

Please provide the following details on the origin of this report

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

The Supreme Council for Environment and Natural Reserves (SCENR) prepared a zero draft, drawing from several policy documents and published papers, and in particular the National Biodiversity Strategy and Action Plan and the several contributing papers prepared in the course of the making of the same. The zero draft was circulated among various government agencies, academic institutions and environmental groups, and was revised based on the input received over a period of time.

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

Intellectual property and traditional knowledge related to genetic resources

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

Traditional knowledge is an accumulation of knowledge obtained through trial and error and subsequent practice through the historical continuum, it is also practical knowledge embedded in intuitive wisdom.

The practice of traditional knowledge had the common community interest at its core and had a tradition of oral transmission from the teacher to the taught. There were often severe ethical criteria for the selection of the recipients of the traditional knowledge which ensured against the misuse of the knowledge. However, in the modern context where there is a different set of values guiding the use of knowledge, the traditional knowledge can be in jeopardy if it is not accorded formal legal protection.

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

This is hardly possible. The traditional knowledge is, in the absence of legal protection, considered by the modern economic system and the property rights regime that governs the same as an open resource that could be taken and owned and this makes the perpetuation of the traditional knowledge a difficult task. The system of exclusive ownership is in contrast to the common property concept underlying the traditional knowledge system, and the tools of the existing intellectual property regime can remove it from its domain of openness.

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

Legal protection would be necessary, but the implementation would be a complex task as it is going to be different from the existing rights regimes. Oral traditions as well as historical texts in local languages should be recognised as evidence for the existence of the knowledge, and the concept of community rights should be introduced. The commercial users of traditional knowledge should use such knowledge by the principles set out in CBD and based on mutually agreed terms with the community holding such knowledge. Since the communities are at a disadvantage to take on erring commercial users of their knowledge there should be easily accessible institutional arrangement to

assist them in dealing with such cases.

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

They remain in different, indeed conflicting, domains, for the formal intellectual property system results in the privatisation of open, community knowledge while the customary laws emphasise community ownership and the common good. The modern legal system in Qatar draws from the Islamic Sharia (law), which may be called as the customary law, and this means that there is no conflict between the two systems of law. However, in adopting modern intellectual property laws countries are to follow a system that emphasises the primacy of private rights over community interests. Just as the formal intellectual property system fails to recognise the country of origin of species as a factor, it takes the traditional knowledge for granted.

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

- According to the Vienna Convention on the Law of Treaties, a country that becomes Party to an international treaty, through the due process, is legally bound to implement the provisions of the treaty in question. Hence the Parties are bound by article 8j as well as the other operational articles, even in the absence of further development or interpretation of the article. This provides the legal opportunity to challenge the infractions of this article in a court of law in the concerned Party. However, the legal standing of the Convention in the court has still to be proved in any country.
- Holders of traditional knowledge could make inventories of their knowledge system and declare their ownership rights over the same, in line with CBD article 8j. However, it remains to be seen if the patent rights system of the country in question recognises this, though they ought to as required by article 8j. It is important to note that the indigenous communities would require well meaning outside support in such exercises.

(f) How to ensure that granting intellectual property rights does not preclude

continued customary use of genetic resources and related knowledge;

Traditional knowledge is essentially community-generated knowledge held by the community and used for common good. The legal protection of the knowledge cannot change and should not change its character as a community resource. The protection accorded, when so done, is against unauthorised commercial exploitation and not against use for livelihood purposes. And this should be reflected in any legal regime created for this purpose.

The customary use of genetic resources is different from the above and it should be guided by the provisions of CBD

Intellectual property rights and access and benefit-sharing agreements

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

Holding the Islamic principles as the guiding value in using resources provides an ethical basis for such resource use in Qatar, although the institutional systems to ensure the application of these need to be strengthened. The *Hima* system of sustainable natural resource management practiced by local communities in Qatar and elsewhere in the Arabian peninsula had been an effective community institution though this has fallen into disuse as a result of the fast pace of modern development in most parts of its former areas. Reinventing the *Himas* (managed resource conservation/use areas) wherever that is feasible makes the practice of conservation and ethical use of the resources readily acceptable to the local communities. The commercial users of resources are often hard pressed by market forces to compromise on ethics and the legal and institutional systems for resource management should be particularly alert to this.

Ethics is internalised in the goals of the CBD and hence vigorous pursuance of CBD, in its entirety, is important in this respect and in the event of conflicts with other international treaties in interpreting the provisions of CBD, Parties should uphold the primacy of CBD.

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

By its nature and history traditional knowledge is a community property and it should continue to remain so when mechanism is created to protect it from illegitimate commercial exploitation. This mechanism should also explicitly provide for the continued customary use of biodiversity as informed by the related traditional knowledge. Any commercial use of such knowledge should not

prejudice this traditional right.

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

The provision of the Convention encouraging joint research in the country of origin of species is particularly important in this respect. This provision and the joint rights over subsequent inventions, if any, should be built into the agreement for the commercial use of biodiversity/traditional knowledge. The Secretariat may publish model agreements to be used in cases of commercial access to biodiversity and traditional knowledge.

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

This is a very important concept and advantageous to both the accessor and the provider of biodiversity and traditional knowledge. It should be built into the agreement in all instances of commercial use of biodiversity accessed in a foreign country, and in all cases of commercial use of traditional knowledge, whether the commercial entity involved is domestic or foreign.