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

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TRADITIONAL KNOWLEDGE – OPERATIONAL TERMS AND DEFINITIONS

*prepared by the Secretariat*

## I. INTRODUCTION

1. This paper sets out possible approaches to defining or elaborating the subject matter of traditional knowledge (“TK”) protection. It responds to the calls for greater clarity in relation to terminology and subject matter that were registered during the first two sessions of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”)<sup>1</sup> and in several written submissions and proposals made to the Committee.<sup>2</sup>

2. Terminological and conceptual issues in relation to the protection of TK were put before the Committee in the paper “Matters Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.”<sup>3</sup> The Committee then adopted<sup>4</sup> the task of delineating “the scope of subject matter in respect of which the Member States wish to discuss the application of intellectual property protection for the purpose of having a definition of the term ‘traditional knowledge’.”

3. Given the focus of the Committee’s work, this paper concentrates on intellectual property (IP) forms of TK protection, yet there are several policy contexts in which other senses of ‘protection’ of TK may be relevant – for instance, the preservation of cultural heritage as an end in itself, the identification and protection of TK as an element of promoting the preservation of biodiversity and the sustainable use of biological resources, and in a human rights context. These policy goals may naturally entail different ways of characterizing the protected subject matter. Even so, it would clearly be desirable to aim for general coherence and compatibility between various policy instruments dealing with TK, although the application and specific interpretation of broad definitions may differ at the level of practical implementation.

## II. APPROACHES TO DEFINING PROTECTED SUBJECT MATTER

4. Discussion of IP-related definitions of TK may be assisted by consideration of how core concepts are defined and applied in other IP systems. International harmonization, standard-setting and cooperation across the field of IP have not, overall, been dependent on the determination of definitive, exhaustive definitions of the subject matter of protection. There has been a tendency to leave specific determinations of the boundaries of protectable subject matter up to domestic authorities, and for terminology at the international level to be used more to express a common policy direction. This applies equally whether the legal instrument

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<sup>1</sup> See WIPO/GRTKF/IC/1/13 (Report of first session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore), paras. 130, 135, 136, 149, 154, 171, 172 and 175.

<sup>2</sup> WIPO/GRTKF/IC/1/5 (Documents submitted by the GRULAC group, entitled “Traditional Knowledge and the Need to Give it Adequate Intellectual Property Protection” and “WIPO Committee on the Relationship between Intellectual Property, Genetic Resources and Traditional Knowledge”); WIPO/GRTKF/IC/1/10 (Proposal Presented by the African Group to the First Meeting of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore).

<sup>3</sup> WIPO/GRTKF/IC/1/3, paras. 64, 65 and 71.

<sup>4</sup> WIPO/GRTKF/IC/1/13, par. 155.

under consideration is binding or non-binding, an expression of principles, a set of guidelines, or firm rules that aim at coordinating or harmonizing national systems of protection.

5. Accordingly, a general definition of the subject matter of IP protection, especially at the international level, can be distinguished from the more precise tests that are developed and applied case-by-case at the national (or regional) level, using interpretative principles based in domestic law. In some instances, individual objects of IP-related protection can be defined in direct and explicit terms at the international level (for example, State emblems and official signs notified under the Paris Convention<sup>5</sup>), but for most categories of IP protection, the approach taken to defining subject matter is more general and remains open to distinct interpretation and application at the national level.

6. The way relevant IP subject matter is identified may also be influenced by the policy objectives of the legal instrument. International instruments on IP protection have addressed various objectives, such as:

- creation of reciprocal rights, involving mutual recognition of foreign nationals' rights to protection under national systems, effectively a guarantee of access for foreign nationals to the national IP system in line with the applicable national standards;
- establishment of agreed minimum standards for protection, so that there is a guarantee of a certain level of protection for eligible subject matter; and
- coordination of specific protection, so that there is convergence in the scope of specific IP rights.

7. The degree of precision in the definition of protected subject matter can vary according to which of these objectives applies. For instance, the Paris Convention defines 'industrial property' in explicitly broad terms<sup>6</sup> and does not define specific terms such as 'patents' and 'trademarks.' Yet this is not a barrier to the effective operation of the international instrument, precisely because the protection which it coordinates or harmonizes still has its operational effect in domestic law, and the specific rights granted in different jurisdictions are intended to be independent of one another.<sup>7</sup> Hence the need for case-by-case precision in the use of a definition may only arise at the domestic level. Even though it may be considered desirable to promote convergence and predictability in the operation of national IP systems, an international instrument need not aim to ensure that different national systems grant individual IP rights that are identical in scope, as an end in itself.

8. The definition of IP-related subject matter may also be expressed very generally when the definition does not determine or delimit the actual scope of protection to be granted under law. It is possible to define relevant subject matter in broad terms, and then separately to specify what distinct subset or portion of that material is actually eligible for legal protection. In other words, defining subject matter that is generally relevant and defining the exact scope

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<sup>5</sup> Following notification of such material under Article 6*ter* of the Paris Convention for the Protection of Industrial Property.

<sup>6</sup> Article 1(3) provides that: 'Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.'

<sup>7</sup> See, for instance, Articles 4*bis* and 6(3) of the Paris Convention.

of protected subject matter can be separate conceptual steps. The second step, of determining exactly which portion of the general subject matter is to be protected, can be taken by applying specific eligibility criteria, by making explicit exclusions to the scope of protectable subject matter, or by referring to specific categories of subject matter. Commonly, some or all of these approaches are adopted in the same legal instrument.

9. Hence ‘invention,’ the object of patent protection, tends to be defined broadly in legal instruments (and is not defined at all in key international instruments such as the Paris Convention and the WTO TRIPS Agreement).<sup>8</sup> Whether protection is actually to be afforded under patent law depends on whether the claims are directed to an invention broadly defined, and on whether the claims also specifically comply with the criteria of novelty, non-obviousness and utility.<sup>9</sup> Some inventions can also be excluded for policy reasons, such as inventions which would otherwise be eligible for patent protection but are deemed to be contrary to *ordre public*. Specific provisions can be made to clarify that certain technologies are included within or are excluded from the definition of patentable subject matter, setting aside any interpretative uncertainty.

10. Similarly, the general object of copyright protection (‘literary and artistic works’) is defined in broad terms in Article 2(1) of the Berne Convention (it ‘shall include every production in the literary, scientific and artistic domain...’), but the actual scope of protected subject matter is defined by specific conditions, such as the need for originality and for material fixation; and it is possible to specify that certain subject matter is deemed to be protectable (such as the requirement that computer programs be protected as literary works<sup>10</sup>), thus confirming how the general definition is applied in that specific case.

11. In IP systems, there is often a dynamic linkage between the definition of subject matter and the actual scope of protection, so that the way the definition is applied is guided by the policy rationale for the particular IP protection. Indeed, in some jurisdictions it can be more instructive to look at decided case law than at the formal statutory definition to get a sense of the actual scope of the definition in practice. The definition of relevant subject matter is often informed and molded by consideration of the policy objectives of the IP law in question, and so an operational definition needs to take account of the policy context in which the subject matter is defined and protected. For instance, trademark rights are typically defined with reference to the way a sign is used by commercial undertakings and is perceived in the marketplace, rather than its use or perception in non-commercial contexts, because trademark law generally aims to promote fair competition between traders and to prevent confusion or deception of consumers. The sign generally needs to be used in a commercial context to function as a trademark. If the same sign were used in a different, non-commercial context it may not be subject to trademark law, since the policy focus is on the commercial sphere.

12. What does this mean for definitions of ‘traditional knowledge’ and related terms? Quite apart from the question of whether a distinct set of underlying legal concepts is required for TK protection, the approach or the methodology used in defining subject matter in other areas

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<sup>8</sup> See document WIPO/GRTKF/IC/1/3, paragraph 65.

<sup>9</sup> To some extent, these criteria can be viewed as overlapping with the inherent notion of ‘invention,’ but it is possible for an invention, so defined, to fail to meet the criteria, for instance for want of novelty or utility.

<sup>10</sup> WIPO Copyright Treaty, Article 4

of IP may provide useful parallels when taking the step of defining TK-related subject matter. For instance, the approaches taken to terminology in other areas of IP suggest that:

- (i) while illustrative or descriptive characterizations of ‘traditional knowledge’ may be developed in isolation to promote discussion, analysis and debate, it may only be possible (or desirable) to settle on a particular definition in the context of a specific legal instrument and with a defined policy goal;
- (ii) the degree of precision required in a definition may depend on the level and extent of harmonization and uniformity in national laws that is expected to result from an international legal instrument;
- (iii) clarity about the policy objectives of the legal instrument and the kind of protection that is intended may be a necessary ingredient for a firm definition of ‘traditional knowledge:’ for instance, does the legal instrument concern defensive or positive protection; is it concerned with active protection of cultural heritage or simply suppression of commercial misuse; and is it intended additionally to promote a distinct public policy objective, such as equitable management of genetic resources and conservation of biodiversity?
- (iv) it could be in keeping with international practice for a definition to be broad and open-ended, with greater precision applying at the national level or in the scope of specific areas of protection; or, at least, the absence of a single, comprehensive and exhaustive definition need not be an obstacle to the international coordination or harmonization of domestic legal systems;
- (v) a definition of ‘traditional knowledge’ could be expressed in a general or indeterminate way, while the actual scope of legal protection may be separately defined as a distinct step, taking into account the nature and policy orientation of the protection, for instance:
  - with reference to specific conditions (e.g. that it not already be in the public domain, or that it be traditional knowledge associated with *in situ* biodiversity conservation)
  - by excluding some areas of subject matter (e.g. secret or sacred traditional knowledge may be excluded from a system that provides protection by publishing details of traditional knowledge)
  - by specifying that some particular subject matter is deemed to fall within the scope of protection (e.g. clarifying that unfixed TK is included in the definition).

13. A relatively general approach to definition may be especially called for in relation to traditional knowledge as the subject matter of protection, in contrast to the areas of intellectual property already surveyed here. TK subject matter is particularly dynamic and variable, and more likely to be shaped by local, cultural factors than other forms of IP (as discussed in the parallel paper, WIPO/GRTKF/IC/3/8). Moreover, there have been calls in the work of the Committee for there to be some recognition of customary law<sup>11</sup> as an element in the definition and protection of TK. If there is to be reflection of customary law in the characterization of traditional knowledge, this would necessarily involve a more general form

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<sup>11</sup> See document WIPO/GRTKF/IC/2/16, Paragraphs 90, 94, 100, 108, 152

of definition at the international level, given the diverse and distinct quality of customary laws; equally, if weight is to be given to local cultural factors, this could also entail a general umbrella definition at an international level. This general approach was foreshadowed in document WIPO/GRTKF/IC/1/3 (itself echoing comments in the ‘WIPO Report on Intellectual Property Needs and Expectations of Traditional Knowledge Holders’<sup>12</sup>):

“Given this highly diverse and dynamic nature of traditional knowledge it may not be possible to develop a singular and exclusive definition of the term. However, such a singular definition may not be necessary in order to delimit the scope of subject matter for which protection is sought. This approach has been taken in a number of international instruments in the field of intellectual property.”<sup>13</sup>

14. The general process of clarifying terminology in relation to TK can be broken down into several elements:

- (i) the choice of an appropriate term, or terms, to describe the subject matter;
- (ii) the identification or description of the subject matter to be covered by the term or term selected;
- (iii) the determination of the scope of that subject matter which is actually to be granted legal protection.

### III. TRADITIONAL KNOWLEDGE AND RELATED TERMS

15. The growing importance attached to TK, and related concerns about preserving cultural and biological diversity, have raised policy, ethical and legal questions at the national, regional and international levels. TK arises as an issue in relating to food and agriculture, biological diversity and the environment, biotechnology innovation and regulation, human rights, cultural policies, and trade and economic development. The working concepts of TK in each forum tend to be shaped by the policy framework of that forum, leading to a decentralized and disintegrated set of approaches, in which the issues are subjected to differing policy considerations, cultural and ethical environments, analytical tools and legal concepts. Different terms can therefore be used for overlapping subject matter and the same term may be used in contrasting ways. This naturally reflects differences in the respective policy focus of each forum. Such differences are likely to be reflected in specific legal instruments, with variations applying in different jurisdictions and responding to different policy objectives.

16. International IP policy discussions have directly addressed the general concept of traditional knowledge relatively recently, although the broader debate is long-standing.<sup>14</sup> The earlier focus of IP-related discussions was on the concept of “expressions of folklore,” a more limited term typically associated with the system of copyright and related rights. The

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<sup>12</sup> WIPO, *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)*, (WIPO, 2001)

<sup>13</sup> See document WIPO/GRTKF/IC/1/3, paragraph 65

<sup>14</sup> See document WIPO/GRTKF/3/8, at paragraph 4.

WIPO/UNESCO Model Provisions<sup>15</sup> characterized this term in 1982. Discussions on further characterization of this term took place during the four Regional Consultations on the Protection of Expressions of Folklore organized by WIPO and UNESCO in 1999,<sup>16</sup> and this was also an issue in the attempts to establish an international agreement on protection of expressions of folklore in the 1980s.

17. The increasing attention to traditional knowledge as such reflects a more recent broadening of the IP policy focus, and TK accordingly covers a much broader range of subject matter and of policy fields – such as medicinal remedies and practices, biodiversity-related knowledge and agricultural knowledge related to plant genetic resources for food and agriculture. The international dimension of this discussion has brought with it calls for clarity in terminology, a concern that was raised, for instance, by many of those who were consulted in many of the countries visited during the WIPO fact-finding missions in 1998 and 1999.<sup>17</sup> Informants stressed the need for clarity both to *identify* the subject matter for which protection is sought, and secondly to clarify the relevance and role of IP in respect of TK.<sup>18</sup> This led to the conclusions that an “appropriate term or terms describing the subject matter for which protection is sought should be selected” and that “from an IP perspective, a clear definition or description of what is meant (and not meant) for IP purposes by the term or terms selected is desirable.”<sup>19</sup> Many other writers and commentators have discussed related terminological issues in relation to IP and TK.<sup>20</sup>

<sup>15</sup> WIPO/UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, 1982

<sup>16</sup> The regional consultations were held for African countries in Pretoria, South Africa (March 1999), for countries of Asia and the Pacific region in Hanoi, Viet Nam (April 1999); for Arab countries in Tunis, Tunisia (May 1999); and for Latin America and the Caribbean in Quito, Ecuador (June 1999). See documents WIPO-UNESCO/FOLK/AFR/99/1; WIPO-UNESCO/FOLK/ASIA/99/1; WIPO-UNESCO/FOLK/ARAB /99/1; WIPO-UNESCO/FOLK/LAC /99/1. Other inter-regional and regional activities of WIPO have also referred to the need for terminological clarity. For example, the WIPO Inter-Regional Meeting on Intellectual Property and Traditional Knowledge, held in Chiangrai, Thailand from November 9 to 11, 2000, recommended that “an important task of the Intergovernmental Committee [on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore], among others, should be to discuss and reach broad agreement on the meanings to be assigned to the various relevant terms and concepts (such as “genetic resources”, “traditional knowledge” and “folklore”), their respective and mutual relationships with each other and with intellectual property and a methodology of working which would take into account the links and distinctions between the subject areas falling within the Committee’s scope” (see Action Plan and Meeting Statement).

<sup>17</sup> WIPO, 2001, pp. 210-213.

<sup>18</sup> *Idem*, p. 216.

<sup>19</sup> *Idem*, p. 211.

<sup>20</sup> See, for example, Janke, T., *Our Culture, Our Future* (Report prepared for the Australian Institute of Aboriginal and Torres Strait Islander Studies and the Aboriginal and Torres Strait Islander Commission, 1999), pp. 2 to 12; Simpson, T., *The Cultural and Intellectual Property Rights of Indigenous Peoples* (IWGIA, 1997), pp. 18 to 22; Blakeney, M., “The Protection of Traditional Knowledge under Intellectual Property Law”, E.I.P.R. 6 [2000], p. 251; Mould-Idrussu, B. “The Experience of Africa”, paper presented at UNESCO-WIPO World Forum on the Protection of Folklore”, held in Phuket, Thailand, in April 1997, published in WIPO Publication Number 758; McDonald, I., *Protecting Indigenous Intellectual Property* (Australian Copyright Council, Sydney, 1997, 1998); Kuruk, P., *Protecting Folklore Under Modern Intellectual Regimes*; Mugabe, J., “Intellectual Property Protection and Traditional Knowledge,” *Intellectual Property and Human Rights* (WIPO, 1999), p. 97.

18. The terms in general use in international debate include:

- “traditional knowledge, innovations and practices,”<sup>21</sup> in the context of conservation and equitable use of biological resources;
- “heritage of indigenous peoples”<sup>22</sup> and “indigenous heritage rights”,<sup>23</sup>
- “traditional medicinal knowledge”<sup>24</sup> in the context of health policy;
- “expressions of folklore”<sup>25</sup> in the context of IP protection;
- “folklore” or “traditional and popular culture” in the context of safeguarding traditional culture;<sup>26</sup>
- “intangible cultural heritage”,<sup>27</sup>
- “indigenous intellectual property”<sup>28</sup> and “indigenous cultural and intellectual property”,<sup>29</sup>
- “traditional ecological knowledge”; and
- “traditional and local technology, knowledge, know-how and practices.”

A non-exhaustive list of some of the terms in use is provided in Annex I to this document.

#### IV. CHOICE OF AN APPROPRIATE TERM OR TERMS

19. There is, accordingly, a diffuse range of potentially overlapping terms in current use in international, regional and national discussions related to TK, corresponding with a wide range of policy frameworks. Terms are not neutral, and the choice of a term is neither arbitrary nor irrelevant. The choice of term may be perceived as sending certain messages or value judgments, even if this is inadvertent. Thus, for example, the use of the word

<sup>21</sup> Article 8(j) of the Convention on Biological Diversity, 1992

<sup>22</sup> “The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic creation such as music, dance, song, ceremonies symbols and designs, narratives and poetry and all forms of documentation of and by indigenous peoples; all kinds of scientific, agricultural, technical, medicinal, biodiversity related and ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immovable cultural property such as sacred sites of cultural, natural and historical significance and burials.” Daes, Irene-Erica, “Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples”, United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1995/26, as revised in E/CN.4/Sub.2/2000./26), paragraph 13.

<sup>23</sup> Janke, *op. cit.*, p. 11; Simpson, *op. cit.*, p. 21.

<sup>24</sup> “[T]he sum total of the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health, as well as in the prevention diagnosis, improvement or treatment of physical and mental illnesses. The terms complementary/alternative/non-conventional medicine are used interchangeably with traditional medicine in some countries.” Document WHO/EDM/TRM/2000

<sup>25</sup> See the WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, (1982), Annex II, Section 2.11 below.

<sup>26</sup> “Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts.” UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore, 1989

<sup>27</sup> UNESCO.

<sup>28</sup> McDonald, *op. cit.*, p. 14.

<sup>29</sup> Janke, *op. cit.*, uses the term “Indigenous Cultural and Intellectual Property.”



“traditional” is objected to by some and “customary” is preferred. There are concerns that this might limit protection to historical (‘old’) material only rather than new or adapted material developed within living cultures and customs, or that legal rights will only pertain to those culturally transmitted aspects of indigenous culture which remain demonstrably faithful to ancient beliefs, practices and knowledge:

“[The] adherence to “tradition” would require indigenous peoples to gather historical proof of the authenticity of their ‘traditions’ before the rights stemming from traditional beliefs, practices or knowledge could be lawfully exercised... At first glance this distinction [between ‘traditional rights’ and ‘customary rights’] may appear predominantly semantic, but the subtle differences in meaning of these terms convey very different messages about indigenous cultural heritage. The term ‘customary,’ for example, implies that indigenous heritage has its origins in traditional knowledge, practices and beliefs which have been transmitted to and reinterpreted by successive generations. Although customs are in harmony with the traditions that have given rise to them, they also embrace and reflect contemporary indigenous practices and beliefs.”<sup>30</sup>

The word “knowledge,” as in “traditional knowledge,” for example, has also been questioned. For IP purposes, it has been suggested that “innovations” rather than “knowledge” would more aptly signal the subject matter.<sup>31</sup>

20. A number of commentators have referred to negative and Eurocentric connotations of the terms “folklore” and “expressions of folklore.” To one commentator, for instance, the term suggests “something dead to be collected and preserved, rather than as part of an evolving living tradition.”<sup>32</sup> Representatives of the Spanish-speaking countries at the 1984 session of the WIPO-UNESCO Group of Experts on the Protection of Expressions of Folklore by Intellectual Property took the position that “folklore” was an archaism, with the negative connotation of being associated with the “creations of lower or superseded civilizations.”<sup>33</sup> On the other hand, other participants in the same session pointed out that the term had acquired new meaning and legitimacy.<sup>34</sup> From the work of the Committee to date, it is already apparent that “folklore” is still used internationally by a number of governments, organizations and academics. The WIPO-UNESCO Model Provisions, using this term, remain an international reference point in this area, and the term appears in several operational legal mechanisms at the domestic<sup>35</sup> and international<sup>36</sup> levels.

21. Another area of uncertainty is the relationship between “traditional knowledge” and “indigenous knowledge.” “Indigenous knowledge” is either used to describe knowledge held and used by communities, peoples and nations that are indigenous, or to denote knowledge

<sup>30</sup> Simpson, T., *op. cit.*, p. 21.

<sup>31</sup> Crucible Group, *Seeding Solutions*, 2001 (Draft), p. 61.

<sup>32</sup> Janke, T., “UNESCO-WIPO World Forum on the Protection of Folklore: Lessons for Protecting Indigenous Australian Cultural and Intellectual Property” (1997) 15 Copyright Reporter 104, at p. 109.

<sup>33</sup> Blakeney, *op. cit.*, p. 251.

<sup>34</sup> WIPO, “Copyright: Monthly Review of the World Intellectual Property Organization” (1985), 40 at p. 41.

<sup>35</sup> Of the 32 responses to the survey on national experiences in the protection of expressions of folklore reported in WIPO/GRTKF/IC/2/8, 12 advised of specific legal protection for expressions of folklore (Question 1.3).

<sup>36</sup> WIPO Performances and Phonograms Treaty, Article 2.

which is itself indigenous, in the sense of specifically originating in a certain region or country: “‘indigenous’ means belonging to, or specific to, a particular place.”<sup>37</sup> Whichever sense of ‘indigenous knowledge’ is used, however, the general usage seems to suggest that all indigenous knowledge is traditional knowledge, although it is likely that some traditional knowledge may not have the specific characteristic of being “indigenous.”<sup>38</sup>

22. No one term will command uniform acceptance and debate over various terms could in fact displace substantive debate as to the nature of protection of the subject matter of concern. It is likely that, in order for international discussions to move forward, there will be a practical need for some degree of progressive, cumulative development and clarification, and interaction between a term and the scope of protection attached to it. While there are many perspectives on which terms are appropriate, reflecting the diversity of stakeholders and policy interests, the process of settling on a uniformly acceptable term appears to be less significant than considering the underlying subject matter the term is to cover, and the form of protection it is to be afforded. It is suggested that the term “traditional knowledge” continued to be used by the Committee, and that discussions continue in relation to “expressions of folklore” (or “folklore”) as a specific subset of the more general term, reflecting the particular policy interests in this area expressed by a number of Committee participants and the particular experience in this area at the national level. The discussion on substantive matters should help clarify whether it would be useful to keep a distinct notion of “folklore” (or some similar term), or whether it should be folded into the broader concept of “traditional knowledge.” The continuing work of the Committee may also shed light on the current range of uses of the terms “folklore” and “expressions of folklore,” as well as related terms that might attract broad acceptance, such as “expressions of traditional culture,” “cultural expression” and “traditional creativity.”

## V. TRADITIONAL KNOWLEDGE SUBJECT MATTER FOR INTELLECTUAL PROPERTY PROTECTION

23. As suggested above, the approach to the definition of ‘traditional knowledge’ may need to take account of existing attempts to characterize this term and other related terms. In particular, it may respond to developments in other international fora, given the growing linkages and cooperation between these different policy areas and the emphasis already laid during in the work of the Committee on the need for coordination with other policy discussions.<sup>39</sup>

24. Other international processes have defined the subject matter in broad, inclusive terms. Some illustrative examples are:

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<sup>37</sup> Comment on the Draft WIPO FFM Report by Mr. Graham Dutfield, Researcher, Oxford Centre for the Environment, Ethics and Society, dated December 12, 2000.

<sup>38</sup> J. Mugabe, “Intellectual Property Protection and Traditional Knowledge,” *Intellectual Property and Human Rights* (WIPO, 1999), p. 97 at pp. 98-99

<sup>39</sup> See document WIPO/GRTKF/IC/1/1/13, *passim*, for several references to the need for coordination between intellectual property discussions and related discussions regarding the Convention on Biological Diversity, 1992 (the CBD) and the Food and Agricultural Organization (FAO) International Treaty on Plant Genetic Resources for Food and Agriculture.

- discussions on Article 8(j) of the Convention on Biological Diversity;<sup>40</sup>
- regional forums such as the UNESCO Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands, Noumea, 1999;<sup>41</sup> and
- the United Nations Draft Declaration on the Rights of Indigenous Peoples<sup>42</sup>

25. Reflecting this general approach, the WIPO Secretariat made use of the following working concept of ‘traditional knowledge’ for the purposes of the fact-finding missions in 1998-1999:

“ ‘traditional knowledge’ ... refer[s] to tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. “Tradition-based” refers to knowledge systems, creations, innovations and cultural expressions which: have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and, are constantly evolving in response to a changing environment. Categories of traditional knowledge could include: agricultural knowledge; scientific knowledge; technical knowledge; ecological knowledge; medicinal knowledge, including related medicines and remedies; biodiversity-related knowledge; “expressions of folklore” in the form of music, dance, song, handicrafts, designs, stories and artwork; elements of languages, such as names, geographical indications and symbols; and, movable cultural properties. Excluded from this description of TK would be items not resulting from intellectual activity in the industrial, scientific, literary or artistic fields, such as human remains, languages in general, and other similar elements of “heritage” in the broad sense.”

26. As discussed in the opening section of this paper, these general definitions of ‘traditional knowledge’ need not define the actual scope of legal protection that is accorded to traditional knowledge as such. Much of the material covered in these general definitions is potentially already entitled to some form of protection under other areas of IP law, such as

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<sup>40</sup> Note by the Executive Secretary, Traditional Knowledge and Biological Diversity (UNEP/CBD/TKBD/1/2), paragraph 85: “Traditional knowledge ... is a term used to describe a body of knowledge built by a group of people through generations living in close contact with nature. It includes a system of classification, a set of empirical observations about the local environment, and a system of self-management that governs resource use. ... traditional forest-related knowledge is associated with the following features:

- i. information about the various physical, biological and social components of a particular landscape;
- ii. rules for using them without damaging them irreparably;
- iii. relationships among their users;
- iv. technologies for using them to meet the subsistence, health, trade and ritual needs of local people; and
- v. a view of the world that incorporates and makes sense of all the above in the context of a long-term and holistic perspective in decision-making.

<sup>41</sup> See Annex II, Section 2.4 below

<sup>42</sup> Article 29 provides: “Indigenous people are entitled to the recognition of the full ownership, control, and protection of their cultural and intellectual property. They have the right to special measures to control, develop, and protect their sciences, technologies, and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, and visual and performing arts.”

design law, copyright, performers' rights, trademark law and the law of confidentiality or undisclosed information. Some material may also be covered by non-IP law, such as contract law or cultural heritage law. It is important to clarify the distinction between 'legal protection' and other forms of material protection, such as physical preservation and conservation, as this clarifies the operational scope of a definition of TK that is more relevant to IP-related protection. Accordingly, work towards a definition of 'traditional knowledge' can simply focus on the distinguishing characteristics of traditional knowledge, without necessarily determining whether or how all subject matter so defined is to be given distinct legal protection. For instance, the parallel paper WIPO/GRTKF/IC/3/8 discusses the possible elements of *sui generis* protection of traditional knowledge.

27. One issue, however, is the degree to which a general definition of 'traditional knowledge' for the purposes of the Committee should take account of the IP focus of this forum, and the extent to which the definition should be tailored to relate to the operation of IP systems. Caution has been sounded as to this approach, and the concern expressed that complex and interconnected knowledge systems may be disaggregated to suit the IP system. "Once you have done to indigenous and local knowledge whatever is necessary to make it fit into the IP mould, it would not be recognizable as indigenous and local knowledge anymore."<sup>43</sup> Yet this concern applies essentially to the application of specific IP legal concepts to traditional knowledge. Broader definitions of intellectual property are potentially more adaptable and accommodating. For instance, the WIPO Convention defines 'intellectual property' with reference to the main areas of conventional IP law but also to include 'scientific discoveries' and 'all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.'<sup>44</sup> Similarly, the Paris Convention indicates that '[i]ndustrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products.'<sup>45</sup>

28. From this point of view, the key IP-related feature that may apply to traditional knowledge is a stipulation that it is in some sense the result of intellectual activity, and is therefore not merely an artefact or physical object associated with a local or Indigenous culture. Its very identification as a form of 'knowledge' inherently sets it in the domain of intellectual activity, broadly construed. It may result from intellectual activities in a wide range of fields, such as the industrial, scientific, literary or artistic, with these construed broadly.

29. Indeed, the broad IP-related sense of 'resulting from intellectual activity' keys in with one way in which 'traditional knowledge' is characterized: it is not necessarily the content in itself of knowledge that makes it 'traditional,' but rather the context, method and qualities of the intellectual processes that create the knowledge, including the community and cultural context.<sup>46</sup> In that sense, the way the knowledge is derived, preserved, and transmitted may be at least as significant as the content itself.

"In the context of knowledge, innovation is a feature of indigenous and local communities whereby tradition acts as a filter through which innovation occurs. In this

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<sup>43</sup> Crucible Group, Seeding Solutions, (Draft), 2001, p. 94.

<sup>44</sup> Article 2 (viii), WIPO Convention

<sup>45</sup> Paris Convention, Article 1(3)

<sup>46</sup> See the parallel discussion in document WIPO/GRTKF/IC/3/8, from paragraph 12.

context, it is traditional methods of research and application and not always particular pieces of knowledge that persist. Practices should therefore be seen as the manifestations of knowledge and innovation.”<sup>47</sup>

30. This focus on the context of knowledge has the further implication that traditional knowledge is not necessarily fixed or static, and indeed the cultural or community framework in which it is developed or transmitted may itself evolve and adapt.

“Local and indigenous knowledge systems are not static. They evolve, adapt and transform dynamically with time. New materials are incorporated, new processes are developed, and sometimes new uses or purposes are evolved for existing knowledge besides the acquisition of knowledge. . . (t)he contemporary knowledge could build upon traditional knowledge but may also be developed autonomously.”<sup>48</sup>

31. It may therefore be significant to have regard to traditional knowledge systems and their interaction with the community and cultural context, while recognizing the diversity of these systems. Even if it contains information of a practical or technological character, traditional knowledge has a cultural dimension and a social context that can distinguish it from other forms of scientific or technological information. The role of customary law in defining traditional knowledge is also potentially important, but this may be more directly relevant in determining how TK is to be protected, rather than the broad scope of potentially relevant subject matter that would be found in a general definition.

32. Traditional knowledge systems exist in fields such as medicine, food and agriculture, environmental management and biodiversity conservation, nutrition, and cultural objects to name a few. Some traditional knowledge systems are codified, others are not. Not all traditional knowledge is produced collectively and/or is inter-generational. Accordingly, a broad definition of traditional knowledge may not be limited to codified or systematic forms, or knowledge originated in a collective way. Even where to an external observer, a knowledge system may not be apparent or when a system is not documented, there may well be a traditional system in use by the community concerned. In any event, TK holders may be unwilling to accept that traditional knowledge need to conform with a recognised or documented knowledge system to be potentially eligible for legal protection.

33. Another feature of traditional knowledge is a sense of self-identity with the community. Traditional knowledge is a means of cultural identification of its holders, so that its preservation and integrity are linked to concerns about the preservation of distinct cultures *per se*. A definition of traditional knowledge may also include an element responding to the right, claimed by indigenous groups, local communities and other TK holders, to identify for themselves what constitutes their own knowledge, innovations, cultures and practices, and the ways in which they should be defined. For example, the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples stated that “In the development of policies and practices, Indigenous Peoples should: . . . Define for themselves their own intellectual and cultural property.”

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<sup>47</sup> Note by the Executive Secretary, Traditional Knowledge and Biological Diversity, (UNEP/CBD/TKBD/1/2), paragraph 85.

<sup>48</sup> Gupta, A., “Rewarding Traditional Knowledge and Contemporary Grassroots Creativity: The Role of Intellectual Property” (Draft), p. 10.

34. A related point is the nature of the connection between traditional knowledge as such and the community within which it originates. Even where there is resistance to the notion of 'ownership' as such, particularly if this is seen as connoting individual or private ownership, there may be a sense of connection, including community or collective ownership,<sup>49</sup> and related senses of responsibility for protection and custodianship.<sup>50</sup> The relationship may be expressed through a community's identity helping to define the tradition in which knowledge is developed and transmitted. The relationship may entail a positive sense of responsibility on the part of the community or collective group, an active sense of obligation to preserve TK and to use it in certain defined, appropriate ways; or it may entail a negative sense, in that the misuse or pejorative misappropriation of traditional knowledge may be seen as harmful or offensive to the community or a set of collective values.

35. Accordingly, if a definition is not aimed at prescribing exactly what portion of knowledge is to be given legal protection and does not itself define the nature of protection, then a definition of 'traditional knowledge' might include elements such as:

- recognition of the knowledge as originating, preserved and transmitted in a traditional context;
- possible association of the knowledge with the traditional or Indigenous culture or community which undertakes the generation, preservation and transmission of the knowledge;
- some sense of relationship between the knowledge and a traditional or Indigenous community or other group of persons identifying with a traditional culture, such as a sense of obligation to preserve the knowledge, or a sense that misappropriation or demeaning usage would be harmful or offensive;
- from the IP perspective, knowledge that originates from intellectual activity in a wide range of social, cultural, environmental and technological contexts; and
- some sense of the community or other group itself identifying the knowledge as traditional knowledge.

*Survey of Protected Traditional Knowledge Subject Matter as Referred to in National, Regional and International Laws, Draft Laws and Instruments*

36. As of January 1, 2001, at least 22 countries and three regional integration organizations had made, or were in the process of making, available specific legal protection for traditional knowledge-related subject matter.<sup>51</sup> Annex II sets out provisions from certain national regional and international laws and instruments, including draft laws and instruments, which describe the subject matter referred to in the law or instrument. Annex II also includes definitions or descriptions contained in governmental proposals or statements relating to IP and traditional knowledge. Not all of these laws and instruments deal directly with IP, and the Annex includes also definitions and descriptions of folklore-related subject matter. Annex III sets out additional definitions and descriptions of traditional knowledge-related subject

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<sup>49</sup> See document WIPO/GRTKF/IC/1/13, para. 136.

<sup>50</sup> See WIPO FFM Report, pp. 21-22.

<sup>51</sup> See documents WIPO/IPTK/RT/99/6A; WIPO/IPTK/RT/99/6B; TD/B/COM.1/EM.13/2; TD/B/COM.1/EM.13/3; UNEP/CBD/WG8J/1/2; UNEP/CBD/COP/5/5; and *Report of the Interregional Workshop on Intellectual Property Rights in the Context of Traditional Medicine*, Bangkok, December 6 to 8, 2000.

matter, including folklore, in the publications of non-governmental organizations, indigenous peoples' declarations and academic literature.

37. From these provisions, certain observations may be made:

(i) it appears that they describe the subject matter concerned in one or both of two ways: (a) by enumerating the key criteria (the key attributes or qualities) of the subject matter concerned; and/or (b) by listing examples of the subject matter concerned, in order to demarcate the categories of traditional knowledge forms covered. In the latter case, the list may either be closed or open and non-exhaustive. Open, non-exhaustive lists are the more common;

(ii) in so far as the key attributes, or key qualities, are concerned, these take various forms. For example:

(a) certain of the laws and instruments define the subject matter with reference to the nature of the persons or communities which developed or which hold the subject matter.

For example, "all individual and collective knowledge, innovations or practices *of local communities* based on biological resources"<sup>52</sup> (emphasis added); "[Collective knowledge] is 'Knowledge relating to the properties of the biologic resources developed by *the indigenous peoples*'"<sup>53</sup> (emphasis added); "Community Knowledge or indigenous knowledge is the accumulated knowledge that is vital for conservation and sustainable use of biological resources and/or which is of socio-economic value, and which has been developed over the years *in indigenous/local communities*."<sup>54</sup> (emphasis added); ". . . knowledge, innovations and practices *of indigenous and local communities* embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity"<sup>55</sup> (emphasis added).

Such an approach necessitates, however, a discussion of what is meant by "indigenous" and "local" in notions such as "indigenous peoples" and "indigenous and local communities."

For purposes of WIPO's work to date, WIPO has used the term "traditional knowledge holder" to refer to all persons who create, originate, develop and practice traditional knowledge in a traditional setting and context. Indigenous communities, peoples and nations are traditional knowledge holders, but not all traditional knowledge holders are indigenous.

(b) certain of the laws and instruments make reference to particular subject matter.

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<sup>52</sup> Annex 2, Lao Law

<sup>53</sup> Annex 2, Peru Law

<sup>54</sup> Draft African Model Legislation for the Protection of the Rights of Local Communities, farmers and Breeders and for the Regulation of Access to Biological Resources 3<sup>rd</sup> Ordinary Session of OU/AEC Ministers of Trade, 16-18 September, 2000, Egypt, Part II – Definitions

<sup>55</sup> Article 8(j), Convention on Biological Diversity, 1992.

For example: “Community Knowledge or indigenous knowledge is the accumulated knowledge *that is vital for conservation and sustainable use of biological resources* and/or which is of socio-economic value, and which has been developed over the years in indigenous/local communities.”<sup>56</sup>; “For the purposes of this law, intangible components, which are included within the term biodiversity, are: the knowledge, innovations and practices, be they traditional, individual or collective, with real or potential value *associated with biochemical or genetic resources*, whether these are protected or not by systems of IP or by *sui generis* registration systems.”<sup>57</sup> (emphasis added); “all individual and collective knowledge, innovations or practices *of local communities based on biological resources*”<sup>58</sup>

(c) In certain, but not many, cases, the subject matter is described in terms of “innovation and creation” or “added value.”

For example: “Traditional knowledge consists largely of *innovations, creations* and cultural expressions generated or preserved by its present possessors, who may be defined and identified as individuals or whole communities, natural or legal persons, who are holders of rights. The economic, commercial and cultural value of this traditional knowledge for its possessors warrants and justifies a legitimate interest that this knowledge be recognized as subject matter of intellectual property.”<sup>59</sup> (emphasis added); “Traditional knowledge (in the strict sense): this is a non-limitative reference to knowledge and practices associated with plants and animals, natural medicines and medical treatments, nutritional and cosmetic knowledge, knowledge of perfumery, etc., *that embody intellectual added value* and are in the public domain.”<sup>60</sup> (emphasis added).

(d) Certain descriptions refer to the public domain.

For example: “Traditional knowledge (in the strict sense): this is a non-limitative reference to knowledge and practices associated with plants and animals, natural medicines and medical treatments, nutritional and cosmetic knowledge, knowledge of perfumery, etc., that embody intellectual added value and *are in the public domain*. Innovations: these are the same knowledge and practices as described above, except that *they are not in the public domain*”<sup>61</sup> (emphasis added). The meaning of public domain in relation to traditional knowledge protection is the subject of much debate.<sup>62</sup>

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<sup>56</sup> Draft African Model Legislation for the Protection of the Rights of Local Communities, farmers and Breeders and for the Regulation of Access to Biological Resources 3<sup>rd</sup> Ordinary Session of OU/AEC Ministers of Trade, 16-18 September, 2000, Egypt, Part II – Definitions

<sup>57</sup> Annex 2, Costa Rica Law

<sup>58</sup> Annex 2, Lao Law

<sup>59</sup> WT/GC/W/362, Proposal by Bolivia, Colombia, Ecuador, Nicaragua and Peru (preparations for the 1999 WTO Ministerial Conference (<http://member.nifty.ne.jp/menu/wto/md99/md99e362.htm>))

<sup>60</sup> WIPO/GRTKF/IC/1/5, Annex I, p. 6 (Submission by Group of Countries of Latin America and the Caribbean (GRULAC).

<sup>61</sup> WIPO/GRTKF/IC/1/5, Annex I, p. 6 (Submission by Group of Countries of Latin America and the Caribbean (GRULAC).

<sup>62</sup> G. Dutfield, *The Public and Private Domains: Intellectual Property Rights in Traditional Knowledge*, 21/3 SCIENCE COMMUNICATION, 278 (2000).



This question may be better located in the discussion of what portions of TK are to be protected by a specific legal mechanism, and how, rather than built into a general definition of TK as such.

*38. The Intergovernmental Committee is invited to note and comment on the contents of this document and its Annexes.*

[Annex I follows]

ANNEX I

LIST OF VARIOUS TERMS GIVEN TO TRADITIONAL KNOWLEDGE

Traditional Knowledge  
Indigenous Knowledge  
Community Knowledge  
Traditional Ecological Knowledge  
Local Knowledge  
Traditional Environmental Knowledge  
Aboriginal Tradition  
Cultural Patrimony  
Folklore  
Expressions of Folklore  
Cultural Heritage  
Traditional Medicine  
Cultural Property  
Indigenous Heritage (Rights)  
Indigenous Cultural and Intellectual Property (Rights)  
Indigenous Intellectual Property  
Customary Heritage Rights  
Traditional Knowledge, Innovations and Practices  
Popular Culture  
Intangible Component

[Annex II follows]

## ANNEX II

## 1. NATIONAL AND REGIONAL LAWS AND DRAFT LAWS

1.1 Rules and Regulations Implementing Republic Act No. 8371 -The Indigenous Peoples' Rights Act of 1997 (Philippines)<sup>63</sup>

“*Indigenous Knowledge Systems and Practices*” refer to systems, institutions, mechanisms and technologies comprising an unique body of knowledge evolved through time that embody patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious spheres and which are the direct outcome of the indigenous peoples,’ responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given socio-cultural and bio-physical conditions.”<sup>64</sup>

1.2 Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Australia)<sup>65</sup>

Section 3 (c): (...) “*Aboriginal tradition*” means the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships;”

1.3 Biodiversity Law (Law No.7788)- April 23, 1998 (Costa Rica)<sup>66</sup>

Article 7 (2): *Biodiversity*: (...) “For the purposes of this law, intangible components, which are included within the term biodiversity, are: the knowledge, innovations and practices, be they traditional, individual or collective, with real or potential value associated with biochemical or genetic resources, whether these are protected or not by systems of intellectual property or by *sui generis* registration systems.”

Article 7 (6): *Knowledge*: “Dynamic product generated by society over time and by different means, including that which is produced in the traditional manner, and that generated by scientific practice”.

1.4 Decree on Biological Resources and Related Traditional Knowledge (Lao)<sup>67</sup>

“*Traditional Knowledge*: all individual and collective knowledge, innovations or practices of local communities based on biological resources.”

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63 Of the “National Commission on Indigenous Peoples” of the Philippines

64 The President of the National Commission of Indigenous Peoples of Philippines presented a report to WIPO on 1 - 2 November 1999 which stated:(...) “In the Philippines, traditional knowledge touches on almost all facets of the economic and social development of a community from agriculture to literature and from customary law to arts and crafts and so on (...)”

65 [www.austlii.edu.au/au/legis/cth/consol\\_act/aatsihpa1984549.txt](http://www.austlii.edu.au/au/legis/cth/consol_act/aatsihpa1984549.txt)

66 Law No. 7788 page 2

67 Law of Laos (date unknown)

1.5 Proposal of Regime of Protection of the Collective Knowledge of the Indigenous People (Peru)<sup>68</sup>

Article 2(a): Collective Knowledge: “Knowledge relating to the properties of the biologic resources developed by the indigenous peoples.”

Article 9: Collective nature of the Knowledge. “The collective nature protected under this Regime is that which belongs to an indigenous people and not to individuals that form part of said people. It may belong to various indigenous peoples. These rights are independent of those that may generate inside the indigenous peoples, and for which effect of profit distribution they may appeal to their traditional systems.”

Article 10: Collective knowledge and Cultural patrimony. “The collective knowledge forms part of the cultural heritage of the indigenous peoples.”

1.6 Protection and Promotion of South African Indigenous Knowledge’s Draft Bill (South Africa)<sup>69</sup>

Section (xv): “indigenous knowledge” refers to social capital in the form living skills and means productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community of South Africa or individuals reflecting the traditional artistic expectations of such a community, in particular:

(a) cultural properties of the South African people which have been created, nurtured and transmitted from generation to generation (...)”

1.7 Decision 391 Common Regime on Access to Genetic Resources (Andean Community)

Intangible Component: all know-how, innovation or individual or collective practice, with a real or potential value, that is associated with the genetic resource, its by-products or the biological resource that contains them, whether or not protected by intellectual property regimes.

1.8 Decision 486 on the Biological and Genetic Heritage and Traditional Knowledge (Andean Community)<sup>70</sup>

Article 3: “The Member Countries shall ensure that the protection granted to intellectual property elements shall be accorded while safeguarding and respecting their biological and genetic heritage, together with the traditional knowledge of their indigenous, African American, or local communities. As a result, the granting of patents on inventions that have been developed on the basis of material obtained from that heritage or that knowledge shall be subordinated to the acquisition of that material in accordance with international, Andean Community, and national law. The Member Countries recognize the right and the authority

68 Statutory Requirements of Peru, Annex C, (date unknown)

69 Republic of South Africa (Draft Bill), Private Members’ Bill: MW Serote-(date unknown)

70 Decision 486 Common Intellectual Property Regime (Non official translation)

of indigenous, African American, and local communities in respect of their collective knowledge.”

Article 136 (g): “consist of the name of indigenous, African American, or local communities, or of such denominations, words, letters, characters, or signs as are used to distinguish their products, services or methods of processing, or that constitute an expression of their culture or practice, unless the application is filed by the community itself or with its express consent”;

1.9 Draft African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources (Organization of African Unity)

*Community Knowledge*<sup>71</sup> or indigenous knowledge is the accumulated knowledge that is vital for conservation and sustainable use of biological resources and/or which is of socio-economic value, and which has been developed over the years in indigenous/local communities.

1.10 Angola: Law on Authors’ Rights No. 4/90 of March 10, 1990

Article 4(f): “*folklore*” means all literary, artistic and scientific works created on the national territory by authors presumed to originate in certain regions or ethnic communities, passed from generation to generation – anonymously or collectively or by other means – and constituting one of the basic elements of the traditional cultural heritage;

Article 4(g): “*intellectual creation*” means any work bearing witness to the adequate knowledge and judgement of its author, of his choices, his contributions and his experiences;

1.11 Malawi: Copyright Act No. 9 of April 26, 1989<sup>72</sup>

Section 2: “*folklore*” means all literary, dramatic, musical and artistic works belonging to the cultural heritage of Malawi created, preserved and developed by ethnic communities of Malawi or by unidentified Malawi authors, (...)

1.12 Lesotho: Copyright Order No. 13 of 1989

Section 2: “*expression of folklore*” means production consisting of characteristic elements of the traditional artistic heritage developed and maintained over generations by a community or by individuals reflecting the traditional artistic expectations of their community;\_

1.13 Tunisia: Law No. 94-36 of February 24, 1994 on Literary and Artistic Property

Article 7: Folklore forms part of the national heritage. Folklore within the meaning of this Law shall be any artistic heritage bequeathed by preceding generations and bound up with

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71 Draft African Model Legislation for the Protection of the Rights of Local Communities, farmers and Breeders and for the Regulation of Access to Biological Resources 3rd Ordinary Session of OU/AEC Ministers of Trade, 16-18 September, 2000, Egypt, Part II – Definitions

72 As Amended by the Statute Law No. 2, of November, 1989

customs and traditions and any aspect of folk creation such as folk stories, writings, music and dance.

1.14 Panama: Law on Copyright and Neighboring Rights and Enacting Other Provisions, Law No. 15 of August 8, 1994

Article 2.11: “*expressions of folklore*” means production of characteristic elements of the traditional cultural heritage, constituted by the whole store of literary and artistic works created on the national territory by unknown or unidentified authors presumed to be nationals or to belong to the country’s ethnic communities, and which are handed down from the traditional artistic or literary aspirations of a community;

1.15 Bolivia: Law on Copyright No.12 of April 29, 1992

Article 21: (...) folklore being understood in the strict sense of the body of literary and artistic works created within the national territory by unknown or unidentified authors presumed to be nationals of the country or of its ethnic communities, which are handed down from generation to generation and thereby constitute one of the fundamental elements of the traditional cultural heritage of the nation.

1.16 Algeria: Copyright Ordinance No. 73-14 of April 3, 1973

Article 14: For the purpose of this Ordinance, “*folklore*” shall be understood to mean works of which the authors are unknown but in respect of which there is every ground to presume that such author is or was a national for the Democratic and Popular Republic of Algeria, and “work inspired by folklore” shall be understood to mean any work composed with the aid of elements borrowed from the traditional cultural heritage of Algeria.

1.17 Benin: Law on the Protection of Copyright of March 15, 1984

Article 10: Folklore shall belong *ab origine* to the national heritage.

(1) Folklore shall mean all literary, artistic, religious, scientific, technological and other traditions and productions created by the national communities, passed on from generation to generation and thus constituting the basic elements of the national cultural heritage.

1.18 Burundi: Decree-Law No. 1/9 Regulating the Rights of Authors and Intellectual Property in Burundi, May 4, 1978

Article 4: All literary, artistic and scientific works created on the national territory by authors presumed to be nationals of Burundi, passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage, shall be considered works of national folklore.

1.19 Cameroon: Law No. 82-18 to Regulate Copyright of November 26, 1982

Section 4 (viii): folklore: all literary, artistic and scientific works produced by various communities and which, passed on from one generation to another, are part of the traditional cultural heritage of the country.

1.20 Cameroon: Law No. 90-010 on Copyright of August 10, 1990

(10) Folklore: all productions involving aspects of traditional cultural heritage, produced and perpetuated by a community or by individuals who are clearly responding to the expectations of such community, comprising particularly folk tales, folk poetry, popular songs and instrumental music, folk dances and shows, as well as artistic expressions, rituals and productions of popular art.

1.21 Central African Republic: Ordinance No. 85 002 on Copyright of January 5, 1985

Article 9: Folklore shall belong *ab origine* to the national heritage.

Folklore shall mean all the literary and artistic productions created by the national communities, passed on from generation to generation and constituting one of the basic elements of the traditional cultural heritage.

A work inspired by folklore shall mean any work composed of elements taken from the traditional cultural heritage.

1.22 Congo: Law on Copyright and Neighboring Rights of July 7, 1982

Article 15: Folklore shall belong originally to the national heritage. For the purposes of this Law, folklore shall mean all literary and artistic productions created on the national territory by authors presumed to be Congolese nationals or by Congolese ethnic Communities, passed from generation to generation and constituting one of the basic elements of the national traditional cultural heritage.

1.23 Ghana: Copyright Law of March 21, 1985

Section 53: In this Law, unless the context otherwise requires -

(...) folklore means all literary, artistic and scientific work belonging to the cultural heritage of Ghana which were created, preserved and developed by ethnic communities of Ghana by unidentified Ghanaian authors, and any such works designed under this Law to be works of Ghanaian folklore;

1.24 Guinea: Law Adopting Provisions on Copyright and Neighboring Rights in the Revolutionary People's Republic of Guinea, August 9, 1980

Article 9: Folklore shall belong in the first instance to the national heritage.

For the purpose of this Law:

(1) folklore means all literary and artistic creations made by authors presumed to be of Guinean nationality, passed from generation to generation and constituting one of the basic elements of the traditional Guinean cultural heritage.

1.25 Côte d'Ivoire: Law No. 78-634 on the Protection of Intellectual Works of July 28, 1978

Article 7: Folklore shall belong originally to the national heritage.  
For the purpose of this Law:

- (i) folklore means all literary and artistic productions, passed from generation to generation, which form part of the traditional cultural heritage of the Côte d'Ivoire, the identity of whose author is unknown, but where there is every reason to presume him to be a national of the Côte d'Ivoire;
- (ii) works derived from folklore means any work composed of elements borrowed from the traditional cultural heritage of the Côte d'Ivoire;

1.26 Kenya: The Copyright Act of 1966, as amended up to 1989 - Regulations and Extensions of Application of Act

Article 15: (...)

(4) (...) folklore means any literary, musical or artistic work presumed to have been created within Kenya by an unidentified author which has been passed from one generation to another and constitutes a basic element of the traditional cultural heritage of Kenya.

1.27 Liberia: Act Adopting a new Patent, Copyright and Trademark Law of May 24, 1972

Article 2.1:[...]

(c) the term "literary, scientific or artistic work," irrespective of the value and the manner or form of expression shall include the following:

(1) works inspired by folklore;[...]

(e) the term "work inspired by folklore" means any literary, scientific or artistic work composed with the aid of elements which belong to the traditional African cultural heritage.

Article 8: Folklore shall form part of the national cultural heritage. With the exception of public legal entities, the direct or indirect fixation of folklore with a view to its exploitation for profit-making purposes shall require an authorization from the Minister responsible for the arts and culture, who may require that the fixation shall be subject to the payment of a fee in accordance with a decree to be issued by the said Minister.

1.28 Morocco: Dahir (Act) Relating to the Protection of Literary and Artistic Works of 1970

Article 10:

(5) Folklore shall be taken to mean unpublished works where the identity of the author is unknown but where there is every ground to presume that he is or was a Moroccan national.

(6) "A work inspired by folklore" shall be taken to mean any work composed with the aid of elements borrowed from the traditional Moroccan cultural heritage.



1.29 Rwanda. Law Governing Copyright of November 15, 1983

Article 3: Works of folklore shall be protected in the same way as original works. For the purposes of this Law, folklore shall mean all the literary, artistic, religious, scientific, technological and other traditions and productions created from generation to generation by individual unidentified Rwandese, which thus constitute the fundamental elements of the Rwandese heritage.

1.30 Senegal: The Copyright Act 1973 (No. 73-52) of December 4, 1973 as amended by Act No. 86-05 January 24, 1986

Article 9: Folklore shall belong originally to the national cultural heritage. For the purposes of this law:

- (1) folklore means all literary and artistic works created by authors presumed to be Senegalese nationality, passed from generation to generation and constituting one of the basic elements of the traditional Senegalese cultural heritage;
- (2) work inspired by folklore means work composed exclusively of elements borrowed from the Senegalese traditional cultural heritage;

1.31 Zaire: Ordinance-Law on Protection of Copyright and Neighboring Rights of April 5, 1986

Article 6: For the purpose of this Ordinance-Law: [...]

(k) folklore shall mean an artistic, literary or scientific work passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage;

(1) works derived from folklore shall mean a work composed of elements borrowed from the traditional cultural heritage.

1.32 Togo: Law on the Protection of Copyright, Folklore and Neighboring Rights No. 91-12 of June 10, 1991

Article 66: Folklore is an original component of the national heritage. For the purposes of this Law, folklore consists of all literary and artistic products created on the national territory by anonymous, unknown or forgotten authors presumed to be Togolese nationals or ethnic communities, handed down from generation to generation and constituting one of the fundamental elements of the national cultural heritage.

1.33 Burkina Faso: Ordinance Affording Protection to Copyright No.83-16 CNR. PRES of September 29, 1983 as rectified by Ordinance no 84-12 CNR. PRES of February 29, 1984

Article 10: For the purposes of this Ordinance:

(a) folklore shall mean all literary and artistic productions created on the national territory by national ethnic communities, passed from generation to generation and constituting one of the basic elements of the traditional cultural heritage of Burkina Faso;

(b) works derived from folklore shall mean any work composed of elements borrowed from the traditional cultural heritage of Burkina Faso;

1.34 Mali: Ordinance Concerning Literary and Artistic Property of July 12, 1977

Article 8: Folklore shall form part of the national cultural heritage. With the exception of public legal entities, the direct or indirect fixation of folklore with a view to its exploitation for profit-making purposes shall require an authorization from the Minister responsible for the arts and culture, who may require that the fixation shall be subject to the payment of a fee in accordance with a decree to be issued by the said Minister.

1.35 Sri Lanka: Code of Intellectual Property Act, (No. 51), 1979 as amended up to 1990

Section 6: Interpretation. For the purpose of this Part-[...] folklore means all literary and artistic works created in Sri Lanka by various communities, passed on from generation to generation and constituting one of the basic elements of traditional cultural heritage.

1.36 Barbados: Copyright Act, 1981-1982, an Act to Reform and Modernize Copyright Law and the Law governing similar or related matters of January 22, 1982

Section 13:

(1) In respect of folklore, that is to say, all literary and artistic works that

- (a) constitute a basic element of the traditional and cultural heritage of Barbados,
- (b) were created in Barbados by various groups of the community, and
- (c) survive from generation to generation, the author's rights vest in the Crown to the same extent as if the Crown had been the original creator of the folklore.

## 2. MULTILATERAL INSTRUMENTS, ORGANIZATIONS AND PROCESSES

### 2.1 “Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples” developed under the Auspices of the United Nations (UN) Working Group on Indigenous Populations<sup>73</sup>

11. The heritage of indigenous peoples has a collective character and is comprised of all objects, sites and knowledge including languages, the nature or use of which has been transmitted from generation to generation and which is regarded as pertaining to a particular people or its territory of traditional natural use. The heritage of indigenous peoples also includes objects, sites, knowledge and literary or artistic creation of that peoples which may be created or rediscovered in the future based upon their heritage.

12. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic creation such as music, dance, song, ceremonies symbols and designs, narratives and poetry and all forms of documentation of and by indigenous peoples; all kinds of scientific, agricultural, technical, medicinal, biodiversity related and ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immovable cultural property such as sacred sites of cultural, natural and historical significance and burials.”

### 2.2 United Nations (UN) Draft Declaration on the Rights of Indigenous Peoples<sup>74</sup>

Article 29: “Indigenous people are entitled to the recognition of the full ownership, control, and protection of their cultural and intellectual property. They have the right to special measures to control, develop, and protect their sciences, technologies, and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, and visual and performing arts.”

### 2.3 Convention on Biological Diversity (CBD) (1992)

Article 8(j): Each Contracting Party shall, as far as possible and as appropriate:  
(...)

j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity (...).

In this context “traditional knowledge” has been noted as a “term used to describe a body of knowledge built by a group of people through generations living in close contact with nature. It includes a system of classification, a set of empirical observations about the local environment, and a system of self-management that governs resource use (...). In the context of knowledge, *innovation* is a feature of indigenous and local communities whereby tradition

73 UN document number E/CN.4/Sub.2/1994/31

74 UN document number SUB/COM/RES 1994/45

acts as a filter through which innovation occurs. In this context, it is traditional methods of research and application and not always particular pieces of knowledge that persist. *Practices* should therefore be seen as the manifestations of knowledge and innovation.”<sup>75</sup>

#### 2.4 UNESCO Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands, Noumea, 15-19 February 1999<sup>76</sup>

The traditional knowledge and expressions of indigenous cultures are defined as the ways in which indigenous cultures are expressed and which are manifestations of worldviews of the indigenous peoples of the Pacific. Traditional knowledge and cultural expressions are any knowledge or any expressions created, acquired and inspired (applied, inherent or abstract) for the physical and spiritual well-being of the indigenous peoples of the Pacific. The nature and use of such knowledge and expressions are transmitted from one generation to the next to enhance, safeguard and perpetuate the identity, well-being and rights of the indigenous peoples of the Pacific. This knowledge and these expressions include and are not limited to:

- spirituality, spiritual knowledge, ethics and moral values,
- social institutions (kinship, political, traditional justice),
- dances, ceremonies and ritual performances and practices,
- games and sports,
- music,
- language,
- names, stories, traditions, songs in oral narratives,
- land and sea and air,
- all sites of cultural significance and immovable cultural property and their associated knowledge,
- cultural environmental resources,
- traditional resource management including traditional conservation measures,
- all material objects and moveable cultural property,
- all traditional knowledge and expressions of indigenous cultures held in *ex situ* collections,
- indigenous peoples ancestral remains, human genetic materials,
- scientific, agricultural, technical and ecological knowledge, and the skills required to implement this knowledge (including that pertaining to resource use practices and systems of classification),

The delineated forms, parts and details of visual compositions (designs), permanently documented aspects of traditional indigenous cultures in all forms (including scientific and ethnographic research reports, papers and books, photographs and digital images, films and sound recordings).

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<sup>75</sup> see document UNEP/CBD/TKBD/1/2, paragraph 84 and 86

<sup>76</sup> [http://www.unesco.org/culture/copyright/folklore/html\\_eng/declaration.shtml](http://www.unesco.org/culture/copyright/folklore/html_eng/declaration.shtml)

2.5 WTO: Proposal on Protection of the Intellectual Property Rights Relating to the Traditional Knowledge of Local and Indigenous Communities: Communication from Bolivia, Colombia, Ecuador, Nicaragua, and Peru, 12 October 1999

“*Traditional knowledge* consists largely of innovations, creations and cultural expressions generated or preserved by its present possessors, who may be defined and identified as individuals or whole communities, natural or legal persons, who are holders of rights. The economic, commercial and cultural value of this traditional knowledge for its possessors warrants and justifies a legitimate interest that this knowledge be recognized as subject matter of intellectual property.”<sup>77</sup>

2.6 WHO General Guidelines for Methodologies on Research and Evaluation of Traditional Medicine<sup>78</sup>

“*Traditional medicine*” means the “the sum total of the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health, as well as in the prevention diagnosis, improvement or treatment of physical and mental illnesses. The terms complementary/alternative/non-conventional medicine are used interchangeably with traditional medicine in some countries.”

2.7 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD) 1994

Article 16(g): Subject to their respective national legislation and/or policies, exchange information on local and traditional knowledge, ensuring adequate protection for it and providing appropriate return from the benefits derived from it, on an equitable basis and on mutually agreed terms, to the local population concerned.

Article 17.1(c): The Parties undertake, (...) to protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring, subject to their respective national legislation and/or policies, that the owners of the knowledge will directly benefit on an equitable basis and on mutually agreed terms from any commercial utilization of it or from any technological development derived from that knowledge;

Article 18.2: The Parties shall, according to their respective capabilities, and subject to their respective national legislation and/or policies, protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices and, to that end, they undertake to:

- (a) make inventories of such technology, knowledge, know-how and practices and their potential uses with the participation of local populations, and disseminate such information, where appropriate, in cooperation with relevant intergovernmental and non-governmental organizations;

77 See WTO document WT/GC/W/362, Preparations for the 1999 Ministerial Conference

78 see Document WHO/EDM/TRM/2000

(b) ensure that such technology, knowledge, know-how and practices are adequately protected and that local populations benefit directly, on an equitable basis and as mutually agreed, from any commercial utilization of them or from any technological development derived therefrom;

## 2.8 Food and Agricultural Organizations (FAO)'s Advisory Committee on Fisheries Research<sup>79</sup>

*Traditional* has been variously described as:

“That which has elements of a culture passed down of from generation to generation, especially by oral communication”;

“A mode of thought or behavior followed by a people continuously from generation to generation; a custom or usage”;

“A set of such customs and usages viewed as a coherent body of precedents influencing the present”;

“A time-honored practice or set of such practices”;

As an alternative term, for countries which have a strong “indigenous” concept in their culture and policy, various definitions of “*indigenous knowledge*” have been proposed which incorporate both “traditional” and “local” knowledge, amongst them: Unique, traditional, local knowledge existing within and developed around the specific conditions of men and women indigenous to a particular geographic area. (Grenier, 1998);<sup>80</sup>

*Local knowledge* - knowledge that is unique to a given culture or society. It contrasts with the international knowledge system generated by universities, research institutions and private firms. It is the basis for local-level decision making in agriculture, health care, food preparation, education, natural-resource management, and a host other activities in rural communities” (Warren, 1991);<sup>81</sup>

*Traditional ecological knowledge* can be defined as a cumulative body of knowledge and beliefs, handed down through generations by cultural transmission, about the relationship of living beings with one another and with their environment. Further, traditional ecological knowledge is an attribute of societies with historical continuity in resource use practices; by and large, these are non-industrial or less technologically advanced societies, many of them indigenous or tribal.” (Berkes, 1993)<sup>82</sup>

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79 Third Session, Rome, Italy, 5-8 December 2000, Using Local and Traditional Knowledge in Improving Sustainable livelihoods in fishing Communities (<http://www.fao.org/docrep/meeting/003/x8906e.htm>)

80 Grenier, 1998 in Indigenous and Local Knowledge Systems in Sustainable Development. Informal meeting for delegates and staff members. De Guchteneire, P. & Nakashima, D. UNESCO, November, 1999.)

81 *ibid.*

82 *ibid.*

2.9 World Bank<sup>83</sup>:

*Indigenous Knowledge* is local knowledge.

IK is unique to every culture or society.

IK is the basis for local-level decision making in:

- agriculture,
- health care,
- food preparation,
- education,
- natural-resource management, and
- a host of other activities in communities.

IK provides problem solving strategies for communities.

IK is commonly held by communities rather than individuals.

IK is tacit knowledge and therefore difficult to codify, it is embedded in community practices, institutions, relationships and rituals

“*Indigenous Knowledge*: Knowledge possessed by indigenous and other local peoples which is transmitted orally and often shows a sophisticated understanding of natural and other processes, typical examples are traditional medicinal plant, agricultural, ethno-veterinary, and other forms of knowledge. May also include such knowledge as usually related to broader cultural values and beliefs of indigenous and other traditional peoples.”<sup>84</sup>.

2.10 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of November 15, 1989<sup>85</sup>

“Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts.

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83 <http://www.worldbank.org/afr/ik/what.htm>.

84 [www.worldbank.org/essd/essd.nsf](http://www.worldbank.org/essd/essd.nsf)

85 Adopted by the General Conference at its twenty-fifth session in Paris

2.11 UNESCO – WIPO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions of 1982

Section 2: For the purposes of this [law], “*expressions of folklore*” means productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community of [name of country] or by individuals reflecting the traditional artistic expectations of such a community, in particular:

- (i) verbal expressions, such as folk tales, folk poetry and riddles;
- (ii) musical expressions, such as folk songs and instrumental music;
- (iii) expressions by actions, such as folk dances, plays and artistic forms or rituals; whether or not reduced to a material form; and
- (iv) tangible expressions, such as:
  - (a) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket weaving, needlework, textiles, carpets, costumes;
  - (b) musical instruments;
  - (c) architectural forms

2.12 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970<sup>86</sup>

Article 1:

“For the purposes of this Convention, the term “cultural property” means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
  - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

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86 Done at Paris, 14 November 1970. Entry into force, 24 April 1972



- (ii) original works of statuary art and sculpture in any material;
- (iii) original engravings, prints and lithographs;
- (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

[Annex III follows]

## ANNEX III

## 1. NON-GOVERNMENTAL ORGANIZATIONS (NGOs), ACADEMIC LITERATURE AND OTHERS

1.1 Center for International Research and Advisory Networks (CIRAN)

“There are various definitions of *Indigenous Knowledge (IK)*. One way to define IK is “the unique, traditional, local knowledge existing within and developed around the specific conditions of women and men indigenous to a particular geographic area.”<sup>87</sup> Indigenous Knowledge has many aspects. Communities have their own indigenous methods for imparting knowledge, for example, just as they have indigenous ways of deriving a livelihood from the environment. Information, insight and techniques that are passed down and improved from one generation to the next cover such topics as medicine, animal breeding and production, water management, soil conservation, and pest management.”<sup>88</sup>

1.2 Nuffic Ciran<sup>89</sup>

“The term ‘*indigenous knowledge*’ (IK) is used synonymously with ‘*traditional*’ and ‘*local*’ knowledge to differentiate the knowledge developed by a given community from knowledge systems generated through universities, government research centers and private industry.

IK refers to the knowledge of indigenous peoples or any other defined community.

Indigenous knowledge relates to the ways members of a given community define and classify phenomena in their physical/natural and social environments.

Examples are local classifications of soils, knowledge of which local crop varieties grow in difficult environments, and traditional ways of treating human and animal diseases.

IK systems provide the basis for local-level decision-making; this frequently occurs through formal and informal community associations and organizations. Communities identify problems and seek solutions to them in such local forums, capitalizing on indigenous creativity and encouraging experimentation and innovation. Successful new technologies are added to the indigenous knowledge system.

Indigenous knowledge is dynamic, not static, as the word ‘traditional’ commonly implies.”

1.3 Commission on Sustainable Development NGO Women’s Caucus

*Traditional Environmental Knowledge* has been defined as: “a body of knowledge built by a group of people through generations living in close contact with nature. It includes a system of classification, a set of empirical observations about the local environment, and a system of self-management that governs resource use” (Johnson 1992: 4). TEK is socially differentiated according to gender, age, occupation, socio-economic status, religion, and other

87 Louise Grenier - Working with Indigenous Knowledge. A guide for researchers. IDRC, 1998

88 Best Practices in Indigenous Knowledge(www.unesco.org)

89 <http://www.nuffic.nl/ik-pages/info3.html>

factors. It is therefore inappropriate to generalize about indigenous or traditional knowledge without making proper distinctions. Of particular interest here, the gender-specific division of labor, property rights, decision-making processes and perceptions of the environment all shape the local knowledge, use and management of natural resources. Rocheleau (1996) talks of the boundaries of knowledge as being neither fixed nor independent, further saying that they “extend well beyond the confines of botany and agriculture, and well into the domain of practical political economy” (p. 14). While it is context-bound, TEK cannot be examined in isolation from broader economic and global processes. Issues of gender, environment and development are closely interrelated and constantly shaped and re-shaped by ideologies and cannot be addressed independently.

#### 1.4 Prof. Dr Erica-Irene A. Daes<sup>90</sup>

“The intellectual property of indigenous peoples may be usefully divided into three groups: (i) folklore and crafts; (ii) biodiversity; and (iii) indigenous knowledge.

Folklore and crafts include various forms of oral literature, music, dance, artistic motifs and designs crafts such as basketry, beading, carving, weaving and painting. (...) The biodiversity of the traditional territories of indigenous peoples may also be considered as part of the intellectual property of indigenous peoples requiring protection. Biodiversity refers, inter alia, to plant varieties which have been developed through experiment and cultivation for use as food, medicine or materials for houses, boats or other kinds of construction or use. (...)

*Indigenous knowledge* refers to the knowledge held, evolved and passed on by indigenous peoples about their environment, plants and animals, and the interaction of the two. Many indigenous peoples have developed techniques and skills which allow them to survive and flourish in fragile ecosystems without causing depletion of resources or damage to the environment. The various forms of sustainable development practiced by indigenous peoples in forests, mountain and valley areas, dry-lands, tundra and arctic regions derive from a successful application of technology in agro-forestry, terracing, resource management, animal and livestock controls, fish harvesting and in other areas. In particular, many indigenous peoples have a knowledge of plants suitable as medicines and this traditional medicine has been and continues to be in many cases a source for Western pharmacology.”

#### 1.5 Berkes

*Traditional ecological knowledge*: “(...) a cumulative body of knowledge, practice and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about the relationships of living beings (including humans) with one another and with their environment (...).”<sup>91</sup>

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90 “WIPO Roundtable on Intellectual Property and Indigenous Peoples”, Geneva, July 23 and 24, 1998.

91 See Fikret Berkes, in *Sacred Ecology*, Taylor & Francis, 1999, page 8.

## 1.6 Dutfield

*Traditional ecological knowledge* (sometimes referred to as “traditional environmental knowledge” or “indigenous knowledge”) is defined by Johnson as a “body of knowledge built by a group of people through generations living in close contact with nature. It includes a system of classification, a set of empirical observations about the local environment and a system of self-management that governs resource use”.<sup>92</sup>

## 1.7 Tirfe Mammo cite Chambers

“*Indigenous knowledge* means a stock of local knowledge prevailing in a certain area and derived from that specific milieu”.<sup>93</sup>

“A body of experience which could be culturally and regionally specific, adaptable to new and useful innovations, cumulative and supportive to sustaining survival.”<sup>94</sup>

## 1.8 Dr. John Mugabe<sup>95</sup>

“Stephen Brush has defined indigenous knowledge as “the systematic information that remains in the informal sector, usually unwritten and preserved in oral tradition rather than texts. ... [It] is culture specific, whereas formal knowledge is decultured.”<sup>96</sup> One may well ask whether really Brush’s definition of indigenous knowledge and his distinction between such knowledge and that which he terms “formal knowledge” stands repeated empirical testing. First, he reduces (perhaps unconsciously) knowledge to information and as such misplaces “practical or skills aspect” of the indigenous knowledge holders: one who possesses knowledge usually has skill and experience in the particular problem domain but one may possess information without experience and skill. Knowledge (whether indigenous or non-indigenous) is associated with practical experience and skill in solving a particular problem while holding of information (for example about indigenous activities) does not necessarily endow one with skill and experience in solving a problem. As Greaves asserts: “indigenous knowledge is, in the main, something more than matter-of-fact information. Rather, it is usually invested with a sacred quality and systemic unity, supplying the foundation on which members of a traditional culture sense their communitas, personal identity, and ancestral anchorage.”<sup>97</sup>

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92 See Graham Dutfield, “Protecting and Revitalising Traditional Ecological Knowledge: Intellectual Property Rights and Community Knowledge Databases in India,” in *Perspectives on Intellectual Property*, vol. 6, edited by Michael Blakeney, page 104.

93 See Tirfe Mammo, *The Paradox of Africa’s Poverty, The role of indigenous knowledge, traditional practices and local institutions – The case of Ethiopia*, The Red Sea Press, Asmara, Eritrea, 1999, page 15.

94 Idem.

95 Mugabe, John (Executive Director), *Intellectual Property Protection and Traditional Knowledge. An Exploration in International Policy Discourse*. Paper Prepared for the World Intellectual Property Organization (WIPO), Geneva, Switzerland December 1998, African Centre for Technology Studies (<http://www.acts.or.ke>)

96 Brush, S. 1996 in Brush, S. and Stabinsky, D. eds. 1996, p. 4.

97 Greaves, T. 1996 in Brush, S. and Stabinsky, D. eds. 1996, p. 26.

Secondly, Brush's classification of knowledge into indigenous and formal fails not only because there are striking similarities across the two classes but also for the reason that indigenous information could be formalized. It could be codified in ethno-botanical databanks and packaged for use in the formal sector, for example by modern pharmaceutical industries.

Indigenous knowledge, as far as we are concerned, is that knowledge that is held and used by a people who identify themselves as indigenous of a place based on a "combination of cultural distinctiveness and prior territorial occupancy relative to a more recently-arrived population with its own distinct and subsequently dominant culture."<sup>98</sup> Traditional knowledge is, on the other hand, that which is held by members of a distinct culture and/or sometimes acquired "by means of inquiry peculiar to that culture, and concerning the culture itself or the local environment in which it exists."<sup>99</sup> Indigenous knowledge fits neatly in the traditional knowledge category but traditional knowledge is not necessarily indigenous. That is to say, indigenous knowledge is traditional knowledge but traditional knowledge is not necessarily indigenous. Traditional knowledge is thus the totality of all knowledge and practices, whether explicit or implicit, used in the management of socio-economic and ecological facets of life. This knowledge is established on past experiences and observation. It is usually a collective property of a society. Many members of the particular society contribute to it over time, and it is modified and enlarged as it is used over time. This knowledge is transmitted from generation to generation. According to UNEP, this knowledge "can be contrasted with cosmopolitan knowledge, which is drawn from global experience and combines 'western' scientific discoveries, economic preferences and philosophies with those of other widespread cultures."<sup>100</sup> It is generally an attribute of a particular people, who are intimately linked to a particular socio-ecological context through various economic, cultural and religious activities.

Traditional knowledge is dynamic in nature and changes its character as the needs of the people change. It also gains vitality from being deeply entrenched in people's lives. It is difficult to isolate or archive traditional knowledge from traditional people. Examples of traditional knowledge include knowledge about the use of specific plants and/or parts thereof, identification of medicinal properties in plants, and harvesting practices."

1.9 Henry P. Huntington, Ph.D., and Nikolai I. Mymrin: Traditional Ecological Knowledge of Beluga Whales. An Indigenous Knowledge Pilot Project in the Chukchi and Northern Bering Seas- Inuit Circumpolar Conference.<sup>101</sup>

*Traditional Ecological Knowledge (or TEK)* is a system of understanding one's environment. It is built over generations, as people depend on the land and sea for their food, materials, and culture. TEK is based on observations and experience, evaluated in light of what one has learned from one's elders. People have relied on this detailed knowledge for their survival--they have literally staked their lives on its accuracy and repeatability. TEK is

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98 UNEP/CBD/COP/3/Inf. 33, Annex 2

99 UNEP/CBD/COP/3/Inf. 33, Annex 2.

100 UNEP/CBD/COP/3/Inf. 33., p. 9.

101 <http://www.mnh.si.edu/arctic/html/tek.html>

an important source of information and understanding for anyone who is interested in the natural world and the place of people in the environment.

“Two definitions of indigenous knowledge have been proposed by Brush (1996):

(i) Broadly defined, indigenous knowledge is the systematic information that remains in the diverse social structures. It is usually unwritten and preserved only through oral tradition;

(ii) Narrowly defined, it refers to the knowledge system of indigenous people and minority cultures.”<sup>102</sup>

1.10 John Sallenave: Giving Traditional Ecological Knowledge Its Rightful Place in Environmental Impact Assessment<sup>103</sup>

*TEK* can be defined as a cumulative body of knowledge and beliefs, handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment. Further, *TEK* is an attribute of societies with historical continuity in resource use practices; by and large, these are non-industrial or less technologically advanced societies, many of them indigenous or tribal (Berkes 1993:3).

1.11 George Hobson: Traditional Knowledge Is Science<sup>104</sup>

“*Traditional knowledge* is the accumulated knowledge and understanding of the place of human beings in relation to the world in both an ecological and spiritual sense”

1.12 Gustavo Capdevila: Indigenous Peoples Defend Traditional Knowledge<sup>105</sup>

*Traditional knowledge*, defined as “the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles” as well as “indigenous and local technologies,” according to the UN Convention on Biological Diversity.

1.13 U.S. Department of Interior: What is traditional knowledge?<sup>106</sup>

*Traditional knowledge*, is also referred to as indigenous knowledge, indigenous ecological knowledge, traditional ecological knowledge, and local knowledge. Noted author, Barry Lopez defines it as “vast and particular knowledge . . . garnered from hundreds of years

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102 Endangered Resources: Biodiversity and Cultural Knowledge. by Promila Kapoor-Vijay and Stephen Blackmore Department of Botany, The Natural History Museum, Cromwell Road, <http://www.iubs.org/about/old/pub/BioInt/39/7.htm>

103 Sallenave, John. Giving Traditional Ecological Knowledge Its Rightful Place in Environmental Impact Assessment (<http://www.carc.org/pubs/v22no1/know.htm>)

104 Hobson, George. Traditional Knowledge Is Science (<http://www.carc.org/pubs/v20no1/science.htm>)

105 apdevila, Gustavo. Indigenous Peoples Defend Traditional Knowledge [c] 2000, InterPress Third World News Agency (IPS), November 8, 2000 ([www.forest.org/archive/general/indefkno.htm](http://www.forest.org/archive/general/indefkno.htm))

106 U.S. Department of Interior What is traditional knowledge? Article by Minerals Management Services (MMS), Alaska OCS Region([www.mms.gov/alaska/native/tradknow/tk\\_mms2.htm](http://www.mms.gov/alaska/native/tradknow/tk_mms2.htm))

of patient interrogation of the landscape.” Canada’s Traditional Knowledge Working Group stated that “. . . traditional knowledge of northern aboriginal peoples has roots based firmly in the northern landscape and a land-based life experience of thousands of years. Traditional knowledge offers a view of the world, aspirations, and an avenue to truth different from those held by non aboriginal people whose knowledge is based largely on European philosophies.”

Tom Albert, biologist for Alaska’s North Slope Borough, defined traditional knowledge as “information about the natural world from generations of observations by Native people who could be killed if they acted on wrong information. With this in mind there is a strong tendency for traditional knowledge to lean toward the truth.”

Ellen Bielawski, Anthropologist and former Director of Keeper of the Treasures, Alaska has said simply that traditional knowledge is: “practical strategies; what’s worked and what hasn’t.”

Polarizing perspectives frame traditional knowledge and Western science as incommensurable, i.e., traditional knowledge is anecdotal, unsystematic, highly localized, cannot observe across migratory pathways and non empirical in its key, explanatory framework, while western science is fragmentary, fails to understand ecological relations, relies only on numerical data and ignores intuition. Both systems have broadly overlapping zones of information based on empirical observation; both have their empirical and non-empirical domains.

In both the traditional knowledge and Western-science systems, much of the accumulated knowledge is derived from empirical observation. Traditional knowledge is frequently the aggregate of many generations, gathered in oral form. Western science relies on the natural systems. Instead, observation is often comparatively short-term. For the gatherers of traditional knowledge, non-empirical elements are openly spiritual and give foundation for an ethical system of behavior between humans and animals. For Western science, the non-empirical elements are more subtle. The MMS traditional knowledge round table showed much room for self-reflection, humility, tentativeness, and willingness to learn on the part of both gatherers of traditional knowledge and Western science advocates.

1.14 Paul de Guchteneire and Douglas Nakashima: Indigenous and local knowledge systems in sustainable development<sup>107</sup>

“The unique, *traditional, local knowledge* existing within and developed around the specific conditions of men and women indigenous to a particular geographic area.” (Grenier 1998) “the local knowledge – knowledge that is unique to a given culture or society. IK contrasts with the international knowledge system generated by universities, research institutions and private firms. It is the basis for local-level decision making in agriculture, health care, food preparation, education, natural-resource management, and a host of other activities in rural communities.” (Warren 1991)

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107 de Guchteneire, Paul; and Nakashima, Douglas Indigenous and local knowledge systems in sustainable development Informal meeting for delegates and staff members. Monday, 8 November 1999 Definitions of indigenous knowledge (<http://www.unesco.org/most/ik8nov.htm>)

“There is consensus amongst scientists using various terms that such knowledge: i) is linked to a specific place, culture or society; ii) is dynamic in nature; iii) belongs to groups of people who live in close contact with natural systems; and iv) contrasts with ‘modern’ or ‘Western formal scientific’ knowledge.”(Studley 1998)

1.15 The State of Canada’s Environment. Arctic Ecozones. Initiatives Towards Sustainable Development.<sup>108</sup>

“*Traditional ecological knowledge*” (TEK) is defined as the knowledge acquired by Indigenous or local peoples through generations of direct contact with the environment. This is also referred to as TEKMS (traditional ecological knowledge management systems), Indigenous knowledge, traditional knowledge, Indigenous environmental knowledge, local knowledge, and ethnoscience.

TEK is a system of knowledge, parallel and complementary to “Western scientific knowledge,” which can be organized into three categories, each of which has its Western scientific equivalent:

- The first category concerns knowledge about and a specialized vocabulary to describe specific components or aspects of plants, animals, and phenomena. This is somewhat similar to the field of systematics, with its attendant systems of classification.
- The second component concerns the development, evolution, and use of appropriate technologies for hunting, fishing, and trapping.
- The third category is more complex and is the least well understood, yet it is potentially the most significant of the three. It concerns the understanding of and intimate relationship with environmental systems as a whole. Aboriginal peoples often use such terms as the “web of life” to describe the connectedness of all elements of nature, including human beings. This holistic view is reflected in the language, culture, spirituality, mythology, customs, and social organization of local communities. The scientific discipline of ecology partially embraces this category, which may take the form of maps, documents, and oral history.

1.16 Traditional Knowledge Research Guidelines - Reflections<sup>109</sup>

Georgina Sidney:

“Traditional knowledge is a living knowledge, it’s living with the Elders and we have to be very careful, I think, there is danger in writing it down and recording and storing it. The Elders pass that knowledge on to us as young people; it’s a living knowledge - how we live, how we look after the animals. We store it and put it on videotapes or whatever, that’s where it stays. The responsibility has to remain with us, with the Elders as parents, as grandparents,

108 The State Of Canada’s Environment. Arctic Ecozones. Initiatives Towards Sustainable Development. Traditional Ecological Knowledge (<http://www.ec.gc.ca/soer-ree/English/1996report/Doc/1-6-9-5-6-1.cfm>) Box 9.8 Traditional ecological knowledge

109 Traditional Knowledge Research Guidelines. Reflections. (<http://www.contaminants.ca/done/tkGuidelines/sections/07-Reflections.html>)



we have to pass that knowledge on to our younger people. It's fine to store it and to keep it in a safe place, but the safest place we can keep it is in our minds and in our hearts, and we have to remember that. Those are the things that we have to think about when we are talking about traditional knowledge; it's a living knowledge, how we live our lives every day, how we look after our animals, how we look after our land, how we look after each other, how we respect one another. Traditional knowledge is respect, it's pretty simple actually."

Angie Joseph-Rear:

"Traditional knowledge is within each individual; it's what you learn, it's your responsibility and our responsibility what we gather as we grow to carry it on and to pass it on to the young people. And if the young people don't know today, then it's our fault, really. We have to; sometimes we have to admit to our wrongs, we can't always stand here and say the kids don't listen and stuff, because we have to teach them. And if you want to teach them, you teach them, then they will know and they will respect this."<sup>110</sup>

#### 1.17 An Approach to Aboriginal Cultural Landscapes - Traditional Knowledge<sup>111</sup>

In 1991 the Northwest Territories Traditional Knowledge Working Group defined it as "knowledge derived from, or rooted in the traditional way of life of aboriginal people. Traditional knowledge is accumulated knowledge and understanding of the human place in relation to the universe. This encompasses spiritual relationships, relationships with the natural environment and the use of natural resources, relationships between people, and is reflected in language, social organization, values, institutions, and laws."

Two years later the Government of the Northwest Territories, apparently the first jurisdiction to assign traditional knowledge a formal role in policy, stated it to be: "[k]nowledge and values which have been acquired through experience, observation from the land or from spiritual teachings, and handed down from one generation to the next". It derives from Aboriginal peoples' experience in "living for centuries in close harmony" with the land. It means knowing "the natural environment and its resources, the use of natural resources, and the relationship of people to the land and to each other" (cited in Abele, 1997: iii). Emphasizing the fundamental role of relationship to the environment in the lives of Aboriginal peoples, the Dene Cultural Institute has defined traditional environmental knowledge as "a body of knowledge and beliefs transmitted through oral tradition and first-hand observation. It includes a system of classification, a set of empirical observations about the local environment and a system of self-management that governs resource use. Ecological aspects are closely tied to social and spiritual aspects of the knowledge system...." (cited in Stevenson, 1996: 281). Unlike the written word, traditional knowledge is not static, but responds to change through absorbing new information and adapting to its implications.

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110 ibid.

111 [http://parkscanada.pch.gc.ca/aborig/aborig5\\_e.htm](http://parkscanada.pch.gc.ca/aborig/aborig5_e.htm)

1.18 Arctic Environmental Impact Assessment: What is traditional knowledge?<sup>112</sup>

*Traditional knowledge* has been defined in many ways and is an evolving concept. For the purposes of these guidelines, traditional knowledge is defined as accumulated knowledge held by indigenous people on the arctic environment, and the management of its resources for present and future generations. This knowledge is passed down to younger generations through activities of actual resource use, and by storytelling, dance, songs and legends. It ensures the survival and integrity of the indigenous people in the arctic regions.

Traditional knowledge is the intellectual property of indigenous communities and the holders of this knowledge. Traditional knowledge is recognized by the newly formed Arctic Council as a key element in the sustainable development of arctic resources and is rapidly gaining global recognition as an essential component in the management of natural resources. It is now included in the Convention on Biological Diversity.

1.19 Martin J.D. Whittles: Colliding Cosmologies: Intellectual Hegemony and Competing Discourses of Resource Development and Management in the Canadian Arctic in the Post-Land Claim Era<sup>113</sup>

“Defined by the Royal Commission on Aboriginal Peoples, *traditional knowledge* is “a cumulative body of knowledge and beliefs, handed down through generations...about the relationship of living things (including humans) with one another and their environment”. For many original peoples, such knowledge forms a critical and ageless ontological foundation upon which all aspects of human society are integrated into the natural world, and vice-versa.”

1.20 Promila Kapoor-Vijay, and Stephen Blackmore: Endangered Resources: Biodiversity and Cultural Knowledge<sup>114</sup>

Two definitions of indigenous knowledge have been proposed by Brush (1996): (i) Broadly defined, indigenous knowledge is the systematic information that remains in the diverse social structures. It is usually unwritten and preserved only through oral tradition; (ii) Narrowly defined, it refers to the knowledge system of indigenous people and minority cultures.

1.21 MITCHIK ANIBIKOK INIK The Trilateral Agreement. Measuring Social Impacts of Forestry Development on the Algonquins of Barriere Lake. Traditional Knowledge in Sustainable Development.<sup>115</sup>

The term “*traditional knowledge*” (TK) is often used to describe the body of knowledge which pertains to aboriginal cultural uses, values, traditions, and perspectives of the forest and

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112 Chapter 10 ([http://finnbarents.urova.fi/aria/in\\_chap10.asp](http://finnbarents.urova.fi/aria/in_chap10.asp))

113 Department of Social and Environmental Sciences. University College of the Cariboo ([http://www.geog.ouc.bc.ca/wcag/oral/Whittles\\_Martin.html](http://www.geog.ouc.bc.ca/wcag/oral/Whittles_Martin.html))

114 Department of Botany, The Natural History Museum, Cromwell Road. (<http://www.iubs.org/about/old/pub/BioInt/39/7.htm>)

115 <http://www.sitesunseen-icu.com/clients/abl/trilateral/operation.html>

sustainability, and is reflective of the relationship which aboriginal peoples have with the land. As defined by the Dene Cultural Institute:

“social status, intellectual capability, and profession (hunter, spiritual leader, healer, etc.) With its roots firmly in the past, traditional knowledge is both cumulative and dynamic, building upon the experience of earlier generations and adapting to the new technological and socioeconomic changes of the present (Emery, 1997).”

#### 1.22 Janke: Report on Australian Indigenous Cultural and Intellectual Property Rights<sup>116</sup>

“Indigenous Cultural and Intellectual Property Rights” refers to Indigenous Australians’ rights to their heritage. Such rights are also known as “Indigenous Heritage Rights.”

Heritage consists of the intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems that have been developed, nurtured and refined (and continue to be developed, nurtured and refined) by Indigenous people and passed on by Indigenous people as part of expressing their cultural identity, including:

1. Literary, performing and artistic works (including music, dance, songs, ceremonies, symbols and designs, narratives and poetry)
2. Languages
3. Scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and sustainable use of flora and fauna)
4. Spiritual knowledge
5. All items of moveable cultural property<sup>117</sup>, including burial artefacts
6. Indigenous ancestral remains
7. Indigenous human genetic resources (including DNA and tissues)
8. Cultural environment resources (including minerals and species)
9. Immovable cultural property (including Indigenous sites of significance, sacred sites and burials)
10. Documentation of Indigenous people’s heritage in all forms of media (including scientific, ethnographic research reports, papers and books, films, sound recordings)

The heritage of Indigenous people is a living one and includes items which may be created in the future based on that heritage. Any definition of Indigenous Cultural and Intellectual Property should be flexible to reflect the notions of the particular Indigenous group and may change over time.

#### 1.23 Report of the Working Party on the Protection of Aboriginal Folklore of December 1981

“*folklore*”- “the body of traditions, observances, customs and beliefs of Aboriginals as expressed in Aboriginal music, dance, craft, sculpture, painting, theatre and literature.”

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116 Page 11

117 As defined by the UNESCO Cultural Property Convention 1970

#### 1.24 Community Intellectual Rights Act - Third World Network 1994

(b) “*innovation*” shall include any collective and cumulative knowledge or technology of the use, properties, values and processes of any plant variety and any plant or part thereof rendered of any or enhanced use or value as a result of the said cumulative knowledge or technology whether documented, recorded, oral, written or howsoever otherwise existing including any alteration, modification, improvement thereof and shall also include derivatives which utilize the knowledge of indigenous groups or communities in the commercialization of any product as well as to a more sophisticated process for extracting, isolating, or synthesizing the active chemical in the plant extracts or compositions used by the indigenous people.

### 2. INDIGENOUS DECLARATIONS

#### 2.1 The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples of June 1993

In the development of policies and practices, Indigenous Peoples should:

1.1 Define for themselves their own intellectual and cultural property.<sup>118</sup>

#### 2.2 Kari-Oca Declaration and the Indigenous Peoples’ Earth Charter of May 30, 1992

Article 102: As creators and carriers of civilizations which have given and continue to share knowledge, experience, and values with humanity, we require that our right to intellectual and cultural properties be guaranteed and that the mechanism for each implementation be in favor of our peoples and studied in depth and implemented. This respect must include the right over genetic resources, genebanks, biotechnology, and knowledge of biodiversity programs.

### 3. DICTIONARY DEFINITIONS

*traditional knowledge*: knowledge gained through tradition or anecdote: “early peoples passed on plant and animal lore through legend” [syn: lore]<sup>119</sup>

[End of Annex III and of document]

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118 1st International Conference on Cultural and Intellectual Property Rights of Indigenous Peoples. (<http://users.ox.ac.uk/~wgtrr/decin.htm>-)

119 Source: WordNet ® 1.6, © 1997 Princeton University ([www.dictionary.com](http://www.dictionary.com))