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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

Sixteenth Session
Geneva, May 3 to 7, 2010

SUBMISSION OF BOTSWANA ON BEHALF OF THE MEMBER STATES OF THE
AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANISATION (ARIPO): THE
AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANISATION (ARIPO)
DRAFT PROTOCOL ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND
EXPRESSIONS OF FOLKLORE

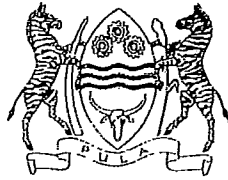
Document prepared by the Secretariat

1. On February 16, 2010, the Permanent Mission of the Republic of Botswana to the United Nations Office in Geneva, submitted, on behalf of the Member States of the African Regional Intellectual Property Organisation (ARIPO), a document entitled "The African Regional Intellectual Property Organisation (ARIPO) Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore" and requested that it be made available as an information document for the sixteenth session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

2. *The document is contained in the Annex to this document.*

[Annex follows]

ANNEX



**PERMANENT MISSION OF THE REPUBLIC OF BOTSWANA
TO THE UNITED NATIONS**

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The Permanent Mission of the Republic of Botswana to the United Nations Office and other International Organisations in Geneva, on behalf of the Member States of the African Regional Intellectual Property Organisation (ARIPO) presents its compliments to the International Bureau of the World Intellectual Property Organisation and has the honour to submit the African Regional Intellectual Property Organization (ARIPO) Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore as an information document to the 16th Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore scheduled to be held in Geneva from 3-7 May 2010.

The Permanent Mission of the Republic of Botswana to the United Nations Office and other International Organisations in Geneva, on behalf of the Member States of the African Regional Intellectual Property Organisation (ARIPO), avails itself of this opportunity to renew to the International Bureau of the World Intellectual Property Organisation the assurances of its highest consideration.

GENEVA, 16 February 2010

International Bureau of the World Intellectual Property Organisation

GENEVA

A handwritten signature in black ink is written over a circular stamp. The signature appears to be 'J. N.' or similar. The stamp is mostly illegible but seems to contain some text around the perimeter.

Enclosures:

- (i) African Regional Intellectual Property Organisation (ARIPO) Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore

- ii) Draft Regulations for Implementing the ARIPO Protocol on Traditional Knowledge and Expressions of Folklore within the framework of the African Regional Intellectual Property Organisation (ARIPO)



AFRICAN REGIONAL INTELLECTUAL PROPERTY
ORGANIZATION (ARIPO)

DRAFT PROTOCOL
ON THE PROTECTION OF
TRADITIONAL KNOWLEDGE
AND
EXPRESSIONS OF FOLKLORE
WITHIN THE
FRAMEWORK OF
THE AFRICAN REGIONAL
INTELLECTUAL PROPERTY
ORGANIZATION
(ARIPO)

ARIPO Secretariat
Harare
© May 2009

Draft

Protocol on the Protection of
Traditional Knowledge and
Expressions of Folklore
Within the Framework of the
African Regional Intellectual
Property Organization
(ARIPO)

ARIPO

Harare, 2009

Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore

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Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore

PREAMBLE

We, the Contracting Parties,

Having adopted the Legal Instrument for the Protection of Traditional Knowledge and Expressions of Folklore at the Eleventh Session of the ARIPO Council of Ministers in Maseru, in the Kingdom of Lesotho, on November 23, 2007,

In accordance with the objectives of ARIPO generally and in particular Article III (c), which provides for the establishment of such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the intellectual property activities affecting its member states;

Recognizing the intrinsic value of traditional knowledge, traditional cultures and folklore, including their social, cultural, spiritual, economic, intellectual, scientific, ecological, medical, technological, commercial and educational value;

Convinced that traditional knowledge systems, traditional cultures and folklore are diverse frameworks of ongoing innovation, creativity and distinctive intellectual and creative life that benefit local and traditional communities and all humanity;

Convinced of the need to respect traditional knowledge systems, traditional cultures and folklore, as well as the dignity, cultural integrity and intellectual and spiritual values of traditional and local communities; to recognize and reward the contributions made by such communities to the conservation of the environment, to food security and sustainable agriculture, to the improvement in the health of populations, to the progress of science and technology, to the preservation and safeguarding of cultural heritage, to the development of artistic skills, and to enhancing a diversity of cultural contents and artistic expressions;

Convinced of the need to respect the continuing customary use, development, exchange and transmission of traditional knowledge and expressions of folklore by traditional and local communities, as well as the customary custodianship of traditional knowledge and expressions of folklore;

Concerned at the gradual disappearance, erosion, misuse, exploitation and misappropriation of traditional knowledge and expressions of folklore;

Recognizing the right of holders and custodians of traditional knowledge and expressions of folklore to effective and efficient protection against all acts of misuse, exploitation or misappropriation of their knowledge and expressions of folklore;

Desiring to preclude the grant and exercise of improper intellectual property rights in traditional knowledge, associated genetic resources and derivatives thereof, and in expressions of folklore and works and productions derived therefrom;

Recognizing the need to ensure and promote respect for traditional cultures in order to meet the needs of communities by empowering them;

Convinced of the need to enhance the diversity of cultural contents and artistic expressions in the interest of traditional and local communities, in particular, and for the benefit of humanity in general;

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Recognizing that protection must reflect the need to maintain an equitable balance between the rights and interests of those who develop, preserve and maintain traditional knowledge and expressions of folklore, and those who use and benefit from such knowledge and expressions of folklore;

Affirming the requirement to meet the needs of the holders and custodians of traditional knowledge and expressions of folklore, in particular by empowering them to exercise due control over their knowledge and expressions;

Desiring to encourage and reward authentic creativity and innovation resulting from traditional knowledge systems and expressions of folklore, and to promote innovation, creativity and the transfer of technology to the mutual benefit of holders and users of traditional knowledge and expressions of folklore;

Emphasizing that legal protection must be tailored to the specific characteristics of traditional knowledge and expressions of folklore, including their collective or community context, the intergenerational nature of their development, preservation and transmission, their link to a community's cultural and social identity, integrity, beliefs, spirituality and values, and their constantly evolving character within the community concerned;

Hereby establish this Protocol to be known as the [name of the city in which this Protocol is adopted] Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the framework of the African Regional Intellectual Property Organization:

Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore

PART I: PRELIMINARY PROVISIONS

Section 1

Purpose of Protocol

- 1.1 The purpose of this Protocol is:
- (a) to protect traditional knowledge holders against any infringement of their rights as recognized by this Protocol; and
 - (b) to protect expressions of folklore against misappropriation, misuse and exploitation beyond their traditional context.
- 1.2 This Protocol shall not be interpreted as limiting or tending to define the very diverse holistic conceptions of:
- (a) traditional knowledge; or
 - (b) cultural and artistic expressions,
- in the traditional context.
- 1.3 This Protocol shall be interpreted and enforced taking into account the dynamic and evolving nature of traditional knowledge and the characteristic of traditional knowledge systems as frameworks of ongoing innovation.

Section 2

Definitions

- 2.1 In this Protocol,
- “appropriate authority” means a body or an agency authorized by the State which is party to this Protocol or entrusted with the responsibility to supervise and administer the provisions of this Protocol;
 - “ARIPO Office” means the African Regional Intellectual Property Organization (ARIPO);
 - “customary laws and practices” means customary laws, norms and practices of communities recognised by the concerned local or traditional communities whether those laws are written or not;
 - “community”, where the context so permits, includes a local or traditional community;
 - “expressions of folklore” are any forms, whether tangible or intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof:
 - i. verbal expressions, such as but not limited to stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;
 - ii. musical expressions, such as but not limited to songs and instrumental music;
 - iii. expressions by movement, such as but not limited to dances, plays, rituals and other performances; whether or not reduced to a material form; and
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- iv. tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, baskets, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms;

“national competent authority” means the authority designated or established under section 3 of this Protocol;

“Prior Informed Consent” (PIC) is the giving by the prospective user of complete and accurate information, and, based on that information, the prior acceptance by the concerned communities to use their traditional knowledge or expressions of folklore under the terms envisaged by sections 7.2 and 19.2 of this Protocol;

“traditional knowledge” shall refer to any knowledge originating from a local or traditional community that is the result of intellectual activity and insight in a traditional context, including know-how, skills, innovations, practices and learning, where the knowledge is embodied in the traditional lifestyle of a community, or contained in the codified knowledge systems passed on from one generation to another. The term shall not be limited to a specific technical field, and may include agricultural, environmental or medical knowledge, and knowledge associated with genetic resources.

2.2. The specific choice of terms to denote the protected subject matter falling under the expression of folklore may be determined at the national level of a Contracting State.

Section 3

National Competent Authority

The Contracting States shall designate or establish a national competent authority which shall implement and enforce the provisions of this Protocol.

PART II: PROTECTION OF TRADITIONAL KNOWLEDGE

Section 4

Protection criteria for traditional knowledge

Protection shall be extended to traditional knowledge that is:

- (i) generated, preserved and transmitted in a traditional and intergenerational context;
 - (ii) distinctively associated with a local or traditional community; and
 - (iii) integral to the cultural identity of a local or traditional community that is recognized as holding the knowledge through a form of custodianship, guardianship or collective and cultural ownership or responsibility. Such a relationship may be established formally or informally by customary practices, laws or protocols.
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Section 5

Formalities relating to protection of traditional knowledge

- 5.1. Protection of traditional knowledge shall not be subject to any formality.
- 5.2. In the interests of transparency, evidence and the preservation of traditional knowledge, relevant national competent authorities of Contracting States and ARIPO Office may maintain registers or other records of the knowledge, where appropriate and subject to relevant policies, laws and procedures, and the needs and aspirations of the traditional knowledge holders concerned.
- 5.3. The registers maintained under section 5.2 may be associated with specific forms of protection, and shall not compromise the status of hitherto undisclosed traditional knowledge or the interests of holders of traditional knowledge in relation to undisclosed elements of their knowledge.
- 5.4. Where two or more communities in the same or different countries share the same traditional knowledge, the relevant national competent authority of the Contracting States and ARIPO Office shall register the owners of the traditional knowledge and maintain relevant records.

Section 6

Beneficiaries of protection of traditional knowledge

The owners of the rights shall be the holders of traditional knowledge, namely the local and traditional communities, and recognized individuals within such communities, who create, preserve and transmit knowledge in a traditional and intergenerational context in accordance with the provisions of section 4.

Section 7

Rights conferred to holders of traditional knowledge

- 7.1 This Protocol shall confer on the owners of rights referred to in section 6 the exclusive right to authorize the exploitation of their traditional knowledge.
- 7.2. In addition, owners shall have the right to prevent anyone from exploiting their traditional knowledge without their prior informed consent.
- 7.3. For the purposes of this Protocol, the term "exploitation" with reference to traditional knowledge shall refer to any of the following acts:
- (a) Where the traditional knowledge is a product:
 - (i) manufacturing, importing, offering for sale, selling or using beyond the traditional context the product;
 - (ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context;
 - (b) Where the traditional knowledge is a process:
 - (i) making use of the process beyond the traditional context;
 - (ii) carrying out the acts referred to under paragraph (a) of this subsection with respect to a product that is a direct result of the use of the process.
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7.4 In addition to all other rights, remedies and action available to them, the owners shall have the right to institute legal proceedings against any person who carries out any of the acts mentioned in section 7.3 without the owner's permission.

Section 8
Assignment and licensing

8.1. Owners of traditional knowledge shall have the right to assign and conclude licensing agreements; however, traditional knowledge belonging to a local or traditional community may not be assigned.

8.2. All access, authorizations, assignments or licences granted in respect of protected traditional knowledge shall be granted in writing, otherwise they shall be of no force or effect.

8.3. A document drawn up for the purpose of section 8.2 shall be approved by the national competent authority, failing which the document shall be void.

8.4. The ARIPO Office shall register all licences and assignments granted under this section.

Section 9
Equitable benefit-sharing

9.1. The protection to be extended to traditional knowledge holders shall include the fair and equitable sharing of benefits arising from the commercial or industrial use of their knowledge, to be determined by mutual agreement between the parties.

9.2. The national competent authority may, in the absence of such mutual agreement, determine the fair and equitable sharing of benefits.

9.3. The right to equitable remuneration might extend to non-monetary benefits, such as contributions to community development, depending on the material needs and cultural preferences expressed by the traditional or local communities themselves.

Section 10
Recognition of knowledge holders

Any person using traditional knowledge beyond its traditional context shall acknowledge its holders, indicate its source and, where possible, its origin, and use such knowledge in a manner that respects the cultural values of its holders.

Section 11
Exceptions and limitations applicable to protection of traditional knowledge

The protection of traditional knowledge under this Protocol shall not be prejudicial to the continued availability of traditional knowledge for the practice, exchange, use and transmission of the knowledge by its holders within the traditional context.

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terms and conditions, a Contracting State may, in the interests of public security or public health, grant a compulsory licence in order to fulfil national needs.

12.2. In the absence of an agreement between the parties, an appropriate amount of compensation for the compulsory licence shall be fixed by a court of competent jurisdiction.

Section 13

Duration of protection of traditional knowledge

Traditional knowledge shall be protected for so long as the knowledge fulfils the protection criteria referred to under section 4, except that where traditional knowledge belongs exclusively to an individual, protection shall last for 25 years following the exploitation of knowledge beyond its traditional context by the individual.

Section 14

Administration and enforcement of protection of traditional knowledge

14.1. To ensure the effectiveness of the protection of traditional knowledge, the national competent authority and ARIPO Office acting on behalf of the Contracting States shall be entrusted with the tasks of awareness-raising, education, guidance, monitoring, registration, dispute resolution, enforcement and other activities related to the protection of traditional knowledge.

14.2. National authorities shall be entrusted, in particular, with the task of advising and assisting holders of protected traditional knowledge in defending their rights and instituting civil and criminal proceedings, where appropriate and when requested by them.

14.3. Where two or more communities in different countries share the same traditional knowledge, the ARIPO Office shall be responsible for raising awareness, education, guidance, monitoring, dispute resolution and other activities relating to the protection of traditional knowledge of those communities.

Section 15

Access to traditional knowledge associated with genetic resources

Authorization under this Protocol to access protected traditional knowledge associated with genetic resources shall not imply authorization to access the genetic resources derived from the traditional knowledge.

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PART III: PROTECTION OF EXPRESSIONS OF FOLKLORE

Section 16

Protection criteria for expressions of folklore

Protection shall be extended to expressions of folklore, whatever the mode or form of their expression, which are:

- (a) the products of creative and cumulative intellectual activity, such as collective creativity or individual creativity where the identity of the individual is unknown; and
- (b) characteristic of a community's cultural identity and traditional heritage and maintained, used or developed by such community in accordance with the customary laws and practices of that community.

Section 17

Formalities relating to protection of expressions of folklore

17.1. The protection of expressions of folklore shall not be subject to any formality.

17.2. For the purposes of evidence, measures for the protection of expressions of folklore may require that certain categories of the expressions for which protection is sought, particularly those with special cultural or spiritual value or significance or those that are sacred in character, be notified to the appropriate authority.

17.3. The notification shall have a merely declaratory function and shall not in itself constitute rights, nor shall it involve or require the documentation, recording or public disclosure of the expressions of folklore concerned.

17.4. Where two or more communities in the same or different countries share the same expressions of folklore, the relevant national competent authorities of Contracting States and ARIPO Office shall register the owners of the rights in those expressions of folklore.

Section 18

Beneficiaries of protection of expressions of folklore

The owners of the rights in expressions of folklore shall be the local and traditional communities:

- (a) to whom the custody and protection of the expressions of folklore are entrusted, in accordance with the customary laws and practices of those communities; and
- (b) who maintain and use the expressions of folklore as a characteristic of their traditional cultural heritage.

Section 19

Protection of expressions of folklore against unlawful acts

19.1. Expressions of folklore shall be protected against all acts of misappropriation, misuse and exploitation.

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19.2. In respect of expressions of folklore of particular cultural or spiritual value or significance to a community, there shall be adequate and effective legal and practical measures to ensure that the relevant community can prevent the following acts from taking place without its free and Prior Informed Consent (PIC):

- (a) in respect of such expressions of folklore other than words, signs, names and symbols:
 - i). the reproduction, publication, adaptation, broadcasting, public performance, communication to the public, distribution, rental, making available to the public and fixation (including by still photography) of the expressions of folklore or derivatives thereof;
 - ii). any use of the expressions of folklore or adaptation thereof which does not acknowledge in an appropriate way the community as the source of the expressions of folklore;
 - iii). any distortion, mutilation or other modification of, or other derogatory action in relation to the expressions of folklore; and
 - iv). the acquisition or exercise of intellectual property rights over the expressions of folklore or adaptations thereof;
- (b) in respect of words, signs, names and symbols which are such expressions of folklore, any use of the expressions of folklore or derivatives thereof, or the acquisition or exercise of intellectual property rights over the expressions of folklore or derivatives thereof, which disparages, offends or falsely suggests a connection with the community concerned, or brings the community into contempt or disrepute.

19.3. In respect of the use and exploitation of other expressions of folklore, ARIPO and the Contracting States shall provide adequate and effective legal and practical measures to ensure that:

- (a) the relevant community is identified as the source of any work or other production adapted from the expression of folklore;
- (b) any distortion, mutilation or other modification of, or other derogatory action in relation to, an expression of folklore can be prevented and/or is subject to civil or criminal sanctions;
- (c) any false, confusing or misleading indications or allegations which, in relation to goods or services that refer to, draw upon or evoke the expression of folklore of a community, suggest any endorsement by or linkage with that community, can be prevented and/or is subject to civil or criminal sanctions; and
- (d) where the use or exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on terms determined by the national competent authority in consultation with the relevant community.

19.4. There shall be adequate and effective legal and practical measures to ensure that communities have the means to prevent the unauthorized disclosure, subsequent use of and acquisition and exercise of intellectual property rights over expressions of folklore that are held secret.

Section 20

Exceptions and limitations applicable to protection of expressions of folklore

20.1. Measures for the protection of expressions of folklore shall:

Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore

- (a) be such as not to restrict or hinder the normal use, development, exchange, dissemination and transmission of expressions of folklore within the traditional or customary context by members of the community concerned, as determined by customary laws and practices;
- (b) extend only to uses of expressions of folklore taking place outside their traditional or customary context, whether or not for commercial gain;
- (c) be subject to exceptions in order to address the needs of non-commercial use, such as teaching and research, personal or private use, criticism or review, reporting of current events, in the course of legal proceedings, the making of recordings and reproductions of expressions of folklore for inclusion in an archive or inventory exclusively for the purposes of safeguarding cultural heritage, and incidental uses,

Provided that in each case, such uses are compatible with fair practice, the relevant community is acknowledged as the source of the expressions of folklore where practicable and possible, and such uses would not be offensive to the relevant community.

20.2. The measures put in place for the protection of expressions of folklore may make special provision for their use by the nationals of the country concerned.

Section 21

Duration of protection of expressions of folklore

Expressions of folklore shall be protected against all acts of misappropriation, misuse or exploitation for as long as the expressions of folklore fulfil the protection criteria set out in section 16.

Section 22

Management of rights in expressions of folklore

22.1. For the purpose of ensuring the effectiveness of the protection and management of expressions of folklore, the national competent authority shall be entrusted with the tasks of awareness-raising, education, guidance, monitoring, dispute resolution and other activities relating to the protection of expressions of folklore.

22.2. Authorizations to exploit expressions of folklore shall be obtained from the national competent authority which acts on behalf of and in the interests of the community concerned.

22.3. Where the national competent authority acts under sections 22.1 and 22.2 of this Protocol:

- (a) authorizations shall be granted only after appropriate consultations with the communities concerned, in accordance with their traditional processes for decision-making and public affairs management;
 - (b) authorizations shall comply with the scope of protection provided for the expressions of folklore concerned and shall, in particular, provide for the equitable sharing of the benefits arising from their use;
 - (c) uncertainties or disputes as to which communities are concerned shall be resolved, as far as possible, in accordance with customary laws and protocols, where applicable, of those communities;
 - (d) any monetary or non-monetary benefits arising from the use of the expressions of folklore shall be transferred directly by the national competent authority to the community concerned;
-

Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore

- (e) enabling legislation or administrative measures shall provide guidance on matters such as procedures for applications for authorization, fees that the national competent authority or ARIPO Office may, where necessary, charge for its services, official publication procedures, dispute resolution, and the terms and conditions governing authorizations that may be granted by the national competent authority.

22.4 Where two or more communities in different countries share the same expressions of folklore the ARIPO Office shall be responsible for raising awareness, education, guidance, monitoring, dispute resolution and other activities relating to the protection of expressions of folklore of those communities.

PART IV: GENERAL PROVISIONS

Section 23

Sanctions, remedies and enforcement

23.1. The national competent authority shall ensure that accessible and appropriate enforcement and dispute-resolution mechanisms, sanctions and remedies are available where there is a breach of the provisions relating to the protection of traditional knowledge and expressions of folklore.

23.2. The national competent authority shall be entrusted with the task of advising and assisting holders of protected traditional knowledge and communities who are beneficiaries of protected expressions of folklore in defending and enforcing their rights and instituting civil and criminal proceedings, where appropriate and when requested by the holders and communities concerned.

Section 24

International and regional protection

24.1. Eligible foreign holders of traditional knowledge and expressions of folklore should enjoy benefits of protection at least to the same level as holders of traditional knowledge and expressions of folklore who are nationals of the country of protection, taking into account as far as possible the customary laws and protocols applicable to the traditional knowledge or expressions of folklore concerned.

24.2. Measures should be established by the national competent authority and ARIPO Office to facilitate as far as possible the acquisition, management and enforcement of such protection for the benefit of the holders of traditional knowledge and expressions of folklore from foreign countries.

24.3. Existing or new regional organizations may be entrusted with the task of settling cases of concurrent claims from communities of different countries with regard to traditional knowledge or expressions of folklore; to this end, such organizations shall make use of customary law, local information sources, extrajudicial means for settling disputes, and any other practical mechanism of this kind, which might prove necessary.

Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore

Section 25

Transitional measures

25.1. Exploitation and dissemination of traditional knowledge prior to the entry into force of the protection under this Protocol shall comply with the provisions of section 9 relating to equitable benefit-sharing and section 10 relating to the recognition of the source, within twelve months following the entry into force of the protection, subject to equitable treatment of the rights acquired by third parties in good faith.

25.2. The continued use of expressions of folklore that had commenced prior to the introduction of this Protocol to protect the expressions of folklore shall comply with provisions of section 19 within twelve months of this Protocol entering into force, subject to equitable treatment of the rights and interests acquired by third parties through prior use in good faith.

Section 26

Regulations

26.1. The Administrative Council of ARIPO shall make Regulations for the implementation of this Protocol and may amend them where necessary.

26.2. The Regulations shall, in particular,

- a) stipulate any administrative requirements, or any necessary details for the implementation of the provisions of this Protocol and any relevant international treaty;
- b) prescribe the procedure for applications of authorization to exploit traditional knowledge and expressions of folklore;
- c) prescribe fees to be charged by the ARIPO Office and the details of the distribution of part of the fees among Contracting States; and
- d) provide forms to be used for matters requiring forms under this Protocol.

Section 27

Entry into force

27.1. Any State which is a member of ARIPO or any State to which membership of ARIPO is open may become party to this Protocol by:

- i) signature followed by the deposit of an instrument of ratification; or
- ii) deposit of an instrument of accession.

27.2. Instruments of ratification or accession shall be deposited with the Government of the Republic of Zimbabwe.

27.3. This Protocol shall come into force three months after three States have deposited their instruments of ratification or accession.

27.4. Ratification of or accession to this Protocol shall entail acceptance of the Agreement on the Creation of an African Regional Intellectual Property Organization.

Draft Protocol on the Protection of Traditional Knowledge and Expressions of Folklore

Section 28
Reservations

No reservations may be made to this Protocol.

Section 29
Signature of the Protocol

29.1. This Protocol shall be signed in a single copy and shall be deposited with the Government of the Republic of Zimbabwe.

29.2. The Government of the Republic of Zimbabwe shall transmit certified copies of this Protocol to the Contracting States to which membership of ARIPO is open in accordance with Article IV of the Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO).

Section 30
Amendment of the Protocol

30.1. This Protocol may be amended at the instance of any Contracting State or by the Director General of ARIPO during the sessions of the Administrative Council of ARIPO.

30.2. Adoption of the amendments of any provision of this Protocol shall require a majority of two-thirds of the votes of all the Contracting States.

Section 31
Denunciation of the Protocol

31.1. Any Contracting State may denounce this Protocol by notification addressed to the Government of the Republic of Zimbabwe.

31.2. Denunciation of this Protocol shall take effect six months after receipt of the said notification by the Government of the Republic of Zimbabwe.



AFRICAN REGIONAL INTELLECTUAL PROPERTY
ORGANIZATION (ARIPO)

**DRAFT REGULATIONS
FOR IMPLEMENTING THE
ARIPO PROTOCOL ON
TRADITIONAL KNOWLEDGE
AND
EXPRESSIONS OF FOLKLORE
WITHIN THE FRAMEWORK
OF THE AFRICAN REGIONAL
INTELLECTUAL PROPERTY
ORGANIZATION
(ARIPO)**

ARIPO Secretariat
Harare
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**Regulations for Implementing
the ARIPO Protocol on Traditional
Knowledge and
Expressions of Folklore
within the Framework of the
African Regional Intellectual
Property Organization
(ARIPO)**

**ARIPO
Harare, 2009**

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DRAFT REGULATIONS FOR IMPLEMENTING THE ARIPO PROTOCOL ON TRADITIONAL
KNOWLEDGE AND EXPRESSIONS OF FOLKLORE

(Made Under section 26 of the Protocol)

Citation

These Regulations may be cited as the ARIPO Traditional Knowledge and Expressions of Folklore Regulations, 2009.

Commencement

These Regulations shall come into operation on [ARIPO to prescribe]

Rule 1

Definitions

In these Regulations, unless the context otherwise requires:

“Administrative Council” means the Administrative Council of the African Regional Intellectual Property Organization;

“applicant” is any natural or legal person, entity or agent applying for authorization or licence to exploit traditional knowledge or for authorization to exploit expressions of folklore;

“appropriate authority” means a body or an agency authorized by a State which is party to the Protocol or entrusted with the responsibility to supervise and administer these Regulations;

“benefit sharing” means the sharing of whatever accrues from the utilization of traditional knowledge and expressions of folklore;

“designated State” means any State designated in the application in accordance with regulation 4 of these Regulations;

“Director General” means the Director General of the African Regional Intellectual Property Organization;

“prior informed consent” means authorization given under these Regulations, by the holders of traditional knowledge to exploit the traditional knowledge under section 6 of the Protocol and in the case of expressions of folklore, to exploit the expressions of folklore under section 18 of the Protocol, for the conduct of a particular activity that requires access to and use of the traditional knowledge or expression of folklore, subject to the provision of sufficient information on the purposes, risks or implications of the activity, including any uses that might be made of the knowledge and expression, and where applicable, on its value;

“Protocol” means the ARIPO Protocol for the Protection of Traditional Knowledge and Expressions of Folklore.

*Rule 2**Applications for authorization*

- (1) An application for authorization to exploit any traditional knowledge and expressions of folklore shall be made on ARIPO Form A and ARIPO Form B respectively set out in the First Schedule to these Regulations.
- (2) An application made under sub-regulation (1) of this regulation shall contain:
 - a) the name and address of the applicant;
 - b) the name of the State of which the applicant is a national;
 - c) a request for the authorization;
 - d) the purpose for which the authorization is sought;
 - e) the economic, social, scientific, technical, environmental, or any other benefit that are likely to accrue to the owners of the traditional knowledge and of rights of expressions of folklore or to the relevant local or traditional community; and
 - (f) the proposed mechanism for equitable sharing of benefits arising from the exploitation of the traditional knowledge and expressions of folklore.
- (3) The application shall designate the Contracting State for which the authorization is requested to have effect.
- (4) The authorization for the exploitation or use of any traditional knowledge and expressions of folklore shall be subject to prior informed consent of the owners of the traditional knowledge and expressions of folklore and the relevant local or traditional community or their representatives.

*Rule 3**Grant of authorization*

- (1) A certificate of authorization to exploit traditional knowledge and expressions of folklore shall be granted by the appropriate authority which acts on behalf of the community, after consultation with the community concerned.
- (2) Where the appropriate authority is satisfied that prior informed consent was obtained from the owners of the traditional knowledge and expressions of folklore, it may issue a certificate of authorization to the applicant to exploit or use the knowledge or expression subject to such conditions as may be specified in the authorization certificate.
- (3) A certificate of authorization under sub-regulation (1) of this regulation shall be on ARIPO Form C set out in the First Schedule to these Regulation.

*Rule 4**Authorization subject to prior informed consent*

- (1) An application for prior informed consent to exploit traditional knowledge and expressions of folklore shall be addressed to the appropriate authority which acts on behalf of and in the interests of the relevant community and shall be in ARIPO Form D set out in the First Schedule to these Regulations.
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- (2) Any exploitation of traditional knowledge and expressions of folklore without consultation with the owners of the traditional knowledge and expressions of folklore or the relevant local or traditional community shall be deemed to be invalid and in violation of the requirement of prior informed consent.

Rule 5
Publication of application

The appropriate authority shall cause the application made under regulation 4 of these Regulations to be published in a local newspaper, radio that is accessible to the public or in any other appropriate manner as is likely to bring the notice of the application to the attention of the relevant local or traditional community.

Rule 6
Forms

The Forms set out in the First Schedule to these Regulations shall be used for the matters specified in that Schedule.

Rule 7
Fees

- (1) An application for authorization or licence to exploit any traditional knowledge or for authorization to exploit expressions of folklore shall be accompanied by the prescribed fees.
- (2) The fees payable for application, registration, renewal, inspection of the register and other related matters shall be the fees specified in the Second Schedule to these Regulations.

Rule 8
Distribution of fees

- (1) Subject to sub-regulation (2) of this regulation, the fees paid under these Regulations shall be distributed between the ARIPO Office and the designated States.
- (2) The distribution of fees between the ARIPO Office and the designated States shall be fifty percent to the ARIPO Office and fifty percent to designated States.

Rule 9
Licensing agreements

- (1) A person wishing to enter into a licensing agreement to exploit protected traditional knowledge may apply in writing to the owners of the traditional knowledge.
- (2) Where the owners of the traditional knowledge agree to enter into a licensing agreement with an applicant under sub-regulation (1) of this regulation, the agreement shall be subject to the written approval of the appropriate authority.
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- (3) The licensing agreement shall specify the terms and conditions and the duration applicable to it.
- (4) Where the owners of the traditional knowledge, with the approval of the appropriate authority, have agreed to conclude a licensing agreement, the appropriate authority shall issue a licence for that purpose in ARIPO Form E set out in the First Schedule to these Regulations.

Rule 10
Register

The ARIPO Office shall maintain a register in which shall be recorded:

- a) the number of every application made under these Regulations;
- b) the name and address of the applicant;
- c) the date and number of authorizations granted under regulation 5 and licensing agreements made under regulation 11 of these Regulations;
- d) the designated States;
- e) any change with respect to the matters set out in paragraphs (a) to (d) of this sub-regulation.

Any person may, on payment of the fees prescribed in the Second Schedule to these Regulations, inspect the register maintained under this regulation.

Rule 11
Publication and issue of authorizations and certificates; etc

The ARIPO Office shall:

- (a) publish in the ARIPO Journal a reference to the registration of the authorization or licensing agreement;
- b) issue the applicant with a certificate of registration of the authorization or licensing agreement, as the case may be;
- c) transmit to each designated State for which the authorization or licensing agreement is registered a copy of the certificate of the registration.

Rule 12
Benefit sharing

- (1) The benefits accruing from exploitation of the traditional knowledge under these Regulations shall be shared in a fair and equitable way, between the owners of the traditional knowledge and persons who have been granted authorization or licensing agreement.
 - (2) The benefits arising from the use of expressions of folklore shall be transferred directly by the appropriate authority to the local or traditional community concerned.
 - (3) The sharing of benefits under sub-regulations (1) and (2) of this regulation shall involve the participation and approval of the owners of the traditional knowledge and expressions of folklore and the concerned communities.
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(4) The benefits derived from exploitation of traditional knowledge and expressions of folklore may include:

- a) division of profits;
- b) payment of royalties;
- c) technology access and transfer; and
- d) training of human resources.
- e) Others, as applicable

Rule 13

Right to refuse to grant authorization or to conclude a licensing agreement

The owners of traditional knowledge and expressions of folklore and concerned communities may refuse to grant authorization or to conclude a licensing agreement under these Regulations where the authorization and licensing agreement are likely to be detrimental to their natural or cultural heritage.

Rule 14

Right to withdraw consent

The owners of traditional knowledge and expressions of folklore and concerned communities may withdraw consent or place restrictions on the activities relating to the exploitation of their traditional knowledge and expressions of folklore where the activities are likely to be detrimental to their socio-economic life or their natural or cultural heritage.

Rule 15

Dispute settlement

- (1) The appropriate authority shall establish a Dispute Settlement Committee for the purpose of settling disputes arising out of authorizations granted and licensing agreements concluded under these Regulations and any other related matter.
- (2) Where the subject matter of the dispute concerns ascertaining the relevant community, the dispute shall be resolved as far as possible, in accordance with the customary laws and practices of the community concerned.
- (3) A person aggrieved by the decision of the Dispute Settlement Committee may appeal to the Director General of ARIP0.

Rule 16

Amendment

- (1) These Regulations may be amended at the instance of the Director General or any member of a Contracting State during the Administrative Council sessions.
 - (2) The decision to amend these Regulations shall be by a simple majority of Contracting States.
 - (3) Every amendment to these Regulations shall be notified to the Contracting States by the Director General.
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SCHEDULES

FIRST SCHEDULE

ARIPO Form A

Reg. 2

Application form for authorization to exploit traditional knowledge

ARIPO Form B

Reg. 2

Application form for authorization to exploit Expressions of Folklore

ARIP0 Form C

Reg. 3

Certificate of Authorization to Exploit Traditional Knowledge and Expressions of Folklore

ARIPO Form D

Reg. 4

**Application for Prior Informed Consent to Exploit Traditional Knowledge
and Expressions of Folklore**

ARIPO Form E

Reg. 9

Licence for the Exploitation of Traditional Knowledge under Agreement

ARIPO Form F

Reg. 11

Certificate of Registration of Authorization to Exploit Traditional
Knowledge or Licensing Agreement

SECOND SCHEDULE

FEES

Reg. 7