

STUDY PROCESS ON CUSTOMARY LAW AND PROTOCOLS

Suggested guidelines for study papers

These guidelines should be read in conjunction with the draft issues paper. They are intended to offer ideas and possible directions for those considering making a contribution to the study process, and should not be construed in any way as limiting or prescribing the appropriate scope and form of studies on these issues.

NB: Consultations with indigenous communities, local communities and other cultural communities should follow appropriate consultative mechanisms that respect customary practices, rights and responsibilities and accord with the principle of full prior informed consent. Documentation or other recordal of customary laws and practices should only proceed to the extent that full prior informed consent has been confirmed. Wherever possible, studies should be developed by or in partnership with members of the community concerned. Secret, sacred or culturally significant aspects of customary law and protocols may need appropriately respectful and sensitive treatment, in line with the guidance, standards and values of the community itself.

Studies may address the nature of customary law and protocols in general among indigenous and other traditional communities, and may also provide specific case studies of how customary law and protocols apply to TCEs and/or TK, and other specific elements of the established IP system.

As an illustrative list, studies may include

- discussion of conceptual, methodological and legal issues;
- discussion of appropriate approaches to consultation on customary law issues, and a narrative of consultations undertaken;
- review of the nature, basic elements and legal status of customary law and protocols;
- description of the nature of customary law and protocols, with a focus on their relationship with (i) protection and safeguarding of TCEs and TK, and (ii) IP laws and IP as an administrative and legal system;
- legal and policy issues and practical experiences concerning the interface between customary law and protocols and the IP system, or with other related areas of law (such as the protection of cultural heritage or biological diversity);
- specific case study or case studies that illustrate these issues and experiences, including analysis of legal and policy issues raised and practical lessons learned from the case study or studies;

- general reviews of the status of customary law and protocols in the context of (i) the protection of TCEs and TK against misuse and misappropriation; and (ii) IP law in general and the administration and development of the IP system.