

Facilitators' Rev. 1s

CLEAN

August 29, 2018

<p>The Protection of Traditional Knowledge: Draft Articles</p> <p>Rev. 1</p>	<p>The Protection of Traditional Cultural Expressions: Draft Articles</p> <p>Rev. 1</p>
<p>PREAMBLE/INTRODUCTION</p> <p>ACKNOWLEDGING the UN Declaration on the Rights of Indigenous Peoples and the aspirations of indigenous peoples and local communities therein:</p> <p>Recognizing that indigenous peoples and local communities have the right to maintain, control, protect and develop their intellectual property over their cultural heritage, traditional knowledge and traditional cultural expressions;</p> <p>Recognizing that the situation of the indigenous peoples and local communities varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration;</p> <p>Recognizing that the traditional knowledge and traditional cultural expressions of indigenous peoples and local communities has intrinsic value, including social, cultural, spiritual, economic, scientific, intellectual, commercial and educational values;</p> <p>Acknowledging that traditional knowledge systems are frameworks of ongoing innovation and distinctive intellectual and creative life that are intrinsically important for indigenous peoples and local communities;</p> <p>Respecting the continuing customary use, development, exchange and transmission of traditional knowledge and traditional cultural expressions by, within and between communities;</p> <p>Promoting respect for traditional knowledge systems, for the dignity, cultural integrity</p>	<p>[PRINCIPLES/PREAMBLE/INTRODUCTION]</p>

<p>The Protection of Traditional Knowledge: Draft Articles</p> <p>Rev. 1</p>	<p>The Protection of Traditional Cultural Expressions: Draft Articles</p> <p>Rev. 1</p>
<p>and spiritual values of the traditional knowledge holders who conserve and maintain those systems.</p> <p>Acknowledging that the protection of traditional knowledge and traditional cultural expressions should contribute toward the promotion of creativity and innovation, and to the transfer and dissemination of knowledge to the mutual advantage of holders and users in a manner conducive to social and economic welfare and to a balance of rights and obligations.</p> <p>Promote intellectual and artistic freedom, research or other fair practices and cultural exchange based on mutually agreed terms including fair and equitable sharing of benefits and subject to the free prior informed consent and approval and involvement of indigenous peoples, local communities and nations/beneficiaries.</p> <p>Ensuring mutual supportiveness with international agreements relating to the protection and safeguarding of traditional knowledge and traditional cultural expressions, and those relating to IP.</p> <p>Recognizing and reaffirming the role the IP system plays in promoting innovation and creativity, transfer and dissemination of knowledge and economic development, to the mutual advantage of stakeholders, providers and users of traditional knowledge and traditional cultural expressions.</p> <p>Recognize the value of a vibrant public domain and the body of knowledge that is available for all to use, and which is essential for creativity and innovation.</p> <p>Recognizing the need for new rules and disciplines concerning the provision of effective and appropriate means for the enforcement of rights relating to traditional knowledge, and traditional cultural expressions, taking into account differences in national legal systems;</p> <p>Nothing in this instrument may be construed as diminishing or extinguishing the rights that indigenous peoples or local communities have now or may acquire in the future.</p>	

<p>The Protection of Traditional Knowledge: Draft Articles</p> <p>Rev. 1</p>	<p>The Protection of Traditional Cultural Expressions: Draft Articles</p> <p>Rev. 1</p>
<p>[ARTICLE 1 OBJECTIVES</p> <p>This instrument should provide beneficiaries with the means to:</p> <ul style="list-style-type: none"> (a) prevent the misappropriation, misuse, and unauthorized use of their traditional knowledge; (b) encourage and protect creation and innovation, whether or not commercialized; and (c) prevent the erroneous grant or assertion of intellectual property rights over traditional knowledge. 	<p>[ARTICLE 1 OBJECTIVES</p> <p>This instrument should provide beneficiaries with the means to:</p> <ul style="list-style-type: none"> (a) prevent the misappropriation, misuse, and unauthorized use of their traditional cultural expressions; (b) encourage and protect creation and innovation, whether or not commercialized; and (c) prevent the erroneous grant or assertion of intellectual property rights over traditional cultural expressions.
<p>ARTICLE 2 USE OF TERMS</p> <p>For the purposes of this instrument:</p> <p>[Misappropriation means</p> <p>Alt 1</p> <p>Any access or use of the [subject matter]/[traditional knowledge] without prior informed consent or approval and involvement and, where applicable, without mutual agreed terms, for whatever purpose (commercial, research, academic and technology transfer).</p>	<p>[ARTICLE 2 USE OF TERMS</p> <p>For the purposes of this instrument:</p>

<p>The Protection of Traditional Knowledge: Draft Articles</p> <p>Rev. 1</p>	<p>The Protection of Traditional Cultural Expressions: Draft Articles</p> <p>Rev. 1</p>
<p>Alt 2</p> <p>The use of protected traditional knowledge of another where the [subject matter]/[traditional knowledge] has been acquired by the user from the holder through improper means or a breach of confidence and which results in a violation of national law in the provider country, recognizing that acquisition of traditional knowledge through lawful means such as [independent discovery or creation], reading books, receiving from sources outside of intact traditional communities, reverse engineering, and inadvertent disclosure resulting from the holders' failure to take reasonable protection measures is not [misappropriation/misuse/unauthorized use/unfair and inequitable uses.]</p> <p>Alt 3</p> <p>Any access or use of traditional knowledge of the beneficiaries in violation of customary law and established practices governing the access or use of such traditional knowledge.</p> <p>Alt 4</p> <p>Any access or use of traditional knowledge of the [beneficiaries] indigenous [peoples] or local communities, without their free prior and informed consent and mutually agreed terms, in violation of customary law and established practices governing the access or use of such traditional knowledge.</p> <p>[Misuse may occur where the traditional knowledge which belongs to a beneficiary is used by the user in a manner that results in a violation of national law or measures endorsed by the legislature in the country where the use is carried out; the nature of the protection or safeguarding of traditional knowledge at the national level may take different forms such new forms of intellectual property protection, protection based on principles of unfair competition or a measures-based approach or a combination thereof.]</p>	

<p>The Protection of Traditional Knowledge: Draft Articles</p> <p>Rev. 1</p>	<p>The Protection of Traditional Cultural Expressions: Draft Articles</p> <p>Rev. 1</p>
<p>[Protected traditional knowledge] is traditional knowledge that satisfies the criteria for eligibility under Article 1 and the scope and conditions for protection under Article 3.]</p> <p>[Public domain] refers, for the purposes of this instrument, to intangible materials that, by their nature, are not or may not be protected by established intellectual property rights or related forms of protection by the legislation in the country where the use of such material is carried out. This could, for example, be the case where the subject matter in question does not fill the prerequisite for intellectual property protection at the national level or, as the case may be, where the term of any previous protection has expired.]</p> <p>[Publicly available] means [subject matter]/[traditional knowledge] that has lost its distinctive association with any indigenous community and that as such has become generic or stock knowledge, notwithstanding that its historic origin may be known to the public.]</p> <p>Traditional knowledge for the purposes of this instrument, is knowledge that is created, maintained, and developed by indigenous peoples, local communities, and other beneficiaries, and that is linked with, or is an integral part of, the national or social identity and/or cultural heritage of indigenous peoples and local communities; that is transmitted between or from generation to generation, whether consecutively or not; which subsists in codified, oral, or other forms, and which may be dynamic and</p>	<p>[Public domain] refers, for the purposes of this instrument, to tangible and intangible materials that, by their nature, are not or may not be protected by established intellectual property rights or related forms of protection by the legislation in the country where the use of such material is carried out. This could, for example, be the case where the subject matter in question does not fill the prerequisite for intellectual property protection at the national level or, as the case may be, where the term of any previous protection has expired.]</p> <p><i>Alternative</i></p> <p>Public domain means the public domain as defined by national law.</p> <p>[Publicly available] means [subject matter]/[traditional knowledge] that has lost its distinctive association with any indigenous community and that as such has become generic or stock knowledge, notwithstanding that its historic origin may be known to the public.]</p> <p>Traditional cultural expression means any form of creative or spiritual expression, tangible or intangible, or a combination thereof, such as actions¹, materials², music and sound³, or verbal forms⁴ as well as their adaptations, which may subsist in written/codified, oral or other form, that is created, generated, expressed or maintained in a collective context by indigenous peoples and local communities; that is the unique product of and/or linked with the cultural and/or social identity and</p>

¹ [Such as dance, works of mas, plays, ceremonies, rituals, rituals in sacred places and peregrinations, games and traditional sports/sports and traditional games, puppet performances, and other performances, whether fixed or unfixed.]

² [Such as material expressions of art, handicrafts, ceremonial masks or dress, handmade carpets, architecture, and tangible spiritual forms, and sacred places.]

³ [Such as songs, rhythms, and instrumental music, the songs which are the expression of rituals.]

⁴ [Such as stories, epics, legends, popular stories, poetry, riddles and other narratives; words, signs, names and symbols.]

<p>The Protection of Traditional Knowledge: Draft Articles</p> <p>Rev. 1</p>	<p>The Protection of Traditional Cultural Expressions: Draft Articles</p> <p>Rev. 1</p>
<p>evolving, and may take the form of know-how, skills, innovations, practices, teachings or learnings.}]</p> <p>[Secret traditional knowledge is traditional knowledge that is held by beneficiaries under certain measures of secrecy, in accordance with customary law, and under the common understanding that the traditional knowledge is to be used and known only within the specific group.</p> <p>ALT</p> <p>Secret traditional knowledge is traditional knowledge that is not generally known or readily accessible to the public; has commercial value because it is secret; and has been subject to measures to maintain secrecy of the knowledge.]</p> <p>[Sacred traditional knowledge is traditional knowledge that in spite of being secret, narrowly diffused, or widely diffused, constitutes part of the spiritual identity of the beneficiaries.]</p> <p>[Narrowly diffused traditional knowledge is non-secret traditional knowledge that is shared by beneficiaries amongst whom measures to keep it secret are not taken, but is not easily accessible to non-group members.]</p> <p>[Widely diffused traditional knowledge is non-secret traditional knowledge which is easily accessible by the public [but is still culturally connected to its beneficiaries' social identity].]</p> <p>[Unlawful appropriation is the use of protected traditional knowledge that has been acquired by a user from a protected traditional knowledge holder through improper means or a breach of confidence which results in a violation of national law in the protected traditional knowledge holder's country. Use of protected traditional knowledge that has been acquired by lawful means such as independent discovery or creation, reading publications, reverse engineering, and inadvertent or deliberate disclosure resulting from the protected traditional knowledge holders failure to take</p>	<p>cultural heritage of indigenous peoples and local communities; that may be dynamic and evolving; and that is transmitted from generation to generation, whether consecutively or not.</p>

<p>The Protection of Traditional Knowledge: Draft Articles</p> <p>Rev. 1</p>	<p>The Protection of Traditional Cultural Expressions: Draft Articles</p> <p>Rev. 1</p>
<p>reasonable protective measures, is not unlawful appropriation,]</p> <p>[Unauthorized use is use of protected traditional knowledge without the permission of the right holder.]</p> <p>[[“Use”/“utilization”] means</p> <p>(a) where the protected traditional knowledge is included in a product [or] where a product has been developed or obtained on the basis of protected traditional knowledge:</p> <p>(i) the manufacturing, importing, offering for sale, selling, stocking or using the product beyond the traditional context; or</p> <p>(ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context.</p> <p>(b) where the protected traditional knowledge is included in a process [or] where a process has been developed or obtained on the basis of protected traditional knowledge:</p> <p>(i) making use of the process beyond the traditional context; or</p> <p>(ii) carrying out the acts referred to under sub-clause (a) with respect to a product that is a direct result of the use of the process;</p> <p>(c) the use of protected traditional knowledge in non-commercial research and development; or</p> <p>(d) the use of protected traditional knowledge in commercial research and development.]</p>	<p>[[“Use”/“Utilization”] means</p> <p>(a) where the traditional cultural expression is included in a product:</p> <p>(i) the manufacturing, importing, offering for sale, selling, stocking or using the product beyond the traditional context; or</p> <p>(ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context.</p> <p>(b) where the traditional cultural expression is included in a process:</p> <p>(i) making use of the process beyond the traditional context; or</p> <p>(ii) carrying out the acts referred to under sub-clause (a) with respect to a product that is a direct result of the use of the process; or</p> <p>(c) the use of traditional cultural expression in research and development leading to profit-making or commercial purposes.]]</p>

The Protection of Traditional Knowledge: Draft Articles Rev. 1	The Protection of Traditional Cultural Expressions: Draft Articles Rev. 1
<p>[ARTICLE 3 BENEFICIARIES</p> <p>The beneficiaries of protection under this instrument are indigenous peoples, local communities, and other beneficiaries,⁵ as may be determined under national law.</p>	<p>[ARTICLE 3 BENEFICIARIES</p> <p>The beneficiaries of protection under this instrument are indigenous peoples, local communities, and other beneficiaries,⁶ as may be determined under national law.</p>

[End of Document]

⁵ The term other beneficiaries may include states or nations.
⁶ The term other beneficiaries may include states or nations.