

**World Intellectual Property Organization**

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

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**Agenda Item 8; The international dimension**

**Preliminary submission by Assembly of First Nations, Call of the Earth, the Aboriginal and Torres Strait Islanders Commission (ATSIC), Foundation for Aboriginal and Islander Research Action (FAIRA), Canadian Biodiversity Network, Coordinating Body of the Indigenous Organizations of the Amazon Basin (COICA), Hokotehi Moriori Trust, Rekohu, Aotearoa (New Zealand), Indigenous Peoples Caucus of the Creators Rights Alliance, the Kaska Dena Council, the Saami Council and the International Indian Treaty Council: Objectives, principles and elements of an international instrument, or instruments, on intellectual property in relation to genetic resources and on the protection of traditional knowledge and traditional cultural expressions**

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**Objectives**

1. Ensure the rights and responsibilities of the owners, holders and custodians of natural resources, traditional knowledge and traditional cultural expressions are recognised and protected.
2. Prevent the misappropriation of genetic resources, traditional knowledge and expressions of folklore.
3. Ensure the application of the principle of prior informed consent be applied as a precondition of any use of genetic resources, traditional knowledge and expressions of folklore.
4. Ensure the full and effective involvement of indigenous peoples in the development and implementation of any international regime regarding genetic resources traditional knowledge, traditional cultural expressions.

5. Ensure the conservation and sustainable use of bio-diversity.
6. Protect and reward legitimately obtained innovations and creative works derived from traditional knowledge and expressions of folklore.

### **Principles**

1. Recognition that indigenous peoples have the right to development of their cultural and natural resources
2. Recognize the rights and responsibilities of traditional knowledge-holders and custodians, including their inalienable moral rights against the misappropriation of their traditional knowledge and expressions of folklore.
3. Recognize that states have a role in the preservation and protection of traditional knowledge
4. Recognize applicable international law, including human rights law.
5. Recognize the role of customary law and protocols in the protection and the sustainable use of genetic resources, traditional knowledge and expressions of folklore.
6. Recognize the complementary nature of defensive and positive measures relating to the protection and sustainable use of genetic resources, traditional knowledge and expressions of folklore.

### **General Elements**

1. National treatment/Mutual recognition of Indigenous customary laws and national legislation
2. Definitions

### **Genetic Resources**

- Recognition of rights and responsibilities to take measures to ban the patenting of life forms
- Ensure implementation of prior informed consent
- Introducing a disclosure requirement in patent laws as well as evidence of compliance with national law, applicable customary legal systems and international law relating to genetic resources (disclosure of the source of origin of the genetic resources in claimed inventions and of the associated traditional knowledge used in the invention)
- Contractual arrangements

## **Traditional Knowledge**

*Developing a sui generis system of protection and sustainable use*

- Establish scope of protected subject matter
- Establish nature of rights and responsibilities
- Address ownership of rights, moral and economic rights, acquisition, exercise, expiry and enforcement of rights
- Establish registration mechanism, subject to the prior and informed consent of the holders of traditional knowledge

## **Expressions of Folklore**

*Developing a sui generis system of protection and sustainable use*

- Establish scope of protected subject matter
- Establish nature of rights and responsibilities
- Establish ownership of rights, moral and economic rights of performers, acquisition, exercise, expiry and enforcement of rights
- Establish registration and administration mechanisms, subject to the prior and informed consent of the holders of the expression of folklore

## **Institutional Mechanism**

- Capacity building and technical assistance
- Cultural sensitization and Awareness building
- Networking and exchanging of information
- Promotion of documentation and codification of traditional knowledge and expressions of folklore, subject to the prior and informed consent of the holders of traditional knowledge and expressions of folklore
- Institutional mechanism for fostering the transfer of technology
- Establishment of national focal points of implementation
- Establishment of a follow-up body

## **Enforcement**

## **Dispute Settlement**