

**Chair's Summary
Consultative Meeting on the Work of
the Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources,
Traditional Knowledge and Folklore
Bali, Indonesia, 11-12 March 2014**

1. The Consultative Meeting on the Work of the Intergovernmental Committee ("IGC") on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('Consultative Meeting') was held from 11 – 12 March 2014 at the Sheraton Kuta Resort, Bali, Indonesia. The Consultative Meeting was chaired by Ambassador Triyono Wibowo, Permanent Representative of the Republic of Indonesia in Geneva and assisted by Ambassador Wayne McCook, Permanent Representative of Jamaica in Geneva, the Chair of IGC, and also assisted by the Vice Chairs of IGC. The Meeting was attended by Representatives of Algeria, Australia, Bangladesh, Botswana, Brazil, China, Colombia, Egypt, European Union, Indonesia, Jamaica, Kenya, Malaysia, Myanmar, Peru, Republic of Korea, South Africa, Switzerland, Thailand, Trinidad and Tobago, United States of America, Vietnam, Zambia and WIPO Secretariat.
2. The Consultative Meeting aims at recalibrating and refocusing the negotiation on Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs). The Consultative Meeting was also intended to identify building blocks for resolution of the outstanding issues in order to facilitate the negotiation in the forthcoming 27th Session of IGC.
3. The Chair stressed that all comments, views or position expressed during the Meeting should be without prejudice to the official position of any Member States in the IGC.
4. The Meeting discussed three main topics, which are:
 - Cross Cutting Issues of TK and TCE;
 - Outstanding issues on TK; and
 - Outstanding issues on TCE.

Cross Cutting Issues of TK and TCE

5. The Meeting identified and considered some cross cutting issues of TK and TCEs, as follows:
 - Subject matter of protection
 - Extent of rights and its relationship with misappropriation
 - Beneficiaries
 - Publicly available TK/Widely diffused TK
 - Limitations and Exceptions
6. On the point of definition in Subject Matter of Protection, the Participants had constructive exchange of views that the definition should provide a certain level of clarity. Therefore, the Meeting stressed the importance of reflecting distinguishing characteristics of TK/TCEs within the context of protection of the instrument. In this regard, while reiterating the necessity of a broad and inclusive definition, some Participants emphasized that the definition should also provide legal certainty, transparency and predictability. For this purpose, the inclusion of a non-exhaustive list of examples was deemed desirable by these participants. With the view to drawing a clear line on the extent of the protection, some also suggested that the issue of Criteria for Eligibility can be addressed in the other part of the instrument. On the other hand, others maintained that the definition of TK/TCEs eligible for protection should clearly establish what constitutes protected TK/TCEs. Therefore, they deemed that clear provisions on Criteria for Eligibility in the text containing the definition of Subject Matter of Protection are necessary.

7. As far as the extent of rights is concerned, the Meeting discussed whether there is value in defining the nature of the rights, including the concept of misappropriation. In this regard, the Meeting had an exchange of views on the practical value of establishing the level of rights as determined by the character of the TK/TCEs in question and the character of their use. Some Participants stressed that such approach would be useful in resolving a number of inter-related outstanding issues, including Beneficiaries, Scope of Protection and Limitation and Exceptions. Within this context, the Meeting discussed options relating to various kinds of rights that might be granted to TK as well as TCEs. Four kinds of rights were discussed:

- The right to say no: exclusive rights;
- The right to be compensated: (Benefit-sharing);
- The right to be acknowledged and to prevent distortion: moral rights; and
- The right to prevent misrepresentation (passing off).

The above mentioned rights are not necessarily mutually exclusive. The right or rights could be selected depending inter alia on: (i) The character of the TK; and (ii) The uses to which it is being put.

8. The Meeting highlighted that, regardless the diverging views on the use of the terms "people and local communities", there was an understanding on the principle that the Beneficiaries are "indigenous people and local communities" or "indigenous and local communities". The Meeting also discussed a number of proposed roles of the States as Beneficiaries in particular when TK/TCEs are not specifically attributable or confined to an indigenous community or it is not possible to identify the community who generated them. In this connection, the Meeting further discussed such roles of the State whether designated as an administrator of the rights or as a beneficiary of the rights or the State could have no role.
9. The Meeting discussed the treatment of protection for publicly available TK/TCEs and widely diffused TK/TCEs. The Meeting underlined that this issue should be addressed in conjunction with the discussion on the nature of the rights. The Meeting also had an exchange of views on the concept of "public domain".
10. The Meeting conversed on the issue of Exceptions and Limitations and its relationship with characterization of the treatment of protection for TK/TCEs.

Discussion on Traditional Knowledge

11. The Meeting exchanged views on some issues relating to the Text of TK. Some Participants expressed concern at the placement of the Criteria for Eligibility in the definition of Subject Matter of Protection. Other Participants highlighted the practical value of putting a minimum time period of the existence of the Traditional Knowledge as Criteria for Eligibility. On the other hand, some Participants maintained that, in order to provide greater certainty of the scope of the protection for the TK which falls within this instrument, Criteria for Eligibility in the definition should be retained.

Discussion on Traditional Cultural Expressions

12. With respect to the Subject Matter of Protection, the Meeting identified a need to advance the dialogue regarding broad and specific definition of TCEs. There was shared view that there should be protection but there is still divergence of views on how the protection be reflected in the Text. In this regard, the Participants contemplated the linkages between the definition, the characteristics of TCEs and the level of protection. The Meeting noted that, while some diverging views on the Subject Matter of Protection exist, there is a modest common denominator in the elements of the definition. It was stressed that distinguishing characters of "inter-generation", "maintained", and "develop", as part of their

collective culture and social identity, were shared. For that purpose, it was suggested that Member States work towards reaching a middle ground by combining the two Options in Scope of Protection of the TK/TCEs *vis a vis* current protection granted to patents, undisclosed information or forms of other intellectual property. The Meeting also discussed the issue of the Disclosure Requirement and Prior Informed Consent in the context of TCEs and the relationship of the proposed instrument with other forms of intellectual property protection currently in place.
