

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

### **Seventeenth Session Geneva, December 6 to 10, 2010**

#### **DRAFT ARTICLES ON THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS/EXPRESSIONS OF FOLKLORE PREPARED AT IWG 1**

*Document prepared by the Secretariat*

#### **INTRODUCTION**

1. The First Intersessional Working Group (IWG 1) met from July 19 to 23, 2010 to discuss traditional cultural expressions (TCEs). With reference to document WIPO/GRTKF/IC/17/4 Prov. ("The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles"), IWG 1 discussed the issues and articles in that document as follows: objectives and general guiding principles; subject matter of protection (Article 1); beneficiaries/management of rights (Articles 2 and 4); acts of misappropriation/exceptions and limitations/formalities (Articles 3, 5 and 7); term of protection/transitional measures (Articles 6 and 9); sanctions/remedies and exercise of rights (Article 8); relationship with IP protection and other forms of protection, preservation and promotion (Article 10); and, international and regional protection (Article 11).
2. The results of IWG 1 are reported on in the session's "Summary Report" (WIPO/GRTKF/IWG/1/2), made available at this session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) as document WIPO/GRTKF/IC/17/8. In particular, after extensive and detailed deliberations in the plenary of IWG 1, six informal, open-ended drafting groups were established to further discuss, exchange and consolidate the various views expressed in the plenary, and to propose streamlined text, including options, on each

cluster of issues. The work of the informal drafting groups was consolidated and introduced by the respective rapporteurs of the drafting groups to all the experts in the IWG 1 plenary on July 23, 2010, as the advice that IWG 1 was requested to provide to the IGC. The consolidated drafts were commented on by the experts in the IWG 1 plenary and some experts added new options. The drafting proposals, comments and additional options were noted and not adopted as such.

3. IWG 1 requested the Secretariat to prepare, for this session of the IGC, a document incorporating the draft articles prepared by the informal drafting groups, as well as the additional comments and options made by the IWG 1 plenary on July 23, 2010, as referred to above. This present document fulfils that request.

*Preparation and structure of this document*

4. The articles prepared at IWG 1 appear in the annex to this document. In respect of each article, there also appears: (i) the introduction made by the rapporteur(s) of the relevant drafting group; (ii) comments on the proposed articles made by the experts in the IWG 1 plenary on July 23, 2010; and, (iii) any alternative options presented by experts on the same day. Alternative options were presented in respect of articles 1, 3 and 8.

*Related documents*

5. The following documents also made available at this session of the IGC are directly related to the present document:

“Summary Report of the First Intersessional Working Group (IWG 1)”, which includes the List of Participants of IWG 1 (WIPO/GRTKF/IC/17/8); and,

“Record of Deliberations of IWG 1” (WIPO/GRTKF/IC/17/INF/7).

6. *The Committee is invited to review and comment on the articles contained in the Annex towards developing a revised and updated version thereof.*

[Annex follows]

ANNEX

ARTICLE 1

SUBJECT MATTER OF PROTECTION

1. "Traditional cultural expressions" and/or "expressions of folklore" are any form, tangible or intangible, in which traditional culture [and knowledge] are embodied and have been passed on from generation to generation, including, but not limited to:
  - (a) phonetic or verbal expressions, such as stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;
  - (b) musical or sound expressions, such as songs, rhythms, and instrumental music;
  - (c) expressions by action, such as dances, plays, ceremonies, rituals, games, puppet performances, and other performances;
  - (d) tangible expressions, such as material expressions of art, handicrafts, architecture and spiritual forms.
2. Protection shall extend to any traditional cultural expression or expression of folklore which is the unique product of an indigenous people or local community and belongs to that people or community as part of their cultural or social identity or heritage.
3. The specific choice of terms to denote the protected subject matter should be determined at the national, sub-regional, and regional levels.

[Commentary on Article 1 follows]