration with the Government of Seychelles, has been working on a SMEs Policy to assist the development of SMEs

- a. Berne Convention for the Protection of Literary and Artistic Works,
- b. Madrid Agreement and Protocol regarding trademarks, and
- c. The WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the Rome Convention.<sup>49</sup>

Stakeholders expressed that little was done to take advantage of the membership and develop capacity. An example was that the country was paying US\$ 30,000 membership fee to the WCO but gaining very little.<sup>50</sup>

## **RECOMMENDATION**

The Government may consider to:

- a) Accede to the Madrid Agreement and Protocol Concerning the International Registration of Marks,
- b) Accede to the Lusaka Agreement establishing ARIPO, the Harare Patent Protocol and the Banjul Trademark Protocols administered by ARIPO
- c) Develop programs of cooperation with WCO, COMESA, SADC and other potential partners in meeting the needs identified in this report.

## **CHAPTER FIVE IDENTIFIED SECTOR FOR THE PILOT PROJECT**

The National Development Strategy, which aims at doubling the GDP and the per capita income of the population by 2017, identifies the tourism sector as the main pillar of the economy. The craft sector is closely linked and associated with the tourism industry. Changes in the production and marketing of craft products will boost tourism and contribute to the realization of the goals of the National development strategy.

The Government recognizes the significance of the craft sector and is committed to strengthen the sector as one of its priority focus areas. The 2002 Craft Policy identifies the sector as a valuable sector with the potential for export, highlights the Government support schemes to develop the sector and recognizes the importance of intellectual property in strengthening the competitiveness of the sector.

Consultations made with the stakeholders revealed that there were distinctive craft products that:

- a) have demand in the domestic market and export potential, and
- b) could be protected and exploited using appropriate intellectual property tools.

Stake holders agreed that the craft sector may be used as a potential area to demonstrate the importance of intellectual property in wealth creation and improving competitiveness of the small enterprises and handicrafts in a pilot project.

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<sup>49</sup> This will enable the country to meet the needs of the stakeholders and cope up with the challenges posed by the digital era to the protection of artistic and literary works

<sup>50</sup> There is a need to establish a clear cooperation program with the above organizations to meet the identified needs.

There are a number of reasons which may justify the choice of the sector as a pilot project including the following:

- a) The craft sector provides employment opportunity to a number of Seychellois, makes significant contribution to the GDP<sup>51</sup> and is one of the key priority areas of the Government;
- b) The sector generates and utilizes intellectual property assets such as designs that make craft products distinctive and can be protected using appropriate IP tools;
- c) Crafts are based on cultural and traditional motifs and help to preserve cultural heritage,
- d) There is a growing international market for gift articles<sup>52</sup> and the country may benefit from export potential of its craft products,
- e) There is rampant copying of designs that is affecting local business. The use of IP helps to deal with the problem as well as enhance IP culture by preventing reproduction of protected designs, stimulating creativity and innovativeness in the sector and generating fair competition,
- f) There is an ongoing program of the Government to differentiate local craft products using logo and brands. A pilot project that may be developed and implemented to show case the benefits of IP will complement and strengthen the Government initiative, and
- g) The Pilot Project will have the support of both the public and the Private sector. SEnPA and the craft associations are keen to use IP.

Stakeholders that were consulted identified the following craft products as unique to Seychelles, having demand in the local market and a potential for export:

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<sup>51</sup> The 2002 craft Policy indicates that The Sector contributes Sr 4 to 8 million per annum for the GDP,

<sup>52</sup> In November 2005, the EU-25 market for gifts and decorative articles was estimated at 10.8 billion Euros. See Barber T. and Krivoshlykova M., Global Market Assessment for Handicrafts, Volume 1, USAID (2006), pg.17



### Coconut-Shell Pen, Pencil and Letter Opener Holder



This product, which is made of a natural coconut shell, is one of the famous souvenir products in Seychelles. It features designs inspired by the shape of the world largest nut Coco De Mer, which is endemic to Seychelles and includes decorative carvings such as coco nut tree. The Coco De Mer shape and the pen, pencil and letter opener holder are usually placed on either side of the wooden plaque.

The demand for the product is increasing as the volume of Coco De Mer related craft products have risen substantially in the last decade. The product is often sought for by foreign visitors and tourists in the local market. Stakeholders believe that the product has export potential.

### **Coconut tree-husk fish**



This product is made of coconut tree-husk and represents the fish of Seychelles. It is crafted in a flat form of a fish and can be hanged on any wall as a decoration. The craft product is very light in weight and convenient for travelling with.

The product has a demand in the local market. Tourists and visitors often buy the product. Stakeholders believe that the product has export potential.

### Bamboo Eau De Parfum



This product is a lady's fragrance, which is unique and distinctive. The product is made of a local bamboo and contains a secret ingredient. The bottle and the package bear excellent designs. The product has demand in the local market. Stake holders expressed that the development of perfume-industries is vital to the economic progress in Seychelles and the perfume product has export potential.

### **Decorative Sea Turtle**



This product represents the Sea Turtle of Seychelles, which are admired by residents and foreign visitors. The product is creatively crafted with the skin effect and turtle shell and has a unique characteristic shape that will look fabulous on any piece of furniture.

Foreign visitors and tourists buy the product in the local market. Stakeholders believe that the product has export potential

The pilot project may take one or more of the above distinctive products and shows case the importance of IP by capturing the intangible values incorporated in the products. Some of the intellectual property assets require putting in place mechanisms such as industrial designs and geographical indications protection in the country. There is thus a need to put in place the necessary legal frame work as a matter of priority.

## **RECOMMENDATIONS**

The Government may, with the assistance of WIPO consider to:

- a. Ensure that the revised patent law and the new laws such as the GI are developed to accord protection to IP assets of the country and its creative people,
- b. Undertake an in depth study to identify IP assets and appropriate intellectual property tools that may be used to protect the assets, determine the domestic market and export potential of the selected products in the craft sector,
- c. Build IP asset identification, protection and exploitation capacity in the craft sector, and
- d. Identify and involve the key actors in the process of developing the pilot project and during its implementation.

Annexes follow



## ANNEXES

## ANNEX I- Outline of needs Assessment- Planning Matrix

## Overall goal

**To ensure full integration of IP in the development policies of the Seychelles in order to contribute and accelerate social, economic, cultural, scientific, industrial and technological advancement.**

Specific Goals	Identified Needs	Main Activities	Responsible body	Provisional Target Time table
Strengthening IP Policy framework	<p>Articulate a National IP Policy and Strategy</p> <p>Develop Institutional IP Policy</p> <p>Training of policymakers</p> <p>Capacity building in Policy analysis, formulation and review</p>	<p>Undertaking an IP audit</p> <p>Formulating and approving National &amp; Institutional IP policies &amp; strategies</p> <p>Setting up an IP policy coordination body</p> <p>Mandating the new IPO with policy studies, developing proposal etc</p> <p>Training of two professionals in IP policy analysis and formulation skills, Establishing an IP management Unit</p>	<p>Government of Seychelles</p> <p>University of Seychelles</p> <p>National cultural Heritage Institute/ Ministry of Culture</p> <p>WIPO</p>	April 2010 to October 2011
Strengthening IP Legal framework	<p>Revise the existing IP laws</p> <p>Enact New IP laws;</p>	<p>Preparing revised industrial property law and drafting new IP laws;</p> <p>new laws governing plant varieties, geographical indications, undisclosed information, lay out designs and traditional knowledge taking advantage of the flexibilities available in TRIPS agreement and reflecting the needs of the country and stakeholders</p> <p>Enact <b>the draft new copyright legislation</b> , the revised and new IP laws;</p>	<p>Government of Seychelles</p> <p>Attorney General's Office</p> <p>WIPO</p>	April – December 2010
Strengthening IP Institutional framework	<p>Streamlining IP administration;</p> <p>Enhancing the human resource capacity of the IP office;</p> <p>Automation of the Office procedures and operations;</p> <p><b>Strengthening SACS</b></p> <p><b>[Strengthening collective</b></p>	<p>Establishing a single IP office ( here in after referred to as SIPO);</p> <p><b>Formulating and adopting legal framework establishing SIPO;</b></p> <p><b>Defining the functions and operational structures of SIPO;</b></p> <p>Designing and implementing capacity Building</p> <p>Equipping SIPO with facilities</p> <p><b>Provision of Office space for SACS, Expansion of SACS to all areas of collective management such as mechanical,</b></p>	<p>Government of Seychelles</p> <p><b>Culture Division, SACS;</b></p> <p><b>National Arts Council,</b></p> <p>WIPO with potential Partner Organizations</p>	December 2010- until the end of the Period of IPDP

	<i>management]</i>	<i>reprographic and performers rights;</i>  <i>Recruitment and Training of staff of SACs</i> <i>Attachments of staff and Board members;</i>  <i>Equipping SACS with ICT facilities including the establishment of website;</i>		
Enhancing the Use of the IP system	<p>Improve IP awareness of Potential users,</p> <p>Organize innovation and Creativity support service</p> <p><i>Undertake a study on the value and contribution of creative industries</i></p> <p><i>Linking the IP system to promotion and protection of traditional knowledge and expressions of folklore</i></p>	<p>Organize IP Awareness programs to the potential users,</p> <p>Set up an IP information and advisory unit with in SIPO</p> <p>Establish IP help desks in SCCI, SEnPA, SACS and other potential IP Users organizations</p> <p><i>Formulation of a project proposal on the study on creative industries;</i></p> <p><i>Study on creative industries;</i></p> <p><i>Dissemination of results of study on creative industries;</i></p> <p><i>Use findings when developing or enriching the National IP policy</i></p> <p><i>Sensitization on the importance of traditional knowledge and expressions of folklore,</i></p> <p><i>Collection and creation of a database on traditional knowledge and folklore;</i></p> <p><i>Training of staff on collection and preservation techniques</i></p> <p><i>Participation on the protection of traditional knowledge and expressions of folklore</i></p>	<p>SIPO</p> <p>SCCI</p> <p>SEnPA,</p> <p><i>National Arts Council;</i></p> <p><i>Culture Division;</i></p> <p>SACS</p> <p>WIPO</p>	January – June 2011
Creating and Strengthening IP Awareness	Improve IP awareness	<p>Design and implement Target oriented IP outreach strategy and action program;</p> <p>Review IP curriculum of the University</p> <p>Make available IP teaching materials</p> <p>Provide in depth specialized IP training to selected staff of the University and SBC</p> <p>Provide with IP promotional materials such as the WIPO comic books and allow their translation in Creole</p>	<p>Government of Seychelles</p> <p>University of Seychelles</p> <p>SIPO</p> <p>SBC;</p> <p><i>Culture Division</i></p> <p>SACS</p> <p>WIPO</p> <p>potential Partner Organizations</p>	April 2010 until the end of the IPDP

		<p><b><i>Introduce systems of awards for creativity</i></b>  <b><i>Organize annual fairs on new inventions or creativeness</i></b></p> <p>Sensitize stakeholders on new and revised IP laws both before and after promulgation.</p> <p><b><i>Organising sensitization programs on international instruments;</i></b>  <b><i>Including IP in regional/sub regional trade negotiations</i></b></p>		
Strengthening IP enforcement	<p>Making available adequate remedy against infringement of IPRs in IP or related laws</p> <p>Increasing IP awareness of Judges, public prosecutors, police and customs officers</p> <p>Training of selected public prosecutors, Police and Customs officials,</p> <p>Improving IP awareness of right holders and the general public</p> <p>Equip the enforcement agencies such as the customs with the necessary infrastructure to identify genuine from infringing products</p> <p>Enhance co-operation of right holders with the enforcement agencies</p> <p>Establish and strengthen cooperation with foreign enforcement agencies on counterfeiting and piracy</p>	<p>Provide for adequate civil, criminal remedies against and Border measure when revising existing IP laws or enacting new IP laws</p> <p>Organize IP workshops, seminars, colloquium, study tours etc,</p> <p>Train selected members of each of the enforcement agencies using the WIPO distance learning program and specialized IP training program with the support of potential partner organizations</p> <p>Equipping the supreme court and the attorney general's office with ICT facilities to enable them access foreign IP judgements on line</p>	<p>Government of Seychelles</p> <p>Attorney General's Office</p> <p>Supreme Court</p> <p>Police</p> <p>Customs</p> <p>WIPO with potential Partner Organizations</p>	<p>April 2010 until the end of the Period of the IPDP</p>



Linking the national IP System with the international IP system	<p>Accession to international treaties such as Berne Convention for the Protection of Literary and Artistic Works; WIPO Copyright Treaty (WCT), Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, WIPO Performers and Phonograms Treaty (WPPT), Madrid Agreement and Protocol Concerning International Registration of trade marks, Lusaka agreement that establishes ARIPO and agreements administered by ARIPO</p>	<p>Undertaking a study on the benefit of the the fied on IP instruments and developing accession proposals; submitting Accession instrument ;</p> <p>Follow up developments at the international and regional level on the protection of TK and expressions of folklore and join the international instruments</p>	<p>Government of Seychelles Attorney General's office, <b>Culture Division, SACS, SIPO</b> <b>WIPO with potential Partners</b> ARIPO</p>	<p><b>April 2010 to end of IPDP</b></p>
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## Annex II. Summary of the Terms of reference

### Mission's objectives:

1. From the information at hand, Seychelles does have in place legal and administrative framework for ensuring protection and enforcement of IPRs albeit in need of modernization and enhancement of capacity. In order to address the needs of Seychelles and mainstream intellectual property in the national development policies and strategies a needs assessment mission is proposed. It will involve a team of experts composed of yourself and Mr. Serman Chavula, former Copyright Administrator of Malawi. The assignment is to assess the current IP system, identify weaknesses and make concrete proposals with the view to defining specific needs-oriented activities and projects for implementation within the IPDP in such a manner as to enhance Seychelles' capacity to create, protect and make strategic use of IPRs and assets as a power tool for economic growth and development. The IPDP seeks to ensure that the IP offices and potential users and generators, such as tertiary institutions, small and medium-sized enterprises (SMEs), chambers of commerce and industry, R&D Institutions and copyright owners' organizations have the technical capacity and know-how to use the IPRs system for development in line with the country's national development strategies.
2. In undertaking the assignment therefore and with the view to formulating a realistic, result-oriented IPDP, it is important that the Consultants take cognizance of any current national development strategy or policy, either in the process of being elaborated or already at the implementation stage and place particular focus on those sectors identified as priority areas in the same strategy or policy with a potential for intellectual property to add value in.
3. It is understood that the Seychelles Authorities will undertake to facilitate the mission assignment, particularly with respect to access to heads of IP-related or any other institution that is key to the overall success of the mission.

### Principal Duties

4. The Consultants will be required to undertake a visit to Seychelles, from 11 to 21 January, 2010, and carry out the following:

The overall assignment will entail the following duties:

- (a) Collect data and information on:
  - (i) Existing legal, administrative and enforcement structures relating to IPRs in Seychelles and identify weaknesses and measures to strengthen the institutions;

- (ii) Key priority areas identified in any national development strategy with a potential to enhance their competitiveness through IPRs for inclusion in the IPDP; in this respect the Consultant will identify, and if possible establish contacts with development partners/donor institutions that are being engaged in the national development strategy for the purpose of proper coordination;
  - (iii) Existing policies/strategies for the promotion of micro businesses and SMEs, and suggest a strategic approach to integrate IPRs in the process in particular in areas where Seychelles has a competitive advantage; and
  - (iv) Existing policies, mechanisms or strategies aimed at facilitating the use of the IPRs system and make suggestions to improve their effectiveness.
- (b) Assess Intellectual Property Institutions' human resources, technical capacity and recommend activities aimed at improving or enhancing their ability to provide quality service to creators and users of IPRs (business procedures and tools, automation, training of staff etc);
- (c) Gauge the level of IPRs awareness of business communities, trade hubs, business incubators, R&D Institutions, traditional knowledge practitioners and users through their groups or associations, governmental and non-governmental SME/Industry support institutions (chambers of commerce, trade promotion offices, etc.) and/or any other area with a stake in intellectual property and identify challenges and potentials;
- (d) Provide guidance in accordance with best practices in the selection of the members of the National Steering Committee (bearing in mind the list under paragraph (c)); advise and assist the national authorities in organizing meetings of the committee and provide technical advice and support on all aspects relating to the revision and updating, as necessary, and implementation of the IPDP;
- (e) Identify sectors from (a)(ii) that have a domestic and/or export market potential and which could be used in a pilot project to demonstrate the strength of IPRs in wealth creation; and
- (f) Prepare and send to WIPO, a report on the findings of the mission, including a realistic matrix and timeframe of activities for both short-term and long-term implementation.

## Annex III. List &amp; Addresses of Persons Contacted

Date	Name	Designation	Institution	Contact details
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11/01/10		Meeting with IP Task force		See Annex C for list

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13/01/10	Mrs. Nicole Tirant-Gherardi	Secretary General	Seychelles Chamber of Commerce & Industry	SCCI Secretariate:2 <sup>ND</sup> Floor, Ebrhim Building, P.o.box 1399, Victoria, Mahe, Tel: 323812, Fax: 321422/224357, email:scci@seychelles.net

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14/01/10	Meeting	With Board chairman, members and Director of Seychelles Authors & Composers Society		See Annex for the list
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Annex IV- List of members of the IP task force and participants to the stakeholder's workshop

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## List of Participants to the Stakeholders Workshop

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1	Mrs. Lucienne Charlette	Registrar general's Office
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3	Miss Samantha Tangalam	Registrar general's Office
4	Mrs. Raymonde Onezime	Culture Division Ministry of Culture
5	Mr Gabriel Essack	Culture Division Ministry of Culture
6	Mrs. Sybil Labrosse	Culture Division Ministry of Culture
7	Miss Janette Dewea	Customs Division
8	Mr. Jeris Cole	Ministry of Industry
9	Mr. David André	Seychelles Authors and Composers Association
10	Officer Philip Cecile	Police Commission
11	Ms Sylvianne Valmont	Small Enterprise Promotion Agency
12	Dr George Ah Thew	University of Seychelles
13	Mr. Brian Moumou	University of Seychelles
14	Mr. Larrey Chetty	National Arts Council
15	Ms Lydia Charlie	National Arts Council
16	Mr. Barry Assary	Small Enterprise Promotion

		Agency
17	Mr. M.K. Rao	Ministry of Foreign Affairs
18	Mr. Ziyaad Ebrahim	Ministry of Finance
19	Mrs. Jill Laporte	Ministry of Finance
20	Mr. Charles A. Morin	Ministry of Finance