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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



EXPRESSIONS OF FOLKLORE AND ITS INTERNATIONAL PROTECTION

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EXPRESSIONS OF FOLKLORE AND ITS INTERNATIONAL PROTECTION

I. INTRODUCTION

1. Folklore has always been considered as part of the common heritage of the community without individual ownership and there were no formal or informal laws in many developing countries which specifically bestowed ownership rights of folklore on any community or group of persons and prohibit its exploitation without their consent. This led to widespread exploitation of folklore inside and outside the nation concerned.

2. The need for a strong legal mechanism for the protection of folklore has been a subject of discussion at the national and international level since 1960's and the two main international fora where most of the discussions were held were the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). While WIPO is concerned with the intellectual property protection of folklore and UNESCO is concerned with the cultural aspect of folklore. Apart from this, regional organizations such as the African Intellectual Property Organization (OAPI) reflects the collective thought of the like-minded nations for the legal protection of creations of folklore.

3. In the early 1978 when WIPO in cooperation with the UNESCO initiated its work on "expressions of folklore," it was considered as a subset of traditional knowledge. Since then the work on expression of folklore has progressed to a more advanced stage than the work on traditional knowledge in general. Apart from the piecemeal amendments in the existing IPR regime for the protection of folklore, the major achievement was the adoption in 1982 of the Model Provisions on the Protection of Expressions of Folklore.

4. The Model Provisions was the result of several joint meetings convened by the WIPO and UNESCO to study the draft model provisions. The outcome of the meeting was submitted to the Committee of Governmental Experts, convened by the WIPO and UNESCO at Geneva in 1982, which adopted the famous "Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Prejudicial Actions (Model Provisions)." The Model Provisions has attempted to achieve a balance between protection against abuses of expressions of folklore, on one hand and the freedom, and encouragement of folklore, on the other.

5. While the WIPO had been attempting to protect the "expressions of folklore" through piecemeal amendments in various international instruments, no comprehensive attempt was made to draft an international instrument for its protection. In this regard, WIPO and UNESCO met at Phuket, Thailand in April 1997 and was attended by 180 participants from approximately 50 countries. The major outcome of the meeting was the recognition of the need for preservation and conservation of folklore throughout the world, legal means of protection of expressions of folklore within national regimes, economic repercussions of exploitation and international protection of expressions of folklore.

6. In 1999, WIPO and UNESCO conducted four Regional Consultations on the Protection of Expressions of Folklore, each of which adopted resolutions or recommendations with proposals for future work. The consultations recommended that WIPO should increase and intensify its work in the field of folklore protection and recommended the establishment within WIPO of a separate committee on folklore and traditional knowledge to facilitate future work in this area. Recommendations for the legal protection of folklore focused on the development of a *sui generis* form of legal protection at the international level (Asia/Pacific, Arab, Latin American Countries Recommendations) and also considered the UNESCO-WIPO Model Provisions to be an adequate starting point and relevant groundwork for future work in this direction. The African countries recommended developing, in the shortest possible time, a broad consensus among States in favor of an international regime.¹

7. Following the recommendations of the regional consultations on folklore, the WIPO General Assembly, at its Twenty-Sixth Session, held in Geneva from September 26 to October 3, 2000, established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee” or “IGC”) in the following general terms:

The Intergovernmental Committee would constitute a forum in which discussions could proceed among Member States on the three primary themes which they identified during the consultation: intellectual property issues that arise in the context of: (i) access to genetic resources and benefit sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore.²

8. In September 2003, the WIPO General Assembly at its thirtieth session decided to extend the mandate of the WIPO IGC and the mandate requires the IGC to accelerate its work and to focus in particular on the international dimension of folklore protection.³ The new mandate excludes no outcome of the IGC’s work, including the possible development of an international instrument or instruments in this field.⁴

9. The Secretary-General of AALCO realizing the extreme importance of the work undertaken by the WIPO IGC for the Asian and African countries, and the possible role AALCO could play in formulating an international instrument, proposed to the AALCO Member States through an Explanatory Note dated 27 April 2004, to include the “Expressions of Folklore and its International Protection” as an item on the Agenda of forthcoming 43rd Session of AALCO which will be held in Bali (Indonesia) from 21-25 June 2004. This proposal was in line with Article 4(d) of the AALCO’s Statutes which provides for exchange of views and information on matters of common concern having legal implications. The AALCO member States

¹ See documents WIPO-UNESCO/FOLK/ASIA/99/1, page 4, paragraph 4; WIPO-UNESCO/FOLK/ARAB/99/1, paragraph II(b)6; WIPO-UNESCO/FOLK/LAC/99/1, page 3). *Matters Concerning Intellectual Property And Genetic Resources, Traditional Knowledge And Folklore*, WIPO General Assembly Twenty-Sixth (12th Extraordinary) Session Geneva, September 25 to October 3, 2000, WO/GA/26/6.

² WO/GA/26/6, paragraph 13, and WO/GA/26/10

³ WO/GA/20/8, paras. 94 and 95

⁴ WIPO Press Release PR/2003/362, 29 September 2003

welcomed the proposal and the item was deliberated upon at the 43rd Session. At that Session the Member States through a resolution requested the Secretary-General to monitor and report the outcome of the Seventh Session of the IGC and urged the Member States to actively participate in the work of the IGC and directed the Secretariat to follow-up the developments within the WIPO and submit a report at the next Session.

10. As a follow-up, this report provides an overview of the work of the WIPO Intergovernmental Committee since its inception in 2001, focusing its attention on the recently concluded Seventh Session of the Committee and the documents circulated at the Session for the consideration of the Member States. The summary of draft policy objectives and core principles for the protection of traditional cultural expressions/folklore and the Comparative Summary of *Sui Generis* Legislation as prepared by the WIPO Secretariat has been reproduced as annex to this Report for the benefit of AALCO Member States.

II. WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Work of the Committee on Folklore from First to Sixth Sessions

12. The Committee first met on April 2001 and by March 2004, the Committee had convened sixth sessions.⁵ The Committee's work programme focused on an ongoing technical analysis of the use of existing intellectual property and *sui generis* approaches for the protection of expressions of folklore.

13. The Committee has built its work on the existing basis of consultations and earlier works done by its various bodies. An active programme of consultation and dialogues has complemented the formal proceedings of the Committee, with emphasis on the fostering of regional dialogue, and the enhanced participation of indigenous and local communities in WIPO activities. The Committee has also provided a framework for interaction with other international processes concerned with IP aspects of Expressions of Folklore. Also a coordinated series of case studies and presentation on national experiences provides an additional source of practical information for holder of Expressions of folklore and for policymakers alike.

14. The Committee's work has already led to a much greater understanding of the concept and issues it has addressed, and has clarified how to deal with concerns and inadequate recognition and protection of Expressions of Folklore. The discussions highlighted the expectation of a number of countries that specific steps should be taken to strengthen protection, including the development of specific new international instruments; others pointed out that the significance of the issue and its complexity, meant that further analysis and clarification was needed before crystallizing formal outcomes; there is a view that more work needs to be done to explore the full potential of existing IP rights and systems to protect Expressions of Folklore.

15. At its sixth session of the IGC held in March 2004, the Committee had also decided that the WIPO Secretariat should prepare drafts of an overview of policy objectives and core principles for protection of Expressions of Folklore; and, an outline of the policy options and legal mechanisms for the protection of Expressions of Folklore subject matter, based on the full range of approaches already considered by the Committee, together with a brief analysis of the policy and practical implications of each option.⁶

⁵ The Committee is open to all Member States of WIPO, and other UN Member States, international organizations and NGO's may participate as observers.

⁶ Report of Sixth Session, WIPO/GRTKF/IC/6/14, par. 66.

III. DISCUSSIONS AT THE SEVENTH SESSION OF THE WIPO IGC ON FOLKLORE ASPECTS

16. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore held its seventh session in Geneva, from November 1 to 5, 2004.⁷ The session was opened by Mr. Francis Gurry, Deputy Director General of WIPO, who welcomed the participants on behalf of the Director General of WIPO, Dr. Kamil Idris.

17. At that Session the Committee continued its work based on the renewed mandate established by the General Assembly and preparation of policy objectives and principles for the protection of traditional knowledge and folklore. The major documents concerning the Expression of folklore introduced before the Committee were: (i) Protection of Folklore/Traditional Cultural Expressions: Overview of Policy Objectives and Core Principles⁸ and (ii) Protection of Folklore/Traditional Cultural Expressions: Outline and Analysis of Policy Options and Legal Mechanisms.⁹

18. The document Protection of Folklore/Traditional Cultural Expressions: Overview of Policy Objectives and Core Principles provides draft material for the Committee's consideration, for possible use in developing an overview of policy objectives and core principles for the protection of expressions of folklore. It sets out possible substantive elements of protection of expressions of folklore in a manner which leaves open and facilitates future decisions by Member States on the context and legal status which they may assume at the international, regional and national levels.¹⁰ It also draws together the legal measures used and practical experience developed by countries and communities in many geographical regions, at every level of economic development.

⁷ The meeting was attended by delegates 103 States, 24 Intergovernmental Organizations and 50 Non-Governmental Organizations.

⁸ See document WIPO/GRTKF/IC/7/3

⁹ See document WIPO/GRTKF/IC/7/4.

¹⁰ The material in this documents are not, in substance, new to the Committee: it simply distils and structures the existing legal mechanisms and the extensive practical experience with protection of TCEs/EoF that have already been widely discussed by the Committee, and draws essentially on the Committee's own deliberations and the various materials put to the Committee.

19. The documents also has taken in to consideration all the relevant documents and submissions including the proposal put to the Committee by the African Group at the Committee's sixth session¹¹, which many delegations welcomed and found helpful as a framework for further discussion and elaboration. Early drafts of this document were discussed and consulted in a variety of meetings including the 43rd Annual Session of the AALCO, Bali, June 21-25, 2004. Following suggestions made by the Delegations of Egypt and the Islamic Republic of Iran and other participants at the sixth session¹², particular efforts were made to obtain the comments and inputs of folklorists and other such experts. Some of the major principles highlighted in the documents are reflected below.

The core principles

20. The statement of the core principles is essential to put international cooperation on a clearer and more solid footing and also clarify what details should remain in the province of domestic law and policy, and leave suitable scope for evolution and further development with the lessons of further practical experience and wider consultation and coordination. It could build common ground, and promote consistency and harmony between national laws, without imposing a single, detailed legislative template.

Flexibility for national policy and legislative development

21. Experience with protection of Expressions of Folklore has shown that it is unlikely that any single 'one-size-fits-all' or 'universal' international template will be found to protect Expressions of Folklore comprehensively in a manner that suits the national priorities, legal and cultural environment, and needs of traditional communities in all countries. Concerns have been expressed that attempts to codify and institutionalize protection of 'cultural identity' are undesirable and that a minimalist approach is preferable.

22. So the provisions for the protection of Expressions of Folklore adopted at the international level should have to accommodate legislative and jurisprudential diversity within current national and regional approaches. Even where international obligations create minimum substantive standards for national laws, it is accepted that the choice of legal mechanisms is a matter of national discretion.

General guiding principles

23. The general guiding principles aim to ensure that protection is equitable, balanced, effective and consistent, and appropriately promotes the policy objectives. They deal with such issues as:

- responding to the aspirations and expectations of relevant communities;
- maintaining balance and proportionality;
- respecting and cooperating with other international and regional instruments and processes;

¹¹ Document WIPO/GRTKF/IC/6/12, entitled "Objectives, Principles and Elements of an International Instrument, or Instruments, on Intellectual Property in relation to Genetic Resources and on the Protection of Traditional Knowledge and Folklore"

¹² WIPO/GRTKF/IC/6/14, paras. 42 and 52.

- combining proprietary and non-proprietary approaches, and the use of existing IP rights, extended and adapted IP rights and specially-created IP measures and systems;
- recognizing the specific nature, characteristics and forms of traditional cultures and cultural expression;
- respecting and avoiding interference with the customary use and transmission of Expressions of Folklore; and
- ensuring that mechanisms for the acquisition, management and enforcement of rights are effective, culturally appropriate and accessible.

Substantive principles

24. The main substantive issues that any approach, system or instrument for the protection of Expressions of Folklore would need to deal with are:

scope of subject matter;
 criteria for protection;
 beneficiaries;
 management of rights;
 scope of protection (such as utilizations requiring authorization);
 exceptions and limitations;
 term of protection; formalities;
 sanctions, remedies and enforcement procedures;
 application in time;
 relationship with IP protection; and
 international and regional protection.

25. The suggested specific principles would apply the guiding principles to these main issues. They draw extensively upon existing IP and non-IP principles, doctrines and legal mechanisms, as well as national and regional experiences, both practical and legislative. They recognize and take into account that current IP laws already protect some Expressions of Folklore and derivatives. The suggested principles, while extending protection for materials not currently protected by IP, are firmly rooted in IP law, policy and practice, and seek to strike the required balances in a manner that is complementary to and supportive of existing IP approaches.

Policy options and legal mechanisms at the national level

26. A general requirement for protection and general international standards may in practice be implemented by a wide range of distinct national legal mechanisms, spanning diverse forms of IP right, adapted IP rights, the general law of unfair competition and various general legal mechanisms beyond the scope of IP law proper (such as criminal law, the law of delict/torts, cultural heritage laws, blasphemy laws, customary laws, contract law, employment law or marketing and labeling laws and schemes). This approach provides that the means for their implementation shall be a matter for the domestic law of each Contracting State and shall include one or more of the following: protection by means of the grant of a copyright or other specific right; protection by means of the law relating to unfair competition; protection by means of penal sanctions.

27. The options selected by various countries have depended to a large degree on the policy objectives and national goals being served. Countries, which have already elected to provide specific protection for folklore, have elected to do so through specific laws on folklore, within broader laws on copyright, or in conjunction with TK protection. However, the documented practical experiences of many Member States reflects that existing IP rights and *sui generis* measures are not mutually exclusive but are complementary options. Effective protection may therefore be found in a combined and comprehensive approach, with a menu of differentiated and multiple levels and forms of protection.

28. Comprehensive protection may require a range of IP and non-IP legal tools. Approaches for protection of Expressions of Folklore, both within and beyond the IP system, could include:

- (a) Distinct intellectual property rights, including:
 - (i) existing IP rights,
 - (ii) modified or adapted IP rights, and
 - (iii) stand-alone *sui generis* IP systems;
- (b) Unfair competition law;
- (c) Trade practices and marketing laws;
- (d) Use of contracts and licenses;
- (e) Registers, inventories and databases;
- (f) Customary and indigenous laws and protocols;
- (g) Cultural heritage preservation laws and programs;
- (h) General law of civil liability and other remedies, such as rights of publicity, unjust enrichment, confidential information and blasphemy;
- (i) Criminal law.¹³

29. These are not mutually-exclusive options, and each may, working together, have a role to play. Which modalities and approaches are adopted will also depend upon the nature of the Expressions of Folklore to be protected, and the policy objectives that protection aims to advance.

Capacity-building and other practical activities

30. It has been widely stressed that any protection for the benefit of the holders of Expressions of Folklore should be both effective in practice, and should be tailored to the specific context and resource constraints of these communities. Hence the suggested principles refer to the need for effective, appropriate and accessible measures for protection. This also underscores the need for coordinated capacity-building and awareness-raising to ensure the practical effectiveness of any protection. For this purpose a comprehensive 'Practical Guide' on the effective protection of Expressions of Folklore is being prepared by the WIPO Secretariat.

¹³ For example, criminal law has been used to protect performances against bootlegging, and penal sanctions are mentioned as one means of implementing the standards set out in the Phonograms Convention.

WORK OF THE IGC AT ITS SEVENTH SESSION

31. The Traditional Cultural Expressions/Folklore was taken up as agenda item 5 of the Seventh Session. After the introductory statement from the Secretariat¹⁴, many States, including many AALCO Members took the floor, which include Syrian Arab Republic, Japan, Arab Republic of Egypt, Republic of Indonesia, Peoples Republic of China, Bangladesh, and Kenya. Most of the delegation endorsed the mandate as set out in the two Secretariat documents, including the involvement of a group of experts in the development of draft objectives and principles for protection of Expressions of Folklore prior to the Committee's eighth session. The Delegation of Japan supported the perspective shown in the Secretariat document that any "single 'one-size-fits-all' or 'universal international template' might not be able to achieve the objective of the comprehensive protection of Expressions of Folklore in a manner that suited the national priorities, legal and cultural environment and needs of traditional communities in all countries".

32. The Delegation of Arab Republic of Egypt said that it regarded this subject as one of great importance. Concerning beneficiaries of protection, the Delegation suggested that nationals of an entire country should be able to claim protection over 'national folklore' regarded as belonging to the State or all the people of a particular country, as is the case in Egypt. The Delegation said that the concept of 'national communities' could be added to the scope of potential beneficiaries. The suggestions of Arab Republic of Egypt were supported by Kenya. The delegate from Indonesia said that it did not recognize the term 'indigenous people', which sounded close to colonialism. The use of the term 'traditional communities' instead of 'indigenous people' was therefore proposed. The Delegation of Bangladesh stated that recently, the Government had formed an organization under the name 'Bangladesh Cultural Heritage Foundation' (BCHF) to address particularly the country's traditional cultural heritage. As there were no laws in Bangladesh to protect Expressions of Folklore, WIPO was requested to undertake an exclusive study on the identification, recording, valuation and protection of Expressions of Folklore in Bangladesh.

33. The meeting for the first time reviewed a set of draft provisions prepared by the WIPO Secretariat outlining policy objectives and core principles for the protection of Expressions of Folklore against misappropriation and misuse (highlights of the documents are given above). Mr. Francis Gurry, WIPO Deputy Director General responsible for these questions, said that the working proposals were distilled from views expressed by WIPO Member States and a wide range of indigenous and local communities, and also drew on a range of national and regional laws. They served as a springboard for a concentrated, focussed debate on the appropriate content of international protection of traditional knowledge and traditional cultural expressions.

33. Delegates explored a range of policy and legal issues raised by these initial drafts. A key question was the relation of any specific protection of Expressions of Folklore to the existing intellectual property (IP) system. Among the other substantive issues raised were how to determine the beneficiaries of protection, the need to take

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Secretariat Documents: WIPO/GRTKF/IC/7/3 and WIPO/GRTKF/IC/7/4

account of the underlying rights of indigenous peoples, the appropriate legal form of protection, how to set the appropriate boundary between international and national legal measures, and the relationship of protection with other legal systems and policy areas. Strong emphasis was placed on the need for a holistic approach, including close coordination with other international systems and processes.¹⁵

34. The Committee agreed on a process to move forward with its substantive work by inviting written comments on the existing draft proposals to supplement the already extensive commentary and proposed amendments made during the Committee's meeting. The deadline for submission of these comments is 25 February 2005. The updated proposals will then be circulated for further consultation in advance of the next session of the IGC in June 2005.

DECISIONS ADOPTED BY THE SEVENTH SESSION OF THE IGC, NOVEMBER 5, 2004

35. The Committee took note of the detailed comments and drafting suggestions made on the draft objectives and core principles as set out in Annex I of document WIPO/GRTKF/IC/7/3; called for further comments on the draft objectives and core principles, including specific suggestions for wording, before February 25, 2005; and requested the Secretariat to produce, on the basis of that Annex and all subsequent inputs and comments from Committee participants, a further draft of objectives and principles for the protection of Expressions of Folklore for consideration by the Committee at its eighth session.

36. The Committee also noted the suggested outline of policy options and legal mechanisms for protection set out in Annex I of document WIPO/GRTKF/IC/7/4, and noted the comments made during its current session on that document. It agreed that this material should be updated as appropriate in the light of revisions to the draft objectives and core principles, and in the light of comments received.¹⁶

EIGHTH SESSION OF THE IGC, 6-10 JUNE 2005

37. The Eighth Session of the Intergovernmental Committee is scheduled to be held from 6 to 10 June 2005 in Geneva, and would continue its work based on the renewed mandate established by the General Assembly, and will consider revised texts of policy objectives and principles for the protection of traditional knowledge and traditional cultural expressions/folklore.

¹⁵ WIPO Press Release, 9 November 2004

¹⁶ The Committee also took note of the contents of documents WIPO/GRTKF/IC/7/11 ('Update on Legal-technical Assistance and Capacity Building Activities') and WIPO/GRTKF/IC/7/INF/4 ('Establishing Effective Systems for the Protection of Traditional Cultural Expressions/Expressions of Folklore: Draft Questionnaire').

IV. SUMMARY OF THE DELIBERATIONS AT THE FORTY-THIRD SESSION OF AALCO HELD IN BALI, INDONESIA, 21-25 2004

38. It may be recalled that at the Sixth Session of the WIPO IGC which was held in Geneva, from 15-19 March 2004, Amb. Dr. Wafik Z. Kamil, the Secretary-General of AALCO had proposed to the AALCO Member States in his statement and through an Explanatory Note dated 27 April 2004, to include the “Expressions of Folklore and its International Protection” as an item on the Agenda of forthcoming 43rd Session of AALCO which will be held in Bali (Indonesia) from 21-25 June 2004.

39. Accordingly, at the 43rd Session of AALCO, the item “Expressions of Folklore and its International Protection” was included and the AALCO Member States welcomed the same. The AALCO Secretariat, in anticipation of the inclusion of the item had also prepared a Secretariat Report which report provided a historical overview of the attempts made at the international level for the protection of expressions of folklore and the work of the WIPO Intergovernmental Committee since its inception in 2001. The Model Provisions on Protection of Folklore and UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore was also included as annexure to that Report.

39. At that Session, Secretary-General of AALCO in his introductory statement expressed his gratitude for the Member States for supporting the initiative of inclusion of this item. He said that his participation at the Sixth Session of the “WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore” (WIPO IGC) held in March 2004 and the intensive consultations he had there inspired him to propose active involvement of AALCO in formulating an international legal framework for the protection of ‘expressions of folklore’. In this regard, within the framework of the Cooperation Agreement signed with WIPO in August 2000, an Explanatory Note was sent to all Member States on 27 April 2004, requesting them to consider inclusion of this item in the Agenda of 43rd Session.

40. ‘Expressions of folklore’ was an important element of the cultural heritage of every nation. The Asian and African countries were home to majority of world’s expressions of folklore and the protection of folklore was of paramount importance to the countries in this region. However, there was widespread illicit and improper exploitation of expressions of folklore for commercial and business interests. Though the last two decades had witnessed great momentum in the area of legal protection of expressions of folklore at the national and international level, it was an accepted fact that there was no unified international legal protection of folklore.

41. However, he noted that there was a general consensus among the nations, especially among the developing countries, that this new global issue should be tackled together in a comprehensive manner. The option of the existing intellectual property rights protection regime, as an instrument of protection for the expressions of folklore was inadequate to address all the issues involved because of the multi-faceted nature of folklore. The earlier attempt at the international level by WIPO and UNESCO culminated in the formulation of Model Provisions for national laws relating to legal protection of folklore in 1982. However, it was disappointing to note

that the international attempt concluded with developing model legislative provisions rather than an international treaty for the protection of folklore.

42. Pursuant to the constant demand from the Member States, the Governing Council of the WIPO, in 2001 established an Intergovernmental Committee (IGC) to discuss the policy, legal and international dimensions of the intellectual property protection of expressions of folklore. He strongly believed that there was indeed a need to negotiate a legally binding international instrument to protect 'expressions of folklore'. AALCO being an intergovernmental legal body, with representation from a large number of nations of Asia and Africa, could be a forum for further discussion and deliberation on the protection of folklore. This would help in consolidating the position of the Asian-African countries on the substantive aspect of the future international instrument for the protection of folklore.

43. He felt that the deliberations at this Session could pave the way to hold a joint AALCO/WIPO Expert Meeting on folklore matters. The joint Expert Meeting could also start discussing a draft of an International Instrument to Protect Expressions of Folklore, which is under preparation by the International Bureau of WIPO. The outcome of the deliberations during this Session and the Expert Meeting can also be reported at the Committee's Seventh Session to be held in November 2004, with the hope that this exercise could be considered as a concrete step forward in the work of the Committee in general and for the benefit of Asian and African Member States in particular, for the drafting of an International Instrument for the Protection of Expressions of Folklore.

44. **Mr. Wend Wendland**, the representative of WIPO gave a brief highlight about the development of international protection of folklore and said that this was one of the long standing demands from many States and communities. Touching on the work of the WIPO Intergovernmental Committee, he said that the main concern was to international legal and policy framework and a possible international instrument or instruments.

45. He informed that the WIPO had conducted many fact-finding missions and consultations and compilation of national legislations on folklore protection. The main objective of folklore protection was to Prevent misappropriation, distortion and imitation ('defensive protection'), Enable communities to protect expressions of folklore developed, used and maintained by them ('positive'), Contribute to sustainable economic, cultural and social development, Regulate use of folklore on equitable terms, Promote certainty and transparency, Promote continued development of folklore, Promote respect and preservation of cultural heritage, Promote cultural diversity and distinctiveness etc.

46. He said that in the future international legal instrument for the protection of folklore should be sufficient flexibility for national and local policy development, because of the diverse national legislative approaches and it should be responsive to aspirations of relevant communities. There should be a balance and proportionality between the holder of the folklore, users and public/protection and creativity/protection and preservation/maintenance and development/individuals and communities. For this there should be coordination with other international and regional instruments and processes.

47. He said that there was a need to combine and adapt the existing Intellectual Property regime for the protection of folklore or develop and *sui generis* methods of protection. Most importantly there was need for effective, appropriate and accessible mechanisms for the management and enforcement of rights. He then drew attention to some of the possible specific principles in the protection of the folklore such as:

- *Subject matter and criteria for protection*: products of human intellectual activity; ‘traditional’; in any mode or form of expression
- *Rightsholders and beneficiaries*:
 1. Protection for the benefit of the indigenous, traditional and other cultural communities that maintain, use and develop them;
 2. Shared folklore: joint ownership/competent authority;
 3. Regional folklore: regional arrangements, rights management and dispute resolution
- *Period of protection*: For as long as the folklore continues to be maintained and used by the indigenous, traditional or cultural community
- *Rights*
 1. prior and informed consent/exclusive rights to authorize or prevent disclosure and exploitation of, and the acquisition of IP over, sacred or secret expressions of folklore or derivatives thereof, which have either been registered or in respect of which it would be reasonable to be aware that they are sacred or secret;
 2. authorize or prevent the fixation, reproduction, public communication and other acts in respect of performances of expressions of folklore
 3. for exploitation of, including the acquisition of IP over, other folklore and derivative works, outside the traditional or customary context, indigenous, traditional or other cultural communities should be:
 4. identified as the source of any derivative work;
 5. able to prevent any distortion or derogatory action in relation to the folklore which would be offend against or be prejudicial to the community or the integrity of the folklore;
 6. able to prevent false or misleading indications in the course of trade as to the origin and other characteristics of goods or services that draw upon or evoke expressions of folklore; and,
 7. where the exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on mutually-agreed terms or as determined by a competent authority.
- *Exceptions and limitations*
 1. customary uses not affected
 2. conventional copyright exceptions, unless culturally offensive
- *Formalities for acquisition and maintenance of rights*
 1. none, but voluntary registration
 2. no documentation of folklore
- *Management and enforcement of rights*
- *Application in time*
- *Relationship with IP protection*
 1. No prejudice to acquisition of IP over derivative works
- *International protection*

- *Effective and enforceable international protection*

48. He finally said that the comments from the Member States would help the WIPO in ongoing work and anticipated an active participation.

49. **The Vice-President** of the Forty-Third Session, who was presiding the meeting, because of the constraints in time, requested the member States to be brief in their interventions and sent their written comments to the AALCO Secretariat for compilation and presentation to the WIPO IGC.

50. **The Delegate of Republic of Indonesia** congratulated the Secretary-General of AALCO for including this item in the agenda and said that this forum would be benefited from such exercise in further discussion issues related to the possible international protection of folklore. He said that Indonesia was aware that WIPO and UNESCO had been active in the promotion of folklore over the past three decades, including the launching of a joint Model Provisions that provide “*sui generis*” model for the intellectual property-type protection of traditional knowledge-related subject matter. In this light, Indonesia closely observed the work conducted by the intergovernmental committee under the aegis of WIPO to explore the proper mechanisms for the protection of genetic resources, traditional knowledge, and expression of folklore.

51. He then shared Indonesia’s experiences in this field. As an archipelagic country composed of more than 17,504 islands, Indonesia was endowed with vast natural resources and cultural heritage. It had more than two hundred and twenty million people comprising of 749 ethnic and sub ethnic groups that speak about approximately 731 dialects. Such diversity coupled with a long cultural history is certainly a great and valuable asset that needs to be protected.

52. For that reason, Indonesia noted with great concern over the years of the emergence of various types of exploitation of expressions of folklore or “traditional cultural expressions – TCE” as referred by WIPO IGC. This type of exploitation had been crafted in such a way that gave precedence to development of technology and expansion of business interests over respect to fundamental cultural and economic interests of the concerned community. It was a distressing development that needed their utmost attention and immediate actions. Given this fact, Indonesia exerts continuous efforts to promote the protection of TCE, including the inclusion of adequate provisions in the national Copyright Law. Indonesia also established a National Working Group on the Empowerment of Genetic Resources, Traditional Knowledge and Folklore with the aim to study and prepare a national system for the their protection. He realized the need to further strengthen Indonesia’s capacity and institutions by designing and implementing various effective measures.

53. Moreover, he believed that other member countries of AALCO had also similar experiences and common interests for the protection of folklore in their respective countries. Further discussion on this issue was therefore worth discussing. He stressed upon the paramount importance to strengthen international cooperation to tackle this issue in a constructive manner and believed that this meeting could serve its purpose by identifying possible areas of legal cooperation between the two regions.

54. In conclusion, noting that the issue on the international protection of folklore was of great importance for AALCO, he recommended to the President that AALCO participates in WIPO's Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore as an observer. He believed AALCO's participation in the afore-mentioned meeting could benefit WIPO by sharing the AALCO's vision in this field.

55. **The Delegate of Nigeria** welcomed the inclusion of this item on the agenda of this session. He said he was particularly interested in the development of relevant jurisprudence on this item, because African traditions were intractably tied to the expressions of folklore. He said that rather belatedly, several African countries had been exploited for too long. And without an effective legal instrument to protect them, most of the culture and mythologies would disappear to the abyss. Thus, Nigeria fully supported an international framework.

56. He said that Nigeria had in conjunction with some African countries, participated in regional consultative meeting relating to legal protection of folklore, in Pretoria, South Africa, in 1999. Some aspects of the laws had been modified on the basis of the 1982 framework Model Provisions for National Laws on the Protection of Expressions of Folklore against illicit Exploitation and other Prejudicial Actions. However, he noted that a more appropriate framework must be developed and agreed upon for a better protective international regime of folklore derived from the Model Provisions.

57. He said that AALCO as an Organization provided an enabling forum for the convergence of their experiences from both African and Asian Regions. He therefore called upon AALCO Secretariat to explore its cooperative mechanism with the WIPO for a fuller study of this item and to address in greater length, relevant frameworks for the protection of our folklore. He also proposed that AALCO should draw upon best practices in Member States for the protection of the folklore. Such provision should aim at protecting the content of their oral tradition, devoid of further exploitation for any purposes. He further suggested that the subject matter remain on the agenda of AALCO in the coming Sessions for further in-depth analysis.

58. **The Delegate of Kenya** said that the Intellectual Property Rights of Expressions of Folklore can only be considered in *sui generis* system as it called for special protection measures. He said that Kenya had been one of the African Group voices that had strongly opined that there was a need to restart discussion on a possible international framework for the protection of folklore.

59. During the First Session of the Intergovernmental Committee on Intellectual Property and Generic Resources, Traditional Knowledge and Folklore, the African Group stated that the protection of Traditional Knowledge under existing forms of intellectual property protection was incomplete and inadequate and had its limitations because of the rigidities built in these process and the very nature of traditional knowledge.

60. The African Group was of the view that the establishment of the IGC was itself an opportune moment to redress the current intellectual property protection regime. He said that Kenya therefore supported the formulation of legally binding instrument for the protection of traditional knowledge, genetic resources and folklore

V. CONCLUDING REMARKS

61. It could be seen that at the Seventh Session of the IGC, the Committee considered a range of objectives and principles for the protection of folklore, and also a number of potential policy options and legal mechanisms to give effect to those objectives and principles. The documents submitted in this regards by the WIPO Secretariat suggests objectives and principles which are intended only to illustrate that it should be possible to conclude such an outcome, in a way that promotes consistency and coordination internationally, and progresses the policy goal of more effective protection of Expressions of folklore, while also allowing flexibility and scope both for appropriate diversity at the national level, and for future international development on the basis of the rich vein of practical experience from many countries that the Committee has already explored and documented.

62. The Committee has made considerable progress in formulating a flexible policy objectives and core principles for the protection of traditional cultural expressions/folklore. However, there are many outstanding issues were the Committee is yet to evolve a consensus formula. As Francis Gurry, WIPO Deputy Director-General himself put it, though the progress made seventh session was very promising, a number of significant issues remain to be resolved by member States.

63. At the Seventh Session, the delegates raised number of concerns about the relationship of protection of folklore to the existing intellectual property system. Some delegations suggested the documents had a "pro-intellectual property rights bias" because, for example, they state that any measures to protect folklore have to be consistent with current IP instruments. The question of international versus national approaches was another issue that was central to the meeting, especially given the WIPO General Assembly's instructions to the IGC in 2003 to "accelerate its work" and "focus on the international dimension" of folklore. Delegates raised questions on how to set an appropriate boundary between international and national legal measures.

64. Though the documents submitted to the Session affirms that the drafts are only a collection of suggestions, and that countries must decide which elements are best considered at the international level and which at the national level, some member countries feared that the desire to create a harmonised, predictable international system could risk the creation of an inappropriate "one size fits all" approach to protection of folklore, approaches that would ignore the diversity of meanings around the world of "Expressions of folklore" and "protection".

65. Another most important problems in the working of the Committee was that most of the holders of expressions of folklore are developing countries. This has substantially reduced the phase of the discussion in the Committee. The Secretariat is of the view that even though it would be extremely unrealistic to expect the countries to agree on the substance of the international protection on this issue overnight, it is crucial for at least the developing counties which are the owners of the resources to be able to agree among themselves on the best possible model.

66. Asian-African Legal Consultative Organization (AALCO), an intergovernmental legal organization with representation from almost all major countries from Asia and Africa, has been following the work of the Committee with

interest and appreciation. AALCO feels that the negotiation is in the right direction and that there is indeed a need for a legally binding international instrument or instruments to protect folklore. The forum of AALCO which was utilized for discussing this item at its 43rd Session could be utilized further for discussion and deliberation on the protection of folklore and could be utilized to consolidate the position of the Asian-African countries on the substantive aspect of the future international instrument for the protection of folklore.

67. AALCO also feels that a joint AALCO-WIPO seminar on folklore matters would be pertinent at this juncture. Participation in the Expert Meeting could be from the jurists and representatives of Member States of AALCO and WIPO, and the Organization could also request the spokesmen from different geographical groups to attend, in order to have high level expert discussions on all the Folklore aspects. The joint Expert Meeting could also start discussing a draft of an International Instrument to Protect Expressions of Folklore, which could be prepared by the International Bureau of WIPO.

ANNEX I

SUMMARY OF DRAFT POLICY OBJECTIVES AND CORE PRINCIPLES FOR THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

(Reproduced as Prepared by the WIPO Secretariat)

I. POLICY OBJECTIVES

The protection of traditional cultural expressions or expressions of folklore should aim to:

[Recognize value]

(i) recognize the intrinsic value of traditional cultures and folklore, including their social, cultural, spiritual, economic, intellectual, commercial and educational value, and acknowledge that traditional cultures constitute diverse frameworks of ongoing innovation and creativity that benefit all humanity;

[Promote respect]

(ii) promote respect for traditional cultures and folklore, and for the dignity, cultural integrity, and the intellectual and spiritual values of the peoples and communities that preserve and maintain expressions of these cultures and folklore;

[Meet the actual needs of communities]

(iii) be guided by the aspirations and expectations expressed directly by indigenous peoples and by traditional and cultural communities, and contribute to the welfare and sustainable economic, cultural and social development of indigenous peoples and traditional and other cultural communities;

[Empower communities]

(iv) be achieved in a manner inspired by the protection provided for intellectual creations and innovations, in a manner that is balanced and equitable and that effectively empowers indigenous peoples and traditional and other cultural communities to exercise due authority over their own TCEs/EoF, including through appropriate moral and economic rights, should they wish to do so;

[Support customary practices]

(v) respect and facilitate the continuing customary use, development, exchange and transmission of TCEs/EoF by, within and between these communities;

[Contribute to safeguarding traditional cultures]

(vi) contribute to the preservation and safeguarding of TCEs/EoF and the customary means for their development, preservation and transmission, and promote the conservation, application and wider use of TCEs/EoF, for the direct benefit of indigenous peoples and of traditional and other cultural communities, and for the benefit of humanity in general;

[Respect for and cooperation with relevant international agreements and processes]

(vii) recognize, and operate consistently with, other international and regional instruments and processes;

[Encourage community innovation and creativity]

(viii) encourage, reward and protect authentic tradition-based creativity and innovation, particularly, when so desired by them, by indigenous peoples and traditional and cultural communities and their members;

[Promote intellectual and cultural exchange]

(ix) promote, where appropriate, access to and the wider application of TCEs/EoF on terms fair and equitable to indigenous peoples and traditional and cultural communities, for the general public interest and as a means of sustainable development;

[Contribute to cultural diversity]

(x) contribute to the promotion and protection of the diversity of cultural contents and artistic expressions;

[Promote community development and legitimate trading activities]

(xi) promote the use of TCEs/EoF for community-based development, recognizing them as a collective asset of the communities that identify with them; and promote the development of and expansion of marketing opportunities for authentic TCEs/EoF, particularly traditional arts and crafts.

[Preclude invalid IP rights]

(xii) curtail the grant, exercise and enforcement of invalid intellectual property rights acquired by unauthorised parties over TCEs/EoF, and derivatives thereof;

[Enhance certainty, transparency and mutual confidence]

(xiii) enhance certainty, transparency and mutual respect and understanding in relations between indigenous peoples and traditional and cultural communities on the one hand, and academic, commercial, educational and other users of TCEs/EoF on the other; and

[Complement protection of traditional knowledge]

(xiv) operate consistently with protection of traditional knowledge, respecting that for many communities knowledge and expressions of culture form an indivisible part of their holistic cultural identity.

II. CORE PRINCIPLES

A. General guiding principles

[These principles should be respected to ensure that the specific principles below concerning protection are equitable, balanced, effective and consistent, and appropriately promote the objectives of protection. Each principle is followed here by a brief description of the possible effect of the principle; a more complete description is provided in Annex II.]

Principle of responsiveness to aspirations and expectations of relevant communities

Protection should reflect the aspirations and expectations of indigenous peoples and traditional and other cultural communities; in particular, it should recognize and apply indigenous and customary laws and protocols as far as possible, promote complementary use of positive and defensive protection, address cultural and economic aspects of development, address insulting, derogatory and offensive acts, enable full and effective participation by these communities, and recognize the inseparable quality of traditional knowledge and TCEs/EoF for many communities. Measures for the legal protection of TCEs/EoF should also be recognized as voluntary from the viewpoint of indigenous peoples and other communities who would always be entitled to rely exclusively or in addition upon their own

customary and traditional forms of protection against unwanted access and use of their TCEs/EoF.

Principle of balance and proportionality

Protection should reflect the need for an equitable balance between the rights and interests of those that develop, preserve and sustain TCEs/EoF, and of those who use and benefit from them; the need to reconcile diverse policy concerns; and the need for specific protection measures to be proportionate to the objectives of protection, actual experiences and needs, and the maintenance of an equitable balance of interests.

Principle of respect for and cooperation with other international and regional instruments and processes

TCEs/EoF should be protected in a way that is consistent with the objectives of other relevant international and regional instruments and processes, and without prejudice to specific rights and obligations already established under binding legal instruments. These principles are not intended to pre-empt the elaboration of other instruments or the work of other processes which address the role of TCEs/EoF in other policy areas.

Principle of flexibility and comprehensiveness

Protection should respect the diversity of TCEs/EoF and the wide range of needs of the beneficiaries of protection, should acknowledge diversity in national circumstances and legal systems, and should allow sufficient flexibility for national authorities to determine the appropriate means of achieving the objectives of protection. Protection may accordingly draw on a comprehensive range of options, combining proprietary, non-proprietary and non-IP measures, and using existing IP rights, *sui generis* extensions or adaptations of IP rights, and specially-created *sui generis* IP measures and systems, including both defensive and positive measures. Private property rights should complement and be carefully balanced with non-proprietary and non-IP measures.

Principle of recognition of the specific nature, characteristics and traditional forms of cultural expression

Protection should respond to the traditional character of TCEs/EoF; their collective or communal context and the inter-generational character of their development, preservation and transmission; their relationship to a community's cultural and social identity and integrity, beliefs, spirituality and values; their often being vehicles for religious and cultural expression; and their constantly evolving character within a community. Special measures for legal protection should also recognize that in practice TCEs/EoF are not always created within firmly bounded identifiable 'communities' that can be treated as legal persons or unified actors. TCEs/EoF are not necessarily always the expression of distinct local identities; nor are they often truly unique, but rather the products of cross-cultural exchange and influence.

Principle of respect for customary use and transmission of TCEs/EoF

Protection should promote the use, development, exchange, transmission and dissemination of TCEs/EoF by the communities concerned in accordance with their customary laws and practices. No contemporary use of a TCE/EoF within the community which has developed and maintained it should be regarded as distorting if the community identifies itself with that use of the expression and any modification entailed by that use. Customary use, practices and norms should guide the legal protection of TCEs/EoF as far as possible, on such questions as

ownership of rights, management of rights and communal decision-making, equitable sharing of benefits, exceptions and limitations to rights and remedies.

Principle of effectiveness and accessibility of protection

Measures for the acquisition, management and enforcement of rights and for the implementation of other forms of protection should be effective, appropriate and accessible, taking account of the cultural, social, political and economic context of indigenous peoples and traditional and other cultural communities.

B. Specific substantive principles

B.1 Scope of subject matter

(a) ‘Traditional cultural expressions’ or ‘expressions of folklore’ may be understood as including productions consisting of characteristic elements of the traditional cultural heritage developed and maintained by a community, or by individuals reflecting the traditional artistic expectations of such a community. Such productions may include, for example, the following forms of expressions, or combinations thereof:

- (i) verbal expressions, such as folk tales, folk poetry and riddles; aspects of language such as words, signs, names, symbols and other indications;
- (ii) musical expressions, such as folk songs and instrumental music;
- (iii) expressions by action, such as folk dances, plays and artistic forms or rituals; whether or not reduced to a material form; and
- (iv) tangible expressions, such as:
 - (a) productions of folk art, in particular, drawings, designs, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket weaving, handicrafts, needlework, textiles, carpets, costumes;
 - (b) musical instruments;
 - (c) architectural forms.

(b) The specific choice of terms to denote the protected subject matter should be determined at the national and regional levels.

B.2 Criteria for protection

TCEs/EoF are protectable, whatever the mode or form of their expression, provided they are:

- (i) the products of creative intellectual activity, including collective and cumulative creativity; and
- (ii) characteristic of a community’s distinctive cultural identity and traditional heritage developed and maintained by it.

B.3 Beneficiaries

Measures for the protection of TCEs/EoF should be for the benefit of the indigenous peoples and traditional and other cultural communities:

- (i) in whom the custody and protection of the TCEs/EoF are entrusted in accordance with the customary law and practices of that community; and
- (ii) who maintain and use the TCEs/EoF as being characteristic of their traditional cultural heritage.

B.4 Management of rights

(a) To ensure the effectiveness of protection of TCEs/EoF, a responsible authority, which may be an existing office or agency, should be tasked with awareness-raising, education, advice and guidance, monitoring, dispute resolution and other functions.

(b) Authorizations required to exploit TCEs/EoF should be obtained either directly from the community concerned or the authority acting on behalf of and in the interests of the community. Where authorizations are granted by the authority:

(i) such authorizations should be granted only after appropriate consultations with the relevant indigenous people/s or traditional or other community/ies, in accordance with their traditional decision-making and governance processes;

(ii) such authorizations should comply with the scope of protection provided for the TCEs/EoF concerned and should in particular provide for the equitable sharing of benefits from their use;

(iii) uncertainties or disputes as to which communities are concerned should be resolved as far as possible with reference to customary laws and practices;

(iv) any monetary or non-monetary benefits collected by the authority for the use of the TCEs/EoF should be provided directly by the authority to the indigenous people or traditional or other community concerned;

(v) enabling legislation, regulations or administrative measures should provide guidance on matters such as procedures for applications for authorization; fees, if any, that the authority may charge for its services; public notification procedures; the resolution of disputes; and the terms and conditions upon which authorizations may be granted by the authority.

B.5 Scope of protection

There shall be adequate measures to ensure:

(i) the prevention of: the reproduction, adaptation, public communication and other such forms of exploitation of; any distortion, mutilation or other modification of, or other derogatory action in relation to; and the acquisition by third parties of IP rights over, TCEs/EoF of particular cultural or spiritual value or significance (such as sacred TCEs/EoF), and derivatives thereof;

(ii) the prevention of the unauthorized disclosure and subsequent use of and acquisition by third parties of IP rights over secret TCEs/EoF;

(iii) in respect of performances of TCEs/EoF, the protection of moral and economic rights as required by the WIPO Performances and Phonograms Treaty, 1996; and

(iv) that, in the case of the use and exploitation of other TCEs/EoF:

- the relevant indigenous, traditional or other cultural communities are identified as the source of any work derived from or inspired by the TCEs/EoF;
- any distortion, mutilation or other modification of, or other derogatory action in relation to a TCE/EoF, which would offend against or be prejudicial to the reputation, customary values or cultural identity or integrity of the community, can be prevented and/or is subject to civil or criminal sanctions;
- any false, confusing or misleading indications or allegations in the course of trade and contrary to honest business practices, as to the origin, the nature, the manufacturing process, the characteristics, the suitability for their purpose, the quantity, endorsement by or linkage with the community of goods or services that refer to, draw upon or evoke TCEs/EoF can be prevented and/or is subject to civil or criminal sanctions; and

- where the exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on terms determined by a competent authority and the relevant community.

B.6 Exceptions and limitations

Measures for the protection of TCEs/EoF should:

- (i) not restrict or hinder the normal use, transmission, exchange and development of TCEs/EoF within the traditional and customary context by members of the relevant community as determined by customary laws and practices;
- (ii) extend only to utilizations of TCEs/EoF outside the traditional or customary context, whether or not for commercial gain;
- (iii) be subject to the same kind of limitations as are permitted with respect to the protection of literary and artistic works, designs, trademarks and other IP, as relevant and as the case may be. Such limitations should not, however, permit the use of TCEs/EoF in ways that would be offensive to the relevant community.

B.7 Term of protection

- (a) Protection of any TCE/EoF should endure for as long as the TCE/EoF continues to be maintained and used by, and is characteristic of, the cultural identity and traditional heritage of the relevant indigenous people or traditional or cultural community.
- (b) Measures for the protection of TCEs/EoF could specify circumstances in which an expression will be deemed no longer to be characteristic of a relevant people or community.

B.8 Formalities

- (a) The protection of TCEs/EoF should not be subject to any formalities.
- (b) In the interests of transparency and certainty, measures for the protection of TCEs/EoF may require that certain categories of TCEs/EoF for which protection is sought should be notified to a competent authority, including TCEs/EoF of particular cultural or spiritual value or significance such as sacred TCEs/EoF. Such notification would have a declaratory function, would not in itself constitute rights, and could contribute towards 'positive' and/or 'defensive' forms of protection. It should not involve or require the documentation, recordal or public disclosure of the TCEs/EoF.

B.9 Sanctions, remedies and enforcement

- (a) Accessible and appropriate enforcement and dispute-resolution mechanisms, sanctions and remedies should be available in cases of breach of the protection for TCEs/EoF.
- (b) An authority should be tasked with, among other things, advising and assisting communities with regard to the enforcement of rights and with instituting civil and criminal proceedings on their behalf when appropriate and requested by them.

B.10 Application in time

Continuing uses of TCEs/EoF that had commenced prior to the introduction of new measures that protect such TCEs/EoF should be brought into conformity with those measures within a reasonable period of time after the measures enter into force, subject to equitable treatment of rights and interests acquired by third parties through prior use in good faith. Long-standing prior use in good faith may be permitted to continue, but the user should be encouraged to acknowledge the source of the TCEs/EoF concerned and to share benefits with the original community. Other uses should cease at the end of a reasonable transition period.

B.11 Relationship with intellectual property protection

Special protection for TCEs/EoF should not replace and is complementary to any protection applicable to TCEs/EoF and derivatives thereof under other intellectual property laws.

B.12 International and regional protection

(a) Legal and administrative mechanisms should be established to provide effective protection in national systems for the TCEs/EoF of foreign rightsholders. Measures should be established to facilitate as far as possible the acquisition, management and enforcement of such protection for the benefit of indigenous peoples and traditional and other cultural communities in foreign countries.

(b) Existing or new regional organizations should be tasked with resolving competing claims to TCEs/EoF by communities within distinct countries, using customary laws, local information resources, alternative dispute resolution (ADR) and other such practical arrangements as necessary.

ANNEX II
COMPARATIVE SUMMARY OF *SUI GENERIS* LEGISLATION
(Reproduced As Prepared By The WIPO Secretariat)

	Tunis Model Law on Copyright (1976) (parts of relevance to folklore only)	Model Provisions (1982)	Bangui Agreement of OAPI (as amended in 1999) Annex VII, Title I (copyright and related rights)	Panama Law No. 20 (June 26, 2000) and Executive Decree No. 12 (March 20, 2001)	South Pacific Model Law for National Laws (2002)
POLICY CONTEXT AND OBJECTIVES	In so far as “folklore” is concerned, protection is provided “to prevent any improper exploitation and to permit adequate protection of the cultural heritage known as folklore which constitutes not only a potential for economic expansion, but also a cultural legacy intimately bound up with the individual character of the community.” (Notes to Section 6)	<p>Folklore is an important part of living cultural heritage of nations.</p> <p>Dissemination of folklore can lead to improper exploitation of cultural heritage, and any abuse or any distortion of folklore prejudices the cultural and economic interests nations.</p> <p>Expressions of folklore manifesting intellectual creativity deserve intellectual property-type protection.</p> <p>Such protection of expressions of folklore is indispensable for their development, maintenance and dissemination.</p> <p>Therefore:</p> <p>Protection is provided for expressions of folklore against illicit exploitation and other prejudicial actions. Preamble and Section 1.</p>	<p>Promote the effective contribution of intellectual property to the development of Member States.</p> <p>Protect intellectual property in an effective and uniform manner.</p> <p>Contribute to the promotion of the protection of literary and artistic property as an expression of cultural and social values.</p>	<p>The objective is to protect the collective intellectual property rights and traditional knowledge of indigenous communities through the registration, promotion, commercialization and marketing of their rights in such a way as to give prominence to indigenous socio-cultural values and cultural identities and for social justice (Preamble and Article 1 of the Law; Preamble of the Decree).</p> <p>Another key objective is the protection of the authenticity of crafts and other traditional artistic expressions.</p>	<p>The objective is to protect rights of traditional owners in their traditional knowledge and expressions of culture and permit tradition-based creativity and innovation, including commercialization thereof, subject to prior and informed consent and benefit-sharing. The Model Law also reflects the policy that it should complement and not undermine IP laws.</p>

	Tunis Model Law on Copyright (1976) (parts of relevance to folklore only)	Model Provisions (1982)	Bangui Agreement of OAPI (as amended in 1999) Annex VII, Title I (copyright and related rights)	Panama Law No. 20 (June 26, 2000) and Executive Decree No. 12 (March 20, 2001)	South Pacific Model Law for National Laws (2002)
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<p>SUBJECT MATTER</p> <p>(The protected subject matter)</p>	<p>“Folklore” is defined in Section 18 - all literary, artistic and scientific works created on national territory by authors presumed to be nationals of such countries or by ethnic communities, passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage.</p> <p>Folklore receives <i>sui generis</i> protection.</p> <p>On the other hand, works derived from folklore are treated as copyright works.</p>	<p>Productions consisting of characteristic elements of traditional artistic heritage developed and maintained by a community, in particular, verbal expressions, (folk tales, folk poetry, riddles); musical expressions (folk songs and instrumental music); expressions by action (folk dances, plays and artistic forms or rituals); and tangible expressions (productions of folk art, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket-weaving, needlework, textiles, carpets, costumes, musical instruments, and [architectural forms.] (Section 2).</p>	<p>“Expressions of folklore” are defined as productions of characteristic elements of the traditional artistic heritage developed and perpetuated by a community or by individuals recognized as meeting the expectations of such community, including folk tales, folk poetry, folk songs, instrumental music, folk dancing and entertainment as also the artistic expressions of rites and productions of folk art (Article 2 (xx)).</p> <p>Expressions of folklore and works derived from folklore seem to be protected as copyright works (Article 5(xii)).</p> <p>Translations, adaptations, arrangements and other transformations of expressions of folklore also seem to be protected as copyright works, as are collections and databases of works and expressions of folklore (Article 6 (1) (i) & (ii)).</p>	<p>Customs, traditions, beliefs, spirituality, cosmovision, folkloric expressions, artistic manifestations, traditional knowledge and any other type of traditional expressions of indigenous communities which are part of their cultural assets (cultural heritage) (Law, Article 2).</p> <p>“Collective intellectual property rights” and “traditional knowledge” embodied in creations such as inventions, models, designs and drawings, innovations contained in images, figures, graphic symbols, petroglyphs and other material, cultural elements of history, music, arts and traditional artistic expressions (Decree, Article 1).</p> <p>Collective indigenous rights” means the indigenous cultural and intellectual property rights relating to art, music, literature, biological, medical and ecological knowledge and other</p>	<p>Cultural expressions are the main focus of the Law.</p> <p>Expressions of culture are defined as any ways in which traditional knowledge appears or is manifested, including inter alia names, stories, chants, riddles, histories, songs in oral narratives, art and craft, musical instruments, sculpture, painting, carving, pottery, terracotta mosaic, woodwork, metalware, painting, jewelry, weaving, needlework, shell work, rugs, costumes and textiles, music, dances, theatre, literature, ceremonies, ritual performances, cultural practices, designs, architectural forms.</p>
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	Tunis Model Law on Copyright (1976) (parts of relevance to folklore only)	Model Provisions (1982)	Bangui Agreement of OAPI (as amended in 1999) Annex VII, Title I (copyright and related rights)	Panama Law No. 20 (June 26, 2000) and Executive Decree No. 12 (March 20, 2001)	South Pacific Model Law for National Laws (2002)
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			<p>“Performances” as defined include performances of “expressions of folklore” (Article 46).</p>	<p>subject matter and manifestations that have no known author or owner and no date of origin and constitute the heritage of an entire indigenous people (Article 2, Decree). “Traditional knowledge” means the collective knowledge of indigenous people based on the traditions of centuries, and indeed millennia, which are tangible and intangible expressions encompassing their science, technology and cultural manifestations, including their genetic resources, medicines and seeds, their knowledge of the properties of fauna and flora, oral traditions, designs and visual and representative arts. (Article 2 Decree).</p> <p>Only subject matter capable of commercial use appears covered (Law, Article 1).</p>	
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	Tunis Model Law on Copyright (1976) (parts of relevance to folklore only)	Model Provisions (1982)	Bangui Agreement of OAPI (as amended in 1999) Annex VII, Title I (copyright and related rights)	Panama Law No. 20 (June 26, 2000) and Executive Decree No. 12 (March 20, 2001)	South Pacific Model Law for National Laws (2002)
				A classification system is created by the Decree (Article 3) and several examples of protected subject matter are given by the Law and the Decree, such as traditional dresses of certain named indigenous communities, musical instruments, music, dances, performances, oral and written expressions, working instruments and traditional art and techniques for making them, such as basket and bead work (Law, Articles 3, 4 and 5).	
<p>CRITERIA FOR PROTECTION</p> <p>(Conditions that the subject matter must meet for protection. Examples: originality, novelty, distinctiveness, fixed form etc).</p>	<p>Fixation not required (Section 5bis); originality not required.</p> <p>No criteria specifically stated.</p>	None specified.	<p>Expressions of folklore and works inspired by them are regarded as “original” copyright works (Article 5).</p> <p>Need not be fixed on material medium (Article 4(2)).</p>	<p>The subject matter must:</p> <ul style="list-style-type: none"> (i) be capable of commercial use (Law, Article 1); (ii) be based upon tradition, although it need not be ‘old’ (Law, Article 15); (iii) fit within the classification system established by Article 3 of the Decree; 	<p>The subject matter must be “traditional” i.e., (i) created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes;</p>

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				(iv) be “collective”, i.e., the subject matter must have no known author or owner and no date of origin and constitute the heritage of an entire indigenous people (Decree, Article 2), or must be regarded as belonging to one or more of the indigenous communities of Panama (Decree, Article 5 and 6).	(ii) transmitted from generation to generation; (iii) regarded as pertaining to a particular traditional group, clan, or community of people; and (iv) is collectively originated and held (Section 4). Need not be in material form (Section 8).
HOLDER OF RIGHTS	Rights in folklore exercised by a competent authority (Sections 6 and 18).	Either a “competent authority” or relevant community.	The author is the first holder of the economic and moral rights. Specific provisions deal with collaborative works, collective works, the works of employees, and other cases – there are no specific provisions dealing with expressions of folklore (Articles 28 to 33).	The relevant indigenous communities represented by their general congresses or traditional authorities. More than one community can be registered collectively as holders of the rights (Decree, Article 5).	Traditional owners of TK or expressions of culture, being the group, clan or community, or individual recognized as part of group, clan or community, in whom the custody or protection of the traditional knowledge or expressions of culture are entrusted in accordance with customary law and practices (Section 4).

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					If a derivative work is created, IP in work vests in creator or as provided for by IP law (see further below).

<p>GHTS CONFERRED</p> <p>(Including exemptions and free uses)</p>	<p>Section 6 – works of national folklore enjoy rights referred in Section 4 and 5(1) and are exercised by the competent authority.</p> <p>Section 4 – Economic Rights: author has exclusive right to reproduce, make translation, adaptation, arrangement, transformation, communicate work to public either through performance or broadcasting.</p>	<p>The following uses when made with both gainful intent and outside the traditional or customary context, require prior authorization: publication, reproduction, distribution of copies, public recitation, performance, transmission by wire or wireless means and any other form of communication to the public (Section 3).</p> <p>Acknowledgement of source (Section 5) - source must be acknowledged in appropriate manner (mentioning community and/or geographic place from where expression utilized has derived from) in all printed publications, in any communications to the public.</p>	<p>Expressions of folklore and works inspired by them are regarded as copyright works in respect of which economic and moral rights as understood in the copyright sense seem to apply (Article 8 and 9).</p> <p>Performances of expressions of folklore are accorded the same protection as is accorded to other performances (Article 48).</p> <p>In addition, however, expressions of folklore and works that have fallen into the public domain are subject to “<i>domaine public payant</i>” (Section 59).</p>	<p>Collective rights to authorize or prevent:</p> <ul style="list-style-type: none"> (i) use and commercialization; (Article 15). (ii) industrial reproduction (Law, Article 20). <p>Collective right to apply for IP over protected subject matter (Law, Article 2).</p> <p>Collective right to prevent or authorize third parties from acquiring exclusive IP over protected subject matter (Law, Article 2).</p>	<p>The Model Law establishes “traditional cultural rights” and “moral rights” in TK or expressions of culture.</p> <p>Traditional cultural rights are rights to authorize or prevent the following uses:</p> <ul style="list-style-type: none"> (i) <i>to reproduce the traditional knowledge or expressions of culture;</i> (ii) <i>to publish the traditional knowledge or expressions of culture;</i> (iii) <i>to perform or display the traditional knowledge or expressions of culture in public;</i>
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	<p>Section 5(1) - Moral Rights: to claim authorship, to object to and seek relief in connection with distortion, mutilation, modification or any other action which would be prejudicial to his honor or reputation.</p> <p>Rights do not apply however when works of national folklore are used by a public entity for non-commercial purposes (Section 61bis).</p> <p><i>Domain public payant</i> system also introduced (Section 17). Users of works of national folklore must pay percentage of receipts to competent authority for specified purposes (Section 17).</p>	<p>Exceptions (Section 4 and 5(2)): No authorization required for:</p> <ul style="list-style-type: none"> (i) purposes of education (ii) utilization “by way of illustration” in original work (iii) where expressions of folklore are “borrowed” for creating an original work of author (iv) (iv) “incidental utilization” such as reporting on current events, located permanently in public place. 	<p>The exploitation of expressions of folklore and that of works or productions that have fallen into the public domain on expiry of the terms of protection shall be subject to the user entering into an undertaking to pay to the national collective rights administration body a relevant royalty. Royalties collected with respect to the exploitation of expressions of folklore shall be devoted to welfare and cultural purposes.</p>	<p>Collective right to consent to the certification of cultural expressions as works of indigenous traditional art or handicraft and handmade by natives (Law, Article 10, Decree, Article 15).</p> <p>Exemptions for folkloric dance groups (Law, Article 16) and small non-indigenous artisans in certain cases –they are able to manufacture and market reproductions, but they will not be able to claim the collective rights recognized by this Law (Law, Articles 23 and 24; Decree, Articles 26 and 27)</p> <p>Registration of collective rights in an object or in traditional knowledge shall not affect the traditional exchange of the object or the knowledge in question between indigenous peoples (Decree, Article 11).</p>	<ul style="list-style-type: none"> (iv) <i>to broadcast the traditional knowledge or expressions of culture to the public by radio, television, satellite, cable or any other means of communication;</i> (v) <i>to translate, adapt, arrange, transform or modify the traditional knowledge or expressions of culture;</i> (vi) to fixate the traditional knowledge or expressions of culture through any process such as making a photograph, film or sound recording;

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					<p>(vii) <i>to make available online or electronically transmit to the public (whether over a path or a combination of paths, or both) traditional knowledge or expressions of culture;</i></p> <p>(viii) <i>to create derivative works;</i></p> <p>(ix) <i>to make, use, offer for sale, sell, import or export traditional knowledge or expressions of culture or products derived therefrom;</i></p> <p>(x) <i>to use the traditional knowledge or expressions of culture in any other material form, if such uses are a non-customary (whether or not of a commercial nature).</i></p> <p>(Section 7).</p>

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					<p>“Moral rights” refers to rights of attribution of ownership; the right not to have ownership falsely attributed; right not to have TK subject to derogatory treatment (Section 13).</p> <p>If cultural expressions and derivative works are used for commercial purposes, user must share benefits with traditional owners, acknowledge source and respect moral rights (Section 12).</p> <p>Traditional cultural rights do not prevent uses of cultural expressions by traditional owners (Section 7(3), nor to face-to-face teaching, criticism or review, reporting news or current events, judicial proceedings, and incidental use, although sufficient acknowledgement is needed in these cases (Section 7(4) and (5)).</p>
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PROCEDURES AND FORMALITIES	<p>None stated.</p> <p>License agreements authorized by the competent authority but must be proceeded by negotiations with parties concerned.</p>	<p>Uses as contemplated in Section 3 subject to authorization (section 9).</p> <p>Competent authority grants authorization, fee required (section 10(2)).</p> <p>Appeals against decisions made by person applying for authorization and/or representative of interested community section (section 10(3)).</p>	<p>No particular procedures for expression of folklore.</p>	<p>A special registration system is established (Law, Article 1).</p> <p>Applications for registration must specify that a collective right is involved, that the object applied for belongs to an indigenous community, the technique used, and the history and brief description of the object (Decree, Article 6).</p> <p>Registration must be made by the indigenous community or by its general congresses or indigenous traditional authority (Law, Article 7).</p> <p>The application must contain certain prescribed information (Decree, Article 7) and the form is publicly available. The application must include a specimen of the object.</p>	<p>Uses of cultural expressions require prior and informed consent.</p> <p>Applications for consent may be made directly to a “Cultural Authority” or directly to traditional owners.</p> <p>Applications to the Cultural Authority must be in prescribed form; specify manner in which applicant proposes use; state purpose for which use intended; prescribed fee.</p> <p>The Cultural Authority must finalize application in prescribed period. If not, it is deemed that consent not given by traditional owners.</p> <p>Applications are published by means of copy to traditional owners, copy in national newspaper, and if</p>

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				<p>The application procedure does not require legal services and is exempt from payment (Law, Article 7).</p> <p>Registrations are published and appeals against them may be lodged (Decree, Article 10).</p> <p>The register of collective rights is public, with the exception of experiments and cognitive processes conducted by indigenous peoples and the traditional production techniques or methods used (Decree, Article 12).</p> <p>The position of an examiner on indigenous collective rights is established in the industrial property office to examine all applications filed to ensure that industrial property registrations are not granted that are against the Law (Law, Article 9).</p>	<p>required broadcast on radio and TV.</p> <p>Appeals relating to application must be made within 28 days of publication.</p> <p>In the event of direct negotiations between the user and the owners, the Cultural Authority must still be provided with a copy of the proposed authorized user agreement (Section 25(2)).</p> <p>Potential users of cultural expressions must enter into an authorized user agreement with the traditional owners should they agree to the proposed use. An authorized user agreement should include terms and conditions about the following:</p>

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					<ul style="list-style-type: none"> (i) sharing of financial and other benefits arising from the use of the traditional knowledge or expressions of culture; (ii) compensation, fees, royalties or other payments for the use; (iii) whether the use will be exclusive or non-exclusive; (iv) duration of the use to be allowed and rights of renewal; (v) disclosure requirements in relation to the use; (vi) the possible sharing by the traditional owners of any intellectual property rights arising from the use of the traditional knowledge or expressions of culture; (vii) access arrangements for the traditional owners;

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					<p>(viii) education and training requirements for the applicant;</p> <p>(ix) controls on publication;</p> <p>(x) specify whether the rights arising under the agreement can be assigned;</p> <p>(xi) choice of law in relation to disputes under the agreement;</p> <p>(xii) respect for moral rights of the traditional owners.</p> <p>If a prospective user and the traditional owners enter into an authorized user agreement, the traditional owners are deemed to have given their prior and informed consent to the proposed use.</p> <p>The Cultural Authority is to keep a register of authorized user agreements.</p>

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RESPONSIBILITIES OF NEW OR EXISTING AUTHORITIES AND INSTITUTIONS	<p>Competent authority – proposed that authority be body responsible for administration of authors’ rights within country (Notes).</p> <p>User of work of folklore must obtain authorization from competent authority</p> <p>Competent authority defined in Section 18.</p> <p>Sums collected by the competent authority must be used <i>inter alia</i> to protect and disseminate national folklore (Section 17).</p>	<p>Competent authority determined by enacting country (Section 9(1))</p> <p>Court has jurisdiction to hear appeals against decisions of competent authority (Section 11(1)).</p> <p>OR</p> <p>Court has jurisdiction in case of offences under Section 6 to Section 11(2).</p>	<p>No particular provisions concerning expressions of folklore.</p>	<p>Applications for registration are made to the industrial property office or the copyright office (Law, Article 4).</p> <p>A Department of Collective Rights and Expressions of Folklore is established within the industrial property office to approve applications and maintain the register (Law, Article 7).</p> <p>Officials of the industrial property office and the Department of Collective Rights and Expressions of Folklore may go to indigenous communities to gather information necessary for prosecution of applications they may wish to file.</p>	<p>The cultural authority must:</p> <ul style="list-style-type: none"> (i) receive and process applications; (ii) identify traditional owners; (iii) monitor compliance and inform of breaches; (iv) develop standard terms and conditions for authorized user agreements; (v) keep a register of authorized user agreements; (vi) provide training and education for traditional owners and users; (vii) develop Code of Ethics; (viii) issue advisory guidelines; (ix) liaise with regional bodies; (x) maintain record of traditional owners and knowledge; (xi) provide guidance on meaning of “customary use.”

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SANCTIONS AND ENFORCEMENT PROCEDURES	<p>Importation of copies of protected work into national territory constitutes an infringement and can be seized.</p> <p>Person infringing rights obliged to cease infringement; liable for damages; if willful be punishable by fine or imprisonment or both (Section 15(1)).</p> <p>Infringement of rights mentioned which are considered as violation of national cultural heritage and may be curbed by all legitimate means (Section 15(2)).</p> <p>Infringement materials subject to seizure (Section 15(3)).</p>	<p>Offences determined by enacting country (section 6).</p> <p>Seizure of objects which violate law (section 7).</p> <p>Fees collected used for purpose of safeguarding national culture. (section 10(3)).</p> <p>Omissions to acknowledge source in cases where required subject to fine (Section 6).</p>	<p>No particular provisions for expressions of folklore</p>	<p>The importation, smuggling, industrial reproduction of protected objects and other violations of the Law are prohibited and the proceeds of fines are shared with the respective indigenous community (Law, Articles 17 to 21).</p> <p>Apart from the affected indigenous communities, the regional governor or the country governor may take preventative action (Law, Article 22).</p>	<p>Various offences are created, punishable on conviction by fine or term of imprisonment, or both.</p> <p>Traditional owners may also institute civil proceedings.</p> <p>Remedies: injunction, damage for loss, public apology, cease or reverse false attribution of ownership or derogatory treatment, order for account for profits, seizure of objects, other.</p> <p>Nothing prevents recourse to mediation procedures, ADR, customary laws.</p>

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	Material proof of infringement may be provided by statements of police officers or certified statements of sworn agents of authors' organization (Section 15(4)).				
TERM OF PROTECTION	Without limitation in time (Section 6(2)).	No time limit stated.	Economic rights: lifetime of author + 70 years after death. Moral rights without limit in time. After expiry of economic rights, collective rights administrative body (Article 60) entitled to ensure compliance with moral rights. Anonymous author = 70 years after first publication or making of the work / lawfully accessible to public (Article 24).	Rights are indefinite (not unlimited) (Law, Article 7).	Moral rights and traditional cultural rights continue in force in perpetuity, are inalienable, and cannot be waived or transferred (Sections 9 and 13(4)).

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<p>INTERACTION WITH EXISTING IP LAWS</p> <p>(and other laws, such as cultural heritage laws)</p>	<p>Works derived from folklore are regarded as copyright works (Section 2).</p>	<p>Under section 12, there is no limit or prejudice to any protection applicable to expressions of folklore under other existing laws or other forms of protection provided.</p>	<p>Provides for the protection of expressions of folklore as copyright works and performances thereof as protected performances under related rights.</p> <p>However, <i>domain public</i> <i>payment</i> also provided for.</p> <p>Title II deals with cultural heritage and provides as follows:</p> <p>“Cultural heritage” concerns folklore, sites and monuments, and ensembles (Article 67). Under Article 68, “folklore” means literary, artistic, scientific, technological and other traditions and productions as a whole created by communities and handed down from generation to generation. Examples are given in Articles 68 to 71.</p>	<p>The Panamanian Copyright Act, 1984, does not provide copyright protection for “objective expressions of folklore” (Article 9).</p> <p>Also relevant are Law 27 of July 30, 1997 “Establishing the Protection, Promotion and Development of Handicraft” and Law No. 14 of May 5, 1982 “Enacting Measures on the Custody, Conservation and Administration of the Historical Heritage of the Nation.”</p> <p>The Law and Decree refer also to the Fiscal Code, customs law and the trademarks legislation</p>	<p>The Law does not affect rights existing immediately before the commencement of the law (in each country), including IPRs.</p> <p>Traditional cultural rights are in addition to and do not affect IP rights.</p> <p>IPRs in derivative works (tradition-based creations) vest in the IP holder under relevant IP laws. However, if a derivative work is commercialized, certain duties arise (see above).</p>

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			<p>Article 73 prohibits the “denaturing” (distortion), destruction, exploitation, sale, disposal and illegal transfer of any part or a part of the property that makes up the cultural heritage except with authorization by competent authority (Article 73)(1)).</p> <p>Under 73(2), the following acts are prohibited when undertaken for profitable purposes:</p> <ul style="list-style-type: none"> (i) publication, reproduction, distribution of copies of cultural property; and (ii) recitation, public performance, transmission by wire or wireless means and any other form of communication to the public. <p>Several limitations to these rights are provided for, notably the borrowing of cultural heritage for the creation of original works (Article 74 (1)(c)).</p>		
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			<p>States shall inventorize, determine, classify, place in security and illustrate the elements that make up the cultural heritage (Article 72).</p> <p>Establishment of a High Commission for the Cultural Heritage (Article 97), to be consulted on all matters concerning the protection, safeguard and promotion of cultural heritage.</p>		
CUSTOMARY LAWS AND PROTOCOLS	No reference.		No reference	Registration does not affect the traditional exchange of the object of knowledge between indigenous peoples (Decree, Article 11).	In case of dispute, customary laws and practices can be applied as a means to resolve the dispute.

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REGIONAL AND INTERNATIONAL PROTECTION (including the question of the protection of the same or similar cultural expressions from neighboring countries (so-called “regional folklore”)).	<p>Copies, adaptations etc of works of national folklore made abroad without authorization, shall not be imported or distributed in national territory (Section 6(3)).</p> <p>Section 16 (2) Alternative X – law applies to all works which, by virtue of treaties entered into by the country, are to be protected, as well as to works of national folklore.</p> <p>Alternative Y adds further application of the law to include national folklore of countries promulgated.</p>	<p>Subject to reciprocity (Section 14 (i)).</p> <p>Basis of international treaties or other agreements (Section 14 (ii)).</p>	<p>Article 3 (1): Rights relating to the fields of intellectual property, as provided for in the Annexes to the Agreement, are independent national rights subject to the legislation of each of the Member States in which they have effect.</p> <p>Article 4 (2) - the Agreement and Annexes applicable in their entirety to every State that ratifies or accedes to the Agreement.</p>	<p>Artistic and traditional expressions of other countries have the same benefits of law, when made by means of reciprocal international agreements (Law, Article 25).</p> <p>The importation of non-original reproductions of protected objects is prohibited (Article 17).</p>	<p>In accordance with reciprocal arrangements, Act provides same protection to TK and expressions of culture originating in other countries or territories as is provided within the country itself.</p>