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**AFRICAN CONSOLIDATED FRAMEWORK
FOR INTELLECTUAL PROPERTY, INDIVIDUAL AND
COMMUNITY RIGHTS**

**DRAFT CONSOLIDATED FRAMEWORK ON PROTECTION OF
TRADITIONAL KNOWLEDGE, INTELLECTUAL PROPERTY, INDIVIDUAL
AND COMMUNITY RIGHTS**

A. Background

This draft consolidated framework is a product of a meeting that was held in Mauritius from 13th-14th September, 2007. The meeting was officially opened by Dr Patrice Cure on the first day (10th September, 2007) when representing the Minister of Foreign Affairs, International Trade and Cooperation. He noted that his country felt especially honoured to host the two meetings. He was grateful that Mauritius was playing its role in the generation of draft frameworks that would be useful to the continent. A welcome address was delivered by Professor I. Fagonee, the Vice-Chancellor of the University of Mauritius, who stressed the importance of such a meeting in view of the growing importance of natural plant products in the well-being on communities.

Dr M.H.K. Timamy, representing the Commissioner for Human Resources, Science and Technology, conveyed greetings from the Commissioner. He observed that the Commissioner has expended considerable effort in advancing the cause of science and technology in Africa, and the meetings in Mauritius were a reflection of her desire to see effective arrangements being put in place to promote growth and prosperity in Africa. He stated that Her Excellency was aware that traditional knowledge and the useful biotic heritage in our midst was not being properly cared for, but hoped that the discussions would produce outcomes that enhance commercialization and protection of our genetic heritage. He concluded by wishing the participants fruitful meetings.

B. Objective of the meeting

The objective of the meeting was to discuss a commissioned paper entitled: *Draft Consolidated Framework on the Protection of Traditional Knowledge, Intellectual Property, Individual and Community Rights*, with a view to generating a draft framework based on cross-fertilization of ideas and exchanges. The idea stemmed from the concern that Africa does not have a formal framework to guide Member States in

protecting inventions and innovations arising from the efforts of traditional communities as well as individuals. Most initiatives along these lines have not received formal endorsement by Ministers, and therefore have not received the blessings of the Heads of State. This particular exercise was designed to fill that gap. At least 30 experts from Africa attended the meeting.

C. Introduction

In recent years, Africa had to cope with vast changes at the global and institutional levels. The rapid pace of globalization, coupled with major institutional initiatives such as the trade-related intellectual property rights (TRIPs), have engendered a new dynamic in the way in which the continent would interrelate with the rest of the international community. It has since become evident that intellectual property issues are becoming increasingly important in facilitating rapid economic change while improving and enhancing the productive potential of economic systems as they evolve through time.

Productive knowledge of, and innovative contributions by, African inventors and technical practitioners have enjoyed limited practical protection largely because national initiatives have often been disparate and inchoate in their implementational thrusts. Models have been developed and frameworks have been devised without organisms underpinnings such that dynamic changes hardly find space for accommodation. The non-anticipatory nature of these instruments means that the models need to be revisited from time to time to incorporate evolutionary developments. Since the development of the OAU Model Law in year 2000, major changes and advances have taken place at regional and global levels without commensurate innovations being effected at strategic and institutional end-points. The rapid pace of globalization and astronomic flows of information following dramatic advances in communication technologies has not only posed new challenges with respect to property protection, but has also engendered new opportunities for inventors, innovators, governments, and other stakeholders.

D. Vision

We envision a future in which AU Member States recognize the protect traditional knowledge and folklore, intellectual property and associated technologies, innovations and practices, individual and community rights through appropriate legal framework.

E. Definition of traditional knowledge

Traditional knowledge is the tradition-based set of information that humans living in a given community have developed over time, and continue to develop, on the basis of experience and adaptation to a local culture and environment, from generation to generation. This knowledge is used to sustain the whole community and its culture and to maintain the biological resources necessary for its continuing survival.

Custodians of TK are important stakeholders who should always be involved in discussions on TK, IPR and individual and community rights.

F. Principles

- i. The State and its people have sovereign and inalienable rights over their biological resources;
- ii. The rights of local communities over their biological resources, knowledge, folklore, technologies, innovations and practices which have evolved over generations of human history, are collective *a priori* rights that take precedence over private or individual ownership rights;
- iii. There should be available, effective and accessible protection,
- iv. There should be no patenting of life forms;
- v. The State should provide adequate mechanisms for guaranteeing equitable and effective participation of its citizens in making decisions affecting biological resources and intellectual property rights;
- vi. There should be flexibility and comprehensiveness,
- vii. There should be an equitable benefit sharing in an appropriate manner.

G. Elements that should be part of the policy framework for traditional knowledge, Individual and community rights:

- i. Recognition of TK holders;
- ii. Conferring of Rights on TK holders;
- iii. Fair and equitable benefit sharing;
- iv. Compulsory licensing;
- v. Prior informed consent;
- vi. Rights to restrict access to TK;
- vii. Sanctions, remedies and enforcement; and
- viii. Regional protection of TK.

H. Conditions and incentives for the protection of traditional knowledge of individuals and communities to be provided in the framework

It was observed that in many Member States conditions and incentives are not provided for in any legal framework. It was further observed that even at the administrative level, both conditions and incentives are not provided for. These will form part of the guidelines under the national policy framework.

(a) Conditions

- i. Prior Informed Consent
- ii. Material Transfer Agreement
- iii. Development of database
- iv. Recognition of TK holders
- v. Sustainable use of biological resources
- vi. Recognition of individuals and community rights
- vii. Transfer of technology
- viii. Validation of TK
- ix. Collecting permits
- x. Contractual agreements; and

- xi. Prohibitions and penalties. (There should be an explicit prohibition of biopiracy* and other related offences.

(b) **Incentives**

- i. Fair and equitable sharing of benefits;
- ii. Recognition of individual and community rights e.g. publications, patents and reports; and
- iii. Sharing and dissemination of information and knowledge.

Member States should:

- i. formulate relevant policies;
- ii. enact relevant legislation;
- iii. make regulations to facilitate implementation of laws;
- iv. provide administrative measures for effective implementation;
- v. plan for and build capacity;
- vi. raise awareness about IP at all levels especially grassroots;
- vii. involve custodians of TK in discussions;
- viii. sign a PCT Agreement;
- ix. ensure that patents registered nationally are protected internationally and
- x. create databases of all registered patents.

I. National Policy Framework

1. Integrate individual, community and intellectual property protection into national planning processes;
 - xi. Formulate policies on the protection of traditional knowledge, individual and community rights;
 - xii. Reform national health policies to accommodate traditional knowledge, individual and community rights;
 - xiii. Adopt new policies to promote conservation and equitable uses of medicinal biodiversity;

- xiv. Regulate the transfer of medicinal genetic resources to interested parties abroad;
- xv. Establish incentives for effective domestication, cultivation and utilization of medicinal biodiversity;
- xvi. Modify national income account to reflect services emanating from the use of traditional knowledge and applications of individual and community rights;
- xvii. Audit the utilization and application of traditional knowledge to raise awareness to protect individual and community rights;
- xviii. Encourage local communities to explore opportunities for greater benefit sharing from traditional knowledge;
- xix. Build awareness of the importance of traditional, individual and community rights among citizens;
- xx. Use the formal education system to increase awareness about traditional knowledge, individual and community rights;
- xxi. Establish or strengthen national institutions, providing information on traditional knowledge, individual and community rights;
- xxii. Undertake national inventory on traditional knowledge and produce periodic assessment of commercialization of traditional knowledge;
- xxiii. Establish a national information network on traditional, individual and community rights;
- xxiv. Promote basic and applied research using traditional knowledge focusing on efficacy, safety and standardization to provide medicines;
- xxv. Assess national research priorities based on traditional knowledge;
- xxvi. Increase support for training of traditional health practitioners;
- xxvii. Strengthen the influence of capacity of the traditional knowledge institutions to promote the utilization and sustainable commercialization of traditional knowledge.

J. Recommendations

Member States should formulate the necessary policies and enact legislation on TK, IP and individual and community rights;

Member States should centralize all matters related to TK, IPR and individual and community rights in one institution;

The indentified institution/organization should have an assembly of expertise to handle matters related to TK, IPR and individual and community rights;

For effective coordination and implementation, each Member States should constitute a committee or commission comprising various stakeholders and experts;

- recognize, protect and support and support the inalienable rights of traditional health practitioners and local communities including farming communities and breeders over their biological resources, knowledge and technologies;
- provide an appropriate system of access to biological resources, communities knowledge, innovations and technologies subject to the prior informed consent of the State and the concerned local communities;
- provide institutional mechanisms for a fair and equitable sharing of benefits arising from the uses of biological resources, knowledge and technologies;
- ensure the effective participation of concerned communities, with a particular focus on women, in making decisions as regards the distributions of benefits which may derive from the use of their biological resources, knowledge and technologies;
- promote and encourage the building of national and grassroots scientific and technological capacity relevant to the protection, conservation, evaluation and sustainable use of biological resources, with a particular focus on the major role women play;

Promote improvements in the productivity, profitability, stability and sustainability of major production systems through yield enhancement and maintenance of biological diversity;

- promote the supply of good quality seed/planting material to farmers, and
- ensure that biological resources are utilized in an effective and equitable manner in order to strengthen the food security and improve the quality of life.

K. Activities

- Prepare an action plan to guide Member States implement the proposed Decade on Protection and Implementation of Traditional Knowledge, Intellectual Property, Individual and Community Rights (2008-2018)
- Document traditional knowledge;
- Institutionalize the education on intellectual property and protection of traditional knowledge/traditional cultural expressions at appropriate levels
- Establish desired competence at research institutions and universities to handle intellectual property issues.

L. Conclusion

Africa does not have a formal draft framework on protection of traditional knowledge, intellectual property, individual and community rights that has been endorsed by Ministers and eventually by Heads of State. This initiative has synthesized earlier efforts undertaken at various times. Hence the use of the term consolidated. This product is to guide Member States in the direction of developing respective national frameworks for the protection of various rights as regards inventions and innovations based in traditional knowledge.