

# ***IP Survey Report***

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# 1. Introduction

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On the invitation of the Sri Lanka National Committee on Intangible Cultural Heritage (SLNCICH), a survey was undertaken to prepare a country report on the subject of Intellectual Property Issues in the Process of ICH Information Building and Sharing, in response to the communication from the International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP). The National Library and Documentation Service Board of Sri Lanka (NLDSB), as the facilitating institution within the country, provided the necessary facilities to successfully fulfil the entrusted responsibility.

Sri Lanka, owing to its long, unbroken, resourceful, and proud history, is very rich in the area of ICH. And the nation can be considered a rare example of a country preserving its ICH in a traditional way, though subjected to many vicissitudes of so-called modernisation. It can be seen that the ICH in Sri Lanka is found all over and associated with the different aspects of daily life of the people. By far, the most widespread is in the field of aesthetics, such as in music, dance, drama, folklore, while other areas carry much traditional knowledge that is second to none.

It is also remarkable that Sri Lankans feel very proud of being able to carry on this traditional heritage in such a manner despite the 450 years of destructive colonialism and the subsequent influence of modernisation that was often a mere camouflage to hide its true appearance of colonialism coupled with various other forces. Yet the foreign origin of the associated institutions and dealing with them and the alien nature of the working system hardly leave any room for their use. This is mainly due to ignorance and the non-recognition of the value of these by the alien systems.

## 1. Objectives of the Project

In planning the implementation of the survey, the first task was to get a clear idea of the expected objective of the initiators of the Project. For this purpose,

the long and very descriptive questionnaire was studied very meticulously to map out the most suitable strategy for the purpose.

In almost all the fields very near and dear to the daily life of the people in this country, whether in respect of means of livelihood, domestic rituals, medical practises, aesthetics, folk games, pastimes, culinary practices, or in many other areas, most of the practices, knowledge, and mechanisms have continued up to now as relics of the proud ancient past, basically in an intangible form. Therefore, the whole gamut of ICH in Sri Lanka can be considered a part of the living heritage of the local people. This made it easy to engage in cordial and fruitful discussions with the interviewees.

However, the situation with regard to the Intellectual Property Rights (IPR) proved to be completely different since the attitude of the vast number of local traditional bearers, custodians, practitioners, and stakeholders, as well as the members of the community in which these intangible cultural aspects persist, appeared to be one of disinterest, and hence they were unresponsive to the relevant issues. Except for the few who were western oriented and knowledgeable about the modern western concepts most of the other local practitioners and artists appeared to be unconcerned of the concepts that they considered alien to their traditions. Still it was not hard to find even among the well-educated intellectuals who expressed the opinion that “the entirety of the questionnaire totally reflects a western way of thinking with no due regard to the local thinking patterns thus thrusting the colonialism on us even during the period of so-called independence”. This was only a disapproval of the non-recognition of the local context.

The traditional, local practitioners are unanimous on the view that their forefathers had left behind all their creations for the general wellbeing of the whole community and not for any single person or a group and hence IPR issues do not arise in respect to traditional society. Therefore, it was not an easy task to find a suitable method of eliciting their responses to the issues related to IPR as given in the questionnaire. However, it must be emphasised that they were not totally unresponsive to the relevant issues. Instead, they had their own interpretations to the issues and suitable solutions to the problems that could arise out of these issues in the process of making use of them. But they were far aloof from the concepts evolved in the West and imported here.

## **Identification of samples for survey**

The next stage in preparing for the field survey implementation was identifying the most suitable survey samples or categories of respondents who would be valuable resources in respect of the many areas to be covered within the time limits. It was almost December 2011 when the responsibility was entrusted, even though the expected time to start the job was stipulated as November. On the other hand the Report had to be ready by the middle of February 2012, and hence it appeared that the one who implemented this task would be bound to be conscious of the handicaps and limitations against which he or she would have to struggle in the process of preparing a satisfactory if not an excellent report to convince the sponsors of the validity of the views and opinions this country has on offer to the rest of the region. Being very mindful of the time constraints, the team was compelled to prepare the strategies to suit the situation.

The intentions of the initiators of the project to elicit as much as possible the experiences and opinions of the various institutions dealing with the related subjects are very clear as can very well be seen from the thorough questionnaire prepared for the implementation. This is justifiable since they are anxious to formulate a common policy applicable to all the members. What appears as foremost in the minds of the initiators of this project can be construed as the identification of variety of issues that may emanate from the use or misuse of ICH in those countries and the problems caused by such situations along with the solutions given to such problems to suit their own conditions and context. Very justifiably ICHCAP seems keen to promote a uniform system of resolving such problems and conflicts and hence seeks the assistance of the member countries to arrive at that common programme acceptable to one and all.

Hence we are bound, however much we may differ from each other in respect of our own approaches to such problems to share our experiences and opinions with others to help minimise the conflicts and problems that could arise in the future. That will also help to nip in the bud those problems that may blow up to uncontrollable proportions if no measures are stipulated to resolve them at the first sight of their appearance. Therefore, major attention is devoted to collecting relevant information from the institutions identified as most relevant in respect of the subject under consideration.

Accordingly an attempt was made to identify the institutions that have much relevance to the subject area. The first and foremost institution for

consideration was the Office of the Intellectual Property Rights Authority of Sri Lanka (IPRA). It is the state authority in the area of IPR and possesses the powers and responsibilities in relation to determining rights and their breaches and assisting in litigations or settlements. Hence the Director-General of IPRA was the automatic choice for obtaining official information.

Ministry of Cultural Affairs and Arts is the state institution mandated to look after, sustain, and develop the cultural aspects in the country as a whole. It has within its mandate the function of safeguarding the most valuable and irreplaceable resources of the country. With the establishment of the new government of the Executive President in 2010, the Ministry of National Heritage was created to look after the tangible cultural heritage of the country. It has under its mandate most of the departments in charge of tangible culture, such as the National Archives, National Museums, Archaeological Survey, and Arts and Crafts Council. Since all these departments look after tangible cultural heritage that is in fact the tangible expressions of intangible culture and hence have much in common with ICH, action has been taken to seek the opinion of the heads of all ministries and departments mentioned above.

The Department of Agriculture, the Department of Irrigation, the Department of Ayurveda (Indigenous Medicine), the Department of Wildlife and Forestry, and the Department of Education are some other outstanding areas where traditional knowledge (TK), which includes many ICH elements, forms the backbone of their subject areas. Owing to the great emphasis laid recently by the world at large on TK in general, Sri Lanka had always been the sine qua non of all those in eager pursuit of and quest for formidable knowledge leading towards solutions to numerous problems currently rampant because of the mismanagement of the world resources. The intrinsic value of this body of very traditional unrefined and raw knowledge is ever increasing in the light of exhaustion of the available resources owing to the callous and brutal mismanagement of the limited resources of the world. TK is indeed one of the most outstanding segments of ICH in any country that can boast of an era of traditional history.

However, it is well known that each of these departments or institutions, owing to their colonial origins, devotes very little attention to this traditional knowledge since colonialism, in the guise of modernism, has engulfed the entire fields covered by them from the time of their very inception with the sole intention of preventing them from nurturing the indigenous knowledge system. Therefore, the relevant information is hardly available with them, and hence they are to be obtained from scholars engaged in research in the

respective areas in addition to whatever scanty information is obtainable from them.

The field of traditional medicine is one of the most fertile grounds for ICH, as has been proven by the Sri Lankan scene. Traditional native medical practice engulfs all the known areas of treatment that the modern western medical system is known for, and hence, it can be said that Sri Lankan native medical practitioners, inheriting the knowledge from generation to generation, stand more or less as the repositories of native medical knowledge and are not second to any in the world. Each head of a practising family in the line of a particular tradition is a very valuable source of information.

Internationally too, the native medical practices have now gained recognition and acceptance, and hence, the need has arisen to elevate the practice to higher levels of education in recognition of the widespread nature of its application and acceptance as a field deserving higher training and research among the national and international bodies relevant to the area. Hence a few universities have been established to disseminate the knowledge among the locals and to foreign students who clamour for it. A versatile indigenous medical practitioner with modern education and experience in dissemination knowledge very well confirmed this point of view.

Traditional healing rituals and ceremonies, which have ancient origins and survive up to now as an alternative medical practice, are yet other areas where IPR issues can be found. Since it was an area in which people had faith and upon which they relied heavily, the traditional practitioners need to be represented among the resource persons in a study of this nature. Still, the time constraints and non-availability of knowledgeable practitioners to be reached with short notice prevented us from approaching them. However, the void was filled by the versatile dance practitioners who hail from traditional families.

Another well-known area full of ICH in Sri Lanka is the vast arena of different vocations with a long history engaged in by the people for their livelihood as well as for pastime pleasures and leisure. The latter category is often known as the folk arts and crafts since they are engaged in more as a way of exhibiting their skills while deriving much pleasure out of its finished products in addition to augmenting household income. Among the vocations under consideration foremost place is occupied by traditional agriculture since it is the pivot around which the entire life pattern of the people and the economy of the whole country revolve.

The heavy array of functions and all aspects of the different activities involved in obtaining a successful harvest had their own mechanisms. Different means and methods resorted to achieve the desired results at each stage of the process; different treatments adopted to rid the fields of the pests and diseases; the multiplicity of implements, containers, and receptacles, and many more associated with agriculture are all reflectors of the wisdom of the people of the past in addition to the belief system emanating out of the relationship they had with the environment. Therefore, traditional agricultural practices have come to be accepted as rich storehouses of ICH with a lot of potential for finding solutions for many problems faced by the whole world in a particular field.

In countries with a long and glorious past, every vocation is equally important as carriers of ICH. Sri Lanka is a classic example since its long and unbroken history with creations and achievements unparalleled to any other proves beyond doubt that it in fact had been a rich ground to many vocations that cherished a vivid and rich ICH. Handicrafts is one with a wide variety of branches, such as carpentry and woodworking, black smithy and ironwork, brass work, pottery, mat weaving, rattan work, and weaving and spinning of cotton. Irrigation, gem mining, graphite mining, hunting, collecting bee honey, and many more technological vocations were very familiar.

Abundant information in respect of these vocations that had been prevalent in the past are, most unfortunately, hard to find today owing to the wanton negligence inflicted during colonial rule to tarnish the pride that such storehouses of ICH instilled in the people. Their fear was the motivation that could have generated aspirations of freedom from the yoke of colonialism. The destruction was prompted by their desire to ensure market opportunities for their own products as well since it was the foremost motivation in embarking on these expeditions. Although it was firmly believed and unreservedly accepted that the opinion of versatile masters from such vocations and crafts would add much glamour to a study like this, there was no way that such skilled persons knowledgeable about the issues in question could be easily reached. Hence justice has been done to such vocations by giving due recognition and gathering information from records and books to illustrate the depth of the knowledgebase associated with such vocations and crafts.