

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

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LIKE-MINDED COUNTRIES CONTRIBUTION TO THE OBJECTIVES AND PRINCIPLES ON THE PROTECTION OF GENETIC RESOURCES AND PRELIMINARY DRAFT ARTICLES ON THE PROTECTION OF GENETIC RESOURCES

Document submitted by the Delegation of Indonesia

INTRODUCTION

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

[Annex I follows]

LIKE-MINDED COUNTRIES
CONTRIBUTION TO THE OBJECTIVES AND PRINCIPLES
ON THE PROTECTION OF GENETIC RESOURCES

Objective 1

Ensure that those accessing and/or using genetic resources, their derivatives and/or associated traditional knowledge in particular applicants for intellectual property rights comply with national law and requirements¹ of the country providing² for prior informed consent, mutually agreed terms, fair and equitable benefit-sharing and disclosure of origin.

Principles of Objective 1

Recognize the wide variety of ownership arrangements pertaining to genetic resources, their derivatives and/or associated traditional knowledge, including the sovereign rights of States, the rights of indigenous and local communities, as well as private property rights.

Objective 2 – Options 1

Prevent intellectual property rights involving the access and utilization of genetic resources, their derivatives and/or associated traditional knowledge from being granted where there is no prior informed consent, mutually agreed terms and/or fair and equitable benefit-sharing, and disclosure of origin.

Objective 2 -Option 2

Prevent intellectual property rights from being granted in error and/or bad faith for intellectual property applications relating to genetic resources, their derivatives and/or associated traditional knowledge that do not satisfy the eligibility conditions.

Principles of Objective 2 -Option 1

The intellectual property system should provide certainty of rights for legitimate users and providers of genetic resources, their derivatives and/or associated traditional knowledge.

The intellectual property system must provide for mandatory disclosure requirements ensuring that the intellectual property offices become key checkpoints for disclosure and monitoring the utilization of genetic resources, their derivatives and/or associated traditional knowledge.

¹ National law and requirements include customary norms.

² Country providing is the country of origin or that has acquired the genetic resources / with traditional knowledge in accordance with the CBD.

Administrative and/or judicial authorities shall have the right to (a) prevent the further processing of the intellectual property applications or (b) prevent the granting of intellectual property rights, as well as (c) revoke intellectual property rights and render unenforceable intellectual property rights when the applicant has either failed to comply with the objectives and principles or provided false or fraudulent information.

Principles of Objective 2 -Option 2

Intellectual property rights applicants should not receive exclusive rights where free, prior and informed consent and fair and equitable benefit-sharing requirements for accessing and using genetic resources have not been met.

Principles of Objective 2 -Option 3

Persons applying for intellectual property rights involving the use of genetic resources and/or associated traditional knowledge have a duty of good faith and candor to disclose in their applications all background information relating to the genetic resources and associated traditional knowledge, including the country of source or origin.

Objective 3

Ensure that intellectual property offices have appropriate and available information on genetic resources, their derivatives and/or associated traditional knowledge needed to make proper and informed decisions in granting intellectual property rights. Such information shall include confirmation through the mandatory disclosure requirements that prior informed consent has been obtained and access has been granted on mutually agreed terms which can be made through an internationally recognized certificate of compliance.

Principles of Objective 3

Intellectual property offices should consider all relevant prior art information relating to genetic resources, their derivatives and associated traditional knowledge when assessing the eligibility for grant of intellectual property rights.

Intellectual property applicants should disclose all background information of genetic resources, their derivatives and associated traditional knowledge relevant for determining the eligibility conditions.

Objective 4 -Options 1

Establish a coherent system and promote mutually supportive relationship between intellectual property rights involving the utilization of genetic resources, their derivatives and/or associated traditional knowledge and existing international and regional agreements and treaties.

Objective 4 -Option 2

Ensure consistency with international legal standards in the promotion and protection of the collective rights of indigenous and local communities to their genetic resources and/or associated traditional knowledge by establishing a transparent, independent, accessible mechanism for oversight and dispute resolution, with associated rights to local communities

Principles of Objective 4

Promote respect for and seek consistency with other international and regional instruments and processes.

Promote cooperation with relevant international and regional instruments and processes.

The work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should not prejudice the work pursued in other fora.

Objective 5 – Option 1

Preventing the adverse effects of the intellectual property system on the indigenous and local communities' customs, beliefs and rights with the aim of recognize and protect the rights of indigenous and local communities to use, develop, create and protect their knowledge and innovation in relation to genetic resources.

Objective 5 -Option 2

Recognize and maintain the role of the intellectual property system in promoting innovation, transfer and dissemination of technology, to the mutual advantage of holders and users of genetic resources, their derivatives and/or associated traditional knowledge in a manner conducive to social and economic welfare, while contributing to the protection of genetic resources, their derivatives and/or associated traditional knowledge.

Principles of Objective 5 -Option 1

Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources and associated traditional knowledge.

Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources and associated traditional knowledge.

Protect creativity and reward investments.

Promoting transparency and dissemination of information by publishing and disclosing technical information related to new inventions, where appropriate and when publicly available, so as to enrich the total body of knowledge accessible to the public.

Principles of Objective 5 -Option 2

Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources, their derivatives and/or associated traditional knowledge and in the protection of traditional knowledge, genetic resources, their derivatives and/or associated traditional knowledge and traditional cultural expressions and fair and equitable sharing of benefits arising from their use.

Promote certainty and clarity of intellectual property rights, noting the relationship with genetic resources, their derivatives and/or associated traditional knowledge and obligations with respect to the protection of traditional knowledge, genetic resources, their derivatives and/or associated traditional knowledge and traditional cultural expressions and certainty and clarity for prior informed consent and fair and equitable benefit-sharing.

Protect creativity, reward investments and ensure prior informed consent and fair and equitable benefit-sharing with the knowledge holders. Promoting transparency and dissemination of information by disclosing country of origin and publishing and disclosing technical information related to new inventions, where appropriate and where publicly available, so as to enrich the total body of technical knowledge accessible to the public.

Principles of Objective 5 -Option 3

Increase legal certainty and trust between users and providers of genetic resources and traditional knowledge through a mandatory disclosure of origin or source.

Principles of Objective 5 -Option 4

Promote transparency and dissemination of information where not in contrast with public morality and/or public order.

[Annex II follows]

LIKE-MINDED COUNTRIES

PRELIMINARY DRAFT ARTICLES ON THE PROTECTION OF GENETIC RESOURCES

ARTICLE 1
SUBJECT MATTER OF PROTECTION

1. Protection shall extend to any utilization of genetic resources, its derivative and associated traditional knowledge.
2. For the purposes of this instrument:
 - (a) "Associated Traditional knowledge" means knowledge which is dynamic and evolving, generated in a traditional context, collectively preserved and transmitted from generation to generation including but is not limited to know-how, skills, innovations, practices and learning, that subsist in genetic resources.
 - (b) "Derivative" means a biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity;
 - (c) "Genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity
 - (d) "Genetic Resources" are genetic material of actual or potential value;
 - (e) Utilization of Genetic Resources means to conduct research and development on the genetic and/or biochemical composition of genetic resources, their derivatives and associated traditional knowledge including through the application of biotechnology.

ARTICLE 2
BENEFICIARIES

1. Measures for the protection of genetic resources, their derivatives and associated traditional knowledge shall be for the benefit of country of origin of genetic resources.
2. Parties shall respect the rights of indigenous and local communities in the traditional knowledge associated with genetic resources, their derivatives in accordance with the domestic legislation.

ARTICLE 3
SCOPE OF PROTECTION

1. Contracting parties shall provide in their national intellectual property legislation the following in the event that the subject-matter of an application involves genetic resources, their derivatives and associated traditional knowledge:
 - (a) Mandatory disclosure of information in the intellectual property application, of the following:
 - (i) Country of origin and source of genetic resources, their derivatives and associated traditional knowledge;
 - (ii) Prior informed consent, either by the certificate of origin or by any other document issued in accordance with the domestic law of country of origin. In case the country of origin is not identifiable even after making reasonable efforts, certificate of evidence issued in accordance with the domestic law of country providing;
 - (iii) Evidence of benefit sharing under mutually agreed terms entered with the beneficiaries as define in Article 2 in accordance with their domestic legislation;
 - (iv) Make available written and oral information regarding traditional knowledge associated with genetic resources, their derivatives for enabling search and examination of the intellectual property application including the details of the holder of the TK.
 - (b) Put in place an adequate information dissemination system to enable an opportunity by relevant authorities from other contracting parties, indigenous and local communities or any other interested parties to submit information relevant to search and examination of an intellectual property application pending before national intellectual property offices in order to better assess compliance with the eligibility criteria for the grant of intellectual property rights.
 - (c) That the intellectual property offices while examining the intellectual property application ascertain whether the applicant has comply with the mandatory disclosure requirements as per clause 1(a) of this Article and take necessary measures as mandated in this instrument in case of non compliance.
 - (d) No intellectual property rights shall be granted to genetic resources that naturally occur in situ and ex situ.
 - (e) That the national intellectual property offices shall:
 - (i) Consider all relevant written and oral information relating to genetic resources, their derivatives and associated traditional knowledge, regardless of the language, from all countries when conducting search and examination for determining the eligibility criteria for granting of intellectual property rights.
 - (ii) Develop appropriate and adequate guidelines for the purpose of conducting search and examination of intellectual property applications relating to genetic resource, their derivatives and associated traditional knowledge considering existing and additional information provided by the applicants, as well as accessible to the examiners.

2. Contracting Parties shall appoint national intellectual property offices as a checkpoint for disclosure of the country of origin and source of genetic resources, their derivatives and associated traditional knowledge and for their monitoring.

ARTICLE 4 COMPLIMENTARY MEASURES

1. Contracting Parties may facilitate access to information, including information made available in databases, relating to genetic resources, their derivatives and associated traditional knowledge with the intellectual property offices of Contracting Parties to this instrument.
2. Contracting Parties shall ensure that:
 - (a) confidentiality of such information provided to the intellectual property offices as stated in clause 1.1. is maintained by the such offices and the applicants who have access to such information, in accordance with domestic legislation or contractual obligation;
 - (b) any violation of the same shall be considered as an act of unfair competition and a violation of contractual obligations or an infringement of the protection provided in this instrument and be subjected to sanction as provided in this instrument.

ARTICLE 5 RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS

1. Contracting Parties shall establish a coherent system and promote mutually supportive relationship between intellectual property rights involving the utilization of genetic resources, their derivatives and associated traditional knowledge and existing international agreements and treaties.
2. Contracting Parties shall support, in particular, the implementation of the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention of Biological Diversity.

ARTICLE 6 INTERNATIONAL COOPERATION

Relevant WIPO bodies to encourage Patent Cooperation Treaty members to develop a set of guidelines for the search and examination by the international search and examination authorities under Patent Cooperation Treaty including additional information arising from the disclosure requirement as provided in this instrument.

ARTICLE 7
TRANS-BOUNDARY COOPERATION

In instances where traditional knowledge is located in territories of different Contracting Parties, those Contracting Parties shall co-operate by taking measures that are supportive of and do not run counter to the objectives of this instrument.

ARTICLE 8
SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS

1. Contracting Parties shall ensure, in accordance with their legal systems, adequate criminal, civil and administrative enforcement procedures and dispute resolution mechanisms are available under their laws against the willful infringement of the protection provided genetic resources, their derivatives and associated traditional knowledge under this instrument.
2. Contracting Parties shall provide that administrative and/or judicial authorities have the right to :
 - (a) prevent the further processing of the intellectual property applications;
 - (b) prevent the granting of intellectual property rights;
 - (c) revoke intellectual property rights; and
 - (d) render unenforceable intellectual property rights when the applicant has either failed to comply with the obligations of mandatory disclosure requirements as provided in this instrument or provided false or fraudulent information.
3. Where a dispute arises in relation to mutually agreed terms between users, beneficiaries and providers of genetic resources, their derivatives and associated traditional knowledge each Party may be entitled to refer the issue to an alternative dispute resolution mechanism recognized by domestic legislation.

ARTICLE 9
TECHNICAL ASSISTANCE, COOPERATION AND CAPACITY BUILDING

Relevant WIPO bodies shall develop modalities for the creation, funding and implementation of the provisions under this instrument. WIPO shall provide technical assistance, cooperation, capacity building and financial support for developing countries in particular the least developed countries to implement the obligations under this instrument.

[End of Annexes and of document]