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Code of Ethics as a Tool to Protect the Rights of Holders of Traditional Knowledge and Practices Related to Genetic Resources

Traditional knowledge and practices are the result of creative self-expression of a person. They are transmitted from generation to generation, develop and recreate within the communities concerned, and also, due to their origin and existence, they contribute to the conservation and sustainable use of biological diversity. The living nature of traditional knowledge and practices makes them vulnerable to external factors and threats, and therefore they should be protected not only at the legislative level, but in the framework of ethical norms.

At the international level, the UN Convention on Biological Diversity (1992) (hereinafter referred to as “the Convention on Biological Diversity”) and the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) (hereinafter referred to as “the 2003 Convention”) aim to address this issue. In the first instance, traditional knowledge and practices are considered as the human activity result based on the lenient utilization of natural genetic resources. In the second document, traditional knowledge and practices are classified within the paradigm of the cultural heritage of mankind being part of intangible cultural heritage, which is “created and constantly reproduced” by its bearers (communities, groups and individuals), thereby promoting respect for the cultural diversity and human creativity” [1].

Both documents prescribe member States to ensure respect, preservation and maintenance of knowledge, innovations and practices of indigenous and local communities [2], take the necessary measures to ensure the safeguarding of intangible cultural heritage present in its territory [3]. Among the general approaches proposed by the Conventions, it is possible to distinguish the identification, inventory, determination or creation at the national level of one or more competent bodies responsible for the protection of traditional knowledge and practices, financial support and access to them as part of intangible cultural heritage in compliance with the accepted practices that establish

an access procedure for the particular aspects of such heritage [4]. Operational Directives to the 2003 Convention (Paragraph 103) recommend that member States develop and adopt the Codes of Ethics based on the Provisions of the Convention and these Operational Directives should ensure “appropriate ways of awareness-raising of intangible cultural heritage in their territories” [5]. Article 7 of the Nagoya Protocol to the Convention on Biodiversity also states that Parties to the Protocol shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources is accessed with the prior and informed consent or approval and involvement of their holders, indigenous and local communities in the first instance, and that mutually agreed terms have been established.

Development of the Codes of Ethics with respect to various population groups is a common UNESCO practice. In 2015, the Intergovernmental Committee at its 10th session in Windhoek, Namibia, approved twelve ethical principles related to the protection of rights of intangible cultural heritage bearers and promoting an ethical aspect of the 2003 Convention (Decision 10.COM 15.a). They represent a set of overarching aspirational principles that are widely accepted as constituting good practices for governments, organizations and individuals directly or indirectly affecting intangible cultural heritage in order to ensure its viability, thereby recognizing its contribution to peace and sustainable development [6]. They are based on a set of value benchmarks, which are instrumental for the objectives of the 2003 Convention. One of the key beacons is the protection of rights of intangible cultural heritage bearers, including traditional knowledge and practices. The point at issue is that communities, groups and, where applicable, individuals should have the primary role in the safeguarding of their own intangible cultural heritage – that is they who are right owners to its continuation and passing down needed to ensure the viability of intangible cultural heritage (Principle 12).

According to Principle 4, activities related to the safeguarding of intangible cultural heritage should be compatible with existing international norms on human rights, as well as the mutual respect requirement. They should be implemented with the maximum feasible participation, free, prior, sustained and informed consent of the afore-mentioned communities, groups and individuals by transparent collaboration, dialogue, negotiation and consultation. This requirement is underpinned by the 2003 Convention objectives (Article 2, Para. 1) and the key provisions of such well-known international instruments as the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and the United Nations Declaration on the Rights of Indigenous Peoples (2007).

Principle 3 addresses the issues of mutual respect and mutual appreciation of the intangible cultural heritage and prevails in interactions between States, as well as between communities, groups and, where applicable, individuals. This also applies to the cultural diversity and identity of communities, as well as gender equality (Principle 11).

Intangible cultural heritage bearers, including traditional knowledge and practices, are of a priority right in assessing the value of their own intangible cultural heritage and this intangible cultural heritage should not be subject to external judgments of value or worth (Principle 6). The same relates to determining of threats that carry dangers for such heritage existence. First and foremost, its bearers should feel concern about preventing and mitigating such threats (Principle 10). Meanwhile, unacceptability of exaggerated peer review’s role with respect to viability and quality characteristics of this heritage is emphasized. In other words, the elements of the intangible cultural heritage, representing the dynamic and living nature of culture, cannot be considered from above, only through the prism of scientific knowledge, not noticing their broader humanitarian and social

role. Authenticity and exclusivity should not constitute concerns and obstacles in the safeguarding of intangible cultural heritage (Principle 8).

A core driver to promote ethical standards is respect for accepted restrictions on access to the intangible cultural heritage. This stems from situations when outsiders who are not local community members conduct research, collect data, make reports for the mass media, distorting information or playing fast and loose with the facts in their interests, or come as tourists showing no respect to local residents. Thus, customary practices governing access to intangible cultural heritage should be fully respected, even where these may limit broader public access (Principle 5).

The communities, groups and individuals who create intangible cultural heritage should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others (Principle 7).

Among the threats arising from uncontrolled access to traditional knowledge and practices of local communities and their use by third parties, the following ones are mentioned in Paragraph 102 of the Operational Directives of the 2003 Convention:

- *De-contextualization or denaturalization of the intangible cultural heritage;*
- *Harm the image of the communities, groups or individuals concerned;*
- *Political, social, ethnic, religious, linguistic or gender-based discrimination;*
- *Misappropriation or abuse of the knowledge and skills of the communities, groups or individuals concerned;*
- *Over-commercialization or unsustainable tourism that may put at risk the intangible cultural heritage concerned [5].*

It is these factors that led to the development of Codes of Ethics, since the norms of intellectual property law do not apply to traditional culture and its bearers in the majority of cases. This is where the special protection mechanism (*Sui Generis*) should operate, which includes Codes of Ethics. Special protection aims to ensure the sustainable development of traditional knowledge and practices, which is able to meet the requirements of the current generation and at the same time not to exhaust the resources necessary for the existence of future ones. Communities, groups, local, national and transnational organizations and individuals should carefully assess the direct and indirect, short-term and long-term, potential and definitive impact of any action that may affect the viability of intangible cultural heritage or the communities who practise it (Principle 9).

Knowledge and skills imparted through intangible cultural heritage are a valuable resource for sustainable development. In local systems of knowledge and practices, we often find solutions to the problems facing mankind in modern society: from biodiversity conservation and climate change to protection from natural disasters, poverty and even violence. This is an inexhaustible source of finding ways to achieve the desired balance between the environment and man.

Ethical principles proposed by the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage can, of course, become a guide for national discussions in the Republic of Belarus, and in particular, on how to update these principles in our own practice on implementing a sustainable development program that cannot be realized without the development of specific policies for the conservation of traditional knowledge and practices, as well as genetic resources associated with them. The cornerstone of this policy should be the protection of the holders of such knowledge and practices – communities, groups and individuals, without which their further existence and proliferation is impossible.

REFERENCES

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