

Article 1:

Option for CRITERIA

Protected TCEs/EOF shall be :

- (a) the products of creative intellectual activity, including and communal creativity;
- (b) indicative of authenticity/being genuine of the cultural and social identity and cultural heritage of indigenous peoples and communities and traditional and other cultural communities; and
- (c) maintained, used or developed by nations, states, indigenous peoples and communities and traditional and other cultural communities, or by individuals having the right or responsibility to do so in accordance with the customary land tenure system or law customary normative systems or traditional/ancestral practices of those indigenous peoples and communities and traditional and other cultural communities, or has an affiliation with an indigenous/traditional community.

Option for Article 3:

Adequate and effective legal and practical measures shall be provided to safeguard the exclusive rights of beneficiaries of traditional cultural expressions/expressions of folklore as defined in article 2 of these provisions to control, authorize or prohibit and benefit from the use of such traditional cultural expressions/expressions of folklore in the following terms

(a) traditional cultural expressions/expressions of folklore which have been as referred to in Article 7, there shall be adequate and effective legal and practical measures to ensure that beneficiaries, that may be a nation, a people or an indigenous community or other community the relevant indigenous people or community, traditional and other cultural community can prevent the following acts taking place : without its free, prior and informed consent:

(i) in respect of such traditional cultural expressions/expressions of folklore other than words, signs, names and symbols:

- the reproduction, publication, adaptation, broadcasting, public performance, communication to the public, distribution, rental, making available to the public and fixation (including by still photography of the traditional cultural expressions/expressions of folklore or derivatives (adaptation) thereof;
- any use of the traditional cultural expressions/expressions of folklore or adaptation thereof which does not acknowledge in an appropriate way the indigenous peoples and communities and traditional and other cultural communities as the source of the traditional cultural expressions/expressions of folklore;
- any distortion, mutilation or other modification of, or other derogatory action in relation to, the traditional cultural expressions/expressions of folklore, done in order to cause harm thereto or (or any action that may prejudicial to the expressions, that would against or

would damage the reputation, customary values or cultural identity or integrity of the community) to the reputation or image of the community, indigenous peoples and communities or region to which they belong; and

the acquisition or exercise of IP rights over the traditional cultural expressions/expressions of folklore or adaptations thereof;

(ii) in respect of words, signs, names and symbols which are such traditional cultural expressions/expressions of folklore, any use of the traditional cultural expressions/expressions of folklore or derivatives thereof, or the acquisition or exercise of IP rights over the traditional cultural expressions/expressions of folklore or derivatives thereof, which disparages, offends or falsely suggests a connection with the indigenous peoples and communities and traditional and other cultural communities concerned, or brings them into contempt or disrepute;

(iii) any fixation, representation, publication, communication or use in any form of the traditional cultural expressions/expressions of folklore which make no mention of the community, indigenous peoples or communities or region to which they belong except where omission is dictated by the manner of the use,

iv) any false, confusing or misleading indications or allegations which, in relation to goods or services that refer to, draw upon or evoke the traditional cultural expression/expression of folklore of the indigenous peoples and communities and traditional and other cultural communities, suggest any endorsement by or linkage with such indigenous peoples and communities and traditional and other cultural communities, can be prevented and/or is subject to civil or criminal sanctions; and

v) there should be equitable benefit sharing where the use or exploitation of this knowledge for gainful intent is, there should be benefit sharing on terms determined by the relevant communities in consultation with the designated national authority referred to in Article 4 designated national authority referred to in Article 4 in consultation with the relevant indigenous people and communities; and

Secret traditional cultural expressions/expressions of folklore

There shall be adequate and effective legal and practical measures to ensure that the indigenous peoples and communities and traditional and other cultural communities have the means to prevent the unauthorized disclosure, subsequent use of and acquisition and exercise of IP rights over secret traditional cultural expressions/expressions of folklore.

Option to replace Article 8. al. 4 or for a new article 12 on TRANSBOUNDARY COOPERATION

In instances where TCEs / EoF are located in the territories of neighbouring countries, those countries shall as appropriate cooperate support the implementation of this instrument by ensuring that measures taken are supportive of and do not run counter to its objectives.

Where the same TECs / EoF are shared by different countries or by indigenous and local communities in several jurisdictions, those countries shall cooperate, in close consultation and

involvement of indigenous and local communities if any, in the exercise of implementing the objectives of this instrument.