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REGIONAL COMMITTEE OF EXPERTS  
ON MEANS OF IMPLEMENTATION IN AFRICA OF MODEL PROVISIONS  
ON INTELLECTUAL PROPERTY ASPECTS OF PROTECTION OF  
EXPRESSIONS OF FOLKLORE

Dakar, February 23 to 25, 1983

DRAFT REPORT

prepared by the Secretariat

I. Introduction

1. In pursuance of resolution 5/01 adopted by the General Conference of Unesco at its twenty first session (Belgrade, September - October 1980) and the decisions taken by the Governing Bodies of WIPO at their November 1981 sessions, the Directors General of Unesco and WIPO convened a Regional Committee of Experts on Means of Implementation in Africa of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (hereinafter referred as "the Committee"). The Committee met at the Regional Office for Education in Africa in Dakar from February 23 to 25, 1983. The meeting was organized in cooperation with the African Cultural Institute.

2. The purpose of the meeting was to consider the text of Model Provisions for National Laws on the Protection of Expressions of Folklore against illicit exploitation and other prejudicial actions adopted by the Committee of Governmental Experts convened by the Directors General of Unesco and WIPO from June 28 to July 2, 1982 in Geneva, and to make suggestions on the possible means of implementation in Africa of the said text.

- 2 -

3. Experts from seven countries of the African Region (Cameroon, Cape Verde, Ghana, Kenya, Senegal, Tanzania, Zaire) had been invited to participate, in a personal capacity, in the Committee. Two international non-governmental organisations (CISAC and URTNA) attended the meeting as observers.

4. The list of participants will appear in the Annex to the final Report.

## II. Opening of the meeting

5. On behalf of the Directors General of WIPO and Unesco, Mr. C. Masouyé, Director, Public Information and Copyright Department, WIPO and Mr. A. Amri, Copyright Division, Unesco, respectively welcomed the participants at the meeting. Mr. Apronti, Deputy Director-general, ACI also welcomed the participants in the name of his Organisation.

## III. Election of officers

6. On the proposal of Mr. Ndongani, the expert from Zaire, Mr. Ndiaye, the expert from Senegal, and Mr. Athiambo, the expert from Kenya were elected Chairman and Vice-Chairman of the Committee, respectively.

## IV. General Discussion

7. The Secretariat of the meeting introduced document UNESCO/WIPO/FOLK/AFR/2 containing the text of the model provisions, accompanied by a commentary. It recalled the background of the work which led to the adoption of this text. It also gave explanations about the contents and the scope of the said document.

8. The experts expressed their appreciation at the achievement. This document enables the national legislators to have at their disposal a model law intended to protect expressions of folklore. This is particularly important in view of the fact that such a protection at the legal level is not yet fully set up in Africa.

9. It was recalled that the matter has been dealt with by several African legislations (for instance, the laws of Cameroon, Congo, Guinea, Ivory Coast and Senegal), but mainly in a copyright approach. In this connection, it was noted that the system established in Senegal is based on the principle of a declaration (instead of a prior authorization) and that the amounts collected for the use of works of folklore were put into a fund used for cultural and social purposes.

10. It was stressed that legislations are insufficient if there is no implementation machinery allowing for a control in the use of expressions of folklore and for the collection of the appropriate fees.

- 3 -

Such machineries already exist in certain African countries; it seems, however, highly desirable that they be set up everywhere.

11. The experts have also underlined the scope of the use of the various forms of folklore, as with the development of technical means of reproduction and dissemination folklore is more and more fixed on a material support. The multiplicity of dialects, especially in Africa, increased the richness and variety of folklore which is widely used. Furthermore, the experts have emphasized that this utilization mostly goes beyond boundaries and develops at the international level. The impact of a law being in principle limited to national territory, it is essential to search for means of establishing also protection in the international relations.

12. The Secretariat stated that, subject to the approval of competent bodies, Unesco and WIPO have provided in their future activities the study of means of ensuring an international protection of expressions of folklore. On the other hand, the Secretariat recalled that the model provisions do not offer any definition of the notion of folklore, in order to avoid possible conflict with relevant definitions which are or may be contained in other documents or legal instruments. To this purpose, the model provisions simply define the expressions of folklore and set up a system of protection against their illicit exploitation. Other problems, such as identification, conservation and preservation of folklore, call for a global and interdisciplinary study which is undertaken by Unesco.

13. Finally, the Secretariat reminded the experts that the purpose of model provisions was to provide national authorities with a model, not at all compulsory, leaving national legislators free to adopt the type of provisions which according to them is better adapted to the conditions existing in their own country. In this respect, the experts expressed the view that it is essential to see whether the model provisions are compatible with existing legislations, as well as with the Bangui Agreement of 1977 which constitutes at the African level an attempt to a regional solution.

#### V. Discussion section by section

14. The general discussion was followed by an examination, section by section, of the model provisions and the relevant commentary, submitted to the Committee. The experts made a number of observations and suggestions, which are summarized as follows. Before starting to discuss each provision, the Secretariat introduced the text and its commentary and informed the Committee of the results of the previous regional meetings held in Bogota in October 1981 and in New Delhi in February 1983.

### Preamble

15. Some experts stated that it is not in the legal tradition of African countries to have the legislations preceded by recitals ; proposed text may, however, be used to summarize the main reasons of the statutes.

### Section 1 : Principle of Protection

16. One expert stressed that the expressions of folklore are not only developed and maintained in a given country but may also be created in that country. Consequently, he proposed that the scope of the protection include also the creation. Other experts noted that the notion of expressions of folklore covers both the expressions created in a community and those originating elsewhere but having been adopted, further developed or maintained through generations by that community. What is essential is the development of the expressions as defined in Section 2, the notion of development covering, as the case may be, the notion of original creation and the legislator remaining free to indicate it, expressly or not.

### Section 2 : Protected expressions of folklore

17. The experts preferred that the definition of the term "expression of folklore" be focused on the cultural heritage and not limited to the artistic heritage of the nation. It was underlined that the latter is a narrower notion and does not permit to include into the said definition traditional beliefs, scientific views and substance of legends, which should also be granted protection.

### Section 3 : Utilization subject to protection

18. The experts felt that it was not realistic to give to the community concerned the power of granting authorizations and that the African countries unanimously prefer the system of the competent authority.

### Section 4 : Exceptions

19. One expert was of the opinion that exceptions should also be provided for public bodies which utilize expressions of folklore, without making profit, for their own needs, for instance in the case of radio or television broadcasts. Another expert raised the question as to what would be the situation in which expressions of folklore were used in the form of postage stamps, the user being the State itself. Reference was also made to postcards reproducing expressions of folklore. In a general manner, it was considered abnormal that operations of a commercial nature may not fall under the regulations, which is a prejudice to the communities concerned.

Section 5 : Acknowledgement of source

20. The experts noted that the requirement of the acknowledgement of source was conceivable only in the case of identifiable expressions and that in such a case the country from which the expressions utilized are derived could also be mentioned.

Sections 6 to 8 : Offences, seizure and civil remedies

21. The experts expressed the view that in the case of seizure and damages, all sums collected should be assigned either to the community concerned or, if it is not feasible, to the competent authority for cultural or social purposes.

Section 9 : Authorities

22. It was unanimously agreed that it was more wise, economical and efficient to use the existing structures in Africa, in particular, the societies of authors, and to entrust them with the responsibilities provided for the competent authority.

Section 10 : Authorization

23. As a general rule, it was recommended that the fees collected should be used by the societies of authors in the most appropriate manner for the purpose of promoting national culture.

Section 11 : Jurisdiction

24. No comments. The question as to which court is, in any given country, to be appointed, largely depends on the existing court system of that country.

Section 12 : Relation to other forms of protection

25. The wish was expressed that if several means of protection are established under national laws they should be complimentary rather than competitive.

Section 13 : Interpretation

26. Some doubts were raised as to the usefulness of inserting this provision into the national legislation.

Section 14 : Protection of Expressions of Folklore of Foreign Countries

27. The experts, referring to the Bangui Agreement adopted under the auspices of the African Intellectual Property Organization (OAPI), expressed the wish that this regulation be extended to the whole African Continent. Furthermore, they stressed the need to elaborate an instrument protecting expressions of folklore at the international level.

Adoption of the report

28. ....