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DRAFT DOCUMENT CONSIDERATIONS FOR DEVELOPING TECHNICAL GUIDELINES FOR
RECORDING AND DOCUMENTING TRADITIONAL KNOWLEDGE AND THE POTENTIAL
THREAT OF SUCH DOCUMENTATION

INTRODUCTION

1. In decision VIII/5/B.I paragraph 5, the COP requested the Executive Secretary to explore the possibility of developing technical guidelines for recording and documenting traditional knowledge, innovations and practices, and to analyse the potential threats of such documentation to the rights of holders of traditional knowledge, innovations and practices, with the full and effective participation of indigenous and local communities.

2. According to The World Intellectual Property Organization (WIPO)¹, documenting knowledge includes anything that involves recording traditional knowledge in a way that preserves it and could make it available to others. Documentation can mean recording both the knowledge itself and the traditional way it is expressed. In this document, “database” is used to refer to any compilation of data from documenting and recording traditional knowledge. Hardison elaborated upon potential threats and the various meanings of “protection” of knowledge, innovations and practices, in document UNEP/CBD/WG8J/4/INF/9²

¹ Refer WIPO/GTRKF/IC/4/5 "Draft outline of an intellectual property management toolkit for documentation of traditional knowledge", and WIPO/GTRKF/IC/5/5, 4/5

5/5 is titled "Report on the toolkit for managing intellectual property when documenting traditional knowledge and genetic resources".

² Composite report on the status and trends regarding the knowledge, innovations and practices on indigenous and local communities - The advantages and limitations of registers UNEP/CBD/WG8J/4/INF/9.

3. The protection aimed at by documenting and recording traditional knowledge can be protection from extinction, protection from privatization and unjust enrichment, protection for access and benefit sharing, and protection from unauthorized use, among others. However, despite the potential benefits of documenting and recording traditional knowledge, the topic has been controversial, namely in terms of whether documenting traditional knowledge may actually constitute a threat to the preservation and nature of traditional knowledge and of whether it may, in practice, facilitate misuse and unauthorized use of such knowledge.

I. EXPLORING THE POSSIBILITY OF DEVELOPING TECHNICAL GUIDELINES FOR RECORDING AND DOCUMENTING TRADITIONAL KNOWLEDGE

4. To explore the possibility and necessity of developing technical guidelines for recording and documenting traditional knowledge, innovations and practices, this document will provide an overview of the benefits of establishing such recording and documenting mechanisms, as well as some concepts and ideas that should be taken into account. Existing guidelines and handbooks on the topic will also be overviewed.

5. The OCAP principles³ are a useful guide to the basic considerations that should underpin any recording and documenting system, as they provide an insight on the relationship between indigenous and local communities and their traditional knowledge. “OCAP” stands for ownership, control, access and possession. This thus means that (1) the community or group owns information collectively in the same way that an individual owns his / her personal information, (2) Indigenous and local communities are within their rights in seeking to control all aspects of research and information management that impact them, (3) Indigenous and local communities must have access to information and data about themselves and their communities, regardless of where it is actually held, and they have the right to manage and make decisions regarding access to their collective information, and (4) Indigenous and local communities should have possession or physical control of the data.

6. Registers, as one form of documenting and recording, have been found useful for organizing knowledge to enable better protection and improved management of community resources. However, there are various goals that indigenous and local communities and others seek to reach, in establishing databases and registers. More specifically, there are various definitions of what needs to be protected, as was noted above. Those definitions of protection must be considered in the elaboration of documenting and recording schemes, in order to respond to the targeted needs. A distinction also needs to be made between the different kinds and levels of traditional knowledge.

7. Some of the purposes of existing databases are the maintenance and preservation of traditional knowledge by recording and documenting it, protection against inappropriate granting of intellectual property rights by providing evidence of prior art, raising awareness of communities with respect to the values of traditional knowledge, encouraging long term conservation and promotion of natural resources and their related traditional knowledge, providing information to parties who may be interested in obtaining information available in the registry in exchange for a fee, and use as part of a legislative system for the assertion of rights over traditional knowledge including intellectual property based rights and non-intellectual property based rights (such as various sui generis systems of protection).

8. Certain databases, like community traditional knowledge databases, serve purposes such as support for and input to government planning, furthering community education, management of knowledge, revitalization of traditional practices and revitalization of traditional languages. Furthermore, it appears that the development of such databases has contributed to the development of communication

³ The OCAP principles were set forth by the National Aboriginal Health Organization (NAHO) and its First Nations Center. NAHO is a Canadian organization. More information on the OCAP principles is available at: http://www.naho.ca/firstnations/english/ocap_principles.php

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and knowledge exchange between indigenous and local communities. Such exchange might be, for instance, exchange of technologies to record and manage traditional knowledge.

9. As an example, the Gwich'in Environmental Knowledge Project seeks to document and record Elders' traditional knowledge in order to maintain it for future generations, but also in order to allow more informed decision-making regarding resource management and other matters. The project has produced books and a database of information. Intellectual property rights do not seem to be part of the concerns for establishing the system but as such, the project and data-based may certainly be useful in asserting intellectual property rights.

10. These databases and others, such as external traditional knowledge databases, may also provide protection from unwanted intellectual property rights filed by entities external to indigenous and local communities. This protection is made possible for patent reviews because the database provides evidence of prior art. Furthermore, databases may provide evidence for collective rights to innovations, should such rights be recognized by national or international law. They may also be an efficient means through which local innovators and entrepreneurs can connect with investors. Documenting and recording knowledge may furthermore be used within an intellectual property regime namely as a tool for access and benefit sharing or in the context of trade secrets. However, the important issue in such protection from patents and other intellectual property rights is that of the public domain, which is discussed below.

11. Hardison made several observations as to traditional knowledge registers and databases. He found that registers and databases were most useful in the national context, where countries have sovereign control and work within the context of constructive arrangements with indigenous and local communities, within their territories, concerning elements of the intellectual property system. He also found that they were most useful when they were part of a framework designed to protect traditional knowledge. He also stated that the databases and registers should respond to the indigenous and local community's goals of protection. He suggests that a mix of non-property and property rights measures can be used to achieve the selected goals, making use of traditional knowledge distinctions acceptable to the indigenous and local communities, themselves and disaggregating roles. Recording and documenting traditional knowledge should normally imply collaboration with the indigenous and local communities involved and ideally ownership by those communities, although it has not always been so in the past. Some databases have been elaborated with little or no input from indigenous and local communities and this remains a great concern to them.

12. Although the above-mentioned characteristics and workings of documenting and recording schemes seem appealing, it has been pointed out by many that such databases and other documenting projects should not stand alone in a legal vacuum. They are most useful when they are part of a larger framework of protection of traditional knowledge. As such, any government or entity external to the indigenous and local communities that wish to establish documenting and recording projects should consider the national intellectual property framework and other related matters. The intellectual property laws and regulations may frustrate the purpose of the documenting and recording project if they are not fully taken into consideration from the beginning of the project. External entities should also consider that it is highly desirable that documentation projects are initiated driven by the indigenous and local communities themselves and that ownership should rest with the relevant communities. Such projects would require capacity building of interested communities.

13. Some have suggested that sui generis systems of protection of traditional knowledge would be desirable, for such purposes as overcoming the difficulty brought about by the public and private domain distinction. Sui generis systems would most likely provide better protection for indigenous and local communities and their traditional knowledge because they would be better adapted to the nature of traditional knowledge and its protection requirements. Sui generis systems are likely to render traditional knowledge databases purposeful. Sui generis protection mechanisms should thus be considered as a necessary co-requirement for documenting and recording traditional knowledge.

14. The purposes and considerations mentioned above illustrate that if there is indeed an interest in creating databases of traditional knowledge, there are several elements that must be taken into account. The interest in creating a database and the related considerations may support future work by the

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Convention in the elaboration of guidelines, especially considering that there are more and more traditional knowledge databases being elaborated or considered in various parts of the world.

15. Taking into account the concerns considered in this document, it may be necessary to elaborate guidelines particularly to highlight issues of free prior informed consent, full and effective participation and mutually agreed terms, in the context of access and benefit sharing of genetic resources and associated traditional knowledge and the development of an international regime. The ultimate workings of a documenting and recording project rests with the ones who elaborate it and it is highly desirable that indigenous and local communities themselves are the developers and owners of any such documenting system. Furthermore, in order to render the potential guidelines useful to as many indigenous and local communities as possible, translation into local languages, should be highly desirable. In fact, indigenous and local communities who make a fully informed decision to document their own knowledge, innovations and practices may consider doing so in their own languages to ensure the system is most effective as an community tool.

16. However, before Parties to the Convention consider whether to pursue guidelines for documenting traditional knowledge or not, it is important to note that several other organizations and groups are in the process of producing guidelines or have already produced documents to guide documenting and recording projects relating to traditional knowledge.

17. The World Intellectual Property Organization (WIPO) is producing a toolkit to guide documenting and recording of traditional knowledge. WIPO has provided a useful consultation draft of the toolkit outline for consultations with stakeholders. Finalization of the toolkit will be based on continuous input from member States, other participants in the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, including indigenous and local community representatives and a wide range of other stakeholders, with an emphasis on field-testing the toolkit in cooperation with the communities concerned and with other traditional knowledge and genetic resource-related initiatives. The toolkit focuses on management of intellectual property concerns during the documentation process, and also takes the documentation process as a starting point for a more beneficial management of traditional knowledge as a community's intellectual and cultural asset. The next steps in developing WIPO's toolkit are consultations, field-testing, translation and dissemination. Interestingly, it was stated that this toolkit aims to formulate the questions that need to be reflected upon in such a venture and assist in finding answers, rather than providing ready-made answers to presumed questions. In the consultation draft toolkit, the definition of objectives of the documenting and recording project is emphasized in all sections. The other element that is emphasized is control of access to the information or disclosure. Intellectual property elements are examine in parallel. As the Convention has already agreed to disseminate this toolkit through its Clearing House Mechanism, it is needless to say, that any guidelines elaborated by the Convention should not duplicate the work of WIPO.

18. The American Association for the Advancement of Science has also produced a handbook on how to document and protect traditional knowledge through intellectual property rights and other legal tools. The project, titled "A Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property and Maintaining Biological Diversity", was designed to make intellectual property protection issues and options more understandable to traditional knowledge holders, human rights organizations and legal professionals working with indigenous and local communities. It is meant to help traditional knowledge holders in identifying potentially applicable protection mechanisms in the current intellectual property rights regime. Documenting and recording are overviewed in relation to the relevant intellectual property protection mechanisms. There are also suggestions relating to documenting knowledge.

19. The International Institute on Rural Reconstruction, supported by the International Development Research Centre and the Heifer Project International, published a book titled "Recording and Using Indigenous Knowledge: A Manual"⁴, commonly called the IK Manual. Among other issues, the book

⁴ The book can be ordered at: http://www.iirr.org/bookstore/index.php?product_id=27

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discusses thirty methods of recording and assessing indigenous knowledge and contains more than twenty question guides that outline content areas to be considered when recording indigenous knowledge.

20. The Department of Indian Affairs and Northern Development Canada has developed the “Community Guide to Protecting Indigenous Knowledge”. Documenting and recording are discussed to some extent, although they are not the main focus of the Guide. The stated objective of the Guide is to empower communities to recognize, protect, preserve and share their knowledge in keeping with their goals and traditions. The Guide focuses on community organizing and planning, gathering and assessing information, and developing and implementing a community-based action plan.

21. Furthermore, many indigenous and local communities have elaborated their own guidelines for conducting research and documenting knowledge in their community⁵. Additionally, there are a few post-graduate students currently working or seeking to work on projects relating to the creation of guidelines or databases for documenting and recording traditional knowledge in various regions of the world.

22. Given the amount of activity concerning guidelines for documenting traditional knowledge it is important to consider what is the “value added”, of the Convention also pursuing the development of guidelines for knowledge innovations and practices of indigenous and local communities, within its maintain on biological diversity.

II. ISSUES AND CONCERNS REGARDING DOCUMENTING AND RECORDING TRADITIONAL KNOWLEDGE

23. Although recording and documenting traditional knowledge may present some advantages, it is important to note that the manner in which it is carried out determines whether the community will effectively benefit from it or whether it will, conversely, severely damage the community’s interests and knowledge. Furthermore, external factors such as national intellectual property laws and regulations need to be taken into account before they become a threat to the goals of any particular documenting and recording project. According to Hardison, the issues raised by traditional knowledge registers are: the free prior informed consent from communities; the process of how knowledge becomes registered and validated; the ownership of the data in the databases and the locus of control over access to information recorded. Those issues and others will be briefly addressed below.

Issues of Culture

24. One fundamental issue in the recording and documenting of traditional knowledge revolves around cultural views attached to such knowledge and the inevitable clash between customary legal systems and national legal systems, as well as the risk of cultural exploitation linked to the dissemination of the knowledge. Traditional knowledge is at the core of, or at least an important part of, the identity of indigenous and local communities. It is apparent that such knowledge has been gathered and maintained by the indigenous and local communities as the result of long experience in a particular place. It also defines and informs a particular way of life. As such, traditional knowledge cannot be dissociated from the cultural and environmental context in which it evolved. This context needs to be taken into account in documenting and recording projects, and it may lead to certain complexities. Furthermore, because of its cultural importance, it requires a high degree of respect from anyone using it, documenting it or disseminating it.

25. To illustrate the problems that may arise from this clash of perspectives, indigenous and local communities do not universally view their biological cultural heritage as alienable “resources”, but more commonly believe them to be a part of a sacred heritage that is regulated by customary law and that

⁵ For instance the Traditional Knowledge Research Guidelines of the West Kitikmeot Slave Study, online at: http://www.wkss.nt.ca/HTML/06_Research/06_tkResearchGuide.htm and the Australian Institute for Aboriginal and Torres Strait Islander Studies – Guidelines for Ethical Research in Indigenous Studies at http://www.aiatsis.gov.au/_data/assets/pdf_file/2290/ethics_guidelines.pdf

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specifies the limits of its acceptable uses. Biological resources are more closely associated to concepts of guardianship and kinship rather than alienable property and resources. As such, the registration and documentation destined for “intangible” knowledge may not be adequate to provide for the whole of the knowledge and its relationship to its surroundings.

26. Another issue of concern relates to the flexible and adaptable nature of traditional knowledge. Traditional knowledge is generally transmitted through oral tradition, strongly interconnected with its surrounding environment and resources and adaptable to changing circumstances. It thus appears that documenting and recording traditional knowledge would be essentially contrary to its flexible and adaptable nature. Holders of traditional knowledge fear that documentation would freeze both culture and knowledge and would impede their constant evolution, including innovations.

27. A similar debate exists in the sphere of traditional cultural expressions and intellectual property rights such as copyright. In the sphere of traditional cultural expressions, it was also mentioned that copyrighting and other forms of intellectual property protection may actually impede the transmission of those traditional cultural expressions. Copyright, however, is not generally viewed as a relevant intellectual property mechanism to protect traditional knowledge that is not a traditional cultural expression.

28. A traditional language used to describe the resource or the uses made of it, may also not be adaptable to documentation, if such software does not exist. It may also not be appropriate to record the knowledge in a language other than that spoken by the relevant communities as certain concepts may be lost in translation. For instance, the traditional description of the uses made of a given resource may not be specific enough in order to protect it from being patented, namely because the traditional description will likely not use Western medical terms to describe the uses. It must also be noted that translation, no matter how careful, is bound to lose some of the original meaning of the terms used as some concepts and words in the traditional language may not exist in the language of the database.

29. The above cultural issues illustrate the importance of full and effective participation of indigenous and local communities in the documenting and recording process, as well as in the elaboration of the underlying legal framework relating to traditional knowledge. Collaboration with and input from communities is necessary to elaborate a documenting and recording project adapted to the needs and concerns of the indigenous and local communities, and thus more likely to meet the goals of the project with regards to the preservation and protection of traditional knowledge. Full and effective participation by the indigenous and local communities also helps diminish the risk of exploitation of the given culture.

Issues of Property

30. Similarly, the issues relating to property and its definition are also of great concern. For instance, it seems inadequate that resources deemed communally-owned could be privatized and commercialized. The way resources are “owned”, managed or transferred in and between indigenous and local communities, as well as concepts such as the public domain are generally incompatible with Western notions of property. This issue of property is rooted in cultural perspectives, as illustrated above.

31. Further issues regarding property relate to who should own the knowledge contained within the database and who should benefit from it. Problems may potentially arise, for instance, when some traditional knowledge is common to several communities or when the benefits from the use of the protected traditional knowledge flow back to the State and not to the communities concerned. Concern has been expressed regarding the legal vacuum in which current biodiversity and knowledge registers exist. It is feared that documentation without a clear legal resolution as to the control over the information could have potentially serious and undesirable consequences.

32. As emphasized by Hardison, there is a debate concerning the differences between rights holders and stakeholders. In national and international intellectual property law, there is generally a balance struck in the allocation of rights to users and producers of the knowledge. However, regarding the

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question of traditional knowledge, it is not a question of granting rights, but of recognizing rights, which renders the said balance between rights of knowledge holders and stakeholders difficult to achieve, especially if issues of sovereignty and self-determination of indigenous and local communities are added to the equation. It must be noted that some States and international standards such as ILO 169, recognize indigenous peoples and recognize prior indigenous rights to ownership and control of their traditional knowledge and culture and the validity of customary law in decisions regarding their use.

Issues of Access

33. The issues related to access to the documented traditional knowledge and to such issues as prior and informed consent, mutually agreed terms and full and effective participation are complex ones that have been referred to throughout the Convention and explored by numerous Convention documents. These issues may be the most important matters to address in terms of enabling indigenous and local communities to document and record their knowledge. Certainly, these concepts should inform any documenting and recording process carried out in indigenous and local communities. Numerous documents, protocols and guidelines concerning research to be carried out within communities have been produced by various indigenous and local communities throughout the world and these should be the starting point for Parties interested in pursuing the documentation of traditional knowledge.

34. As stated in the draft WIPO toolkit, the point of access to the traditional knowledge and associated genetic resources is pivotal in determining whether documentation is beneficial or injurious. Free prior informed consent plays an important role in this access and touches upon many aspects of the documenting and recording process. For instance, as pointed out by Hardison, the concept of free prior informed consent comes into play regarding knowledge that is intended to be kept secret, but that is recorded and documented for the benefit of future generations. Free prior informed consent determines who may gain access to the knowledge and under what terms. However, controlling access is not only important for secret knowledge, but also for any type of knowledge that the community seeks to keep control over, and especially knowledge that is not meant to be part of the public domain. Control over access to the knowledge is also an important element of ownership and possession.

35. However, some databases have been established without the free prior informed consent of indigenous and local communities because the creators felt that the knowledge was part of the public domain and thus revealing it to non-members of the relevant indigenous and local communities did not require such consent. Other databases offer no indication as to whether they were created with the prior informed consent of knowledge holders. This of course namely raises issues of misuse of traditional knowledge and of the respect of indigenous and local communities and their culture, in addition to precluding indigenous and local communities from intellectual property benefits.

36. Opponents of documenting and recording traditional knowledge argue that databases and other such support renders access to traditional knowledge easier for companies seeking to capitalize on the knowledge and resources. The knowledge may be used as the basis for research and development of or fast tracking of new products that fulfil the criteria of patent applications and which does not create obligations for those companies to share any part of their profit with the communities concerned. As such, databases may facilitate access for companies without guaranteeing complete protection and benefit sharing for the relevant communities.

37. A related concern is that recording and documentation could place the knowledge in the public domain and thus affect confidentiality and other rights, including intellectual property rights. For instance, knowledge that is in the public domain may no longer be eligible for intellectual property rights, which may preclude the holders of the knowledge from also accessing intellectual property benefits as the knowledge holders would no longer be able to apply for patents, copyright or other forms of intellectual property protection. A similar question raised in both WIPO and Convention on Biological Diversity discussions has been what should be done with traditional knowledge that is already in the public domain and whether protection can be granted for it. However, documenting traditional knowledge does not mean

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that it automatically becomes part of the public domain. There is still room for confidentiality and restricted use. Some public databases and registries are meant to place knowledge in the public domain in order to serve as evidence of prior art or defensive disclosure. A private database can remain confidential, but does not place the knowledge in the public domain and thus cannot constitute evidence of prior art. Thus in this regard, it is important that the documenting and recording be done in accordance with some intellectual property scheme or plan that allows confidentiality and restricted use. As such, documenting and recording traditional knowledge should be carried out with consideration for the existing relevant intellectual property regime, in order to adequately protect the interests of the ILC and the traditional knowledge.

38. A number of existing databases have been compiled by entities external to the indigenous and local communities. An examination of these databases provides no indication of how they were compiled, whether or not indigenous and local communities were consulted or had given free prior informed consent for the dissemination of their knowledge and whether this use is derived from traditional knowledge documented in development projects. It has also been noted that a number of databases being developed by entities external to the indigenous and local communities are in harmony with the Bonn Guidelines concerning requirements for free prior informed consent or with related decisions of the Convention. Under the Bonn Guidelines adopted in 2002, indigenous and local communities should be free to grant or deny access to any external entity that wishes to use their traditional knowledge.

39. Equitable sharing of benefits is also an area of concern for indigenous and local communities. Indeed, it usually becomes an issue after the fact. The above analysis of access to documented knowledge has already pointed out instances where there are simply no benefits flowing back to the relevant communities or knowledge holders. In cases where some benefits are granted to indigenous and local communities, it appears that governments and companies assume that financial compensation or benefits are sufficient to satisfy the communities concerned. Little consideration is generally given to other benefits that may be desired by the community. A more comprehensive approach to meeting the needs of indigenous and local communities should be adopted. Also, as before mentioned, it is important to examine to whom the benefits actually flow.

Other Issues

40. Along with the issues described above comes the need to improve the community's knowledge of intellectual property rights and of other workings of the relevant legal systems. Indigenous and local communities often feel that they do not have adequate knowledge of relevant law or adequate legal advice when dealing with such matters. Thus, the purposes of the database could be frustrated by inadequate harmonization with applicable laws and existing frameworks. Indigenous and local communities involved in documentation of knowledge need to be aware of external considerations applicable to their project.

41. Another concern is misappropriation of knowledge or the related resources, especially when the knowledge or resources are used for purposes other than those agreed upon or anticipated by the knowledge holders. There have been numerous incidents of breach of agreements with indigenous and local communities as to confidentiality or simply low security measures of databases, that were meant to provide limited access but have led to the dissemination of that knowledge. Sometimes, such dissemination has occurred even after consultation and agreement with the communities involved and despite the good faith of the creators of the database.

42. There has also been some discussions as to what needs to be protected in a database. Legal measures should focus on the protection of the traditional knowledge contained in the databases, rather than on the protection of database technologies. As such, protection of the database may not necessarily mean protection of its contents. This distinction needs to be pointed out in order to preclude unwanted consequences.

43. It has been recommended that registers or other forms of documentation could be part of a larger scheme of protection of traditional knowledge and not an end in themselves. However, some indigenous and local communities have expressed concern that the legal context (relevant laws) have not

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been developed with the full participation of indigenous and local communities. Furthermore, even when the database is part of a broader regime, existence as prior art in the database does not guarantee protection against unwanted patents. Indeed, violations of relevant laws or guidelines may be buried in complex patent applications. Comparisons with prior art may be time and money consuming, as well as difficult. Needless to say, defeating existing patents is equally, if not more, time and money consuming. As such, the database, although it is meant to protect traditional knowledge from unwanted patents may actually fail to do so, while still revealing the knowledge to the rest of the world. Some have suggested restricting access to those databases to patent offices. Again, this issue highlights the need to know the objectives of the database as well as the framework it will operate in. It also highlights the need to create sui generis systems of protection with the full and effective participation of the relevant communities to ensure the legal context of data-bases achieves the goal of protecting traditional knowledge.

44. Some have also argued that the creation of databases may place undue burden on the communities involved. Indeed, it appears to be relatively rare that an item of cultural heritage will be used as patentable property. As such, requiring indigenous and local communities to reveal, register and potentially lose control of their traditional knowledge to protect it against a rare form of exploitation may be deemed too burdensome. As such, the use of registers should be proportional to the problems that the registers are expected to resolve. In the end, it should be up to indigenous and local communities to determine whether such a database would be useful or not.

45. Finally, some suggest that poorly managed documentation and recording projects have the effect of discrediting traditional knowledge rather than protecting and maintaining it. This raises the need to ensure that indigenous and local communities that want to pursue the option of documenting their knowledge are provided with capacity building and resources to do so.

Conclusion

46. Documenting and recording traditional knowledge as a means of preservation and protection has been the object of numerous papers and studies, as it has gained more popularity over the past few years. Although the benefits of documenting traditional knowledge may be substantial, there are also many issues and concerns that affect indigenous and local communities in different ways, be it through matters of access, property, culture or others, and that have the potential of frustrating the purposes of a documenting project. The benefits and drawbacks of documenting traditional knowledge in a given community need to be carefully examined and balanced. Thus there may be a need for guidelines regarding documenting and recording traditional knowledge which highlight both benefits and potential threats, so that such decisions can be made by indigenous and local communities. However, various projects have already addressed and discussed many of the issues raised in this document.

IV. DRAFT RECOMMENDATIONS FOR FUTURE WORK REGARDING THE POSSIBILITY OF DEVELOPING TECHNICAL GUIDELINES FOR RECORDING AND DOCUMENTING TRADITIONAL KNOWLEDGE, INNOVATIONS AND PRACTICES

The Working Group on Article 8(j) and related provisions may wish to recommend that the Conference of the Parties:

1. *Recalling*, Decision VIII/5, B, paragraph 5, which requested the Working Group on Article 8(j) to explore the possibility of developing technical guidelines for recording and documenting traditional knowledge, innovations and practices, and to analyse the potential threats of documentation to the rights of the holders of traditional knowledge, innovations and practices, with the full and effective participation of indigenous and local communities;

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2. *Noting* the work of WIPO concerning the development of a toolkit for the documentation of traditional knowledge;
3. *Further noting* that documentation of the knowledge, innovations and practices of indigenous and local communities for the purpose of protecting traditional knowledge cannot achieve protection in a legal vacuum and requires the prior and informed consent ;
4. *Urges* Parties and Governments to consider develop and implement sui generis systems for the protection of traditional knowledge with the full and effective participation of indigenous and local communities;
3. *Further requests* Parties and Governments and international entities to support indigenous and local communities to make informed decisions regarding the documentation of the knowledge, innovations and practices and where they so desire, to assist them with capacity building, infrastructure and resources to do so.
