

*Please provide to following details on the origin of this report*

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| Contracting Party  | Kingdom of Saudi Arabia  |
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*Please provide summary information on the process by which this report has been prepared, including information on the types of stakeholders who have been actively involved in its preparation and on material which was used as a basis for the report*

The report has been prepared by NCWCD through a consultative process. The National Committee on Biodiversity that includes representatives of several agencies concerned with biodiversity management, academics from the Universities, and a few independent bodies related to conservation, science and technologies issues and local level issues have been consulted in the preparation of the report. Documents such as the National Biodiversity Strategy and Action Plan, first national report to CBD, several research papers, etc were used as background material in preparing the report.

I. Please provide the views of your country on the following issues:

*Intellectual property and traditional knowledge related to genetic resources*

(a) How to define relevant terms including subject matter of traditional knowledge and scope of existing rights;

Traditional knowledge lies in its own domain and it may not always lend itself to rational verification as modern science does, though this is no excuse to pass obvious superstitions as traditional knowledge. Traditional knowledge is essentially a cumulative cultural product being the end result of improvements brought about by trials and errors over generations. It is remarkably holistic and performs best in its own unique socio-cultural milieu.

(b) Whether existing intellectual property rights regimes can be used to protect traditional knowledge;

The pervasive growth in influence of the intellectual property regime calls for the similar protection of traditional knowledge although this system of knowledge historically has been open. The existing IPR regime may not be able to protect the traditional knowledge as it forms a different system of knowledge from the one the existing IPR regime is designed to protect. The existing IPR regime considers biodiversity as a common resource in contrast to the CBD's recognition of sovereign national rights over the same, and in a similar way the IPR regime assumes the traditional knowledge also as a common property. The IPR on traditional knowledge has to be made in line with the CBD. One of the problems to be addressed in terms of protection of rights is the set of issues arising from the parallel holding of the knowledge by several communities in a certain area.

(c) Options for the development of sui generis protection of traditional knowledge rights.

- Any system for the protection of traditional knowledge may give consideration also to the past use of such knowledge for commercial purposes, although this may not necessarily imply an adequate retrospective financial compensation.
- Historical texts containing traditional knowledge should be recognised as valid as documentation of traditional knowledge, and new attempts should be made to document the traditional knowledge duly recognising

the owners of such knowledge. The systems designed for protecting traditional knowledge should ensure that while granting patents to traditional innovations such documentations would not come to represent prior art but on the other hand should support the claim for patent to the traditional custodians concerned.

- Creating new legislation would deem necessary in order to effectively protect the traditional knowledge from misappropriation. The principles embodied in CBD should be used as the basis for creating such legislation.
- It is important to create awareness among the local communities on the multiple values of the traditional knowledge that they hold and this could lead to them taking their own measures to protect their heritage from misappropriation.

(d) The relationship between customary laws governing custodianship, use and transmission of traditional knowledge, on the one hand, and the formal intellectual property system, on the other;

Sharia, the Islamic law, followed in Saudi Arabia, could be termed as both customary law (but not traditional law as it is generally understood) and formal law governing issues having moral and ethical implications. The Sharia holds knowledge, both the revealed and generated, in the public realm and as a common human heritage. While public knowledge can be used for private uses, such uses can by no means be exclusionary. The norms followed by local communities on the custodianship, use and transmission of traditional knowledge may vary from place to place, but they do not contradict the Islamic principle of knowledge as a collective heritage.

The laws for proprietary protection of modern secular knowledge may not prove effective in protecting the traditional knowledge from misappropriation, and there are obvious inherent differences between the ethics, values and epistemology governing each.

(e) Means by which holders of traditional knowledge, including indigenous peoples, may test means of protection of traditional knowledge based on existing intellectual property rights, sui generis possibilities, and customary laws;

In addition to the points mentioned above, it may be added that a possibility that has been widely overlooked is the potential to invoke the provisions of CBD especially article 8j in a court of law to address the misappropriation of traditional knowledge. Ratification of CBD engenders the compliance with its provisions and therefore even in the absence of a specific national law in this respect a State's CBD obligation may prove to be sufficient legal ground to address cases of violation of the substance of the article on the

protection of traditional knowledge and benefit sharing for its use. However, its legality ought to be tested in court(s) of law. On disputes between Contracting Parties CBD provides a dispute settlement mechanism(Article 27), and the decisions of the arbitration tribunal are mandatory. However, this provision still needs to be operationalised.

(f) How to ensure that granting intellectual property rights does not preclude continued customary use of genetic resources and related knowledge;

The use of genetic resources will be governed by provisions that are different from those related to the management of propriety rights over traditional knowledge. The use of genetic resources is to be governed by laws consistent with the CBD. The laws/components of the sui generis system for the protection of traditional knowledge should have provisions built in to ensure the continued use of such knowledge by its historical users. The sharing and exchange of traditional knowledge within the local communities for subsistence use may indeed be encouraged.

#### ***Intellectual property rights and access and benefit-sharing agreements***

(g) Ways to regulate the use of resources in order to take into account ethical concerns;

In Saudi Arabia, as mentioned earlier, Sharia, the Islamic law forms the basis addressing issues having ethical and moral implications. The traditional Hima (protected area) system for resource management provides an example in this respect. The Hima system for the sustainable management of the scarce natural resources has been widespread in most parts of the Arabian peninsula, their gradual disappearance having been brought about by the socio-economic changes in the rural areas. However, a few Himas are still operating in the western mountain areas. Following are the ethical principles governing the Himas:

- A Hima is to be declared by a tribal leadership and approved by an Islamic authority (eg a scholar)
- Minimum acceptable harm to individuals and maximum benefit to the community
- Use of resources (fodder, firewood, honey, medicinal plants, water and game as the case may be) not to exceed the regenerating capacity of the resource base.

The Sharia provides elaborate rules for the management of vital resources such as water, rangeland and common resources where in the central ethical concern is exercising the role of man as a steward of the created beings. However, there is a need to build greater awareness about these Islamic values which

are sometimes overlooked by scholars.

(h) Ways to ensure the continued customary use of genetic resources and related knowledge;

See (f)

(i) How to make provision for the exploitation and use of intellectual property rights to include joint research, obligation to work any right on inventions obtained or provide licenses;

These should be built into the agreements providing access to biodiversity/traditional knowledge. Article 9.c preferring research in the country of origin of species should be duly taken into account while such agreements are developed. A competent national authority should oversee the operation of such agreements.

(j) How to take into account the possibility of joint ownership of intellectual property rights.

This is to be addressed at the time of formulating the agreement itself.