

RESPONSE TO THE QUESTIONNAIRE ON THE PROTECTION OF TRADITIONAL KNOWLEDGE BY THE REPUBLIC OF GHANA

1.0 DEFINITION OF TRADITIONAL KNOWLEDGE

1.1 Definition of traditional Knowledge:- this refers to tradition based literary, artistic or scientific works, performances, inventions, scientific discoveries, designs, marks, names and symbols undisclosed information and all other tradition based innovation and creations resulting from intellectual activities in the industrial, scientific, literary or artistic fields.

1.2 Traditional Knowledge should be protected comprises information held in human memories that is by recall and the practice of learned skills in a useful way in day to day life. However, what is generally recognized is that it is a multi faceted concept encompassing several components. These may range from traditional Knowledge systems in the field of medicine and healing, biodiversity conservation, the environment, food and agricultural techniques and so on.

1.3 WIPO currently uses the term “traditional knowledge” to refer to traditional – based literary, artistic or scientific works; performances, invention, information and all other traditional – based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Tradition – based refers to knowledge systems, creations, innovations and cultural expressions which have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and are constantly evolving in response to a changing environment. Categories of traditional knowledge could include agricultural knowledge, scientific knowledge, technical knowledge, ecological knowledge, medicinal knowledge, “expressions of folklore” in the form of music, dance, song handicrafts, designs, stories and art work; elements of languages, such as names, geographical indications an symbols, and movable cultural properties. Excluded from this description of traditional knowledge would be items not resulting from intellectual activity in the industrial, scientific, literary or artistic fields, such as human remains, languages in general, and other similar elements of “heritage” in the broad sense.

1. Traditional based; refers to knowledge systems, creations, innovations and cultural expressions which have generally been transmitted from generation to generation and are generally regarded as pertaining to a particular people or its territory and are constantly evolving in response to a changing environment.
2. It is therefore imperative that the community at large should be recognized as the sole beneficiary of such protection and also be accorded the rights to protect able Traditional Knowledge.

2.0 BENEFICIARIES OF PROTECTION

The beneficiaries of the protection of traditional knowledge (genetic resources) may be divided into two categories viz:-

- i. Holders or Owners of the knowledge viz individuals, traditional communities, casts, families, ethnic groups, nations and sub regions. For instance, in West Africa

except with slight differences in species and use, kente, yam, gari, and palm fruits are widely used in the sub region.

- ii. derived right owners such as modern researchers, innovators and extractors of traditional knowledge.

The beneficiaries of protection under the instrument must include indigenous communities, nations and sub-regions which own and maintain the traditional knowledge and secondary owners of rights such as collectors, researchers, extractors and developers.

Researchers, collectors and extractors of information regarding traditional knowledge to be given limited recognition. Shared serendipity applications of traditional knowledge folklore (that is discoveries made by accident). Provision must be made for shared ownership of the commercial exploitation of knowledge that is developed from traditional knowledge.

3.0 OBJECTIVES

1. To acknowledge ownership of traditional knowledge
2. To protect the rights of the owners.
3. To encourage collection, storage, collation, retrieval and use of traditional knowledge
4. To facilitate research extraction and development rights in traditional knowledge.
5. To make same available for the benefit of mankind.
6. To guarantee adequate remuneration to the beneficiaries.

The objective for the protection of Traditional Knowledge as provided in document GRTKF/9/INF/5 is too limited. It is true that some researchers, extractors and innovators who come by traditional knowledge, most often misappropriate this knowledge. The source of the information is not acknowledged and little or no financial benefit ensure to the owners or holders of the knowledge from the exploitation of the traditional knowledge. Misappropriation should not be the only basis or objective for the protection of traditional knowledge. It is necessary to expand the objectives for the protection of traditional knowledge.

4.0 FORMS OF ABHORRED BEHAVIOUR

- a. Unauthorized collection of traditional from the right owners.
- b. Non acknowledge of the rights of the owners or holders of the Traditional Knowledge
- c. Exploitation of the protected traditional knowledge without the consent nor authorization of the owner of the traditional knowledge
- d. Publishing the protected information without the authorization nor observance of the moral right in the traditional knowledge
- e. Unreasonable withholding of information on traditional knowledge by the holders from researchers.

5.0 LIMITATIONS

This instrument shall not affect the following

- i) Traditional systems of access, use or exchange of traditional knowledge.
- ii) Access, use and exchange of knowledge and technologies by and between local communities.

The sharing of benefits based upon customary practices of the concerned local communities, provided that the exception shall not be taken to apply to any person or persons not living in the traditional and customary way of life relevant to the conservation and sustainable use of traditional knowledge.

- iii) the continued availability of traditional knowledge for the customary practice, exchange, use and transmission of traditional knowledge by traditional knowledge holders
- iv) the use of traditional medicine for household purposes; use in government hospitals, especially by traditional knowledge holders attached to such hospitals; or use for other public health purposes
- v) Regime of storage categorization of traditional medical practices
- vi) Any use of the traditional knowledge or TCE for the benefit of the public.

6.0 TERM OF PROTECTION

Traditional knowledge is to be protected in perpetuity.

However derivatives and extractions from the knowledge or secondary / related rights are to be protected in line with the term of protection of intellectual property rights such as patents copyright, etc.

7.0 PROTECTION OF TRADITIONAL KNOWLEDGE

Ghana currently protects the literary, scientific and artistic aspects of Traditional Cultural Expressions, Adinkra and Kente designs, i.e. traditional motifs are protected under the Copyright Act 2005, Act 690.

The gaps that needed to be filled are the remaining aspects of folklore such as modes and methods of preparation of traditional foods, medicine.

8.0 SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS

We suggest that the following provisions in the African Union model law be considered.

- 1) Without prejudice to the existing agencies and authorities, the state shall establish appropriate agencies with the power to ensure compliance with the provisions of the instrument.
- 2) Without prejudice to the exercise of civil and penal actions which may arise from violations of the provisions of the instrument and subsequent regulations, sanctions and penalties to be provided may include:

- i) written warning
 - ii) fines
 - iii) automatic cancellation / revocation of the permission for access
 - iv) confiscation of collected biological specimens recorded information and equipment
 - v) permanent ban from access to traditional knowledge such as biological resources / community knowledge and technologies in the country.
- 3) The violation committed shall be publicized in the national and international media and shall be reported by the national competent authority to the secretariats of relevant international conventions and regional bodies.
- 4) When the collector innovator conducts his / her operation outside of national jurisdiction, any alleged violations by such a collector may be prosecuted through the co-operation of the government under whose jurisdiction the collector operates based on the guarantee that the latter has provided.

9.0 Every issue concerning Traditional Knowledge should be dealt with at both the national and international levels especially where, the issue involves two or more different nationals or nations.

10.0 RELATIONSHIP TO OTHER INTERNATIONAL CONVENTIONS

Nothing in this convention may be interpreted as altering the status or diminishing the level of protection under any convention affecting the rights and obligations of states parties deriving from international instruments relating to intellectual property rights or to the use of biological and ecological resources to which they are parties. Foreign right holders / beneficiaries should be given equal treatment.

Thank you.

RESPONSE TO THE QUESTIONNAIRE ON THE PROTECTION OF FOLKLORE BY THE REPUBLIC OF GHANA

1.0 DEFINITION OF FOLKLORE

1.1 The WIPO Glossary defines folklore as works belonging to the cultural heritage of a nation created, preserved and developed in indigenous communities by unidentified persons from generation to generation.

Examples of such works are folk tales, folk songs, instrumental music or dances and the different rites of people. In the broad sense, folklore comprises all literary and artistic works mostly created by authors of unknown identity but presumed to be nationals of a given country, evolving from characteristic forms traditional with ethnic groups of the country.

1.2 The Copyright act 2005 (Act 690) defines folklore as the literary, artistic and scientific expressions belonging to the cultural heritage of Ghana which are created, preserved and developed by ethnic communities of Ghana designs, where the author of the designs are not known and any work designated under the Act as works of folklore.

1.3 Definition 3: The UNESCO Bulletin Volume 32 NO. 4 defines folklore as follows:- Folklore is a mode by which culture is expressed. Folklore encompasses all aspects of cultural heritage, including art works, songs, dances, stores, customs, traditional medical knowledge, etc.

2.0 BENEFICIARIES OF PROTECTION

The beneficiaries of the protection of folklore may be divided into two categories viz:-

i. Holders or Owners of the folklore viz individuals, traditional communities, casts, families, ethnic groups, nations and sub regions. For instance, in West Africa except with slight differences in species and use, kente, yam, gari, and palm fruits are widely used in the sub region.

ii. Derived right owners such as modern researchers, innovators and extractors of folklore.

The beneficiaries of protection under the instrument must include indigenous communities, nations and sub-regions which own and maintain the folklore and secondary owners of rights such as collectors, researchers, extractors and developers.

Researchers, collectors and extractors of information regarding folklore to be given limited recognition. Shared serendipity applications of folklore (that is discoveries made by accident). Provision must be made for shared ownership of the commercial exploitation of knowledge that is developed from folklore.

3.0 OBJECTIVES

1. To acknowledge ownership of folklore
2. To protect the rights of the owners.

3. To encourage collection, storage, collation, retrieval and use of folklore
4. To facilitate research extraction and development rights in folklore
5. To make same available for the benefit of mankind.
6. To guarantee adequate remuneration to the beneficiaries.

The objective for the protection of Folklore as provided in document GRTKF/9/INF/5 is too limited. It is true that some researchers, extractors and innovators who come by folklore, most often misappropriate this knowledge. The source of the information is not acknowledged and little or no financial benefit ensure to the owners or holders of the knowledge from the exploitation of the folklore. Misappropriation should not be the only basis or objective for the protection of folklore. It is necessary to expand the objectives for the protection of folklore.

4.0 FORMS OF ABHORRED BEHAVIOUR

- a. Unauthorized collection of folklore from the right owners.
- b. Non acknowledge of the rights of the owners or holders of the folklore
- c. Exploitation of the protected folklore without the consent or authorization of the owner of folklore.
- d. Publishing the protected information without the authorization nor observance of the moral right in the folklore
- e. Unreasonable withholding of information on folklore by the holders from researchers.

5.0 LIMITATIONS

This instrument shall not affect the following

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