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

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SUBMISSION BY THE AFRICAN GROUP: OBJECTIVES, PRINCIPLES AND
ELEMENTS OF AN INTERNATIONAL INSTRUMENT, OR INSTRUMENTS,
ON INTELLECTUAL PROPERTY IN RELATION TO GENETIC RESOURCES AND
ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

Document submitted by the African Group

1. On March 12, 2004, the Permanent Mission of the Arab Republic of Egypt to the Office of the United Nations and other International Organizations in Geneva submitted a document on behalf of the African Group entitled “Objectives, principles and elements of an international instrument, or instruments, on intellectual property in relation to genetic resources and on the protection of traditional knowledge and folklore”.
2. The document is reproduced and published in the Annex.
3. *The Committee is invited to take note of this document and the Annex to it.*

[Annex follows]

OBJECTIVES, PRINCIPLES AND ELEMENTS OF AN INTERNATIONAL
INSTRUMENT, OR INSTRUMENTS, ON INTELLECTUAL PROPERTY IN RELATION
TO GENETIC RESOURCES AND ON THE PROTECTION OF TRADITIONAL
KNOWLEDGE AND FOLKLORE

Objectives

1. Prevent the misappropriation of genetic resources, traditional knowledge and expressions of folklore
2. Ensure prior informed consent and equitable sharing of the benefits arising from the use of genetic resources, traditional knowledge and expressions folklore
3. Ensure that these benefits are harnessed for the benefit of traditional knowledge holders and custodians, in particular local and indigenous communities
4. Ensure the conservation and sustainable use of bio-diversity
5. Protect and reward innovations and creative works derived from traditional knowledge and expressions of folklore

Principles

1. Reaffirm the principle of national sovereignty over genetic resources
2. Recognize the role of the State in the preservation and protection of traditional knowledge and expressions of folklore
3. Recognize the economic rights of traditional knowledge holders and custodians as well as their moral rights against the culturally offensive use of their traditional knowledge and expressions of folklore
4. Recognize the role of customary law and protocols in the protection of traditional knowledge and expressions of folklore
5. Recognize the complementary nature of defensive and positive measures relating to the protection of genetic resources, traditional knowledge and expressions of folklore

General Elements

- National Treatment/ Mutual recognition of national legislation
- Definitions.

Genetic Resources

- Recognition of the right of States to take measures to ban the patenting of life forms
- Compliance with access and benefit sharing laws of the country of origin of genetic resources to ensure implementation of prior informed consent and equitable benefit sharing
- Introducing a disclosure requirement in patent laws as well as evidence of compliance with national access and benefit sharing laws of the country of origin of genetic resources (disclosure of the source and country of origin of the genetic resource in claimed inventions and of the associated traditional knowledge used in the invention)
- Contractual arrangements

Traditional Knowledge

Developing a *sui generis* system of protection

- Establish scope of protected subject matter
- Establish nature of rights,
- Address ownership of rights, moral and economic rights, acquisition, exercise, expiry and enforcement of rights
- Establish registration mechanisms

Expressions of Folklore

Developing a *sui generis* system of protection

- Establish scope of protected subject matter
- Establish nature of rights,
- Establish ownership of rights, moral and economic rights of performers, acquisition, exercise, expiry and enforcement of rights
- Establish registration and administration mechanisms

Institutional Mechanism

- Capacity building and technical assistance
- Sensitization and Awareness building
- Networking and exchange of information
- Promotion of documentation and codification of traditional knowledge and expressions of folklore
- Institutional mechanism for fostering the transfer of technology
- Establishment of national focal points of implementation
- Establishment of a follow up body

Enforcement

Dispute Settlement

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