

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Nineteenth Session

Geneva, July 18 to 22, 2011

LIKE-MINDED COUNTRIES CONTRIBUTION TO THE DRAFT ARTICLES ON THE PROTECTION OF TRADITIONAL KNOWLEDGE

Document submitted by the Delegation of Indonesia

INTRODUCTION

1. On July 18, 2011, the International Bureau of the World Intellectual Property Organization (WIPO) received a Note Verbale from the Permanent Mission of the Republic Indonesia to the United Nations, the World Trade Organization and other International Organizations in Geneva, transmitting an "advanced text" on traditional knowledge "as contribution from cross-regional group of like-minded developing countries to the text-based negotiations" in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).
2. Further, the International Bureau was requested to make available the said text as a working document for the nineteenth session of the IGC. The text is, accordingly, contained in the Annex to this document.
3. *The Committee is invited to take note of this document and the Annex to it.*

[Annex follows]

LIKE MINDED COUNTRIES
CONTRIBUTION TO THE DRAFT ARTICLES ON THE PROTECTION OF
TRADITIONAL KNOWLEDGE

ARTICLE 1
SUBJECT MATTERS OF PROTECTION

Definition

- 1.1. Traditional Knowledge is knowledge that is dynamic and evolving, which is generated in a traditional context, collectively preserved and transmitted from generation to generation and includes but is not limited to know-how, skills, innovations, practices and learning, that subsist in a codified, oral/verbal or other forms of knowledge systems. Traditional knowledge also includes knowledge that is associated with biodiversity and natural resources. Traditional knowledge may be sacred or secretly held by beneficiaries, or widely available.

Eligibility for protection

- 1.2. Protection under this instrument shall extend to traditional knowledge that is identified or associated or linked with the cultural identity of beneficiaries, as defined in Article 2.

Secret TK

- 1.3. The specific choice of terms to denote the protected subject matter should be determined by national legislation.

ARTICLE 2
BENEFICIARIES

- 2.1. Beneficiaries of protection of traditional knowledge as defined in Article 1 shall be indigenous and local communities or, where traditional knowledge is not specifically attributable to or confined to an indigenous and local community or it is not possible to identify the community that generated it, any national entity determined by domestic law.
- 2.2. For the purposes of this Article, the term “local communities” shall include any classification of social and cultural identity of a member state as defined by domestic law.

ARTICLE 3
SCOPE OF PROTECTION

- 3.1. Contracting Parties shall ensure that the beneficiaries have the exclusive collective rights to:
- (a) enjoy and exclusively control and utilize their traditional knowledge;
 - (b) authorize or deny the access and use of their traditional knowledge;
 - (c) have a fair and equitable share of benefits arising from the use of their traditional knowledge based on mutually agreed terms;
 - (d) prevent misappropriation and misuse, including any acquisitions, appropriation, use, practice or utilization of their traditional knowledge, without their prior and informed consent and establishment of mutually agreed terms;
 - (e) require, in the application for IP rights involving the use of their traditional knowledge, the mandatory disclosure of traditional knowledge holders and their country of origin as well as evidence of compliance with prior and informed consent and benefit-sharing requirements in accordance with domestic laws or requirements of country of origin;
 - (f) prevent the use of traditional knowledge without: acknowledging the source and origin of that traditional knowledge; acknowledging and attributing the traditional knowledge holders where known; and respecting the cultural norms and practices of its holders.
- 3.2. Contracting parties shall provide adequate and effective legal means/measures to ensure the application of these rights taking into account relevant customary laws and practices.
- 3.3. For the purposes of this instrument, the term “utilization” in relation to traditional knowledge shall refer to any of the following acts:
- (i) Where the traditional knowledge is a product:
 - (a) manufacturing, importing, offering for sale, selling, stocking or using the product beyond the traditional context; or
 - (b) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context;
 - (ii) Where the traditional knowledge is a process:
 - (a) making use of the process beyond the traditional context;
 - (b) carrying out the acts referred to under sub clause (i) with respect to a product that is a direct result of the use of the process.
 - (iii) Research and development leading to profit making or commercial purposes.

[End of Annex and of Document]