

- Customary laws: Customary laws, protocols and practices are the ones which define how traditional communities develop, hold and transmit traditional knowledge.

What is ARIPO doing?

ARIPO is mandated under the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, which came into force on 11 May 2015, to register TK and expressions of folklore so as to protect the holders (of TK) against any infringement, misappropriation, misuse and unlawful exploitation beyond their traditional context.

ARIPO has also developed a prototype TK data base to:

- Promote documentation, preserve and maintain TK;
- Provide a means to assist patent search procedures and identify prior art;
- Identify communities which might be entitled to benefit-sharing and assign exclusive rights;
- Provide the means for recording the existence of TK over which positive rights have been recognized under national or customary law; and
- Serve as the mechanism for obtaining protection of TK through *sui generis* database protection.

For further information please visit or contact:

African Regional Intellectual Property Organization (ARIPO)

11 Natal Road, Belgravia

PO Box 4228, HARARE

Telephone: (+263) (4) 794054/65/6/8/74

Fax: (+263) (4) 794072/3

E-Mail: mail@aripo.org

Website: www.aripo.org



TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF FOLKLORE



Traditional knowledge (TK)

It is a multifaceted concept that encompasses several components and, generally, it is not produced systematically but in accordance with the individual or collective creators' responses to and interaction with their cultural environment. There is no universally accepted definition of TK but the two below are most commonly used in defining TK:

- It is practical common sense based on teachings and experiences passed on from generation to generation.
- It is knowing the country. It covers knowledge of the environment - snow, ice, weather, resources — and the relationships between things.

Ownership and control of traditional knowledge

Natives own the intellectual property (IP) rights to their traditional knowledge, even if much of it has yet to be written down. No one has the right to document or use traditional knowledge without permission. And, when their knowledge is recorded by others, Natives have the right to insist that it not be taken out of context or misrepresented. When traditional knowledge is cited by others, Natives also have the right to insist that the source of this knowledge be properly acknowledged. In other words, Natives have the rights to own and control access to their traditional knowledge.

They possess both collective and individual traditional knowledge. Most traditional knowledge is shared among community members. But some traditional knowledge may be specific to an individual. For example, some elders and resource-users will, because of different life experiences, be the only source of certain types of traditional knowledge.

Fears of TK owners

Many Natives view the extraction of their traditional knowledge from its broader cultural context as a form of theft and, understandably so have been reluctant to share the depth and breadth of what they know with outside interests. They



also fear that, because many wildlife managers and decision makers do not understand their culture, customs or values, their traditional knowledge will somehow be used against them (e.g. setting quotas and other hunting regulations).

At best, piecemeal extraction of traditional knowledge from its larger cultural context invites misrepresentation and misinterpretation. At worst, it represents a form of misappropriation and cultural exploitation.

Protection of traditional knowledge

Legal concepts for traditional knowledge protection include:

- **Prior Informed Consent:** As per this principle traditional knowledge holders should be fully consulted before third parties use their knowledge.
- **Equitable Benefit Sharing:** This principle prescribes the balancing of the interests of the right holders and the general public.
- **Unfair Competition:** Unfair competition means any act of competition contrary to honest practices in industrial or commercial matters and includes various acts that mislead the public or cause confusion. This principle allows for action to be taken against false or misleading claims that a product is authentically indigenous, or has been produced or endorsed by, or otherwise associated with, a particular traditional community.
- **Patents:** When practitioners innovate within the traditional framework, they can use the patent system to protect their innovations.
- **Distinctive signs:** such signs include trade marks, collective marks, certification marks and geographical indications. Traditional signs, symbols and terms associated with traditional knowledge may be protected as distinctive marks.

