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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

**INTERGOVERNMENTAL COMMITTEE
ON INTELLECTUAL PROPERTY AND GENETIC
RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE**

Tenth Session

Geneva, November 30 to December 8, 2006

COMMENTS RECEIVED IN RELATION TO DOCUMENTS WIPO/GRTKF/IC/9/4 AND
WIPO/GRTKF/IC/9/5

Document prepared by the Secretariat

1. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the Committee) of the World Intellectual Property Organization (WIPO) took the following decision at its ninth session, held from April 24 to 28, 2006:

“381. On the basis of the indications of delegations that they would be submitting written comments on the contents of WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5, the Chair proposed, and the Committee agreed, that Committee participants be invited to submit such written comments to the Secretariat before July 31, 2006, so that the comments could be circulated prior to the tenth session of the Committee.”

2. In this document, the comments and observations sent in Spanish to the Secretariat by the members of the Committee and by observers accredited to participate in Committee sessions are attached. It is planned to prepare additional documents for submission of the comments and observations received in the Committee's other working languages.

3. *The Committee is invited to note the comments and observations contained in the Annex to this document.*

[Annex follows]

ANNEX

COMMENTS AND OBSERVATIONS

(in the order in which they have been received)

ECUADOR	page 2
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ECUADOR

ECUADOREAN INTELLECTUAL PROPERTY INSTITUTE (IEPI)

Comments on documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5

DOCUMENT WIPO/GRTKF/IC/9/4

The protection of traditional cultural expressions/expressions of folklore (TCEs/EoF):
Revised objectives and principles

Comments on:

(I) Policy objectives and observations.

As stated by the drafters of the provisions, the objectives must be clear, measurable, achievable and permanent, and must in themselves be sustainable.

The objectives stated in (i) to (xiii) could aim to:

- (i) recognize the contribution of communities for the benefit of humanity;
- (ii) promote the respect of humanity for communities;
- (iii) meet and contribute to the actual needs of communities;
- (iv) guarantee the existence of TCEs/EoF;
- (v) disseminate intellectual property (IP) rights within communities;
- (vi) support customary practices and community cooperation;
- (vii) contribute to safeguarding traditional cultures;
- (viii) encourage community innovation and creativity;
- (ix) promote intellectual and artistic freedom, research and cultural exchange on equitable terms;
- (x) contribute to cultural diversity;
- (xi) promote community development and legitimate trading activities;
- (xii) preclude the grant of unauthorized IP rights;
- (xiii) enhance certainty, transparency and mutual confidence between communities and the users of TCEs/EoF.

(II) As regards the general guiding principles and the observations thereon, compliance must be maintained with the following:

- (a) responsiveness to aspirations and expectations of communities;
- (b) balance;
- (c) respect for and consistency with international and regional agreements and instruments;
- (d) flexibility and comprehensiveness;
- (e) recognition of the specific nature and characteristics of cultural expressions;
- (f) complementarity with protection of traditional knowledge;
- (g) respect for rights of and obligations towards indigenous peoples and other traditional communities;
- (h) respect for customary use and transmission of TCEs/EoF;
- (i) effectiveness and accessibility of measures for protection;

Note:

(j) the “principle of national treatment” and the “principle of the most favored nation”, enshrined in the TRIPS Agreement (Articles 3 and 4), should be included.

(III) Substantive principles

Article (1) Subject matter of protection

In addition to the concepts covered by subject matter for protection, the following should necessarily be included:

(ii) in addition to songs and instrumental music, “the characteristic whistles and sounds resulting from ancestral instruments” could be included in musical expressions. It is also necessary to protect the musical instruments specific to each community.

“Architectural constructions and works” could be included in (iv).

Article (2) Beneficiaries

Compliance must be retained with the observations on the document in the sense that communities are made up of individuals, such that the regulation and collective control of TCEs/EoF ultimately benefit the individuals who form part of the relevant community. Thus, in practice it is individuals who benefit in accordance with customary laws and practices.

Article (3) Acts of misappropriation

Intrinsically speaking, it is necessary to legislate in favor of the least developed communities in the face of users who exploit TCEs/EoF, with the guarantee that governing offices promote the dissemination of these resources, and ultimately society in general benefits and communities provide their consent.

Although in referring to “acts of misappropriation” the Article defines such acts, the sanctions to which those who misappropriate TCEs/EoF would be subject should be mentioned.

Article (4) Management of rights

Authorization should necessarily be requested in the first instance from an individual community. The acts of a governing authority, which grants an authorization, should involve the members of communities.

Article (5) Exceptions and limitations

No restriction of any kind should be placed on creativity, artistic freedom, cultural exchanges or ingenuity. Protection should be limited in that those who are not authors of TCEs/EoF should not request protection for such expressions. The protection being provided by WIPO in the drawing-up of appropriate contracts, summary lists of intellectual property and other guidelines and codes of conduct for museums, archives and cultural heritage inventories is of interest.

Article (6) Term of protection

It is relevant to mention that if efforts are being made to legislate in favor of communities, TCEs/EoF must be of a fixed duration. Once this period is complete, they must enter the public domain and it should be established that no community may claim this right.

Article (7) Formalities

A joint administrative procedure should be followed, as in the case of intellectual property registers.

Article (8) Sanctions, remedies and exercise of rights

Although reference is made to cases of breach of protection, details of the enforcement and dispute resolution mechanisms should be given. Also, the relevant sanctions, appeals and methods of enforcement should be described.

Article (9) Transitional measures

Item (iii) “an intermediate solution, in terms of which utilizations which become subject to authorization under the law or regulation but were commenced without authorization before the entry into force, should be brought to an end before the expiry of a certain period (if no relevant authorization is obtained by the user in the meantime, as required). The public domain principle should be applied in its full context, i.e. no TCE/EoF can be appropriated by any community, which has existed prior to the entry into force of the rule.

Article (10) Relationship with intellectual property protection and other forms of protection, preservation and promotion

From the explanation given in the observations, we consider that TCEs/EoF can be protected by intellectual property standards such as the use of a complementary standard.

Article (11) Regional and international protection

In order to strengthen further the international agreements and conventions, Article 3 of the TRIPS Agreement, relating to national treatment, should be included, adapted to the arrangements for TCEs/EoF.

DOCUMENT WIPO/GRTKF/IC/9/5

The protection of traditional knowledge: Revised objectives and principles

(1) Policy objectives and commentary

As stated by the drafters of the provisions, the objectives must be clear, measurable, achievable and permanent, and must in themselves be sustainable.

The objectives stated in (i) to (xiii) could aim to:

- (xiv) recognize the contribution of communities for the benefit of humanity;
- (xv) promote the respect of humanity for communities;
- (xvi) meet and contribute to the actual needs of communities;
- (xvii) guarantee the existence of traditional cultural expressions/expressions of folklore;
- (xviii) disseminate intellectual property (IP) rights within communities;
- (xix) support customary practices and community cooperation;
- (xx) contribute to safeguarding traditional cultures;
- (xxi) encourage community innovation and creativity;
- (xxii) promote intellectual and artistic freedom, research and cultural exchange on equitable terms;
- (xxiii) contribute to cultural diversity;
- (xxiv) promote community development and legitimate trading activities;
- (xxv) preclude the grant of unauthorized IP rights;
- (xxvi) enhance certainty, transparency and mutual confidence between communities and the users of TK.

(II) As regards the general guiding principles and the observations thereon, compliance must be maintained with the following:

- (k) responsiveness to aspirations and expectations of communities;
- (l) balance;
- (m) respect for and consistency with international and regional agreements and instruments;
- (n) flexibility and comprehensiveness;
- (o) recognition of the specific nature and characteristics of cultural expressions;
- (p) complementarity with protection of traditional knowledge;
- (q) respect for rights of and obligations towards indigenous peoples and other traditional communities;
- (r) respect for customary use and transmission of TK;
- (s) effectiveness and accessibility of measures for protection.

Note:

- (t) the “principle of national treatment” and the “principle of the most favored nation”, enshrined in the TRIPS Agreement (Articles 3 and 4), should be included.

(III) Protection against misappropriation

Article (1) Protection against misappropriation

Based on the recommendation by the African Group, paragraph (3) should include the phrase “In particular, legal means should be provided to prevent **and preclude:**”

The concept of misappropriation should necessarily be prosecuted on the basis of unfair measures and equitable sharing.

Article (2) Legal form of protection

Registers and other TK archives should be included together with their respective databases. The second paragraph should refer only to the collective holders of TK, where protection is directed to the community, and it would serve no purpose to maintain the duality of the individual and collective holders of TK.

Article (3) General scope of subject matter

It is important to highlight the evolving nature of TK, but not only in terms of nature; what is important is to prevent and preclude the interruption of the evolving process, and the phrase “evolving nature” should be replaced by “evolving process”.

Article (4) Eligibility for protection

In (ii), if protection is necessarily going to be granted to the indigenous or traditional community, the word “people” (synonym of population) should be used. The same applies to (iii).

Article (5) Beneficiaries of protection

Emphasis should be placed on identifying the beneficiaries; indigenous or traditional communities should be the lawful beneficiaries.

Article (6) Fair and equitable benefit-sharing and recognition of knowledge holders

Legal measures should necessarily be translated into economic sanctions, in order to maintain confidence in the TK registration system. Indigenous communities do not as a rule possess economic resources to support the defense of their interests and, for the same reason, it is necessary to establish a transparent legal system both for indigenous communities and the users of TK. Indigenous communities are not interested in non-monetary benefits.

Article (7) Principle of prior informed consent

It would be necessary to include this article in the general guiding principles.

Article (8) Exceptions and limitations

Sub-paragraph (ii) should also include users of TK in the use of traditional medicine.

Article (9) Duration of protection

Once the term of protection for TK has expired, the TK shall enter the public domain.

Article (10) Transitional measures

Retroactive protection should, as a matter of course, be clearly delineated and specified in the transitional measures.

Article (11) Formalities

The title of the article should be changed, since (1) envisages that no formalities should be required. It could be entitled “forms of protection”.

Article (12) Consistency with the general legal framework

What happens to traditional knowledge that is not protected? It would be appropriate in the commentary to delete this phrase “...regulating access to genetic resources which are associated with the protected TK...”

Article (13) Administration and enforcement of protection

“Distributing information...” in sub-paragraph (i) should be replaced.

Article (14) International and regional protection

Although regional and international protection is a complex subject, mutual recognition can be applied, using the principle of national treatment as a parameter.

GUATEMALA

OBSERVATIONS ON DOCUMENTS FROM THE NINTH SESSION

1. On document WIPO/GRTKF/IC/9/4, relating to the protection of traditional cultural expressions/expressions of folklore, Guatemala presents the following observations:

Observations on the document:

In Annex I, policy options for protecting TCEs/EoF, page 1:

In (II), the phrase “indigenous peoples and traditional and other cultural communities” should be included.

In (III), the word “respect” should be replaced by “respecting” and, instead of the words “international...contribute”, “international ... contributing” should be used.

In (iv), after cultural communities the phrase “capacity for self-management providing them...” should be added.

Page 23 of Annex I

Include Guatemala:

....) in Guatemala, the 1998 Copyright Law and its reforms of 2000 stipulate that expressions of folklore belong to the country’s cultural heritage and shall be subject to specific legislation.

The Regulations under said Law state that, in accordance with the definition contained in the Law, the term performer also designates the narrator, declaimer and any other person who performs a literary or artistic work , or also an expression of folklore, although no previous text exists to regulate its development.

Page 42 of Annex I (include the management of rights in Guatemala).

....) In Guatemala, Government Agreement 778-2003 and Agreement 379-2005 of the Ministry of Culture and Sport state that, through the Finance Department of said Institution, it is the body that will be responsible for the handling, supervision and administration of the funds collected as payments for image royalties and the marketing thereof, as well as the reproduction of cultural assets, and other fees established; said funds will be intended for specific conservation, restoration, protection, recovery and disclosure projects for the nation’s cultural assets, and shall constitute private funds for the Directorate General of the Cultural and Natural Heritage.

Page 50 of Annex I (include sanctions, remedies and exercise of rights)

....) In Guatemala, the law for the protection of the national cultural heritage states that the infringement of the measures for protection of cultural assets will lead to a fine being imposed on the infringing party, corresponding to 20 times the minimum monthly salary for commercial activity, without prejudice to the corresponding criminal action. A person destroying, altering, degrading or not using, either partially or fully, the assets which are part of the national cultural heritage, will be punished with a prison sentence of six to nine years,

plus a fine equivalent to double the price of the cultural asset affected. A person who unlawfully exports property that is part of the national cultural heritage will be punished with a prison sentence of six to 15 years, plus a fine equivalent to double the value of the cultural asset, which will be confiscated. The monetary value of the cultural asset will be determined by the Directorate General of the Cultural and Natural Heritage.

In the criminal sphere, the crimes and offences committed against the cultural heritage are established by Article 255bis concerning sacrilegious acts.

Article 332 "A" Theft and Robbery of National Treasures, Article 332 "B" Theft and Robbery of Archeological Property, Article 332 "C" Trafficking of National Treasures, Article 332 "D" Lapse of an Action or Penalty.

2. On the second of the documents, WIPO/GRTKF/IC/9/5, concerning the protection of traditional knowledge, revised objectives and principles, our observations are as follows:

Observations on the document:

Guatemala's experience is fundamentally based on the Law for the Protection of the National Cultural Heritage, which brings together the different forms of protection of the cultural heritage, including the tangible and intangible cultural heritage (the latter consists of institutions, traditions and customs such as the oral musical tradition, medicine, cuisine, religion, dance and theater). Said legislation contains rules which regulate certain specific aspects of the Guatemalan tradition such as:

The rules contained in the Law for the Protection of the National Cultural Heritage are considered to be matters of public order and social interest, and the documentary heritage will be protected and conserved according to the case, in the General Archive of Central America, and by the judicial, ecclesiastical and municipal public administration authorities, as well as by individuals who will be responsible for their safekeeping and conservation.

Limitations. The documentary heritage cannot be exported from the country, unless it needs to be presented in international courts in defense of national interests.

Register of Cultural Property: The Register of Cultural Property is a public institution, attached to the Directorate of the Cultural and Natural Heritage, and its function is to register, record and annul acts and contracts relating to the ownership and possession of cultural property. The Register of Cultural Property will, by delegation of the Minister of Culture and Sport of Guatemala, be authorized by government agreement and will be published in the Official Gazette.

Ownership of property: Any natural person or legal entity that possesses or owns, under any title, property that is part of the national cultural heritage shall enter the property in the respective register, within four years of the date on which the regulations for the registration of cultural property enter into force. Registration shall apply from the time when it is effected, as shall the ownership or possession of the property in question, subject to any legal action taken by third parties, and the failure to fulfil the obligation to register movable cultural property within the period determined by the law shall give rise to a fine equivalent to three minimum monthly salaries in force for economic activity. Where the failure to register continues, the Registry shall request the corresponding judge of first instance to order the registration and a legal warning shall be issued.

Declaration of property. The declaration of public or private property as part of the national cultural heritage will be launched through the opening of a file by the Institute of Anthropology and History of Guatemala, which shall issue a ruling on the origin or otherwise of the requested declaration and the provisional application of measures for protection, conservation and safeguarding, restrictions and prohibitions, and other measures to which cultural property is subject. The declaration shall be issued by Ministerial Agreement, which shall be published in the Official Gazette.

Extraction of historical documents. A person extracting historical documents from the document collections which form part of the national cultural heritage will be punished with a prison sentence of three to six years, without prejudice to the return of the respective documents.

Damage to traditional culture. Damage to the traditional culture of indigenous communities, preventing or acting in any manner against the way of life, customs, traditions, indigenous dress, languages, dialects, celebration of their periodical festivals or indigenous rituals is prohibited. Persons infringing this rule shall be subject to a fine of 5,000 quetzales.

OTHER EXPERIENCES WITH LEGISLATION RELATING TO THE PROTECTION OF EXPRESSIONS OF FOLKLORE, TRADITIONAL KNOWLEDGE AND INDIGENOUS COMMUNITIES

In Guatemala, other laws exist which provide some form of protection for national cultural property, including mainly:

Government Agreement 778-2003 and Agreement 379-2005 of the Ministry of Culture and Sport regulate aspects concerning the supervision, purpose and approval of the fees established for reproductions of textiles, image royalties, replicas and copies of cultural property. Article 5 establishes a specific fee of 5,000 quetzales, for reproductions of Maya textiles, in full or in part, or of their designs or motifs, said article referring in particular to respect for the moral right of authorship or intellectual property of the respective communities within the original credit of the textiles and other data concerning the place where they are used by their inhabitants.

Article 7 of Decree Law 426 on the Protection of Indigenous Textile Products, on indigenous or authentic textiles, that each committee will register with the marks and patents office the drawings or embroidery of the textiles of a municipality or community, thereby acquiring exclusive ownership to use them. Both the National Indigenous Institute and the marks and patents office will keep a special register for making this class of registrations. All the management proceedings relating to procedures for obtaining registration shall be completed free of charge.

Decree Law 141-96 on the Protection and Development of Crafts establishes the Advisory Council which includes representatives of each of the Ministries of Education, Culture and Sport, Finance and the Economy.

Decree Law 6069 of the National Congress on the Protection of Ancient Guatemala. Law on the Creation of the Academy of Maya Languages, Decree 65-90 of the National Congress and the reforms thereof contained in Decree 24-2003.

Framework Law on Peace Agreements contains the rules of the Agreement on Identity and Law of Indigenous Peoples, which regulates aspects of the common culture based on principles and structures.

As regards Maya thought, there is a legacy of scientific and technical knowledge, as well as the specific artistic and aesthetic design, and the plurality of expressions of the Maya people.

Decree Law No. 11-2002 on Urban and Rural Development Councils regulates aspects of the participation of the Maya, Xinca, Garifuna and non-indigenous population in public management, for the democratic process of development, taking into account principles of national, multiethnic, pluricultural and multilingual unity of the Guatemalan nation.

Decree of the National Congress ratifying International Labour Organization Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries.

Decree Law 19-2003 of the National Congress on National Languages.

* We hope that the information provided meets the objectives proposed at the Ninth Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

MEXICO

COMMENTS ON THE DOCUMENT: REVISED PROVISIONS
ON THE PROTECTION OF TRADITIONAL KNOWLEDGE
WIPO/GRTKF/IC/9/5

In general, it is considered that the document containing provisions for the protection of traditional knowledge represents great progress as an instrument for the protection of traditional knowledge, since it incorporates accordingly the principles, objectives and policies, and their respective wording. We are therefore in agreement that this text should be used as a basic working document during the next session of the Intergovernmental Committee:

1. General comments

Mexico understands “knowledge” as including traditional practices.

Mexico wishes the United Nations Declaration on the Rights of Indigenous People, approved by the Human Rights Council on June 29, 2006, to be taken into account, together with the Plan of Action for the Second International Decade of the World’s Indigenous People.

The translation from English to Spanish needs to be revised, since in many cases the meaning of the text changes.

In that sense;

(1) the term “holder” should be replaced throughout the text by “owner”.

(2) “Global” (global) is not the same as “holístico” (holistic) and this appears throughout the document. The term “holístico” is the appropriate one in the Spanish translation and should replace “global”.

2. Policy objectives

(i) Recognize value

Stated:	Suggested:
(i) recognize the holistic nature of traditional knowledge and its intrinsic value, including its social, spiritual, economic, intellectual, scientific, ecological, technological, commercial, educational and cultural value, and acknowledge that traditional knowledge systems are frameworks of ongoing innovation and distinctive intellectual and creative life that are fundamentally important for indigenous and local communities and have equal scientific value as other knowledge systems.	(i) Recognize the holistic nature (Spanish: el carácter la naturaleza global holística) and its intrinsic value, including its social, spiritual, economic, intellectual, scientific, ecological, technological, commercial, educational and cultural value, and acknowledge that traditional knowledge systems are frameworks of ongoing innovation and distinctive intellectual and creative life that are fundamentally important for indigenous and local communities and have equal scientific value as other knowledge systems.

(ii) Promote respect

Stated:	Suggested:
<p>(ii) promote respect for traditional knowledge systems; for the dignity, cultural integrity and intellectual and spiritual values of the traditional knowledge holders who conserve and maintain those systems; for the contribution which traditional knowledge has made in sustaining the livelihoods and identities of traditional knowledge holders; and for the contribution which traditional knowledge holders have made to the conservation of the environment, to food security and sustainable agriculture, and to the progress of science and technology;</p>	<p>(ii) promote respect for traditional knowledge systems; for the dignity, cultural integrity and intellectual and spiritual values of the traditional knowledge holders owners who conserve and maintain those systems; (Spanish: de a) for the contribution which traditional knowledge has made in sustaining the livelihoods and identities of traditional knowledge holders; and recognize the contribution which traditional knowledge holders have made to the conservation and sustainable use of the environment and biodiversity, to food security and sustainable (Spanish: sostenible sustentable) agriculture, and to the progress of science and technology;</p>

(v) Strengthen traditional knowledge holders

Stated:	Suggested:
<p>(v) be undertaken in a manner that empowers traditional knowledge holders to protect their knowledge by fully acknowledging the distinctive nature of traditional knowledge systems and the need to tailor solutions that meet the distinctive nature of such systems, bearing in mind that such solutions should be balanced and equitable, should ensure that conventional intellectual property regimes operate in a manner supportive of the protection of traditional knowledge against misappropriation, and should effectively empower traditional knowledge holders to exercise due rights and authority over their own knowledge.</p>	<p>(v) be undertaken in a manner that empowers strengthens traditional knowledge holders to protect their knowledge by fully acknowledging the distinctive nature (Spanish: del carácter la naturaleza) of traditional knowledge systems and the need to tailor solutions that meet the distinctive nature (Spanish: carácter naturaleza) of such systems, bearing in mind that such solutions should be balanced and equitable, should ensure that conventional intellectual property regimes operate in a manner supportive of the protection of traditional knowledge against misappropriation, and should effectively empower strengthen traditional knowledge holders to decide and exercise due rights and authority over their own knowledge.</p>

(vi) Support traditional knowledge systems

Stated:	Suggested:
<p>(vi) respect and facilitate the continuing customary use, development, exchange and transmission of traditional knowledge by and between traditional knowledge holders; and support and augment customary custodianship of knowledge and associated genetic resources, and promote the continued development of traditional knowledge</p>	<p>(vi) respect and facilitate the continuing (Spanish: continuo) customary use, development, exchange and transmission (Spanish: transmisión) of traditional knowledge by and between traditional knowledge holders; and support and augment customary custodianship of knowledge and associated genetic resources, and promote the</p>

systems;	continued development of traditional knowledge systems;
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(viii) Repress unfair and inequitable uses

Stated:	Suggested:
(viii) repress the misappropriation of traditional knowledge and other unfair commercial and non-commercial activities, recognizing the need to adapt approaches for the repression of misappropriation of traditional knowledge to national and local needs;	(viii) repress the misappropriation of traditional knowledge and other unfair commercial and non-commercial activities, recognizing the need to adapt approaches for the repression of (Spanish: enfocar la lucha adaptar los enfoques para impedir) misappropriation of traditional knowledge to national and local needs;

(xv) Enhance transparency and mutual confidence

Stated:	Suggested:
(xv) enhance certainty, transparency, mutual respect and understanding in relations between traditional knowledge holders on the one hand, and academic, commercial, educational, governmental and other users of traditional knowledge on the other, including by promoting adherence to ethical codes of conduct and the principles of free and prior informed consent;	(xv) enhance certainty, transparency, mutual respect and understanding in relations between traditional knowledge holders on the one hand, and academic, commercial, educational, governmental and other users of traditional knowledge on the other, including by promoting adherence to ethical codes of conduct and the principles of free and prior informed consent.

Delete the terms **on the one hand** and **on the other**, in order to clarify the wording and avoid the relations between the traditional knowledge holders and the other players involved being separated.

3. Substantive provisions

Article 1.-

Protection against misappropriation

Stated:	Suggested:
2. Any acquisition, appropriation or utilization of traditional knowledge by unfair or illicit means constitutes an act of misappropriation. Misappropriation may also include deriving commercial benefit from the acquisition, appropriation or utilization of traditional knowledge when the person using that knowledge knows, or is negligent in failing to know, that it was acquired or	2. Any acquisition, appropriation or utilization of traditional knowledge by means unfair or illicit acts of competition constitutes an act of misappropriation. Misappropriation may also include deriving commercial benefit from the acquisition, appropriation or utilization of traditional knowledge when the person using that knowledge knows, or is negligent in failing to

<p>appropriated by unfair means; and other commercial activities contrary to honest practices that gain inequitable benefit from traditional knowledge.</p> <p>3.- In particular, legal means should be provided to prevent:</p> <p>(iv) if traditional knowledge has been accessed, commercial or industrial use of traditional knowledge without just and appropriate compensation to the recognized holders of the knowledge, when such use has gainful intent and confers a technological or commercial advantage on its user, and when compensation would be consistent with fairness and equity in relation to the holders of the knowledge in view of the circumstances in which the user acquired the knowledge; and</p> <p>5.- The application, interpretation and enforcement of protection against misappropriation of traditional knowledge, including determination of equitable sharing and distribution of benefits, should be guided, as far as possible and appropriate, by respect for the customary practices, norms, laws and understandings of the holder of the knowledge, including the spiritual, sacred or ceremonial characteristics of the traditional origin of the knowledge.</p>	<p>know, that it was acquired or appropriated by unfair means; and other commercial activities contrary to honest practices that gain inequitable benefit from traditional knowledge.</p> <p>3.- In particular, legal means should be provided to prevent:</p> <p>(iv) If Access to traditional knowledge has been accessed, commercial or industrial use of traditional knowledge without just and appropriate compensation to the recognized holders owners of the knowledge, when such activities are carried out for gainful intent and or confer a technological or commercial advantage on its user, and when compensation would be consistent with fairness and equity in relation to the holders owners of the knowledge, in view of given the circumstances in which the user acquired the knowledge; and</p> <p>5.- The application, interpretation and enforcement of protection against misappropriation of traditional knowledge, including determination of equitable sharing and distribution of benefits, should be guided, as far as possible and appropriate, by respect for the customary practices, norms, laws and understandings of the holder owner of the knowledge, including the spiritual, sacred or ceremonial characteristics of the traditional origin of the knowledge.</p>
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Article 2

Legal form of protection

Stated:	Suggested:
<p>1.- The protection of traditional knowledge against misappropriation may be implemented through a range of legal measures, including: a special law on traditional knowledge; laws on intellectual property, including laws governing unfair competition and unjust enrichment; the law of contracts; the law of civil liability, including torts and liability for compensation; criminal law; laws concerning the interests of indigenous peoples; fisheries laws and environmental laws; regimes governing access and benefit-sharing; or any other law or any combination of those laws. This paragraph is subject to Article 11(1).</p>	<p>1.- The protection of traditional knowledge against misappropriation may be implemented through a range of legal measures, including: a special law on traditional knowledge; laws on intellectual property, including laws governing unfair competition and unjust enrichment; the law of contracts; the law of civil liability, including torts and liability for compensation; criminal law; laws concerning the interests of indigenous peoples; agricultural and cattle-breeding laws, environmental laws; regimes governing access to genetic resources and benefit-sharing associated with the use of genetic resources”; or any</p>

	other law or any combination of those laws or regulations . This paragraph is subject to Article 11(1).
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Article 3

General scope of subject matter

Stated:	Suggested:
2.- For the purpose of these principles only, the term “traditional knowledge” refers to the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge, and knowledge associated with genetic resources.	2.- For the purpose of these principles only, the term “traditional knowledge” refers to the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, cattle-breeding, fishing , environmental and medicinal knowledge, and knowledge associated (Spanish: asociado) with genetic resources.

In the same way as in the previous case, it will be necessary to include **agricultural and cattle-breeding** laws so as to take account of those communities dedicated to these tasks and to insert the word “associated”, so as not to generate confusion with the term “**derived**” from genetic resources.

Article 5

Beneficiaries of protection

Stated:	Suggested:
Protection of traditional knowledge should benefit the communities who generate, preserve and transmit the knowledge in a traditional and intergenerational context, who are associated with it and who identify with it in accordance with Article 4. Protection should accordingly benefit the indigenous and traditional communities themselves that hold traditional knowledge in this manner, as well as recognized individuals within these communities and peoples. Entitlement to the benefits of protection should, as far as possible and appropriate, take account of the customary protocols,	Protection of traditional knowledge should benefit the communities who generate, preserve and transmit the knowledge in a traditional and intergenerational context, who are associated with it and who identify with it in accordance with Article 4. Protection should accordingly benefit the indigenous and traditional communities themselves that hold (Spanish: detienen detentan) traditional knowledge in this manner, as well as recognized individuals within these communities and peoples. Entitlement to the benefits of protection should, as far as possible and appropriate and

understandings, laws and practices of these communities and peoples.	subject to national legal provisions, at the time it is granted, take account of the customary protocols, understandings, laws and practices of these communities and peoples.
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The changes made are designed to improve the wording and avoid a subjective criterion being applied in order to ascertain when it is appropriate to grant entitlement to the benefits of protection.

Article 6

Fair and equitable benefit-sharing and recognition of knowledge ~~holders~~ owners

Stated:	Suggested:
<p>1 .- The benefits of protection of traditional knowledge to which its holders are entitled include the fair and equitable sharing of benefits arising out of the commercial or industrial use of that traditional knowledge.</p> <p>2. - Use of traditional knowledge for non-commercial purposes need only give rise to non-monetary benefits, such as access to research outcomes and involvement of the source community in research and educational activities.</p>	<p>1.- Use of traditional knowledge for non-commercial purposes need only give rise to non-monetary benefits, such as (Spanish: tales como) access to research outcomes and involvement of the source community in research (Spanish: de investigación) and educational activities.</p> <p>2.- The benefits of protection of traditional knowledge to which its holders owners are entitled include the fair and equitable sharing of benefits arising out (Spanish: deriva deriven) of the commercial or industrial use of that traditional knowledge.</p>

Amend the order of the paragraphs, since the research process generates commercial aims and the reverse is not true.

Article 7

Principle of prior informed consent

Stated:	Suggested:
<p>2. - The holder of traditional knowledge shall be entitled to grant prior informed consent for access to traditional knowledge, or to approve the grant of such consent by an appropriate national authority, as provided by applicable national legislation.</p>	<p>2.- The right of the holder owner of traditional knowledge shall be entitled to grant prior informed consent for access to traditional knowledge, or to approve the grant of such consent by an appropriate competent national authority, shall be recognized, as provided by Article 13 of these provisions and applicable national legislation.</p>

It is suggested that the wording be amended, since the right in traditional knowledge already belongs to the owners of the rights and/or the communities, and the aim of the law will be to recognize such a right not to grant it.

Similarly, it is suggested to amend the word **appropriate** to **competent**, as this is how it is referred to in **Article 13 of the wording**, and in said section the capacities which said authorities shall have are also specified.

Article 8

Exceptions and limitations

Stated:	Suggested:
2. - In particular national authorities may exclude from the principle of prior informed consent the fair use of traditional knowledge which is already readily available to the general public, provided that users of that traditional knowledge provide equitable compensation for industrial and commercial uses of that traditional knowledge.	2. - In particular national authorities may exclude from the principle of prior informed consent the fair lawful use of traditional knowledge which is already readily available to the general public, provided that users of that traditional knowledge provide equitable compensation for industrial and commercial uses of that traditional knowledge.

Legally speaking, it is more precise to speak of lawful or due use, since the word fair can give rise to subjective interpretations.

It is suggested that the term “derived” be added in order to improve the wording.

Similarly, in the commentary on Article 8, contained in the document, it is considered relevant to delete the word “unreasonable”, so that the wording is as follows:

Like the rights and entitlements granted in other fields of legal protection, rights in traditional knowledge may be limited or qualified so as to avoid ~~unreasonable~~ prejudice to the interests of society as a whole.

Article 10

Transitional measures

Stated:	Suggested:
Protection of traditional knowledge newly introduced in accordance with these principles should be applied to new acts of acquisition, appropriation and use of traditional knowledge. Acquisition, appropriation or use prior to the entry into force of the protection should be regularized within a reasonable period of that protection coming into force. There should however be equitable treatment of rights acquired by third parties in good faith.	Protection of traditional knowledge newly introduced in accordance with these principles should be applied to new acts of acquisition, appropriation and use of traditional knowledge. Acquisition, appropriation or use prior to the entry into force of the protection should be regularized within a reasonable period, subject to the provisions of national laws , of that protection coming into force. There should however be equitable treatment of rights acquired by third parties in good faith.

Article 11

Formalities

Stated:	Suggested:
1. Eligibility for protection of traditional knowledge against acts of misappropriation should not require any formalities. 2. - In the interests of transparency, certainty and the conservation of traditional knowledge, relevant national authorities may	1. Eligibility for Protection of traditional knowledge against acts of misappropriation should not require any formalities. 2. - In the interests of transparency, certainty and the conservation of traditional knowledge, relevant national authorities may

<p>maintain registers or other records of traditional knowledge, where appropriate and subject to relevant policies, laws and procedures, and the needs and aspirations of traditional knowledge holders. Such registers may be associated with specific forms of protection, and should not compromise the status of hitherto undisclosed traditional knowledge or the interests of traditional knowledge holders in relation to undisclosed elements of their knowledge.</p>	<p>maintain registers or other records of traditional knowledge, where appropriate and subject to relevant policies, laws and procedures, and the needs and aspirations of traditional knowledge holders owners. Such registers may be associated with specific forms of protection, and should not compromise the status affect the protection of hitherto undisclosed traditional knowledge or the interests of traditional knowledge holders owners in relation to undisclosed elements of their knowledge.</p>
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Article 12

Consistency with the general legal framework

Stated:	Suggested:
<p>1. In case of traditional knowledge which relates to components of biological diversity, access to, and use of, that traditional knowledge shall be consistent with national laws regulating access to those components of biological diversity. Permission to access and/or use traditional knowledge does not imply permission to access and/or use associated genetic resources and vice versa.</p>	<p>1. In case of traditional knowledge which relates to components of biological diversity, access to, and use of, that traditional knowledge shall be consistent with international obligations and national laws regulating access to those components of biological diversity. Permission to access and/or use traditional knowledge does not imply permission to access and/or use associated genetic resources and vice versa.</p>

Article 13

Administration and enforcement of protection

Stated:	Suggested:
<p>(a) An appropriate national or regional authority, or authorities, should be competent for:</p> <p>(i) distributing information about traditional knowledge protection and conducting public awareness and advertising campaigns to inform traditional knowledge holders and other stakeholders about the availability, scope, use and enforcement of traditional knowledge protection;</p> <p>(vi) assisting, where possible and appropriate, holders of traditional knowledge to use, exercise and enforce their rights over their traditional knowledge.</p> <p>(b) The identity of the competent national or regional authority or authorities should be communicated to an international body and published widely so as to facilitate cooperation and exchange of information in</p>	<p>(a) An appropriate national or regional authority, or authorities, should be competent for:</p> <p>(ii) (Spanish: Distribuir Difundir) information about traditional knowledge protection and conducting public awareness and advertising campaigns to inform traditional knowledge holders owners and other stakeholders about the availability, scope, use and enforcement of traditional knowledge protection;</p> <p>(vi) assisting where possible and supporting as appropriate holders owners of traditional knowledge to use, exercise and enforce their rights over their traditional knowledge.</p> <p>(b) The identity of the competent national or regional authority or authorities should be communicated to an international body the competent international bodies and</p>

relation to protection of traditional knowledge and the equitable sharing of benefits.	published widely so as to facilitate cooperation and exchange of information in relation to protection of traditional knowledge and the equitable sharing of benefits.
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[End of Annex and of document]