

TRADITIONAL KNOWLEDGE & TRADITIONAL
CULTURAL EXPRESSIONS:COLOMBO
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OUTLINE OF PRESENTATION

1. Consultation mechanisms with local communities
2. Objectives of protection
3. Assessment of the existing national legal system of protection
4. Beneficiaries of protection
5. Scope of protection/ Exceptions and limitations
6. Management of rights
7. Any other theme

Consultation mechanisms with local communities

- Zimbabwe is party to the Swakopmund Protocol.
- Uses research data from the Protocol to extract out salient matter for its policy making decision.
- Zimbabwe has various TK organizations such as ZINATHA and Traditional Medical Practitioners ` Council (TMPC) which help in advising Government on how best TK can be protected.
- In particular, herbalists, faith healers and traditional healers provide the required information.
- For TCEs, Zimbabwe has a wealth of research sources which include Book Writers ` Association, ZIMCOPY, Book Printers and homes for the elderly.

Objectives of protection: -

- To safeguard the source of the TK and TCE rights holders' knowledge against piracy, counterfeiting and abuse by unscrupulous imitators of TK.
- To ensure that there is a database of different traditional knowledge healers
- To preserve botanical gardens for the community's useful herbs.
- To direct society on where to find alternative health services
- To exclude non-owners from using herbs which do not belong to them.
- To pass on special TK and TCEs to preferred next of kin.
- To trademark the TK and copyright the TCEs
- To provide access of TK to the community users
- To facilitate benefit sharing among stakeholders
- To protect industrial designs, bridges conventional IP and TK.

Existing national legal system of Protection: ZW`

1. S. 33 of the Constitution of Zimbabwe – Preservation of traditional knowledge.
 - "The State must take measures to preserve, protect and promote indigenous knowledge systems, including knowledge of the medicinal and other properties of animal and plant life possessed by local communities and people".
 - This means that TK is a Constitutional matter in Zimbabwe .
2. Traditional Medical Practitioners Act, Chapter... recognises TK healers.
 - Creation of a TMPC Database to enable ease access of different traditional healers
3. Swakopmund Protocol – Acts as the source protection document for ARIPO member states, including ZW .
4. Environmental Management Agency Regulations (EMA) – urge continuous protection of all ZW`s herbal trees.
5. Affiliate to the Nagoya Protocol – Access to GRs and equitable sharing of benefits arising from their utilisation to the Convention on biological diversity

Definition of TK and TCEs eligible for protection in Zimbabwe

TK = Knowhow, practices, skills and innovations derived from intellectual activity passed on from one generation to the next in a traditional context but to a target heir.

TCEs = forms in which traditional culture and knowledge are expressed.

- For example, singing, dancing, art, designs, names, signs and symbols, performances, ceremonies, handicrafts and narratives.
- Expressions of folklore which form part of the identity and heritage of an indigenous people or local community which are also passed on from generation to generation.

Beneficiaries of Protection

- Right holders of both TK and TCEs.
- TK or TCE Assignees on transmission of rights from generation to generation.
- Legal representatives, by virtue of drafting TK and TCE documents for the transmission of right holders` documents to the legitimate beneficiary
- Family members and the community in general
- Researchers

Scope of Protection/Exceptions and Limitations

Protection means - Legal means that prevent the misuse of TK or TCEs by any other party than the originating community which holds it or that enable the community to exploit the knowledge and expressions for its own benefit.

Scope of protection is Sui generis. *It is of its own type. It depends on the nature of TK or TCE being protected.*

Exceptions and limitations depend on the culture of different communities owning the TK or TCEs.

Herbal knowledge is limited to generational knowledge holders.

Only owners and preferred assignees may have the knowledge

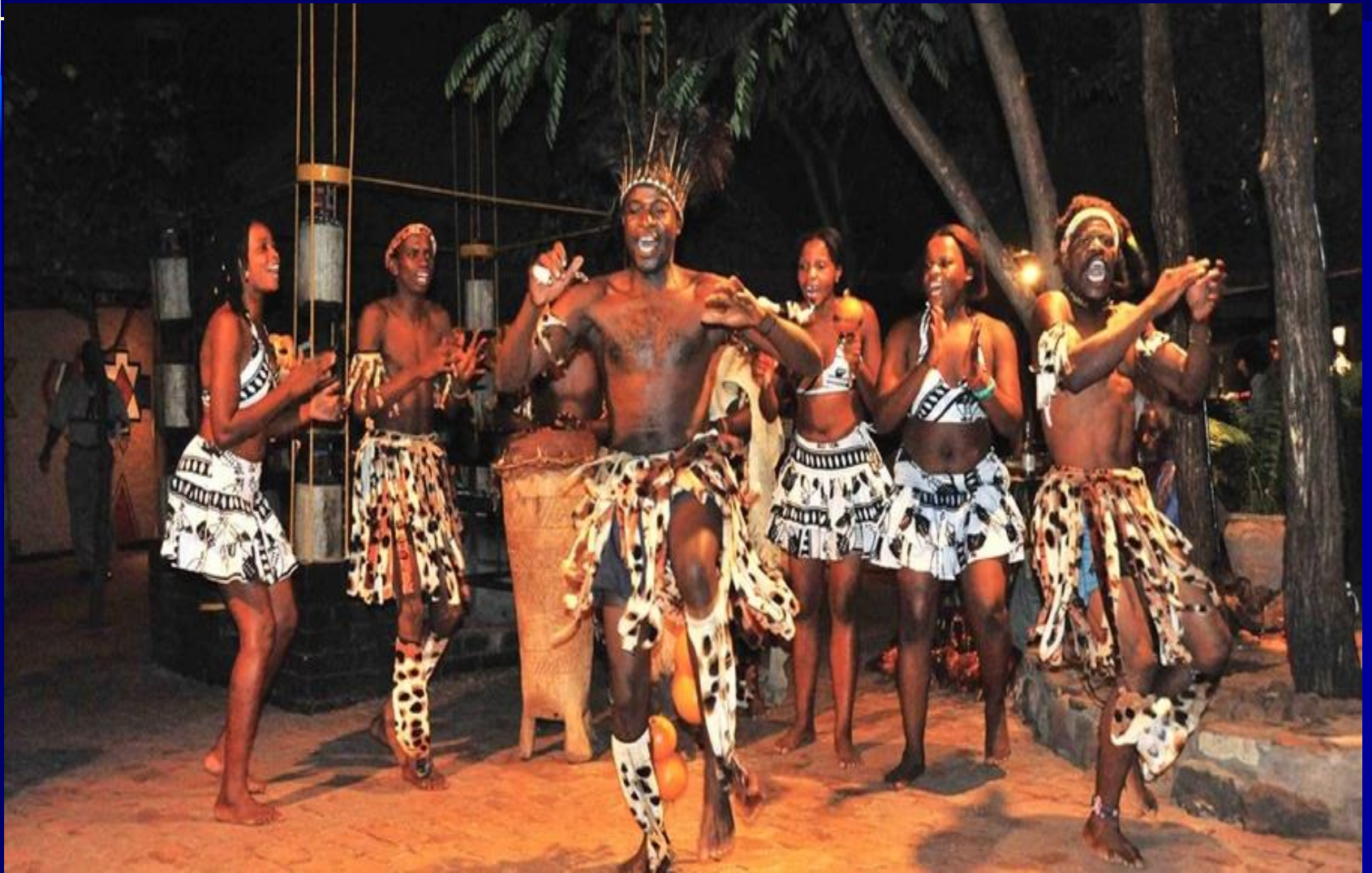
Because of different upbringing set ups, some cultures resist the use of certain raw herbal medicines in preference to faith healing or medical prescriptions from modern doctors.

Others regard TK as some form of witchcraft.

Management of Rights

- The TCEs are community owned whilst the TK is usually individually-owned
- Dances cannot be owned except well known communal dances to the world e.g. Muchongoyo and Jerusalem.
- *It can be performed at funerals and festivals, celebrations and even recreational competitions.*
- *ZW has Mbira dances regarded as most religious of all Shona dances.*
- *It is performed by community elders at important ancestral ceremonies*
- *Mhande dance uses indigenous ritual context among the Karanga people*
- *Dinhe dance is a religious dance usually performed to praise and invite ancestors to speak to the community*
- Certain trees can be protected by virtue of being geographical or native to a community.

Jerusarema dance



Mbira dance



STHU - THI

*Thank You For
Listening!*



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