

**SWAKOPMUND  
PROTOCOL  
ON THE PROTECTION  
OF  
TRADITIONAL  
KNOWLEDGE AND  
EXPRESSIONS OF  
FOLKLORE**

**ARIPO  
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**Swakopmund Protocol on the Protection of  
Traditional Knowledge and Expressions of Folklore**

**Within the Framework of the  
African Regional Intellectual  
Property Organization (ARIP0)**

[adopted by the Diplomatic Conference of ARIP0 at  
Swakopmund (Namibia) on August 9, 2010]

*and*

**Regulations for Implementing  
the Swakopmund Protocol on Traditional Knowledge  
and Expressions of Folklore within the Framework of the  
African Regional Intellectual  
Property Organization (ARIP0)**

[text entered into force on January 1, 2012]

**Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization (ARIPO)**

**List of Contracting States**  
(Status as at February 29, 2016)

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<i>State</i>	<i>Date on which State became party to the Protocol</i>
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Botswana .....	March 28, 2012
The Gambia .....	February 11, 2015
Malawi .....	December 20, 2012
Namibia .....	February 11, 2015
Rwanda .....	July 16, 2012
Zambia .....	August 28, 2015
Zimbabwe .....	April 22, 2013

**(No. of States: 7)**

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## **PREAMBLE**

We, the Contracting Parties,

Having adopted the Legal Instrument for the Protection of Traditional Knowledge and Expressions of Folklore at the Eleventh Session of the ARIPO Council of Ministers in Maseru, in the Kingdom of Lesotho, on November 23, 2007,

In accordance with the objectives of ARIPO generally and in particular Article III (c), which provides for the establishment of such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the intellectual property activities affecting its member states;

*Recognizing* the intrinsic value of traditional knowledge, traditional cultures and folklore, including their social, cultural, spiritual, economic, intellectual, scientific, ecological, agricultural, medical, technological, commercial and educational value;

*Convinced* that traditional knowledge systems, traditional cultures and folklore are diverse frameworks of ongoing innovation, creativity and distinctive intellectual and creative life that benefit local and traditional communities and all humanity;

*Mindful of* the need to respect traditional knowledge systems, traditional cultures and folklore, as well as the dignity, cultural integrity and intellectual and spiritual values of traditional and local communities; to recognize and reward the contributions made by such communities to the conservation of the environment, to food security and sustainable agriculture, to the improvement in the health of populations, to the progress of science and technology, to the preservation and safeguarding of cultural heritage, to the development of artistic skills, and to enhancing a diversity of cultural contents and artistic expressions;

*Convinced* of the need to respect the continuing customary use, development, exchange and transmission of traditional knowledge and expressions of folklore by traditional and local communities, as well as the customary custodianship of traditional knowledge and expressions of folklore;

*Concerned* at the gradual disappearance, erosion, misuse, unlawful exploitation and misappropriation of traditional knowledge and expressions of folklore;

*Recognizing* the right of holders and custodians of traditional knowledge and expressions of folklore to effective and efficient protection against all acts of misuse, unlawful exploitation or misappropriation of their knowledge and expressions of folklore;

*Desiring* to preclude the grant and exercise of improper intellectual property rights in traditional knowledge, associated genetic resources and derivatives thereof, and in expressions of folklore and works and productions derived therefrom;

*Recognizing* the need to ensure and promote respect for traditional cultures in order to meet the needs of communities by empowering them;

*Convinced* of the need to enhance the diversity of cultural contents and artistic expressions in the interest of traditional and local communities, in particular, and for the benefit of humanity in general;



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*Recognizing* that protection must reflect the need to maintain an equitable balance between the rights and interests of those who develop, preserve and maintain traditional knowledge and expressions of folklore, and those who use and benefit from such knowledge and expressions of folklore;

*Affirming* the requirement to meet the needs of the holders and custodians of traditional knowledge and expressions of folklore, in particular by empowering them to exercise due control over their knowledge and expressions;

*Desiring* to encourage and reward authentic creativity and innovation resulting from traditional knowledge systems and expressions of folklore, and to promote innovation, creativity and the transfer of technology to the mutual benefit of society, holders and users of traditional knowledge and expressions of folklore;

*Emphasizing* that legal protection must be tailored to the specific characteristics of traditional knowledge and expressions of folklore, including their collective or community context, the intergenerational nature of their development, preservation and transmission, their link to a community's cultural and social identity, integrity, beliefs, spirituality and values, and their constantly evolving character within the community concerned;

Hereby establish this Protocol to be known as the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the framework of the African Regional Intellectual Property Organization:

## **PART I: PRELIMINARY PROVISIONS**

### ***Section 1***

#### ***Purpose of Protocol***

- 1.1. 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.
- 1.2. This Protocol shall not be interpreted as limiting or tending to define the very diverse holistic conceptions of:
- (a) traditional knowledge; or
  - (b) cultural and artistic expressions,
- in the traditional context.
- 1.3. This Protocol shall be interpreted and enforced taking into account the dynamic and evolving nature of traditional knowledge and the characteristic of traditional knowledge systems as frameworks of ongoing innovation.

### ***Section 2***

#### ***Definitions***

- 2.1. In this Protocol,
- “appropriate authority” means a body or an agency authorized by the State which is party to this Protocol or entrusted with the responsibility to supervise and administer the provisions of this Protocol;
- “ARIPO Office” means the Office of the African Regional Intellectual Property Organization (ARIPO);
- “Contracting State” means any State that has become party to this Protocol in accordance with Section 27;
- “customary laws and practices” means customary laws, norms and practices of local and traditional communities recognized by the Contracting States;
- “community”, where the context so permits, includes a local or traditional community;
- “expressions of folklore” are any forms, whether tangible or intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof:
- i. verbal expressions, such as but not limited to stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;
  - ii. musical expressions, such as but not limited to songs and instrumental music;
  - iii. expressions by movement, such as but not limited to dances, plays, rituals and other performances; whether or not reduced to a material form; and

- iv. tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, basketry, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms;

“national competent authority” means the authority designated or established under section 3 of this Protocol;

“Prior Informed Consent” is the giving by the prospective user of complete and accurate information, and, based on that information, the prior acceptance by the concerned communities to use their traditional knowledge or expressions of folklore under the terms envisaged by sections 7.2 and 19.2 of this Protocol;

“traditional knowledge” shall refer to any knowledge originating from a local or traditional community that is the result of intellectual activity and insight in a traditional context, including know-how, skills, innovations, practices and learning, where the knowledge is embodied in the traditional lifestyle of a community, or contained in the codified knowledge systems passed on from one generation to another. The term shall not be limited to a specific technical field, and may include agricultural, environmental or medical knowledge, and knowledge associated with genetic resources.

2.2. The specific choice of terms to denote the protected subject matter falling under traditional knowledge and expressions of folklore may be determined at the national level of a Contracting State.

### ***Section 3***

#### ***National Competent Authority***

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

## **PART II: PROTECTION OF TRADITIONAL KNOWLEDGE**

### ***Section 4***

#### ***Protection criteria for traditional knowledge***

Protection shall be extended to traditional knowledge that is:

- (i) generated, preserved and transmitted in a traditional and intergenerational context;
- (ii) distinctively associated with a local or traditional community; and
- (iii) 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. Such a relationship may be established formally or informally by customary practices, laws or protocols.

## **Section 5**

### ***Formalities relating to protection of traditional knowledge***

- 5.1. Protection of traditional knowledge shall not be subject to any formality.
- 5.2. In the interests of transparency, evidence and the preservation of traditional knowledge, relevant national competent authorities of Contracting States and ARIPO Office may maintain registers or other records of the knowledge, where appropriate and subject to relevant policies, laws and procedures, and the needs and aspirations of the traditional knowledge holders concerned.
- 5.3. The registers maintained under section 5.2 may be associated with specific forms of protection, and shall not compromise the status of hitherto undisclosed traditional knowledge or the interests of holders of traditional knowledge in relation to undisclosed elements of their knowledge.
- 5.4. Where two or more communities in the same or different countries share the same traditional knowledge, the relevant national competent authority of the Contracting States and ARIPO Office shall register the owners of the traditional knowledge and maintain relevant records.

## **Section 6**

### ***Beneficiaries of protection of traditional knowledge***

The owners of the rights shall be the holders of traditional knowledge, namely the local and traditional communities, and recognized individuals within such communities, who create, preserve and transmit knowledge in a traditional and intergenerational context in accordance with the provisions of section 4.

## **Section 7**

### ***Rights conferred to holders of traditional knowledge***

- 7.1. This Protocol shall confer on the owners of rights referred to in section 6 the exclusive right to authorize the exploitation of their traditional knowledge.
- 7.2. In addition, owners shall have the right to prevent anyone from exploiting their traditional knowledge without their prior informed consent.
- 7.3. For the purposes of this Protocol, the term “exploitation” with reference to traditional knowledge shall refer to any of the following acts:
  - (a) Where the traditional knowledge is a product:
    - (i) manufacturing, importing, exporting, offering for sale, selling or using beyond the traditional context the product;
    - (ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context;
  - (b) Where the traditional knowledge is a process:
    - (i) making use of the process beyond the traditional context;
    - (ii) carrying out the acts referred to under paragraph (a) of this subsection with respect to a product that is a direct result of the use of the process.

7.4. In addition to all other rights, remedies and action available to them, the owners shall have the right to institute legal proceedings against any person who carries out any of the acts mentioned in section 7.3 without the owner's permission.

### ***Section 8***

#### ***Assignment and licensing***

8.1. Owners of traditional knowledge shall have the right to assign and conclude licensing agreements; however, traditional knowledge belonging to a local or traditional community may not be assigned.

8.2. All access, authorizations, assignments or licences granted in respect of protected traditional knowledge shall be granted in writing, otherwise they shall be of no force or effect.

8.3. A document drawn up for the purpose of section 8.2 shall be approved by the national competent authority, failing which the document shall be void.

8.4. The ARIPO Office shall keep a register of all licences and assignments granted under this section.

### ***Section 9***

#### ***Equitable benefit-sharing***

9.1. The protection to be extended to traditional knowledge 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.

9.2. 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.

9.3. The right to equitable remuneration might extend to non-monetary benefits, such as contributions to community development, depending on the material needs and cultural preferences expressed by the traditional or local communities themselves.

### ***Section 10***

#### ***Recognition of knowledge holders***

Any person using traditional knowledge beyond its traditional context shall acknowledge its holders, indicate its source and, where possible, its origin, and use such knowledge in a manner that respects the cultural values of its holders.

### ***Section 11***

#### ***Exceptions and limitations applicable to protection of traditional knowledge***

The protection of traditional knowledge under this Protocol shall not be prejudicial to the continued availability of traditional knowledge for the practice, exchange, use and transmission of the knowledge by its holders within the traditional context.

## ***Section 12***

### ***Compulsory licence***

12.1. Where protected traditional knowledge is not being sufficiently exploited by the rights holder, or where the holder of rights in traditional knowledge refuses to grant licences subject to reasonable commercial terms and conditions, a Contracting State may, in the interests of public security or public health, grant a compulsory licence in order to fulfil national needs.

12.2. In the absence of an agreement between the parties, an appropriate amount of compensation for the compulsory licence shall be fixed by a court of competent jurisdiction.

## ***Section 13***

### ***Duration of protection of traditional knowledge***

Traditional knowledge shall be protected for so long as the knowledge fulfils the protection criteria referred to under section 4, except that where traditional knowledge belongs exclusively to an individual, protection shall last for 25 years following the exploitation of knowledge beyond its traditional context by the individual.

## ***Section 14***

### ***Administration and enforcement of protection of traditional knowledge***

14.1. To ensure the effectiveness of the protection of traditional knowledge, the national competent authority and ARIPO Office acting on behalf of the Contracting States shall be entrusted with the tasks of awareness-raising, education, guidance, monitoring, registration, dispute resolution, enforcement and other activities related to the protection of traditional knowledge.

14.2. National competent authorities shall be entrusted, in particular, with the task of advising and assisting holders of protected traditional knowledge in defending their rights and instituting civil and criminal proceedings, where appropriate and when requested by them.

14.3. Where two or more communities in different countries share the same traditional knowledge, the ARIPO Office shall be responsible for raising awareness, education, guidance, monitoring, dispute resolution and other activities relating to the protection of traditional knowledge of those communities.

## ***Section 15***

### ***Access to traditional knowledge associated with genetic resources***

Authorization under this Protocol to access protected traditional knowledge associated with genetic resources shall not imply authorization to access the genetic resources derived from the traditional knowledge.

## **PART III: PROTECTION OF EXPRESSIONS OF FOLKLORE**

### ***Section 16***

#### ***Protection criteria for expressions of folklore***

Protection shall be extended to expressions of folklore, whatever the mode or form of their expression, which are:

- (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.

### ***Section 17***

#### ***Formalities relating to protection of expressions of folklore***

17.1. The protection of expressions of folklore shall not be subject to any formality.

17.2. For the purposes of evidence, measures for the protection of expressions of folklore may require that certain categories of the expressions for which protection is sought, particularly those with special cultural or spiritual value or significance or those that are sacred in character, be notified to the appropriate authority.

17.3. The notification shall have a merely declaratory function and shall not in itself constitute rights, nor shall it involve or require the documentation, recording or public disclosure of the expressions of folklore concerned.

17.4. Where two or more communities in the same or different countries share the same expressions of folklore, the relevant national competent authorities of Contracting States and ARIPO Office shall register the owners of the rights in those expressions of folklore.

### ***Section 18***

#### ***Beneficiaries of protection of expressions of folklore***

The owners of the rights in expressions of folklore shall be the local and traditional communities:

- (a) to whom the custody and protection of the expressions of folklore are entrusted in accordance with the customary laws and practices of those communities; and
- (b) who maintain and use the expressions of folklore as a characteristic of their traditional cultural heritage.

### ***Section 19***

#### ***Protection of expressions of folklore against unlawful acts***

19.1. Expressions of folklore shall be protected against all acts of misappropriation, misuse and unlawful exploitation.

19.2. In respect of expressions of folklore of particular cultural or spiritual value or significance to a community, the Contracting States shall provide adequate and effective legal and practical measures to ensure that the relevant community can prevent the following acts from taking place without its free and Prior Informed Consent:

- (a) in respect of such expressions of folklore other than words, signs, names and symbols:
  - i). the reproduction, publication, adaptation, broadcasting, public performance, communication to the public, distribution, rental, making available to the public and fixation (including by still photography) of the expressions of folklore or derivatives thereof;
  - ii). any use of the expressions of folklore or adaptation thereof which does not acknowledge in an appropriate way the community as the source of the expressions of folklore;
  - iii). any distortion, mutilation or other modification of, or other derogatory action, in relation to the expressions of folklore; and
  - iv). the acquisition or exercise of intellectual property rights over the expressions of folklore or adaptations thereof;
- (b) in respect of words, signs, names and symbols which are such expressions of folklore, any use of the expressions of folklore or derivatives thereof, or the acquisition or exercise of intellectual property rights over the expressions of folklore or derivatives thereof, which disparages, offends or falsely suggests a connection with the community concerned, or brings the community into contempt or disrepute.

19.3. In respect of the use and exploitation of other expressions of folklore, the Contracting States shall provide adequate and effective legal and practical measures to ensure that:

- (a) the relevant community is identified as the source of any work or other production adapted from the expressions of folklore;
- (b) any distortion, mutilation or other modification of, or other derogatory action in relation to expressions of folklore can be prevented and/or is subject to civil or criminal sanctions;
- (c) any false, confusing or misleading indications or allegations which, in relation to goods or services that refer to, draw upon or evoke the expressions of folklore of a community or suggest any endorsement by or linkage with that community, can be prevented and/or is subject to civil or criminal sanctions; and
- (d) where the use or exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on terms determined by the national competent authority in consultation with the relevant community.

19.4. Contracting States shall provide adequate and effective legal and practical measures to ensure that communities have the means to prevent the unauthorized disclosure, subsequent use of and acquisition and exercise of intellectual property rights over expressions of folklore that are held secret.



## ***Section 20***

### ***Exceptions and limitations applicable to protection of expressions of folklore***

20.1. Measures for the protection of expressions of folklore shall:

- (a) be such as not to restrict or hinder the normal use, development, exchange, dissemination and transmission of expressions of folklore within the traditional or customary context by members of the community concerned, as determined by customary laws and practices;
- (b) extend only to uses of expressions of folklore taking place outside their traditional or customary context, whether or not for commercial gain;
- (c) be subject to exceptions in order to address the needs of non-commercial use, such as teaching and research, personal or private use, criticism or review, reporting of current events, use in the course of legal proceedings, the making of recordings and reproductions of expressions of folklore for inclusion in an archive or inventory exclusively for the purposes of safeguarding cultural heritage, and incidental uses,

Provided that in each case, such uses are compatible with fair practice, the relevant community is acknowledged as the source of the expressions of folklore where practicable and possible, and such uses would not be offensive to the relevant community.

20.2. The measures put in place for the protection of expressions of folklore may make special provision for their use by the nationals of the country concerned.

## ***Section 21***

### ***Duration of protection of expressions of folklore***

Expressions of folklore shall be protected against all acts of misappropriation, misuse or unlawful exploitation for as long as the expressions of folklore fulfill the protection criteria set out in section 16.

## ***Section 22***

### ***Management of rights in expressions of folklore***

22.1. For the purpose of ensuring the effectiveness of the protection and management of expressions of folklore, the national competent authority and the ARIPO Office acting on behalf of the Contracting States shall be entrusted with the tasks of awareness-raising, education, guidance, monitoring, dispute resolution and other activities relating to the protection of expressions of folklore.

22.2. Authorizations to exploit expressions of folklore shall be obtained from the national competent authority which acts on behalf of and in the interests of the community concerned.

22.3. Where the national competent authority acts under sections 22.1 and 22.2 of this Protocol:

- (a) authorizations shall be granted only after appropriate consultations with the communities concerned, in accordance with their traditional processes for decision-making and public affairs management;
- (b) authorizations shall comply with the scope of protection provided for the expressions of folklore concerned and shall, in particular, provide for the equitable sharing of the benefits arising from their use;

- (c) uncertainties or disputes as to which communities are concerned shall be resolved, as far as possible, in accordance with customary laws and protocols, where applicable, of those communities;
- (d) any monetary or non-monetary benefits arising from the use of the expressions of folklore shall be transferred directly by the national competent authority to the community concerned;
- (e) enabling legislation or administrative measures shall provide guidance on matters such as procedures for applications for authorization, fees that the national competent authority or ARIPO Office may, where necessary, charge for its services, official publication procedures, dispute resolution, and the terms and conditions governing authorizations that may be granted by the national competent authority.

22.4 Where two or more communities in different countries share the same expressions of folklore, the ARIPO Office shall be responsible for raising awareness, education, guidance, monitoring, dispute resolution and other activities relating to the protection of expressions of folklore of those communities.

## **PART IV: GENERAL PROVISIONS**

### ***Section 23***

#### ***Sanctions, remedies and enforcement***

23.1. 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 traditional knowledge and expressions of folklore.

23.2. The national competent authority shall be entrusted with the task of advising and assisting holders of protected traditional knowledge and communities who are beneficiaries of protected expressions of folklore in defending and enforcing their rights and instituting civil and criminal proceedings, where appropriate and when requested by the holders and communities concerned.

### ***Section 24***

#### ***Regional Protection***

24.1. Eligible foreign holders of traditional knowledge and expressions of folklore shall enjoy benefits of protection to the same level as holders of traditional knowledge and expressions of folklore who are nationals of the country of protection, taking into account as far as possible the customary laws and protocols applicable to the traditional knowledge or expressions of folklore concerned.

24.2. 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 traditional knowledge and expressions of folklore from foreign countries.

24.3. ARIPO may be entrusted with the task of settling cases of concurrent claims from communities of different countries with regard to traditional knowledge or expressions of folklore; to this end, ARIPO shall make use of customary law, local information sources, alternative dispute resolution mechanisms, and any other practical mechanism of this kind, which might prove necessary.

**Section 25**  
**Transitional measures**

25.1. Exploitation and dissemination of traditional knowledge prior to the entry into force of the protection under this Protocol shall comply with the provisions of section 9 relating to equitable benefit-sharing and section 10 relating to the recognition of the source, within twelve months following the entry into force of the protection, subject to equitable treatment of the rights acquired by third parties in good faith.

25.2. The continued use of expressions of folklore that had commenced prior to the introduction of this Protocol to protect the expressions of folklore shall comply with provisions of section 19 within twelve months of this Protocol entering into force, subject to equitable treatment of the rights and interests acquired by third parties through prior use in good faith.

**Section 26**  
**Regulations**

26.1. The Administrative Council of ARIPO shall make Regulations for the implementation of this Protocol and may amend them where necessary.

26.2. The Regulations shall, in particular,

- a) stipulate any administrative requirements, or any necessary details for the implementation of the provisions of this Protocol;
- b) prescribe the procedure for applications of authorization to exploit traditional knowledge and expressions of folklore;
- c) prescribe fees to be charged by the ARIPO Office and the details of the distribution of part of the fees among Contracting States; and
- d) provide forms to be used for matters requiring forms under this Protocol.

**Section 27**  
**Entry into force**

27.1. Any State which is a member of ARIPO or any State to which membership of ARIPO is open may become party to this Protocol by:

- i) signature followed by the deposit of an instrument of ratification; or
- ii) deposit of an instrument of accession.

27.2. Instruments of ratification or accession shall be deposited with the Government of the Republic of Zimbabwe.

27.3. This Protocol shall come into force three months after six States have deposited their instruments of ratification or accession.

27.4. Ratification of or accession to this Protocol shall entail acceptance of the Agreement on the Creation of the African Regional Intellectual Property Organization.

***Section 28***  
***Reservations***

Reservations may not be made to this Protocol.

***Section 29***  
***Signature of the Protocol***

29.1. This Protocol shall be signed in a single copy and shall be deposited with the Government of the Republic of Zimbabwe.

29.2. The Government of the Republic of Zimbabwe shall transmit certified copies of this Protocol to the Contracting States to which membership of ARIPO is open in accordance with Article IV of the Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO).

***Section 30***  
***Amendment of the Protocol***

30.1. This Protocol may be amended at the instance of any Contracting State or the Director General of ARIPO during the sessions of the Administrative Council of ARIPO.

30.2. Adoption of the amendments of any provision of this Protocol shall require a majority of two-thirds of the votes of all the Contracting States.

***Section 31***  
***Denunciation of the Protocol***

31.1. Any Contracting State may denounce this Protocol by notification addressed to the Government of the Republic of Zimbabwe.

31.2. Denunciation of this Protocol shall take effect six months after receipt of the said notification by the Government of the Republic of Zimbabwe.







**AFRICAN REGIONAL INTELLECTUAL PROPERTY  
ORGANIZATION (ARIPO)**

**Regulations for Implementing  
the Swakopmund Protocol on Traditional Knowledge  
and Expressions of Folklore within the Framework of the  
African Regional Intellectual  
Property Organization (ARIPO)**

[text entered into force on January 1, 2012]

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## **IMPLEMENTING REGULATIONS UNDER THE SWAKOPMUND PROTOCOL**

(Made under section 26 of the Protocol)

### ***Citation***

These Regulations may be cited as the Implementing Regulations under the ARIPO Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore Regulations, 2011.

### ***Commencement***

These Regulations shall come into operation on January 1, 2012.

### ***Rule 1***

#### ***Definitions***

In these Regulations, unless the context otherwise requires:

“Administrative Council” means the Administrative Council of the African Regional Intellectual Property Organization;

“applicant” is any natural or legal person, entity or agent applying for authorization or license to exploit traditional knowledge or for authorization to exploit expressions of folklore;

“appropriate authority” means a body or an agency authorized by the State which is party to this Protocol or entrusted with the responsibility to supervise and administer the provisions of the Protocol;

“ARIPO Office” means the Office of the African Regional Intellectual Property Organization (ARIPO);

“benefit sharing” means the sharing of whatever accrues from the utilization of traditional knowledge and expressions of folklore;

“Contracting State” means any State that has become party to the Protocol;

“designated State” means any State designated in the application in accordance with sub-rule (3) of rule 2 and sub-rule (3) of rule 3 of these Regulations;

“Director General” means the Director General of the African Regional Intellectual Property Organization;

“Prior Informed Consent” is the giving by the prospective user of complete and accurate information, and, based on that information, the prior acceptance by the concerned communities to use their traditional knowledge or expressions of folklore under the terms envisaged by sections 7.2 and 19.2 of the Protocol;

“Protocol” means the Swakopmund Protocol for the Protection of Traditional Knowledge and Expressions of Folklore.

## **Rule 2**

### ***Applications for registration of trans-boundary traditional knowledge***

- (1) An application for registration of trans-boundary traditional knowledge shall in accordance with section 5.4 of the Protocol be made on ARIPO Form T1 as set out in the First Schedule to these Regulations.
- (2) An application made under sub-rule (1) of this rule shall contain:
  - a) the name and address of the applicant;
  - b) the name of the State of which the applicant is a national;
  - c) a request for the registration;
  - d) the purpose for which the registration is sought;
  - e) 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 local or traditional community; and
  - (f) the proposed mechanism for equitable sharing of benefits arising from the exploitation of the traditional knowledge.
- (3) The application shall designate the Contracting State which share the trans-boundary traditional knowledge.
- (4) The registration of any trans-boundary traditional knowledge shall be subject to prior informed consent of the owners of the traditional knowledge and the relevant local or traditional community or their representatives.

## **Rule 3**

### ***Applications for registration of trans-boundary expressions of folklore***

- (1) An application for registration of trans-boundary expressions of folklore shall in accordance with section 17.4 of the Protocol be made on ARIPO Form F1 as set out in the Second Schedule to these Regulations.
  - (2) An application made under sub-rule (1) of this rule shall contain:
    - a) the name and address of the applicant;
    - b) the name of the State of which the applicant is a national;
    - c) a request for the registration;
    - d) the purpose for which the registration is sought;
    - e) the economic, social, scientific, technical, environmental, or any other benefit that are likely to accrue to the owners of the expressions of folklore or to the relevant local or traditional community; and
    - f) the proposed mechanism for equitable sharing of benefits arising from the exploitation of the expressions of folklore.
  - (3) The application shall designate the Contracting State which shares the trans-boundary expressions of folklore.
-

- (4) The registration of any trans-boundary expressions of folklore shall be subject to prior informed consent of the owners of the expressions of folklore and the relevant local or traditional community or their representatives.

#### ***Rule 4***

##### ***Certificate for registration of trans-boundary traditional knowledge***

- (1) A certificate of registration of trans-boundary traditional knowledge shall be issued by ARIPO Office to the applicant(s) which acts on behalf of the community, after consultation with the community concerned.
- (2) Where the ARIPO Office is satisfied that prior informed consent was obtained from the owners of the trans-boundary traditional knowledge, it may issue a certificate of registration to the applicant(s) to exploit or use the traditional knowledge subject to such conditions as may be specified in the registration certificate.
- (3) A certificate of registration of trans-boundary traditional knowledge by the ARIPO Office in accordance with section 5.4 of the Protocol shall be on ARIPO Form T2 as set out in the First Schedule to these Regulations.

#### ***Rule 5***

##### ***Certificate for registration of trans-boundary expressions of folklore***

- (1) A certificate of registration of trans-boundary expression of folklore shall be issued by ARIPO office to the applicant(s) which acts on behalf of the community, after consultation with the community concerned.
- (2) Where the ARIPO Office is satisfied that prior informed consent was obtained from the owners of the trans-boundary expression of folklore, it may issue a certificate of registration to the applicant(s) to exploit or use the expressions of folklore subject to such conditions as may be specified in the registration certificate.
- (3) A certificate of registration of trans-boundary expressions of folklore by the ARIPO Office in accordance with section 17.4 of the Protocol shall be on ARIPO Form F2 as set out in the Second Schedule to these Regulations.

#### ***Rule 6***

##### ***Authorization subject to prior informed consent to exploit traditional knowledge***

- (1) An application for prior informed consent to exploit traditional knowledge shall be addressed to the national competent authority or appropriate authority which acts on behalf of and in the interests of the relevant communities. The national competent authority or appropriate authority shall in accordance with section 7 of the Protocol notify the ARIPO Office of such consent to exploit trans-boundary traditional knowledge on ARIPO Form T3 as set out in the First Schedule to these Regulations.
- (2) Any exploitation of traditional knowledge without prior informed consent granted by the relevant local or traditional community shall be in violation of the Protocol.

**Rule 7**

***Authorization subject to prior informed consent  
to exploit expressions of folklore***

- (1) An application for prior informed consent to exploit expressions of folklore shall be addressed to the national competent authority or appropriate authority which acts on behalf of and in the interests of the relevant communities. The national competent authority or appropriate authority shall in accordance with section 7 of the Protocol notify the ARIPO Office of such consent to exploit trans-boundary expressions of folklore on ARIPO Form F3 as set out in the Second Schedule to these Regulations.
- (2) Any exploitation of expressions of folklore without prior informed consent granted by the relevant local or traditional community shall be in violation of the Protocol.

**Rule 8**

***Publication of application for the registration of trans-boundary traditional  
knowledge and expressions of folklore***

- (1) The ARIPO Office shall cause the application for the registration of trans-boundary traditional knowledge and/or trans-boundary expressions of folklore under these Regulations 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.
- (2) The ARIPO Office shall cause the application for the registration of trans-boundary traditional knowledge and/or trans-boundary expressions of folklore under these Regulations to be published in the appropriate ARIPO Journal.

**Rule 9**

***Forms***

The Forms set out in the First Schedule and Second Schedule to these Regulations shall be used for the matters specified, respectively, in those Schedules.

**Rule 10**

***Fees***

- (1) An application for registration of trans-boundary traditional knowledge and/or trans-boundary expressions of folklore shall be accompanied by the prescribed fees.
- (2) The fees payable for application, registration, renewal, inspection of the register and other related matters shall be the fees specified in the Third Schedule to these Regulations.

**Rule 11**

***Distribution of fees***

- (1) Subject to sub-rule (2) of this rule, the fees paid under these Regulations shall be distributed between the ARIPO Office and the designated States.

- (2) The distribution of fees between the ARIPO Office and the designated States shall be fifty percent to the ARIPO Office and fifty percent to designated states.

### ***Rule 12***

#### ***Licensing agreements for traditional knowledge***

- (1) A person wishing to enter into a licensing agreement to exploit protected traditional knowledge may apply in writing to the owners of the traditional knowledge.
- (2) Where the owners of the traditional knowledge agree to enter into a licensing agreement with an applicant under sub-rule (1) of this rule, the agreement shall be subject to the written approval of the national competent authority or appropriate authority.
- (3) The licensing agreement shall specify the terms and conditions and the duration applicable to it.
- (4) Where the owners of the traditional knowledge, with the approval of the national competent authority or appropriate authority, have agreed to conclude a licensing agreement, the national competent authority or appropriate authority shall notify the ARIPO Office in accordance with section 8.4 of the Protocol on ARIPO Form T4 as set out in the First Schedule to these Regulations.

### ***Rule 13***

#### ***Licensing agreements for expressions of folklore***

- (1) A person wishing to enter into a licensing agreement to exploit protected expressions of folklore may apply in writing to the owners of the expressions of folklore.
- (2) Where the owners of the expressions of folklore agree to enter into a licensing agreement with an applicant under sub-rule (1) of this rule, the agreement shall be subject to the written approval of the national competent authority or appropriate authority.
- (3) The licensing agreement shall specify the terms and conditions and the duration applicable to it.
- (4) Where the owners of the expressions of folklore, with the approval of the national competent authority or appropriate authority, have agreed to conclude a licensing agreement, the national competent authority or appropriate authority shall notify the ARIPO Office in accordance with section 8.4 of the Protocol on ARIPO Form F4 as set out in the Second Schedule to these Regulations.

### ***Rule 14***

#### ***Traditional knowledge register***

The ARIPO Office shall in accordance with section 5.2 of the Protocol maintain a traditional knowledge register in which shall be recorded:

- a) the number of every application made under this Protocol;
- b) the name and address of the applicant;
- c) the date and number of registrations made under rule 4 and licensing agreements made under rule 12 of these Regulations;

- d) the name of the holders/communities of the traditional knowledge;
- e) the address or location of the holders/communities of traditional knowledge;
- f) description or identification of the registered traditional knowledge;
- g) any change with respect to the matters set out in paragraphs (a) to (d) of this sub-rule.

Any person may, on payment of the fees prescribed in the Third Schedule to these Regulations, inspect the register maintained under this rule.

### ***Rule 15*** ***Expressions of folklore register***

The ARIPO Office shall in accordance with section 17 of the Protocol maintain an expressions of folklore register in which shall be recorded:

- a) the number of every application made under this Protocol;
- b) the name and address of the applicant;
- c) the date and number of registrations made under rule 4 and licensing agreements made under rule 12 of these Regulations;
- d) the name of the holders/communities of the expressions of folklore;
- e) the address or location of the holders/communities of expressions of folklore;
- f) description or identification of the registered expressions of folklore;
- g) any change with respect to the matters set out in paragraphs (a) to (d) of this sub-rule.

Any person may, on payment of the fees prescribed in the Third Schedule to these Regulations, inspect the register maintained under this rule.

### ***Rule 16*** ***Publication of registered trans-boundary traditional knowledge and issuance of certificates, etc, in respect of traditional knowledge***

The ARIPO Office shall:

- a) publish in the ARIPO Journal a reference to the registration of trans-boundary traditional knowledge or licensing agreement;
- b) issue the applicant with a certificate of registration of the trans-boundary traditional knowledge or licensing agreement, as the case may be, on ARIPO Form T2 or T4 as set out in the First Schedule of the Regulations;
- c) transmit to the national competent authority or appropriate authority for which the registration or licensing agreement is registered a copy of the certificate of the registration.

### ***Rule 17*** ***Publication of registered trans-boundary expressions of folklore and issuance of certificates, etc, in respect of expressions of folklore***

The ARIPO Office shall:

- a) publish in the ARIPO Journal a reference to the registration of trans-boundary expressions of folklore or licensing agreement;

- b) issue the applicant with a certificate of registration of the trans-boundary expressions of folklore or licensing agreement, as the case may be, on ARIPO Form F2 or F4 as set out in the Second Schedule of the Regulations;
- c) transmit to the national competent authority or appropriate authority for which the registration or licensing agreement is registered a copy of the certificate of the registration.

**Rule 18**  
***Benefit sharing***

- (1) The benefits accruing from exploitation of the traditional knowledge under these Regulations shall be shared in a fair and equitable way, between the owners of the traditional knowledge and persons who have been granted authorization or licensing agreement.
- (2) The benefits arising from the use of expressions of folklore shall be transferred directly by the national competent authority or appropriate authority to the local or traditional community concerned.
- (3) The sharing of benefits under sub-rules (1) and (2) of this rule shall involve the participation and approval of the owners of the traditional knowledge and expressions of folklore and the concerned communities.
- (4) The benefits derived from exploitation of traditional knowledge and expressions of folklore may include:
  - a) division of profits;
  - b) payment of royalties;
  - c) technology access and transfer; and
  - d) training of human resources.
  - e) Others, as applicable.

**Rule 19**  
***Right to refuse to grant authorization or to conclude a licensing agreement***

The owners of traditional knowledge and expressions of folklore and concerned communities may refuse to grant authorization or to conclude a licensing agreement under these Regulations where the authorization and licensing agreement are likely to be detrimental to their natural or cultural heritage.

**Rule 20**  
***Right to withdraw consent***

The owners of traditional knowledge and expressions of folklore and concerned communities may withdraw consent or place restrictions on the activities relating to the exploitation of their traditional knowledge and expressions of folklore where the activities are likely to be detrimental to their socio-economic life or their natural or cultural heritage.

**Rule 21**  
**Dispute settlement**

- (1) The appropriate authority shall establish a Dispute Settlement Committee for the purpose of settling disputes arising out of authorizations granted and licensing agreements concluded under these Regulations and any other related matter.
- (2) Where the subject matter of the dispute concerns ascertaining the relevant community, the dispute shall be resolved as far as possible, in accordance with the customary laws and practices of the community concerned.
- (3) The ARIPO Office shall in accordance with sections 14.3 and 22.4 of the Protocol establish *ad hoc* committees for the purposes of settling disputes arising from traditional knowledge and expressions of folklore shared by different communities across national boundaries as the need arises.

**Rule 22**  
**Amendment**

- (1) These Regulations may be amended at the instance of the Director General or any member of a Contracting State during the Administrative Council sessions.
- (2) The decision to amend these Regulations shall be by a simple majority of Contracting States.
- (3) Every amendment to these Regulations shall be notified to the Contracting States by the Director General.



## **SCHEDULES**

## **First Schedule**

### **Forms for Trans-boundary Traditional Knowledge**

<b>Form No</b>	<b>Description/Title Amount</b>
ARIPO Form No. T1	Request for registration of trans-boundary traditional knowledge
ARIPO Form No. T2	Certificate of registration
ARIPO Form No. T3	Communication by national competent authority/appropriate authority that prior informed consent has been granted for the exploitation of trans-boundary traditional knowledge
ARIPO Form No. T4	Notification by national competent authority/appropriate authority of concluded license agreement for the exploitation of trans-boundary traditional knowledge



**AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)**

<b>ARIPO Form No. T1 SWAKOPMUND PROTOCOL</b>	
<b>REQUEST FOR REGISTRATION OF TRANS-BOUNDARY TRADITIONAL KNOWLEDGE</b>	
<b>(Rule 2(1))</b>	
Name of applicant	
Address of the applicant	
Background information of the applicant	
Applicant's Nationality	
Purpose for requesting registration	
Use of the traditional knowledge (traditional context)	
Contracting States which share the Trans-boundary Traditional Knowledge	
Signature..... Date.....	
NATIONAL COMPETENT AUTHORITY/APPROPRIATE AUTHORITY: .....	
ATTACHMENTS: <input type="checkbox"/> Copy of Prior Informed Consent <input type="checkbox"/> Proposal for Benefit Sharing	



**AFRICAN REGIONAL INTELLECTUAL PROPERTY  
ORGANIZATION (ARIPO)**

**ARIPO Form No. T2  
SWAKOPMUND PROTOCOL**

**CERTIFICATE OF REGISTRATION**

**(Rule 4(3))**

In accordance with Rule 4(3) of the Regulations, it is here certified that a Trans-boundary Traditional knowledge having a registration number ..... has been granted to:

Name:

Address:

on..... (Date) on behalf of communities that share the same Traditional knowledge in the following Contracting States

in respect of an application for registration of trans-boundary Traditional Knowledge having an application date of .....

Dated this ..... day of ..... 20.....

.....  
DIRECTOR GENERAL  
ARIPO Office



**AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)**

<p><b>ARIPO Form No. T3 SWAKOPMUND PROTOCOL</b></p> <p><b>COMMUNICATION BY NATIONAL COMPETENT AUTHORITY/ APPROPRIATE AUTHORITY THAT PRIOR INFORMED CONSENT HAS BEEN GRANTED FOR THE EXPLOITA- TION OF TRANS-BOUNDARY TRADI- TIONAL KNOWLEDGE</b></p> <p><b>(Rule 6(1))</b></p>	
<p>On behalf of ..... (Traditional/Local Com- munities), the National Competent Authority/Appropriate Authority of ..... (Contracting State) hereby communicate to the ARIPO Office pursuant to Rule 6(1) that Prior Informed Consent has been granted to</p> <p>Name and Address of Licensee</p>  <p>to exploit the following identified trans-boundary traditional knowledge</p>	
<p>Signature..... Date.....</p> <p>NATIONAL COMPETENT AUTHORITY/APPROPRIATE AUTHORITY: .....</p>	



**AFRICAN REGIONAL INTELLECTUAL PROPERTY  
ORGANIZATION (ARIPO)**

<p><b>ARIPO Form No. T4 SWAKOPMUND PROTOCOL</b></p> <p><b>NOTIFICATION BY NATIONAL COMPETENT AUTHORITY/APPROPRIATE AUTHORITY OF CONCLUDED LICENSE AGREEMENT FOR THE EXPLOITATION OF TRANS-BOUNDARY TRADITIONAL KNOWLEDGE</b></p> <p><b>(Rule 12(4))</b></p>	
<p>On behalf of ..... (Traditional/Local Communities), the National Competent Authority/Appropriate Authority of ..... (Contracting State) hereby notifies the ARIPO Office pursuant to Rule 12(4) that a License Agreement has been made on ..... day of ..... 20..... between ..... (Traditional community concerned) of the one part and ..... (Licensee) of the other part. A copy of the license agreement is attached to this Form.</p>	
<p>Signature..... Date.....</p> <p>NATIONAL COMPETENT AUTHORITY/APPROPRIATE AUTHORITY: .....</p>	

**Second Schedule:**

**Forms for  
Trans-boundary Expressions of Folklore**

<b>Form No</b>	<b>Description/Title Amount</b>
ARIPO Form No. F1	Request for registration of trans-boundary expressions of folklore
ARIPO Form No. F2	Certificate of registration
ARIPO Form No. F3	Communication by national competent authority/appropriate authority that prior informed consent has been granted for the exploitation of trans-boundary expressions of folklore
ARIPO Form No. F4	Notification by national competent authority/appropriate authority of concluded license agreement for the exploitation of trans-boundary expressions of folklore



**AFRICAN REGIONAL INTELLECTUAL PROPERTY  
ORGANIZATION (ARIPO)**

<b>ARIPO Form No. F1 SWAKOPMUND PROTOCOL</b>	
<b>REQUEST FOR REGISTRATION OF TRANS-BOUNDARY EXPRESSIONS OF FOLKLORE</b>	
<b>(Rule 3(1))</b>	
Name of applicant	
Address of the applicant	
Background information of the applicant	
Applicant's Nationality	
Purpose for requesting registration	
Use of the expressions of folklore (traditional context)	
Contracting States which share the Trans-boundary Expressions of Folklore	
Signature..... Date.....	
NATIONAL COMPETENT AUTHORITY/APPROPRIATE AUTHORITY: .....	
ATTACHMENTS: <input type="checkbox"/> Copy of Prior Informed Consent <input type="checkbox"/> Proposal for Benefit Sharing	





**AFRICAN REGIONAL INTELLECTUAL PROPERTY  
ORGANIZATION (ARIPO)**

<p><b>ARIPO Form No. F2 SWAKOPMUND PROTOCOL</b></p> <p><b>CERTIFICATE OF REGISTRATION</b></p> <p><b>(Rule 5(3))</b></p>	
<p>In accordance with Rule 5(3) of the Regulations, it is here certified that a Trans-boundary Ex-pressions of Folklore having a registration number ..... has been granted to:</p> <p>Name:</p> <p>Address:</p> <p>on..... (Date) on behalf of communities that share the same Expressions of Folklore in the following Contracting States</p> <p>in respect of an application for registration of trans-boundary Expressions of Folklore having an application date of .....</p>	
<p>Dated this ..... day of ..... 20.....</p> <p>..... DIRECTOR GENERAL ARIPO Office</p>	



**AFRICAN REGIONAL INTELLECTUAL PROPERTY  
ORGANIZATION (ARIPO)**

<p><b>ARIPO Form No. F3 SWAKOPMUND PROTOCOL</b></p> <p><b>COMMUNICATION BY NATIONAL COMPETENT AUTHORITY/ APPROPRIATE AUTHORITY THAT PRIOR INFORMED CONSENT HAS BEEN GRANTED FOR THE EXPLOITA- TION OF TRANS-BOUNDARY EXPRES- SIONS OF FOLKLORE</b></p> <p><b>(Rule 7(1))</b></p>	
<p>On behalf of ..... (Traditional/Local Com- munities), the National Competent Authority/Appropriate Authority of ..... (Contracting State) hereby communicate to the ARIPO Office pursuant to Rule 7(1) that Prior Informed Consent has been granted to</p> <p>Name and Address of Licensee</p>          <p>to exploit the following identified trans-boundary expressions of folklore</p>	
<p>Signature..... Date.....</p>  <p>NATIONAL COMPETENT AUTHORITY/APPROPRIATE AUTHORITY: .....</p>	



**AFRICAN REGIONAL INTELLECTUAL PROPERTY  
ORGANIZATION (ARIPO)**

<p><b>ARIPO Form No. F4 SWAKOPMUND PROTOCOL</b></p> <p><b>NOTIFICATION BY NATIONAL COMPETENT AUTHORITY/APPROPRIATE AUTHORITY OF CONCLUDED LICENSE AGREEMENT FOR THE EXPLOITATION OF TRANS-BOUNDARY EXPRESSIONS OF FOLKLORE</b></p> <p><b>(Rule 13(4))</b></p>	
<p>On behalf of ..... (Traditional/Local Communities), the National Competent Authority/Appropriate Authority of ..... (Contracting State) hereby notifies the ARIPO Office pursuant to Rule 13(4) that a License Agreement has been made on ..... day of ..... 20..... between ..... (Traditional community concerned) of the one part and ..... (Licensee) of the other part. A copy of the license agreement is attached to this Form.</p>	
<p>Signature..... Date.....</p> <p>NATIONAL COMPETENT AUTHORITY/APPROPRIATE AUTHORITY: .....</p>	

## **Third Schedule**

### **Fees**

#### **PART A**

#### **Fees for Trans-boundary Traditional Knowledge**

	<b>Kind of fees</b>	<b>Amount (US Dollars)</b>
1.	Application fees	50
2.	Registration and publication fee	50
3.	Surcharge for late payment of annual maintenance fee For every month or fraction thereof that the fees remain unpaid	15 2
4.	Certified copy per page and for every page in excess of 10 pages	2 1
5.	Consultation of the register for R&D	100
6.	Correction of errors: the first error any additional errors	10 2
7.	Certified copy of the entry of the register	10

**PART B**

**Fees for  
Trans-boundary Expressions of Folklore**

	<b>Kind of fees</b>	<b>Amount (US Dollars)</b>
1.	Application fees	50
2.	Registration and publication fee	50
3.	Surcharge for late payment of annual maintenance fee For every month or fraction thereof that the fees remain unpaid	15 2
4.	Certified copy per page and for every page in excess of 10 pages	2 1
5.	Consultation of the register for R&D	100
6.	Correction of errors: the first error any additional errors	10 2
7.	Certified copy of the entry of the register	10





