



ARIPO

*African Regional Intellectual
Property Organization*

WORKSHOP ON THE PROMOTION OF ARIPO PROTOCOLS

Overview of the Swakopmund Protocol

Said Ramadhan
Senior Patent Examiner

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Fostering Creativity and Innovation for Economic Growth and Development in Africa

OUTLINE

- Introduction of the Swakopmund Protocol
- Key Provision of the Protocol
- Application and Registration Procedures



The Swakopmund

- Empowers ARIPO to register Traditional Knowledge (TK) and Express of Folklore (EF) on behalf of the contracting States
- Adopted in 2010 in Swakopmund, Namibia.
- Entered into force May 11, 2015.
- Nine (9) member States are party to the Protocol

Contracting States

BOTSWANA



CAPE VERDE



GAMBIA



LIBERIA



MALAWI



NAMIBIA



RWANDA



ZAMBIA



ZIMBABWE



Purpose of Protocol – *Sec. 1*

- The purpose of this Protocol is:
 - a) to protect traditional knowledge holders against any infringement of their rights as recognized by this Protocol; and
 - b) to protect expressions of folklore against misappropriation, misuse and unlawful exploitation beyond their traditional context.



National Competent Authority – *Sec. 3*

- The Contracting States shall designate or establish a national competent authority which shall implement the provisions of this Protocol.



Protection Criteria TK – *Sec. 4*

- Protection shall be extended to TK that is:
 - a) generated, preserved and transmitted in a traditional and intergenerational context;
 - b) distinctively associated with a local or traditional community; and
 - c) integral to the cultural identity of a local or traditional community that is recognized as holding the knowledge through a form of custodianship, guardianship or collective and cultural ownership or responsibility.



Protection Criteria EF – *Sec. 16*

- Protection shall be extended to EF that is:
 - a) the products of creative and cumulative intellectual activity, such as collective creativity or individual creativity where the identity of the individual is unknown; and
 - b) characteristic of a community's cultural identity and traditional heritage and maintained, used or developed by such community in accordance with the customary laws and practices of that community.



Duration of Protection TK – *Sec. 13*

- TK shall be protected for so long as the knowledge fulfils the protection criteria.
- Where TK belongs exclusively to an individual, protection shall last for 25 years following the exploitation of knowledge beyond its traditional context by the individual.



Duration of Protection EF – *Sec. 21*

- EoF shall be protected against all acts of misappropriation, misuse or unlawful exploitation for as long as the EoF fulfill the protection criteria.



Rights Conferred – *Sec. 7, 19*

- The owner of TK/EoF shall have the right to prevent anyone from:
 - exploiting their TK without their prior informed consent
 - all acts of misappropriation, misuse and unlawful exploitation



Assignment and Licensing – *Sec. 8*

- Owners of TK shall have the right to assign and conclude licensing agreements
- TK belonging to an indigenous or local community may not be assigned
- Assignments or licences granted in respect of protected TK knowledge shall be granted in writing



Equitable benefit-sharing – *Sec. 9*

- The protection to be extended to TK holders shall include the fair and equitable sharing of benefits arising from the commercial or industrial use of their knowledge, to be determined by mutual agreement between the parties.
- The national competent authority shall, in the absence of such mutual agreement, mediate between the concerned parties with a view to arriving at an agreement on the fair and equitable sharing of benefits.
- The right to equitable remuneration might extend to non-monetary benefits, such as contributions to community development



Regional Protection – *Sec. 24*

- Eligible foreign holders of TK and EoF shall enjoy benefits of protection to the same level as holders of TK and EoF who are nationals of the country of protection, considering as far as possible the customary laws and protocols applicable to the TK or EoF concerned.
- Measures should be established by the national competent authority and ARIPO Office to facilitate as far as possible the acquisition, management and enforcement of such protection for the benefit of the holders of TK and EoF from foreign countries.



Enforcement— *Sec. 14, 23*

- The Contracting States shall ensure that accessible and appropriate enforcement and dispute resolution mechanisms, sanctions and remedies are available where there is a breach of the provisions relating to the protection of TK and EoF.
- The national competent authority shall be entrusted in enforcing the rights and instituting civil and criminal proceedings, where appropriate and when requested by the holders TK/EoF



TK/EF Application *Rule 2, 3*

- An application TK/EoF shall contain:
- a request form for registration (T1 or F1) with following information:
 - the name and address of the applicant;
 - the name of the State of which the applicant is a national;
 - the purpose for which the registration is sought
 - the economic, social, scientific, technical, environmental, or any other benefit that are likely to accrue to the owners of the traditional knowledge or to the relevant indigenous or local community; and
 - the proposed mechanism for equitable sharing of benefits arising from the exploitation of the traditional knowledge.
- designate the contracting State, which possess or share the TK.



Registration TK/EF – *Rule 4 & 5*

- The registration of TK/EoF shall be subject to prior informed consent of the owners of the TK/EoF and the relevant local or traditional community or their representatives.
- A certificate of registration (ARIPO Form T2/F2) of TK/EoF shall be issued by ARIPO Office to the applicant(s), which acts on behalf of the community, after consultation with the community concerned.
- Transmit to the national competent authority or appropriate authority a copy of the certificate of the registration.



Publication TK/EF – *Rule 8*

- The ARIPO shall cause the application for the registration of trans-boundary TK/EoF to be published:
 - in a local newspaper, radio that is accessible to the public or in any other appropriate manner as is likely to bring the notice of the application to the attention of the relevant local or traditional community.
 - in the appropriate ARIPO Journal.



Importance of the Swakopmund Protocol

- The Swakopmund Protocol aim at:
 - provide legal protection TK/EoF against the unlawful exploitation, misappropriation and infringement of knowledge beyond its traditional context
 - empower the holders of TK/EoF with legal right certainty to exercise and manage their inalienable rights
 - facilitate the utilization of TK/EoF for socio-economic development and wealth creation
 - prevent bioprospecting without prior informed consent and mutually-agreed terms and facilitate fair and equitable benefit-sharing mechanisms
 - ...





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- ▶ Address: 11 Natal Road, Belgravia,
Harare, Zimbabwe
- ▶ Tel: **+263 4 794 065 /6/8/54/74**
- ▶ Fax: **+263 4 794 072**
- ▶ Email: **sramadhan@aripo.org**
- ▶ **mail@aripo.org**
- ▶ **Website: www.aripo.org**