



**Asia-Pacific  
Economic Cooperation**

**REPORT**

**SURVEY ON ACCESS TO GENETIC RESOURCES AND  
PROTECTION OF TRADITIONAL KNOWLEDGE IN  
APEC ECONOMIES**

APEC INTELLECTUAL PROPERTY EXPERTS GROUP  
APEC COMMITTEE ON TRADE AND INVESTMENT

NOVEMBER, 2008

APEC TILF PROJECT CTI 23/2008T (IPEG)  
RAISING AWARENESS AND PROVIDING POLICY INSIGHTS ON PROMOTING  
APPROPRIATE ACCESS AND PROTECTION OF GENETIC RESOURCES AND  
TRADITIONAL KNOWLEDGE IN APEC ECONOMIES

© 2008 APEC Secretariat

FOR THE ASIA-PACIFIC ECONOMIC COOPERATION SECRETARIAT  
35 Heng Mui Keng Terrace Singapore 119616  
Tel: (65) 68919-600 Fax: (65) 68919-690  
Email: [info@apec.org](mailto:info@apec.org)  
Website: [www.apec.org](http://www.apec.org)

APEC#208-CT-01.11

## TABLE OF CONTENTS

### I INTRODUCTION

### II SURVEY ANALYSIS

#### 2.1 General Aspects

#### 2.2 Traditional Knowledge

2.2.1 Definition

2.2.2 Main holders

2.2.3 Preservation of Traditional Knowledge

2.2.4 Protection of Traditional Knowledge

2.2.5 Important issues related to protection of Traditional Knowledge:  
Management of the protection regime, prior informed consent, and  
benefit-sharing

2.2.6 Encouragement of research and development in Traditional  
Knowledge

2.2.7 Existence of databases or compilation mechanisms related to  
Traditional Knowledge

#### 2.3 Access to Genetic Resources

#### 2.4 Convention on Biological Diversity

#### 2.5 Participation in fora, agreements and conventions

#### 2.5 Gender

### III CONCLUSIONS

### IV GLOSSARY

### V INDEX OF TABLES

**Table 1:** Main Holders of Traditional Knowledge (Question 2)

**Table 2:** Preservation of Traditional Knowledge and media for preservation of  
Traditional Knowledge (Questions 1, 3 and 4)

**Table 3:** Protection of Traditional Knowledge (Questions 11 and 12)

**Table 4:** Institutions in charge of managing sui generis regimes for protection of  
TK, in giving Prior Informed Consent and verifying compliance of mutually agreed  
terms for the use of Traditional Knowledge (Questions 13 , 14 and 15)

**Table 5:** Encouragement in research and development of Traditional Knowledge  
(Question 16)

**Table 6:** Information systems related to Traditional Knowledge (Question 17)

**Table 7:** Regimes for the Access to Genetic Resources (Question 5)

**Table 8:** Institutions in charge of Regime for Access to Genetic Resources (Question 6)

**Table 9:** Mechanisms of the Regime for Access to Genetic Resources (Question 7)

**Table 10:** Control mechanism to verify compliance of requirements for access to Genetic Resources and benefit-sharing agreements and to ensure Prior Informed Consent and mutually agreed terms are fair and equitable (Question 8)

**Table 11:** Current statistics on the number of projects involving Access to Genetic Resources (Question 9)

**Table 12:** Encouragement in research and development in Genetic Resources (Question 10)

**Table 13:** Parties to the Convention on Biological Diversity and implementation of Articles 8j) and 15 of the Convention (Question 18)

**Table 14:** Other frameworks that support development of public policies and/or specific norms intended to regulate access to Genetic Resources or protect Traditional Knowledge (Question 19)

**Table 15:** Participation in international fora (Question 20)

**Table 16:** Adoption of measures or commitments assumed related to access to Genetic Resources and protection of Traditional Knowledge as part of bilateral economic agreements (Question 21)

**Table 17:** Role of indigenous women within the dynamic of use and preservation of Traditional Knowledge (Question 22)

## I INTRODUCTION

During the last years, new emerging issues had taken part in discussions and debates at different fora where topics so diverse as conservation and sustainable use of biodiversity, trade, and intellectual property, only to mention some, were treated. In fact, protection of traditional knowledge-TK and access to genetic resources-GR had been debated from different approaches within intergovernmental (Convention on Biological Diversity-CBD, Food and Agriculture Organization-FAO, United Nations Conference on Trade and Development UNCTAD, United Nations Educational, Scientific and Cultural Organization UNCTAD, UNESCO, World Intellectual Property Organization-WIPO, World Trade Organization-WTO) and regional (Andean Community, Amazon Cooperation Treaty Organization, Free Trade Area of the Americas) fora in the last decades.

Furthermore, since the CBD and FAO's International Treaty on Plant Genetic Resources for Food and Agriculture-ITPGRFA<sup>1</sup> entered into force<sup>2</sup> their members have been working to incorporate national policies involving the key principles of these treaties: conservation of biodiversity, its sustainable use, the fair and equitable sharing of benefits derived from the use of GR; and, how to fit in these objectives with intellectual property rights.

During these discussions, some questions had arisen around the main aspects related to protection of TK and access to genetic resources, e.g, How can TK be defined?; Who are the holders of TK?; What protection can be given to TK?; Can this protection be sought applying existing intellectual property mechanisms?; Who gives prior informed consent-PIC?; How can fair and equitable sharing derived from the use of TK and access to GR be assured?; What should be the treatment for TK on public domain?; etc.

In the attempt to find some answers to these questions, protection of TK and access to GR have been included in internal agendas, new formulas have been explored and tested in order to find protection for TK and to settle the rules for a legal access to GR. Also, interesting and successful experiences have been reported as a result of the work with different actors involved in the protection of TK and in regulating the access to GR.

This report compiles information about the existing national frameworks, regulations, practices or experiences related to protection of TK and access to GR among APEC economies. Since the objective of this report and the survey itself is to summarize and present the state of the art in the APEC region regarding these issues, this report does not intend to compare national legislations, the advances of each economy, or to judge any of the experiences of the APEC economies. The results that will be shown have been extracted from the *Survey on Access to Genetic Resources and Protection of Traditional Knowledge in APEC Economies*, hereafter "the Survey", which had been completed by APEC economies. This report tries to reflect in the most accurate way the answers of each economy, therefore the information included, regarding the details of the answers, had been extracted from the Survey; however, in some cases, it has been necessary to summarize the answers. For more complete information, refer to the complete Survey submitted by each economy.

## II SURVEY ANALYSIS

### 2.1 GENERAL ASPECTS

The Survey had been distributed among the 21 member economies of the APEC forum. Once the term for answering the survey and its extension finished, 17 economies<sup>3</sup> presented their results. These results give an 81% of the current scenario regarding the protection of TK and the access to GR within APEC economies. This report summarizes the available data and only mentions the results of the economies that completed the Survey.

To make easier the compilation of information and the processing of data, the 22 questions of the survey had been grouped in five main topics:

- Traditional Knowledge
- Access to Genetic Resources
- Convention on Biological Diversity
- Participation on Fora and Agreements
- Gender

This report presents the answers obtained to each of the 22 questions of the Survey. The results had been worked in a table format to make easier a general overview. Due to space considerations, the names of member economies are abbreviated in the tables (see glossary for the complete name of each member economy) and some information has been summarized.

This report includes only information regarding the 17 economies that submitted the Survey.

### 2.2 TRADITIONAL KNOWLEDGE -TK

#### 2.2.1 Definition:

*Traditional knowledge-TK* is a term that has not an “official” definition. WIPO’s-IGC’s definition of TK is still been discussed; however, WIPO has a working definition developed from the fact-finding missions that took place in 1998 - 1999.

The difficulty in finding a definition for the term *traditional knowledge* may be that it is related to traditional communities and, therefore, has an holistic connotation being highly bonded to the diversity of practices (artistic, environmental, religious, scientific, social, cultural, etc.) and innovations held by these communities.

In spite of all the different approaches that had been discussed and, although, there is not a widely acceptable definition that satisfies different group members (members at fora, TK holders, etc.), there are, indeed, some elements that have been identified as inherent to TK (knowledge being transmitted from generation to generation; knowledge in constant evolution, closely related to the territory, related to the cultural identity of a community, among others).

In order to complete the Survey it was important to have homogenous criteria of the elements that may be considered as TK within APEC economies. In this sense, the Survey considers the working concept developed by WIPO:

*“Tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. “Tradition-based” refers to knowledge systems, creations, innovations and cultural expressions which: have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and are constantly evolving in response to a changing environment.”*

### **2.2.2 Main holders:**

Other aspect related to TK is its holders. In fact, this knowledge may be hold by individuals within a community, by the whole community, by some group of people within the community or by more than one community. Learning how TK is held and who are the custodians of this knowledge, may help to design formulas to seek its protection and preservation.

Question 2 of the Survey intends to explore who are the main holders of TK within each APEC economy. It must be noticed that when a reference to *indigenous peoples* is made, this term has the same concept of the International Labor Organization's - ILO Convention 169, in its 1<sup>st</sup> article:

*“(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*

*(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. ...”*

Table 1 shows the consolidated information of each economy, regarding the main holders of TK within each economy, as well as the additional details given by each economy.

**TABLE 1  
MAIN HOLDERS OF TK  
(QUESTION 2)**

ECONOMY	MAIN HOLDERS OF TK	ADDITIONAL DETAILS
AUS	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> </ul>	Aboriginal and Torres Strait Islander people are the main holders of TK. Most of this knowledge is transferred orally (including language), by music and dance, through paintings and cultural activities from generation to generation and gender to gender.
CDA	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> <li>▪ The whole population</li> </ul>	Canada is of the view that all communities create culture and some of these cultural expressions may be considered TK or TCE. While Canada's many communities create, preserve and pass on what may be considered TK, the focus of Canada's response is in regard to TK of its indigenous communities.
PRC	<ul style="list-style-type: none"> <li>▪ Not applicable</li> </ul>	As there are many different kinds of TK preserved around China, minorities, local communities and other holders could be the answer to the question.
HKC	<ul style="list-style-type: none"> <li>▪ Only minorities</li> </ul>	The holders are the people who are still practicing the knowledge in the relevant industry / culture.
INA	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> </ul>	The draft law says that the main holders or custodians of the TK is the community or traditional society (indigenous peoples), who had preserved or developed the TK in a sustainable manner traditionally and communally.
JPN	The whole population	The definition given for TK is very vague. As a result, the whole population must be said to be the main holders of TK.
ROK	<ul style="list-style-type: none"> <li>▪ The whole population</li> </ul>	---
MEX	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> <li>▪ Only minorities</li> </ul>	Indigenous people and local communities.
NZ	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> </ul>	Māori communities.
PNG	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> </ul>	The main holders of TK are those recognized by their communities as having access to the knowledge that has passed on from generations. There are different categories of ownership of TK such as common and sacred-secret knowledge that is only limited to specific people. The main holders of TK are able to provide their consent over the use of TK. Thus, access to TK should be accessible mainly through the consent of these main holders.
PE	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> <li>▪ The whole population</li> </ul>	<ul style="list-style-type: none"> <li>▪ Law 27811, for the Protection of Collective Knowledge of Indigenous Peoples derived from Biological Resources, defines as indigenous peoples the <i>"aboriginal peoples holding rights that existed prior to the formation of the Peruvian State, maintaining a culture as their own, occupying a specific territorial area and recognizing themselves as such. These include people in voluntary isolation or with which contact has no been made and also rural and native communities. The term "indigenous" shall encompass and may be used as a synonym of "aboriginal", "traditional", "ethnic", "ancestral", "native" or other such word form."</i></li> <li>▪ Peru has 28 ethnical groups, with a total population of approx 12 million people, which represents 47% of the total</li> </ul>



		population of the country.
RP	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> </ul>	<ul style="list-style-type: none"> <li>▪ Main holders are the indigenous peoples, whose rights are recognized under 1987 Philippine Constitution.</li> <li>▪ Republic Act 8371 (Indigenous Peoples' Rights Act, 1997) recognizes the rights of indigenous peoples to their ancestral domains and lands, to self-governance and empowerment, to self-justice and human rights, to cultural integrity, to protection to community IPR; to religious, cultural sites and ceremonies; to indigenous knowledge and practices; and to biological resources.</li> <li>▪ Indigenous peoples support their daily life through traditional agriculture, aquaculture and products derived from their environment, which they consider as their ancestral lands and which together with its resources are traditionally considered community property, and the traditional leaders act as custodians. (For complete information see answer to question 2 of the Survey)</li> </ul>
SIN	<ul style="list-style-type: none"> <li>▪ Unknown information</li> </ul>	---
CT	<ul style="list-style-type: none"> <li>▪ Indigenous peoples</li> <li>▪ Only minorities</li> </ul>	<ul style="list-style-type: none"> <li>▪ For indigenous peoples: <ul style="list-style-type: none"> <li>• According to the <i>Protection Act for the Traditional Intellectual Creations of Indigenous Peoples</i>, traditional arts and cultures that are passed down from ancestors belong to the entire group or tribe.</li> <li>• According to the draft <i>Indigenous Biological Diversity Traditional Knowledge Protection Act</i>, biodiversity TK rights belong to the group or tribe that developed or generated such TK.</li> </ul> </li> <li>▪ For the Hakka people: Hakkanese traditional culture and knowledge belong to the Hakka people. (Note: Related regulations are being formulated.)</li> </ul>
THA	<ul style="list-style-type: none"> <li>▪ The whole population</li> </ul>	TK normally belongs to local communities in each province or sub-province. People living in the province or sub-province are all Thai. Therefore, it can be said that TK belongs to the whole population. However, when considering a particular TK, it can be pointed out that it belongs to which local community.
US	<ul style="list-style-type: none"> <li>▪ The whole population</li> </ul>	The definition given for TK is very broad, that one group of people cannot be said to be more of a holder of knowledge than another. As a result, the whole population must be said to be the main holders of this knowledge. Unique traditional knowledge is held by different ethnic, religious, occupational, and geographical communities within the overall population, but all u.s. citizens hold and pass on TK.
VN	<ul style="list-style-type: none"> <li>▪ The whole population</li> </ul>	Viet Nam has 54 ethnic groups in which <i>Kinh</i> is the majority. Ethnic minorities live along the whole country from Northern, Central to Southern Viet Nam, especially in high-mountainous and island areas. Each group has its own special characteristics on TK. Some TK have been popular and become common customs of Viet Nam while some others are maintained in local communities of each area. Majority of TK are preserved by traditional villages. Culture of community is popular and typical in agricultural culture of Viet Nam during its 4000-year history.

Summarizing the information regarding the main holders of TK, it is important to notice that most of the economies considered indigenous peoples as the main holders of TK. This is the case of Australia; Canada; Indonesia; Mexico; New Zealand; Papua New Guinea; Peru; Philippines and Chinese Taipei. However,

some economies could not answer this question, since did not have the information (Singapore) or considered the option as “*Not Applicable*” (China).

### **2.2.3 Preservation of Traditional Knowledge:**

Other aspect related to TK of particular relevance in the analysis of the Survey is the fact of its preservation and protection. Questions 1, 3, and 4 of the survey are focused on preservation of TK, while questions 11 to 15 are intended to explore some aspects related to its protection and to describe the mechanisms within each economy that may contribute to achieve this objective.

Therefore, it is important to state what is understood as *preservation* and *protection* of TK. From an IP point of view, as WIPO mentions on document WIPO/GRTKF/IC/12/5, protection of TK forms an integral part of policies concerning the promotion and protection of creativity and innovation, community development and grass-roots knowledge-based commercial activity when this is chosen by communities to form part of their sustainable social and economic development. However, the protection of TK also touches its safeguarding and preservation, the conservation of the components of biodiversity and associated TK, and the mechanisms to assure prior informed consent-PIC and equitable benefit-sharing, among other aspects.

In this sense, WIPO’s approach for protection of TK includes in some way the fact of its preservation.

Nevertheless, in the analysis of the survey, and taking into account the options given in question 4, the term *preservation* may be understood as the efforts of avoiding the loss of these practices, and finding ways to perpetuate this knowledge in time by diverse media. In fact, indigenous peoples are concerned about the loss of traditional life styles and TK and reluctance of younger members of the communities to carry forward traditional practices<sup>4</sup>.

Almost all APEC economies that completed the survey answered in a positive way when they were asked if they were preserving their TK.

It is interesting to notice the different aspects of TK<sup>5</sup> that are being preserved within these economies. As it was mentioned before, TK is a broad concept and includes many different expressions.

Table 2 summarizes the answers to questions 1, 3 and 4 of the Survey, indicating the kind of TK being preserved by each economy and describing the way in which they are carrying out this objective.

**TABLE 2**  
**PRESERVATION OF TRADITIONAL KNOWLEDGE AND MEDIA FOR**  
**PRESERVATION OF TK**  
**(QUESTIONS 1, 3 AND 4)**

ECONOMY	IS TK PRESERVED?	KIND OF TK BEING PRESERVED	HOW IS TK PRESERVED?
AUS	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE;</li> <li>▪ Others (Traditional art and craft forms, traditional stories, song and dance, body painting and costume creation, language, ecological and cultural knowledge).</li> </ul>	(a) (b) (c)
CDA	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE</li> </ul>	(a) (b) (c)
PRC	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE;</li> <li>▪ Others (traditional medicine and traditional handicraft)</li> </ul>	(a) (b)
HKC	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> </ul>	
		<ul style="list-style-type: none"> <li>▪ Bamboo scaffolding (traditional-based industrial creation / temporary framework to support people or construction);</li> <li>▪ Cantonese opera (plot is based on Chinese history, famous Chinese classics and myths);</li> <li>▪ “Parade of floats” (traditional performance).</li> </ul>	(a)
		<ul style="list-style-type: none"> <li>▪ Traditional Chinese medicine (theories, diagnosis, treatments like herbal medicine, acupuncture, massage).</li> </ul>	(b)
INA	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE;</li> <li>▪ Others (creations related to technology, cosmology, aesthetic values, principles of art, social order, taxonomy, among others, as defined in the draft law for protection of TK)</li> </ul>	(a) (b) (c)
JPN	YES	<ul style="list-style-type: none"> <li>• TCE</li> </ul>	(a) (b) (c)
ROK	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE;</li> <li>▪ Others</li> </ul>	(b)
MEX	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological and genetic resources (traditional and herbal medicine)</li> <li>▪ TCE (food, cosmetic articles, handcraft).</li> </ul>	(a) (b)
NZ	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE;</li> <li>▪ Others (weaving, performing arts, carving, Maori medicine, house building, string games, Maori songs, tribal stories, fishing stories, environmental knowledge, food gathering).</li> </ul>	(a) (b)
PNG	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE;</li> <li>▪ Others (related to the environment and the natural landscapes).</li> </ul>	(a) (b) (c)
PE	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE</li> </ul>	(a) (b)

RP	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE.</li> </ul>	(b) (c)
SIN	YES	<ul style="list-style-type: none"> <li>▪ TCE</li> </ul>	(a) (c)
CT	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE (religious ceremonies, music, dances, songs, sculptures, weaving, patterns, clothing, folk crafts or any other expression of cultural achievements).</li> </ul>	(b)
THA	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE;</li> <li>▪ Others (Thai traditional and alternative medicine).</li> </ul>	(a) (b)
US	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE (stories and music, handicrafts);</li> <li>▪ Others (literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields).</li> </ul>	(b)
VN	YES	<ul style="list-style-type: none"> <li>▪ TK related to biological resources;</li> <li>▪ TCE;</li> <li>▪ Others (TK based inventions).</li> </ul>	(a) (b) (c)

- \* (a) TK not written down, but transmitted from person to person.  
(b) TK is in the process of being recorded, either in writing, or in video and/or audio recording  
(c) Others  
(d) Not applicable

Some economies reported additional information and experiences relating preservation of TK. Therefore, in order to give a more complete overview of the current situation and advances relating this issue, this information, which has been provided by each economy and has been extracted from the Survey, is detailed next:

**Australia:** Preservation techniques available are related to the particular preferences of the Indigenous community or community group. There are a number of Australian Government programs that support the maintenance and continued development of Indigenous culture in communities. These programs emphasize participation of members of Indigenous communities in cultural activities and transmission of knowledge and skills across age groups, as well as supporting new forms of cultural expression, cultural exchange and projects to increase public awareness of Indigenous culture. The Australian Government also supports funding of TK databases and archive projects (written, audio and visual records, artworks, dance, song and music) so that Indigenous TK can be recorded for current and future generations.

**Canada:** Preservation of TK may take many forms, including (but not limited to):

- Maintenance and transmission of traditional practices.
- Preservation of Aboriginal languages (archiving, digitalization, development of dictionaries and new lexicons). Canada's support of indigenous languages through programs such as the Aboriginal Languages Initiative, Territorial Language Accords, and through financial support for television and radio

programming in indigenous languages. A program called First Nations SchoolNet provides internet access and technical support for schools to facilitate distribution and development of language information.

- Programs that support indigenous participation in some international events dealing with indigenous language and culture<sup>6</sup>.
- Preservation in national collections (e.g., artifacts, records).
- Support for indigenous cultural organizations and activities e.g., support for a community-based network of *Inuit* and on-reserve First Nations Cultural Education Centers.
- Preservation and distribution through print and broadcast media.

**Hong Kong, China:** This economy reported *bamboo scaffolding*, *Cantonese Opera* and the *Parade of Floats* as TK that is been preserved. In these cases, TK related to *bamboo scaffolding*, the skills and techniques involved in the performance of *Cantonese Opera* and the *Parade of Floats* are not recorded in writing. Usually, the TK is passed from seniors who have been practicing the tradition to the juniors who are learning it. Seniors pass on the knowledge orally and by demonstrations.

In case of Traditional Chinese medicine, other kind of TK being preserved, the knowledge is recorded in writing and is being taught in Universities. Hong Kong has a database of traditional Chinese medicine that is administered by Chinese Medicines Board, whose activities are overseen by the Chinese Medicine Council of Hong Kong.

**Indonesia:** TK is in the process of being recorded. Various institutions are in charge of recording information (Ministry of Research and Technology; Ministry of Industry; Agency for the Assessment and application of Technology; Ministry of Agriculture; Ministry of Environment; Ministry of Culture and Tourism; Indonesia Science Institutions and some universities).

**Korea:** TK is preserved through the development of a TK database and through the maintenance and transmission of traditional practices.

**Mexico:** In Mexico, the preservation of TK has also many forms, including, but not limited to: The Program of Collective Biological Resources (PRBC), developed by the Ministry of Environment and Natural Resources (SEMARNAT). Furthermore, the National Commission for the Development of Indigenous Peoples (CDI) has the documentary heritage that was produced and compiled by the National Indigenous Institute (INI), to give an specific area to a broad range of documentary and informative material about social, economic and cultural life of indigenous peoples in Mexico. This documentary heritage concentrates a great volume of information in several forms and constitutes an invaluable cultural and historic national heritage.. This National Commission counts with the most important documentary heritage of native people of Latin America, and its collections rise to more than 340 thousand materials, which can be consulted in its different heritage:

- **Juan Rulfo Library:** Three funds (Bibliographic, Hemerographic and Documentary Funds), with more than 20 thousand materials for consult.
- **Cinema and Video Alfonso Muñoz:** Contains most of the visual memory of the native people of the 20<sup>th</sup> Century. It shelters more than eight thousand productions that include the record of 41 of the 62 native people in Mexico.

- **Fonoteca Henrietta Yurchenco (*Deposit of Sounds*):** It contains one of the most important sound collections for Mexico and Latin America of the native people of the Mexico of the 20<sup>th</sup> Century. The deposit of sounds is formed by three funds (Etnomusicology, Cinema and Video and Radio Funds) with more than 12 thousand tapes and approximately 240 thousand musical pieces, from 1898 until today.
- **Fototeca Nacho López (*Deposit of Photographs*):** It shelters more than 262 thousand images, between originals, negatives, slides, prints and copies, from 1890 until today, organized in three consult forums (Historic, Indigenous Peoples and INI projects Funds).
- **Mapoteca Germán Parra (*Deposit of Maps*):** Has more than 14 thousand materials, organized in three funds (Cartographic INI-CDI, External Cartographic and Consult Funds).
- **Heritage of Indigenous Art:** Has more than 17 thousand pieces, between objects and belongings which are part of the domestic technology and the work, pieces of ritual, festive and recreational use, as well as an extraordinary collection of clothing and textile. The materials that constitute the heritage are pieces of great ethnographic value corresponding to 47 indigenous peoples people of the country, organized in 22 collections, in which can be seen the evolution and development through time of the techniques and the materials used in its production, as well as the symbolism expressed in them.

**New Zealand:** The transmission of TK orally is still widely practiced. New Zealand stands out the importance of considering the benefits and the risks (misappropriation and public domain issues) of documentation. Examples of where this knowledge has been recorded already exists in minutes taken by the Maori land Court, a specialist court, which administers land communally owned by Maori. Other groups are looking at digital repatriation.

**Papua New Guinea:** TK is preserved by transferring certain knowledge from the old to the young. However, TK is now being recorded as a means for preservation. This is also due to the fact that many young generations are becoming educated and having little or no pride at all in their cultural norms and values. By using modern forms of technology (cameras and recorders), cultural heritage can be preserved, also enabling easy access to this knowledge. On the other hand PNG promotes the preservation of TK through traditional cultural shows and festivals that incorporate a wide variety of TK and take place at the national, provincial and the local levels to encourage and promote the importance of preserving TK.

**Peru:** Indigenous peoples preserve their TK by passing them orally from generation to generation. However, Law 27811 (Law introducing a Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources, 2002) establishes three types of registers as a mechanism for the preservation of TK:

- **Public National Register of Collective Knowledge of Indigenous Peoples:** contains collective knowledge in public domain and is under the responsibility of the National Institute for the Defense of Competition and Protection of Intellectual Property-INDECOPI.

- **Confidential National Register of Collective Knowledge of Indigenous Peoples:** contains collective knowledge that is still confined within the indigenous peoples. Its administration is under the responsibility of INDECOPI.
- **Local Registers of Collective Knowledge of Indigenous Peoples:** These registers may be organized by the indigenous peoples within their communities, in accordance with their own practices and customs. Indigenous peoples determine the organization and access to those registers; however, they may ask for assistance to INDECOPI.

**Philippines:** Philippines is undertaking the documentation and inventory of plant GR and TK from its indigenous and local communities. The following are in charge of the preservation, documentation and inventory:

- **For plant GR:** The National Plant Genetic Resources Laboratory (NPGRL) is the national center of plant GR activities. Other local public R&D institutions keep separate biological and genetic collections for specific crops<sup>7</sup>.
- **For cultural products and heritage:**
  - The National Museum keeps a national inventory of the Philippine's cultural products and heritage.
  - The National Commission for Culture and the Arts (NCCA)<sup>8</sup> is also mandated to preserve Filipino cultural heritage, among others.
  - Under Republic Act 7356, every Filipino citizen is mandated to preserve and conserve the Filipino historical and cultural heritage and resources.
- **For traditional and alternative health care:** The Philippine Institute of Traditional and Alternative Care (PITAHC) maintains a database of different traditional and alternative health care materials and products that are available in the Philippines.

Also, there are evolving indigenous mechanisms of preserving TK, as follows:

- **Intercommunity Agreements:** Indigenous communities, such as *Aeta* communities, have signed an intercommunity agreement not to reveal names of certain useful plants, particularly those with medicinal value. They have also passed a resolution prohibiting their members from signing contracts with outsiders without the free, prior informed consent of the whole indigenous community.
- **Community Protocol and Tribal Guards:** Indigenous communities, e.g., the *Talaandig* community in Bukidnon, follow a community protocol for visitors to their territory. The protocol entails coordination of the visit with the community, registration of intention and reason for the visit, and a permission ritual which emphasizes that the visit should not abuse the permission granted. Tribal guards also confiscate specimens collected by researchers if such collection is done by without free, prior informed consent.
- **Community Registry and Community Affidavit:** The first Community Registry in the Philippines involves a collective action by the farming communities in Bohol to save their traditional seeds and protect local GR. This has resulted to the formulation of a Community Affidavit and has replicated in other indigenous communities in the Philippines. The whole process entails making an inventory of rice varieties and seed mapping.

**Singapore:** In Singapore TCE's and expressions of folklore are preserved in museums and heritage centers.

**Chinese Taipei:** In case of indigenous peoples, preservation of traditional intellectual creations includes religious ceremonies, music, dances, songs, sculptures, weaving, patterns, clothing, folk crafts or any other expression of cultural achievements<sup>9</sup>. To protect biodiversity TK and to preserve the rights of such TK for indigenous peoples, the *Indigenous Biological Diversity Traditional Knowledge Protection Act* was drafted. This Act would provide protection to indigenous peoples for using or obtaining natural resources as means to adapt to the environment and sustainable living, or protection to other practical biological or natural environmentally related knowledge that has been passed down through generations.

For the Hakka people, Hakkanese dialect, arts, or folk culture are also subjects for future protection.

**United States:** It is important to point out that United States defines “*preservation*” as opposed to “*protection*”. TK is preserved by the tradition-bearers who learn and pass on those traditions and is protected by laws and legislation.

The United States has a wide variety of knowledge that is preserved by the knowledge holders. TK related to biological resources is preserved<sup>10</sup> in many forms, such as historical records, books, newsletters, academic papers and by oral dissemination. TCE’s may be preserved by reflecting themselves in physical objects such as baskets or carpets, and these objects are retained. TCE’s may be included in stories or songs, and these songs are passed from generation to generation by oral tradition, but they are also recorded on manuscripts and fieldnotes, film, video or audio recordings.

**Viet Nam:** Under IP law, folklore works may be transmitted by reproduction or other ways (writing, oral tradition, models, symbols, etc.). Folklore is mainly transmitted in oral tradition.

#### **2.2.4 Protection of Traditional Knowledge:**

During the debates on protection of TK, one issue that stands out is if existing intellectual property mechanisms can be used for the protection of TK. Therefore, discussions on these items had been focused on how protection can be adopted to provide legal protection for the intellectual property of indigenous people and communities and how can existing forms of intellectual property rights be adapted to the field of TK<sup>11</sup>. Although, it is difficult to fit TK into existing intellectual property systems, some experiences on the use of these mechanisms to protect some kind of TK have been reported.

Nevertheless, existing IP systems may be used to obtain some sort of protection for TK and are indeed been used by some economies; others are exploring new formulas for protection of TK, through the development of *sui generis* systems of protection that may help to achieve a more complete protection for all elements of TK.



Table 3 summarizes questions 11 and 12 of the Survey, and shows how protection of TK is being achieved by each economy: by the use of existing IP systems or by implementing *sui generis* regimes.

**TABLE 3**  
**PROTECTION OF TRADITIONAL KNOWLEDGE**  
**(QUESTIONS 11 AND 12)**

<b>ECONOMY</b>	<b>UNDER CURRENT IP SYSTEMS</b>	<b>SUI GENERIS SYSTEM</b>
AUS	<ul style="list-style-type: none"> <li>▪ Copyright Act 1968</li> <li>▪ Patent Act 1990</li> <li>▪ Trade Marks Act 1995</li> <li>▪ Designs Act 1993</li> </ul>	NO
CDA	<ul style="list-style-type: none"> <li>▪ Copyright Law</li> <li>▪ Patent Law</li> <li>▪ Industrial Design Law</li> <li>▪ Trademark Law</li> <li>▪ Trade Secrets Law</li> </ul>	NO
PRC	<ul style="list-style-type: none"> <li>▪ Patent</li> <li>▪ Trademarks</li> </ul>	<p>YES</p> <ul style="list-style-type: none"> <li>▪ Administrational protection on traditional medicine</li> </ul>
HKC	<ul style="list-style-type: none"> <li>▪ Trademark Law</li> <li>▪ Patent Law</li> <li>▪ Copyright Law</li> </ul>	NO
INA	<ul style="list-style-type: none"> <li>▪ Trade secret Law</li> </ul>	IN PROGRESS
JPN	<ul style="list-style-type: none"> <li>▪ Copyright Law</li> <li>▪ Patent Act</li> <li>▪ Industrial Design Act</li> <li>▪ Trademark Act</li> <li>▪ Unfair Competition Prevention Act</li> </ul>	NO
ROK	<ul style="list-style-type: none"> <li>▪ Protection is given through the documenting of TK and through the use of such documentation as prior art.</li> </ul>	NO
MEX	<ul style="list-style-type: none"> <li>▪ Mexican Industrial Property Law (Trademarks and Geographic indications)<sup>12</sup></li> </ul>	NO
NZ	<ul style="list-style-type: none"> <li>▪ By current intellectual property system, if it meets requirements for protection.</li> </ul>	IN PROGRESS
PNG	<ul style="list-style-type: none"> <li>▪ Copyright and Neighbouring Rights Act 2002</li> </ul>	IN PROGRESS
PE	----	<p>YES</p> <ul style="list-style-type: none"> <li>▪ Law 27811, 2002 (Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources)</li> </ul>
RP		<p>YES</p> <ul style="list-style-type: none"> <li>▪ Republic Act 8371, 1997 - Indigenous People's Rights Act;</li> <li>▪ Republic Act 8423, 1997 -</li> </ul>

	----	Traditonal and Alternative Medicine Act; ▪ Draft Community Intellectual Rights Protection Act (CIRPA)
SIN	▪ Copyright ▪ Patents ▪ Trademarks ▪ Geographical indications ▪ Registered designs ▪ Law of confidential information	NO
CT	----	YES ▪ Protection Act for the Traditional Intellectual Creations of Indigenous Peoples, 1997; ▪ Indigenous Biological Diversity Traditional Knowledge Protection Act (under review / draft).
THA	▪ Legal protection is provided for Thai traditional and alternative medicines	YES ▪ Protection and Promotion of Knowledge of Thai Traditional Medicine Act.
US	▪ Patent, plant or industrial design, if TK is innovative qualify for protection. ▪ Trademark. ▪ Copyright protection. ▪ Trade secret protection	YES ▪ The Indian Arts and Crafts Act of 1990 (Public Law 101-644)
VN	▪ Copyright Law	YES ▪ Cultural Heritage Law 2001.

It can be noticed that protection for TK is obtained rather by using existing IP mechanisms or by developing *sui generis* systems. Seven economies reported no *sui generis* systems, but in all of these economies protection was given, in some way, by using traditional IP systems. This is the case of Australia; Canada; Hong Kong, China; Japan; Korea; Mexico and Singapore. Seven economies (China; Peru; Philippines; Chinese Taipei; Thailand; United States and Viet Nam) pointed out that *sui generis* regimes have been developed; three economies (Indonesia; New Zealand and Papua New Guinea) indicated that were preparing regulations for TK protection.

Some economies detailed in the Survey additional information regarding these issues:

**Economies using existing IP systems for TK protection:**

**Australia:** The following mechanisms are used to protect TK under the current IP system:

- **Copyright Act, 1968 (Cth):** Economic rights and moral rights for indigenous cultural and IP in original works and other subject matter that fall within the framework of the legislation. The protection of copyright material, including indigenous cultural IP, includes civil actions and criminal offences for selling and distributing infringing goods in Australia as well as importing goods into Australia for certain trade or commercial purposes. The Act also provides economic and moral rights for performers whose performances derive from folklore. Extension of protection: the life of the author and 70 years.

This Act also grants moral rights (the right to be attributed for their work, not have their authorship falsely attributed and not have their work treated in a derogatory manner) to individual creators in relation to the works they have created.

- **Australian Patent Act, 1990**
- **Trademarks Act, 1995:** TK can be protected using certification or collective marks.
- **Designs Act, 2003**

It is important to notice, that Australian courts have applied existing IP laws and general legal principles to deal with matters involving the unauthorized reproduction of traditional Aboriginal art<sup>13</sup>.

Although, Australia does not have a *sui generis* regime for protection of TK, this economy has developed a range of programs, policies and laws which contribute to the protection, maintenance or restoration of TK<sup>14</sup>. Also, Australia has promoted, through the Australia Council, a set of five Indigenous Protocol Guides<sup>15</sup> which provide information and advice on respecting Indigenous cultural heritage.

Australia points out that their trade practices, confidential information and unfair competition laws afford protection for TK. The following are some examples of mechanisms that provide legal protection for TK:

- **Aboriginal and Torres Strait Islander Heritage Protection Act, 1984 (Cth):** Protection for TCE;
- **Contractual arrangements:** To protect indigenous cultural information/knowledge by the inclusion of protocols or guidelines in a contract;
- **Trade Practices Act, 1974 (Cth):** Prevents situations where consumers are led into thinking that certain products are the work of an Aboriginal artist or have been originated from a particular Aboriginal community.

**Canada:** Canada has no specific protection for TK, but any person whose creation meets the requirements for protection under current IP systems, will receive IP protection. Therefore, protection can be sought under:

- Copyright Law
- Patent Law
- Industrial Design Law
- Trademark Law
- Trade secrets Law (if knowledge is susceptible of commercial application).

**Hong Kong, China:** The following mechanisms can be used as long as requirements needed for protection are fulfilled:

- Trademark Law
- Patent Law<sup>16</sup>
- Copyright Law

TK can also be protected in the form of confidential information if it is passed in confidence and the unauthorized use of the TK would be detrimental to its holders.

**Japan:** Japan has no specific protection for TK, but in certain limited cases, traditional knowledge can be protected under current IP systems. To seek

protection under such systems, traditional knowledge will have to be met certain requirements.

- Copyright Law
- Patent Act
- Industrial Design Act
- Trademark Act

TK could also be protected in the form of trade secret (undisclosed information), if it meets the requirements for protection as trade secret and the unauthorized use of the TK would infringe business interest of its holders.

- Unfair Competition Prevention Act

**Korea:** Protection is given through the documenting of TK and through the use of such documentation as prior art.

**Mexico:** The Mexican Industrial Property Law has been used for protecting products involving TK, expressions of folklore, crafts and biological resources under Trademarks and Geographical Indications. However, some problems have arisen during the implementation, e.g., *Arte Seri*<sup>17</sup> (registered trademark). Other examples of protection under current IP legislation are *Olinala*<sup>18</sup> (wood handicraft manufactured with raw material from the State of Guerrero, county of Olinala) and *Tequila* (regional alcoholic beverage), both registered as geographic indications.

**Singapore:** Protection is available under copyright, patents, trademarks, geographical indications, registered designs and the law of confidential information, subject to the satisfaction of the applicable legal requirements

#### **Economies in the process of developing *sui generis* regimes for TK protection:**

**Indonesia:** Currently, Indonesia is preparing the draft Law on *sui generis* of TK and TCE's and the draft Law of Protection and Utilization of Genetic Resources, which are based on article 8(j) of CBD and Bonn Guidelines. These laws seek protection for TK related to utilization of GR.

The period of protection regulated in the draft is for as long as TK is still preserved by its owner or custodian.

**New Zealand:** The Intellectual Policy group in the Ministry of Economic Development is working on a three stage work program (capacity building, engagement and information sharing; problem definition surrounding the relationship between IP and TK in New Zealand; and, development of options and consultations) to examine more closely the interface between intellectual property rights and systems and TK. Currently, the intellectual property policy group is working on the first stage of this program.

**Papua New Guinea:** Papua New Guinea is reviewing a model law for the Protection of Traditional Knowledge and Expressions of Culture, whose objectives are to provide protection for all TK and expressions of culture and to

enable access and benefit-sharing arising from the use of this TK and expressions of culture.

### **Economies with *sui generis* regimes for TK protection:**

**China:** Administrational protection on traditional medicine.

**Peru:** Law 27811, 2002 introduces a Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources. This regime grants to the indigenous peoples protection against disclosure, acquisition or use of collective knowledge without their consent and in an improper manner, provided that the collective knowledge is not in the public domain. Also, indigenous peoples are protected against unauthorized disclosure where a third party has legitimately had access to knowledge covered by a safeguard clause<sup>19</sup>. Law 27811 has the following mechanisms in order to achieve its objectives:

- **Registers of Collective Knowledge of Indigenous Peoples:** This registers contain in a written form collective knowledge from indigenous peoples and are administered by each community or by the national authority.
- **Prior Informed Consent:** Is the authorization that indigenous people grant, through their representative organizations, to the person(s) interested in having access to such knowledge.
- **License Contracts:** Contract needed for commercial or industrial uses of collective knowledge. This contract must include the terms that assure equitable distribution of benefits.
- **Fund for the Development of Indigenous Peoples:** This fund is created as a mechanism for benefit-sharing, in order that indigenous peoples that had not subscribed license contracts may have access to the fund's resources. These resources are obtained from public budget, international technical cooperation, donations, a percentage obtained from the gross sales before taxes of the products obtained from the utilization of collective knowledge.
- **Infringement Actions:** The representative organization of indigenous peoples possessing collective knowledge may bring the actions claiming ownership and indemnification against a third party that, in a manner contrary to the provisions of the regime, has directly or indirectly made use of such collective knowledge. These actions can only be exercised if the collective knowledge is not in public domain.

### **Philippines:**

- **Republic Act 8371, 1997 / Indigenous People's Rights Act-IPRA:** This law recognizes the rights of indigenous peoples to their ancestral domains and lands, to self-governance and empowerment, to self-justice and human rights, and to cultural integrity; as well as protection to community IP rights; to religious, cultural sites and ceremonies; to indigenous knowledge and practices; and to biological resources. The most important provision of this law establishes that any access to biological and genetic resources and TK is only allowed with the free and informed consent of the communities, obtained in accordance with customary law, recognizing the full ownership of the indigenous peoples of their cultural and intellectual rights. To develop their own

sciences and technologies, the indigenous communities are given the right over them as well as other cultural manifestations.

- **Republic Act 8423, 1997 / Traditional and Alternative Act:** This law establishes the ownership by indigenous societies of their knowledge of traditional medicines, providing that it shall be a State policy to seek legally workable basis by which indigenous societies would own their knowledge of traditional medicine. When such knowledge is used by outsiders, the indigenous societies can require the permitted users to acknowledge its source and can demand a share of any financial return that may come from its authorized commercial use. One of the main objectives of this law is to formulate policies for the protection of indigenous and natural health resources and technology from unwarranted exploitation, for approval and adoption by the appropriate government agencies.
- **Draft Community Intellectual Rights Act-CIRPA:** This is a proposed bill which recognizes the original rights of indigenous peoples and local communities over plant and GR, traditional medicines, agricultural methods and local technologies they have discovered and developed. Other provision states that the general owners of TK are the indigenous peoples or local communities. The objective of this bill is to provide a system of community intellectual rights protection in respect of the innovative contribution of both local and indigenous cultural communities in the matter of development and conservation of GR and biological diversities. The creation of 3 types of registers is considered:
  - National Inventory of Plant Varieties: for plant varieties, seeds and reproductive material;
  - National Registers of Indigenous Cultural Heritage: for cultural products and heritage; and,
  - National Register of Indigenous Inventions, Designs and Utility Models: for inventions, industrial designs and utility models (agricultural practices and devices developed from indigenous material, customs and knowledge), medicinal products and processes developed from identification, selection, cultivation, preparation, storage and application or medicinal herbs by local communities and indigenous peoples.

It is important to stand out, that Philippines state that under current IP systems there are measures on how to protect TK from use, which includes passing of different laws as Bioprospecting Law or Indigenous People's Rights Act.

**Chinese Taipei:** Article 13 of the *Indigenous Peoples Basic Act, biodiversity TK and intellectual creations of indigenous peoples* settles that intellectual creations of indigenous peoples are to be protected and developed. However, the way in which such knowledge is to be protected should be regulated by other laws and regulations:

- **Protection Act for the Traditional Intellectual Creations of Indigenous Peoples, 1997:** The main points of this regulation are:
  - Requirement of rights: Intellectual creations shall be recognized by and registered with the Council of Indigenous Peoples, so as to be protected by the Act;
  - Content of right: The owner of the exclusive right for the use of intellectual creations shall use and profit from such intellectual creations in the name of specific ethnic groups, tribes or the entire indigenous peoples, unless otherwise stipulated by law or agreement. Also, the owner of an exclusive

right to use intellectual creations enjoys the moral right to prohibit others from distorting, mutilating, modifying, or otherwise changing the content, form, or name of the work, thereby violating the author's reputation.

- Exclusive license: This regulation establishes that an owner of an exclusive right to use intellectual creations can license others to use such creations, including an agreement between the parties the clauses that regulate its use (territory, period of time, content, methods of use, etc.). Any portion that is not clearly set forth shall not be considered as part of a license. Exclusive licenses must be submitted to the competent authority, along with agreements or documents of proof, to apply for registration. No right shall become effective unless registered. Non-exclusive licensees shall not sublicense the rights licensed thereto to any third party unless with the rights owner's consent. An exclusive licensee can exercise its rights as a rights owner within the scope authorized by the rights owner. The owner of the exclusive right to use intellectual creations and the indigenous peoples themselves cannot exercise such rights within the scope of the license.

▪ **Indigenous Biological Diversity Traditional Knowledge Protection Act:**

This proposal is under review at the legislative Yuan. It's main mechanisms are the following:

- Management mechanism: TK rights belong to the tribe or indigenous group who developed or produced it. When the rights are violated, the competent authority should provide assistance in safeguarding such rights. When TK is in dispute the authority should request scholars, experts, impartial parties, representatives from government authorities and from indigenous groups to review and mediate the dispute. The right to use any TK should be agreed upon by the indigenous group or the tribe and tribal council.
- Regulations or any drafts thereof: Biological diversity related to TK is governed by the Indigenous Biological Diversity Traditional Knowledge Protection act (draft), which was passed by the Executive Yuan on November 7, 2007 and was submitted to the Legislative Yuan for further review on November 14, 2007.
- Prior Informed Consent: Any person wishing to obtain or claim the rights to a TK originated or developed by a tribe or indigenous group must obtain PIC from that group. Prior to crediting the origin of a published TK for commercial use, consent must also be obtained from the group owning the TK, and appropriate remuneration must also be paid. Unpublished TK is not to be used without PIC and written contract from the owners of TK.
- Access and benefit-sharing: Direct or indirect profits obtained from commercial use of unpublished TK should be shared in a fair and reasonable manner with the owner of such TK.
- Mutually agreed terms: Prior consent and investigation or utilization contract must be obtained and signed by the tribe or group if investigation or usage of an unpublished TK is desired. Usage that involves commercial purposes should include benefit-sharing provisions in the contract.

**Thailand:** This economy reports protection for Thai traditional medicine through a *sui generis* regime introduced by the *Protection and Promotion of Knowledge of Thai Traditional Medicine Act*.

**United States:**

- **Indian Arts and Crafts Act of 1990 (Public Law 101-644):** This law establishes that it is illegal to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe or Indian arts and crafts organization, resident within the US. This law establishes penalties for violations of the Act, by individuals (civil or criminal penalties up to a \$250,000 fine or a 5-year prison term, or both) or by a business (civil penalties or prosecution and fined up to \$1,000,000). This law covers all Indian and Indian-style traditional and contemporary arts and crafts produced after 1935. All products must be marketed truthfully regarding the Indian heritage and tribal affiliation of the producers, so as not to mislead the consumer. It is illegal to market an art or craft item using the name of a tribe if a member, or certified Indian artisan, of that tribe did not actually create the art or craft item. Under the Act, an Indian is defined as a member of any federally or State recognized Indian Tribe, or an individual certified as an Indian artisan by an Indian Tribe.

**Viet Nam:** Although this economy reports the existence of Cultural Heritage Law, 2001, where principles and responsibilities of State management agencies, organizations and individuals to respect and preserve folklores are defined, TCE's are protected, as well, under the law of copyright in four ways of expression. However, there is no regulation on duration, content of protection and owner of rights for folklore works. IP guidelines promulgated by the Government define that users of these works must pay remuneration in behalf of those preserving folklore and showing original indications. Also, TK-based patent applicants must have to supply information about the TK origin in the application document as a formality for examination. Nevertheless, no rules for getting permission or benefit-sharing arrangements are established.

#### **2.2.5 Other important issues related to protection of TK: Management of the regime; prior informed consent-PIC and benefit-sharing**

Questions 13, 14 and 15 of the Survey, explore how the economies that have implemented *sui generis* systems for protection of TK are managing the control of the regime, PIC and mutually agreed terms for the use of TK. Table 4 summarizes these three questions. However, question 14, in respect of to the roles and responsibilities of the institution in charge of the regime is detailed farther on.



**TABLE 4**  
**INSTITUTIONS IN CHARGE OF MANAGING *SUI GENERIS* REGIMES FOR PROTECTION OF TK, IN GIVING PIC AND VERIFYING COMPLIANCE OF MUTUALLY AGREED TERMS FOR THE USE OF TK (QUESTIONS 13, 14 AND 15)**

ECONOMY	NATIONAL AUTHORITY	WHO GIVES PIC?	CONTROL MECHANISM TO VERIFY COMPLIANCE OF MUTUALLY AGREED TERMS
PRC	<ul style="list-style-type: none"> <li>▪ Office of Traditional Medicine</li> </ul>	NOT ANSWERED	NOT ANSWERED
PE	<ul style="list-style-type: none"> <li>▪ Office of Inventions and New Technologies, of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Representative organizations of indigenous peoples.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Contract licenses, in case of access to TK for commercial or industrial purposes.</li> </ul>
RP	<ul style="list-style-type: none"> <li>▪ National Commission on Indigenous Peoples (NCIP)</li> <li>▪ Philippine Institute of Traditional Knowledge and Alternative Health Care, attached to the Department of Health.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Holders/custodians of TK.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Memorandum of Agreements for all undertakings on TK use”</li> </ul>
CT	<ul style="list-style-type: none"> <li>▪ Council of Indigenous People (CIP).</li> <li>▪ The Council for Hakka Affairs.</li> </ul>	<ul style="list-style-type: none"> <li>▪ For intellectual creations of indigenous peoples: after registration, the applicant obtains exclusive rights to use and license intellectual creations.</li> <li>▪ For TK related to biological diversity: The consent must be obtained from the group or tribe that developed such TK and pay necessary royalties.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Exclusive licenses</li> </ul>
THA	<ul style="list-style-type: none"> <li>▪ Department of Agriculture, Ministry of Agriculture.</li> <li>▪ Department for Development of Thai Traditional and Alternative Medicine. Ministry of Public Health.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Relevant government authority in the case of specific local plant variety and general local plant variety and wild plant variety.</li> <li>▪ The owner of the Thai traditional medicine knowledge.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Criminal punishment for incompliance.</li> </ul>
US	<ul style="list-style-type: none"> <li>▪ The Indian Arts and Crafts Board, a separate agency within the U.S. Department of the Interior created to</li> </ul>	NOT APPLICABLE	<ul style="list-style-type: none"> <li>▪ The Indian Arts and Crafts Board has a complaint procedure where</li> </ul>

	implement and enforce the Act.		misrepresentation can be reported.
VN	<ul style="list-style-type: none"> <li>▪ Ministry of Culture, Sport and Tourism of Vietnam and local relevant departments.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Folklores are the possession of public domain and freely used.</li> <li>▪ For TK related to Trademarks and GIs, users must get permissions from local authorities to register them as certification and collective trademarks with the function of indicating geographical origins.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Civil Code, 2005, defines common principles in supervising provisions for the negotiation of using TK.</li> </ul>

Although, Table 4 compiles information of those economy members that do have implemented *sui generis* regimes for protection of TK, some economies that do not have national regulations, have detailed some interesting information.

For example, Canada considers, regarding the consent for the use of TK, that it is up to the holder of TK to give the approval to the use of this knowledge, and indicates that in some cases such approval may be shaped by IP laws, but, in other cases this approval may be guided by the traditions of the community. Papua New Guinea, with regard to this same issue, points out that their model law allows the main holders of TK to give their consent for the use of TK, due to the fact that they are the owners and thus have the traditional right to decide.

Regarding the roles and responsibilities of national authorities administering *sui generis* regimes for protection of TK, the following economies, that have implemented *sui generis* systems up to now, gave information about this issue:

**Peru:** The main functions of the national authority are:

- To maintain the Register of Collective Knowledge of Indigenous Peoples and keep it up to date;
  - To maintain the Register of Licenses for the use of Collective Knowledge and keep it up to date;
  - To assess the validity of contracts for the licensing of collective knowledge, taking due account the opinion of the Indigenous Knowledge Protection Board;
- Besides, Peru reports the creation of the National Anti-Biopiracy Commission, created by Law 28216, 2004, whose main objectives are:
- To establish and maintain a register for biological resources and TK;
  - To provide protection against acts of biopiracy;
  - To indentify and follow up patents applications made or patents granted abroad that relate to Peruvian biological resources or collective knowledge of indigenous peoples of Peru;
  - To make technical evaluations, lodge objections or institute actions for the annulment concerning the above mentioned applications and patent grants;
  - To issue reports on the cases studied;
  - To establish information channels with the main intellectual property offices around the world; and
  - To draw up proposals for the defense of Peru's interests at different fora.

**Philippines:** The National Commission on Indigenous Peoples (NCIP) is mandated to protect and promote the interest and well-being of indigenous peoples regarding their beliefs, customs, traditions and institutions. This institution is allowed to enter into contracts, agreements or arrangements, including research agreements and has jurisdictions over all claims and disputes involving rights of indigenous cultural communities / indigenous peoples, provided that the parties to the dispute have exhausted all remedies under their customary laws.

**Chinese Taipei:** In case of indigenous peoples, the Council of Indigenous People is the authority in charge of determining and registering intellectual creations and according to Article 9 of the Indigenous Biological Diversity Traditional Knowledge Protections Act, which is still under revision, this Council is responsible for monitoring IPR applications and checking for necessary documents required for application (including letter of consent from the tribe and disclosure of place of origin document), and notifying the IPR competent authority.

In case of the Hakka people, the Council for Hakka Affairs, established on June 14, 2001, is the central competent authority responsible for the preservation and promotion of the Hakka dialect and Hakkanese culture.

**Viet Nam:** The national authority has the responsibility to implement State management activities for the preservation of cultural heritages, including folklores.

## 2.2.6 Encouragement of research and development in TK:

**TABLE 5  
ENCOURAGEMENT IN RESEARCH AND DEVELOPMENT IN TK  
(QUESTION 16)**

<b>ECONOMY</b>	<b>DOES ECONOMY ENCOURAGE R&amp;D IN TK?</b>	<b>Details about the way in which encouragement is given</b>
AUS	YES	<p>Australian Government supports R&amp;D activities through research and innovation activities, as;</p> <ul style="list-style-type: none"> <li>▪ Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS);</li> <li>▪ Desert Knowledge Cooperative Research Centre;</li> <li>▪ Research projects on TK that have received funding from the Australian Research Council; and,</li> <li>▪ Specific funding programs from Australian Government that support the transmission of cultural knowledge.</li> </ul> <p>The Commonwealth Scientific and Industrial Research Organization has recently initiated an Indigenous Engagement Strategy, that seeks to develop effective links between Indigenous knowledge systems and institutionalized scientific research.</p>
CDA	YES	<ul style="list-style-type: none"> <li>▪ Canada has provided assistance to allow indigenous communities, for example, to develop programs to preserve and transmit their languages.</li> <li>▪ Support has also given to scholars to research issues</li> </ul>

		such as customary protocols.
PRC	YES	<ul style="list-style-type: none"> <li>Patents have been issued to some inventions based on traditional medicine.</li> </ul>
HKC	NO	NOT APPLICABLE
INA	YES	<ul style="list-style-type: none"> <li>Law N° 18, 2002 regarding National Research and Development System and Implementation of Science and Technology which is related to R&amp;D of TK, even though it is not specifically related to support and encourage R&amp;D of TK.</li> </ul>
JPN	NO	NOT APPLICABLE
ROK	YES	<ul style="list-style-type: none"> <li>By providing funding for research and by building the capability of researchers, etc.</li> </ul>
MEX	YES	<ul style="list-style-type: none"> <li>The National Commission for the Development of Indigenous Peoples (CDI) aims to guide, coordinate, promote, support, encourage, follow up and evaluate programs, projects and strategies and public actions for sustainable and integral development of indigenous people and communities. Within the Unit of Planning and Consultation of the CDI, there is a line of research on TK which aims to foster the recognition and value of TK; to expand and disseminate information that allows the design and implementation of strategies to regulate access, use, reproduction and protection, as well as legislation on the rights of the indigenous peoples of Mexico.</li> <li>The Program of Indigenous People and Environment of SEMARNAT promote the exchange of experiences as a tool for the transfer of TK among communities.</li> <li>Currently, there are 3 projects that allow visualizing how basic research and the understanding of its relationship with the social processes of appropriation can support the design of public policies that promote diversity; counting with the bases to recognize collective rights on the commercial use of the names of the maguey, Mezcal and regions that produce them.</li> <li>On the Commission of Protected Natural Areas studies on knowledge and practices of indigenous communities in ANP have been elaborated of plant and animal species (<i>Cebollin, pitayo, venado de cola blanca, Borrego Cimarron</i>) (chives, pitaya, white-tailed deer, bighorn sheep) and traditional medicine, among others.</li> <li>The UCPAST conducted the study "Environment Public Policies, Biodiversity and Indigenous Peoples of Mexico". Its results can contribute to the clarification of guidelines for a national conservation strategy and development of natural resources, especially in indigenous territories.</li> <li>35 projects were supported, in various states of Mexico, in order to know and to promote the work of members of indigenous communities regarding the conservation and utilization of their natural resources.</li> </ul>
NZ	YES	<ul style="list-style-type: none"> <li>New Zealand Ministry of Research, Science and Technology has initiated program Vision Mātauranga, whose mission is to "unlock the innovation potential of Maori knowledge, resources and people to assist New Zealanders to create a better future", by encouraging active engagement in research, science and technology.</li> </ul>
PNG	NO	The need to research and develop into TK is progressing in the areas of traditional medical knowledge and practices as a result of the development of the National Policy on Traditional Medicine by the National Department of Health of

		PNG.
PE	YES	<ul style="list-style-type: none"> <li>▪ National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) foresees, in a short term, support for research in order to identify 20 collective knowledge that had become part of public domain in the last 20 years before the publication of Law 27811, 2002, regarding protection of TK (2002) and based on which products have been developed and are currently being commercialized.</li> <li>▪ Some governmental institutions are developing projects to register TK, according to Law 27811.</li> <li>▪ NGO's are working in the organization of local registers of TK.</li> </ul>
RP	YES	<ul style="list-style-type: none"> <li>▪ Sections 3 (a) of Republic Act 8423 (Traditional and Alternative Medicine Act, 1997) permits "<i>scientific research on and develop traditional and alternative health care systems having direct impact on public health care</i>". For instance, the Philippine Institute of Traditional and Alternative Health Care of the Department of Health, tasked to formulate and implement a research program on the indigenous Philippine traditional health care practices performed by "traditional healers", is documenting and developing a Philippine brand of massage.</li> </ul>
SIN	NO	NOT APPLICABLE
CT	YES	<ul style="list-style-type: none"> <li>▪ The <i>Indigenous Biological Diversity</i> Traditional Protection Act (draft), settles that CIP subsidizes schools, organizations, and indigenous groups in the promotion of education, research and development of indigenous culture, as well as education and training for the fostering of sustainable use and innovation of biodiversity TK. Furthermore, it provides guidance, grants, and subsidies to indigenous groups or tribes to maintain their traditional living habits (Articles 1, 5, 6, 7, 8, 9, 25, 26).</li> <li>▪ The Council Hakka Affairs provides subsidies to commissions schools, organizations or Hakkanese groups to engage in research and innovation of Hakka dialect and traditional arts and culture.</li> </ul>
THA	YES	<ul style="list-style-type: none"> <li>▪ Thai Traditional Medicine Institute provides funding for research and development.</li> </ul>
US	YES	See answer to Question 10.
VN	YES	<ul style="list-style-type: none"> <li>▪ Cultural Heritage Law, 2001 defines common principles in TK preservation; the State encourages collection, preservation and development of TK.</li> </ul>

It must be noticed that in most of the economies (Australia; Canada; China; Indonesia; Korea; Mexico; New Zealand; Peru; Philippines; Chinese Taipei; Thailand; United States and Viet Nam) research in TK is encouraged through different initiatives; only three economies (Hong Kong, China; Papua New Guinea and Singapore) did not reported encouragement in research activities. However, it is important to stand out that despite Papua New Guinea's negative answer this economy did realize the need to research and develop information related to TK in new emerging areas, as traditional medicine.

#### **2.2.7 Existence of databases or compilation mechanism related to TK:**

**TABLE 6**  
**INFORMATION SYSTEMS RELATED TO TRADITIONAL KNOWLEDGE**  
**(QUESTION 17)**

ECONOMY	Compilation mechanisms	Additional details
AUS	(b) (c)	<ul style="list-style-type: none"> <li>▪ There are many Indigenous communities that own and run archives (databases) of Indigenous languages, culture and ecological knowledge. The archives are sometimes accessible via the Internet for non-Indigenous users, but there is often a level of security for certain information, particularly secret or sacred cultural information. Some of these projects enjoy successful partnership with government organizations, universities and in some instances private enterprise. Traditional Knowledge Revival Pathways (TKRP) is an example of collaborative effort between the National Heritage Trust (Australian Government), Cape York elders, a number of universities, and others.</li> <li>▪ There are also a number of mainstream cultural institutions who develop and maintain sources of TK. For example the South Australian Museum partners with the Ara Irititja Project cultural archive project (<a href="http://www.irititja.com/about_ara_irititja/partnerships.html">http://www.irititja.com/about_ara_irititja/partnerships.html</a>).</li> <li>▪ In all instances (public and Indigenous owned databases) the rights of Indigenous people are retained.</li> </ul>
CDA	(a)	<ul style="list-style-type: none"> <li>▪ Canada does not have a national database relating TK.</li> <li>▪ Some communities have or are in the process of developing databases. Indigenous communities are concerned with the development of any database, national or otherwise, where the community does not control the access to the database.</li> </ul>
PRC	(c)	<ul style="list-style-type: none"> <li>▪ Databases on patent of traditional medicine.</li> </ul>
HKC	(b)	<ul style="list-style-type: none"> <li>▪ Database in relation to traditional Chinese medicine (the Chinese herbs), administered by the Chinese Medicines Board whose activities are overseen by the Chinese Medicine Council of Hong Kong. Under Hong Kong law, no person shall sell, import or possess any proprietary Chinese medicine unless the Proprietary Chinese medicine is registered in this database under the law.</li> </ul>
INA	(b) (c)	<ul style="list-style-type: none"> <li>▪ Currently, TK is in the process of being recorded either in writing or in video and or audio by various institutions<sup>20</sup></li> </ul>
JPN	(d)	<ul style="list-style-type: none"> <li>▪ Japan does not have any public system relating TK</li> </ul>
ROK	(b)	<ul style="list-style-type: none"> <li>▪ The Korean Intellectual Property Office (KIPO) has been developing a database of Korean TK since 2005. KIPO has provided a search service for the database on the Web site '<a href="http://www.koreantk.com">www.koreantk.com</a>' since December 2006. The database, which has more than 280,000 items of information on Korean medicinal TK, comprises technical papers, scientific journals, historical documents, and so on.</li> </ul>
MEX	(b)	<ul style="list-style-type: none"> <li>▪ There is not a database that systematizes the TK as a whole; there are isolated databases on biodiversity associated with TK (e.g., database developed by the National Commission for the Knowledge and Use of Biodiversity (Conabio) (eg. Biotica, SNIAR,)</li> <li>▪ There are jointly exploring different options for developing databases of TK disseminated by the</li> </ul>

		relevant agencies at the national level, mainly in collaboration with the Mexican Institute of Industrial Property (IMPI).
NZ	(b) (c)	<ul style="list-style-type: none"> <li>▪ Examples of where this knowledge is been recorded already exists in minutes taken by the Maori land Court, a specialist court which administers land communally owned by Maori. Other groups are looking at digital repatriation.</li> </ul>
PNG	(b) (c)	<ul style="list-style-type: none"> <li>▪ Databases relating to TK in place (traditional medicinal knowledge database being established by the School of Medicine and Health Sciences of the University of Papua New Guinea).</li> <li>▪ Preservation of particular traditional cultural knowledge in relation to their learning disciplines by educational institutions.</li> <li>▪ The Institute of PNG Studies under the National Cultural Commission is responsible for documenting and recording of traditional music and folkore, tales and other oral traditions for archival purposes.</li> </ul>
PE	(b) (c)	<ul style="list-style-type: none"> <li>▪ National Public Register of Collective Knowledge of Indigenous Peoples, administered by Indecopi, which contains bibliographic information, in order to identify an accurate publication date.</li> <li>▪ National Confidential Register of Collective Knowledge of Indigenous Peoples, administered by Indecopi.</li> </ul>
RP	(b)	<ul style="list-style-type: none"> <li>▪ National Museum database for cultural products and heritage</li> <li>▪ National Plant Genetic Resources Laboratory (NPGRL) for plant varieties, in cooperation with different public research and development institutions for specific crops.</li> <li>▪ Plant Variety Protection Office (PVPO) database on existing plant varieties, and inventory of traditional and locally-bred materials and propagating materials of the protected variety. The PVPO also maintains a list of traditional varieties, landraces and commercial varieties not eligible for plant variety protection.</li> <li>▪ The Philippine Council for Health Research and Development (PCHRD) of the Department of Science and Technology has also announced recently that it has established a database on TK.</li> </ul>
SIN	(c)	<ul style="list-style-type: none"> <li>▪ Information is being compiled by both public organizations (e.g., museums) and private organizations (e.g. via websites). It is not known whether information is compiled in a systematic manner, such as in databases.</li> </ul>
CT	(b) (c)	<ul style="list-style-type: none"> <li>▪ According to Article 9 of the Protection Act for Traditional Intellectual Creations of Indigenous Peoples, for intellectual creations, registries shall be established by the competent authority and notices shall be issued. In future, an Internet system for traditional intellectual creations will be set up.</li> <li>▪ The Bureau of Culture Park of the Council of Indigenous Peoples will set up an Indigenous Culture Digital Archive to preserve indigenous culture through respect for individual group.</li> </ul>
THA	(c)	<ul style="list-style-type: none"> <li>▪ Database of Thai traditional medicine is being compiled.</li> </ul>
US	(b)	<ul style="list-style-type: none"> <li>▪ Databases of patents, designs and trademarks include TK. The United States Patent and Trademark Office is responsible for the compilation of these documents. In addition, there are many databases of traditional information.</li> </ul>
		<ul style="list-style-type: none"> <li>▪ In terms of folklores, Association of Folklore and</li> </ul>

VN	(c)	<p>Copyright Office of Vietnam, Ministry of Culture, Sport and Tourism are collecting, editing, maintaining VCDs on folklores: folk music, traditional dances, cuisines, gongs, traditional instruments, folk festivals, costumes...</p> <ul style="list-style-type: none"> <li>▪ In term of TK, National Office of Intellectual Property of Vietnam had coordinated with National Institute of Medicinal Materials – Ministry of Health to establish databases on traditional medicinal plants for searching Patent applications at NOIP.</li> </ul>
----	-----	---

- \* (a) No  
(b) Yes, there are databases  
(c) Yes, information is being compiled  
(d) Not applicable

The answers of the economies to question 17 show that most of them (Australia; China; Hong Kong, China; Indonesia; Korea; Mexico; New Zealand; Papua New Guinea; Peru; Philippines; Singapore; Chinese Taipei; Thailand; United States and Viet Nam) have databases on TK or are in the process of compilation of information. Another economy (Canada) indicated that no information systems relating to TK existed, did report that some communities are developing databases as initiatives of their own.

Different institutions are in charge of developing or administering the information systems: communities; partnerships with government organizations, universities and private enterprises; public institutions, including IP authorities and Plant Variety Protection Authorities.

One issue that may deserve special attention and that has been raised by one economy (Canada) is the fact of the access to the information contained in databases related to TK and the concern of indigenous peoples when databases are developed and the members of the communities do not have any control to the access of the information. With regard to this aspect, New Zealand stands out the importance to consider the benefits and the risks, including misappropriation and public domain issues, of documentation.

### 2.3 ACCESS TO GENETIC RESOURCES:

With the CDB the ancient paradigm that considered GR as common heritage of humankind, remained in the past. CDB, among other issues, settled the rules for access to GR, recognizing the sovereign rights of the countries to control the access and use of their GR, through mutually agreed terms and with the PIC of the provider of these resources<sup>21</sup>.

In fact, since the CDB entered into force, its parties have been designing national frameworks to adequate to CDB provisions. Therefore, the development and implementation of national regulations to determine the access to GR has been present in the internal agendas of most of CDB member parties.

This section of the Survey (Question 5 – 10), explores the advances of member economies with regard to the development and implementation of access to GR legislation and all issues involved (national authority, PIC, approval of the ABS



agreement, among others). Also, this section intends to show some results of the application of this legislation by the presentation of statistics for those economies that do have an access to GR regime.

Thus, question 5 of the Survey gives an overview of the status of the implementation of national regulations for access to GR within member economies. Question 6, is related to identify the institution in charge of the management and control of the regime and its roles and responsibilities, for those economies that have implemented national legislation. Questions 7 and 8 allow the identification of the institutions or organizations in charge of authorizing the access to GR, giving PIC, approving mutually agreed terms for the access to GR and benefit-sharing arrangements; and, to determine the control mechanism used to verify compliance of the requirements for access to GR and benefit-sharing arrangements.

The answers to these questions are summarized in Table 7 (Question 5), Table 8 (Question 6), Table 9 (question 7) and Table 10 (question 8).

**TABLE 7  
REGIMES FOR THE ACCESS TO GENETIC RESOURCES  
(QUESTION 5 )**

ECONOMY	IMPLEMENTATION OF REGIME FOR ACCESS TO GR			
	NO	YES	IN PROGRESS	NATIONAL LAW / REGULATION / DRAFT
AUS		✓		<ul style="list-style-type: none"> <li>▪ Nationally Consistent Approach for Access to and Utilization of Australia's Native Genetic and Biochemical Resources (NCA), 2002.</li> <li>▪ Environment Protection and Biodiversity Conservation Regulations, 2000.</li> <li>▪ Biodiscovery Act, 2004.</li> <li>▪ Biological Resources Act, 2004)</li> </ul>
CDA			✓	<ul style="list-style-type: none"> <li>▪ Canada is in the early stage of developing a domestic access and benefit-sharing regime.</li> </ul>
PRC		✓		<ul style="list-style-type: none"> <li>▪ Regulation on human genetic resources.</li> </ul>
HKC	✓			NOT APPLICABLE
INA			✓	<ul style="list-style-type: none"> <li>▪ Draft Law on Access to Genetic Resource and Equitable Benefit Sharing</li> <li>▪ Draft Law of Protection and Utilization of Genetic Resources</li> <li>▪ Law N° 5, 1990, Conservation of Biological Natural Resources and it's Ecosystem</li> <li>▪ Law N° 12, 1992, Plantation Breed System</li> <li>▪ Law N° 5, 1994, ratification of CBD</li> <li>▪ Law N° 7, 1994, ratification of Agreement Establishing the WTO</li> <li>▪ Law N° 29, 2000, Plan Variety Protection</li> <li>▪ Law N° 18, 2002, National Research and Development System and Implementation of Science and Technology</li> <li>▪ Law N° 21, 2004, Ratification of Cartagena Protocol on Bio-safety to CBD</li> </ul>

				<ul style="list-style-type: none"> <li>Government Regulation N° 21, 2005, Bio-safety on Genetic Engineering Product</li> </ul>
JPN	✓			NOT APPLICABLE
ROK		✓		<ul style="list-style-type: none"> <li>By particular laws or administrative regulations in some fields, such as agricultural genetic resources, microorganisms, and wet lands</li> </ul>
MEX			✓	<ul style="list-style-type: none"> <li>NOM-126-ECOL-2000</li> <li>Art. 87 BIS General Law of Ecological Balance for the Environmental Protection</li> </ul>
NZ			✓	<ul style="list-style-type: none"> <li>Currently, developing a bioprospecting regime.</li> </ul>
PNG		✓	✓	
PE		✓	✓	<ul style="list-style-type: none"> <li>Decision 391, Common Regime for Access to Genetic Resources.</li> </ul>
RP		✓		<ul style="list-style-type: none"> <li>Executive Order 247, Bioprospecting Law, 1995;</li> <li>Republic Act 8371, Indigenous Peoples' Rights Act, 1997;</li> <li>Republic Act 8423, Traditional and Alternative Medicine Act, 1997;</li> <li>Republic Act 9147, Wildlife Resources Conservation and Protection Act, 2001;</li> <li>Joint DENR-DA-PCSD-NCIP Administrative Order N°1, Series of 2005.</li> </ul>
SIN		✓		
CT		✓		<ul style="list-style-type: none"> <li>Management Guidelines for Using Animals and Plants' Breeding Materials for Academic Purposes.</li> <li>Draft of Genetic Resources Act</li> </ul>
THA		✓	✓	<ul style="list-style-type: none"> <li>Patent Act is being amended in order to assure that the use of specific local plant variety, general local plant variety and wild plant variety are subject to PIC, disclosure of origin, and benefit – sharing principles.</li> <li>A Bill on protection of animal varieties is being drafted.</li> </ul>
US		✓		<ul style="list-style-type: none"> <li>Regime for the access to GR found within some national parks, wherein the National Park Service has authority to negotiate benefits-sharing agreements with researchers.</li> </ul>
VN			✓	<ul style="list-style-type: none"> <li>Draft Law on Biodiversity</li> </ul>

**TABLE 8  
INSTITUTIONS IN CHARGE OF REGIME FOR ACCESS TO GR  
(QUESTION 6)**

<b>ECONOMY</b>	<b>INSTITUTION</b>	<b>ROLES AND RESPONSABILITIES</b>
AUS	<ul style="list-style-type: none"> <li>Australian Government and State Governments</li> </ul>	Implementation of the access and benefit sharing is made under the principles of the National Consistent Approach.
CDA	NOT APPLICABLE	NOT APPLICABLE
PRC	<ul style="list-style-type: none"> <li>Ministry of Medicine</li> <li>Ministry of Agriculture</li> </ul>	NOT ANSWERED
HKC	NOT APPLICABLE	NOT APPLICABLE
INA	<ul style="list-style-type: none"> <li>Ministry of Environment</li> </ul>	NOT ANSWERED
JPN	NOT APPLICABLE	NOT APPLICABLE
	<ul style="list-style-type: none"> <li>Ministry for Food, Agriculture, Forestry and Fisheries</li> </ul>	To preserve and control the use of particular GR.

ROK	<ul style="list-style-type: none"> <li>▪ Korean Bio Information Center under the Ministry of Education, Science and Technology.</li> </ul>	
MEX	Ministry of Environment and Natural Resources	Implementation of the access and benefit-sharing according to article 15 CBD
NZ	NOT APPLICABLE	NOT APPLICABLE
PNG	<ul style="list-style-type: none"> <li>▪ Papua New Guinea Institute of Biodiversity (PINBio), under the National Department of Environment and Conservation of PNG.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Negotiation on how benefit-sharing should be developed.</li> <li>▪ Policy and legal access to and benefit sharing of GR.</li> </ul>
PE	<ul style="list-style-type: none"> <li>▪ National Institute of Natural Resources</li> </ul>	<ul style="list-style-type: none"> <li>▪ To approve applications for the access to GR related to wild species.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ National Institute of Agricultural Investigation</li> </ul>	<ul style="list-style-type: none"> <li>▪ To approve applications for the access to GR related to cultivated species.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Vice Ministry of Fishery</li> </ul>	<ul style="list-style-type: none"> <li>▪ To approve applications for the access to GR related to hydrobiological species (continental and marine).</li> </ul>
RP	<ul style="list-style-type: none"> <li>▪ <b>Executive Order 247:</b> Inter-Agency Committee on Biological and Genetic Resources (IACBGR), chaired and co-chaired by the Undersecretaries of the Department of Environment and Natural Resources (DENR) and the Department of Science and Technology (DOST), respectively.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review, evaluate and approve research agreements</li> <li>▪ Ensure that the rights of indigenous and local communities where bioprospecting is being undertaken are protected.</li> <li>▪ Study and recommend appropriate laws on the use of biological and genetic resources, including new laws on intellectual property.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ <b>Republic Act 8371:</b> National Commission on Indigenous Peoples (NCIP)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Protect and promote the interest and well-being of indigenous peoples regarding their beliefs, customs, traditions, and institutions.</li> <li>▪ Enter into contracts, agreements, or arrangements</li> <li>▪ Have jurisdiction over all claims and dispute involving rights of indigenous cultural communities/ indigenous peoples</li> </ul>
	<ul style="list-style-type: none"> <li>▪ <b>Republic Act 8423:</b> Philippine Institute of Traditional and Alternative Health Care, which is attached to the Department of Health.</li> </ul>	NOT ANSWERED

	<ul style="list-style-type: none"> <li>▪ <b>Republic Act 9147:</b> Implemented jointly by the Department of Environment and Natural Resources (DENR), for all terrestrial plant and animal species, all turtles and tortoises, and wetland species, including but not limited to crocodiles, waterbirds and all amphibians and dugong; and, the Department of Agriculture (DA), for all declared aquatic critical habitats and all aquatic resources, including but not limited to all fishes, aquatic plants, invertebrates, and all marine mammals except dugong.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Grant the necessary permit regarding bioprospecting.</li> </ul>
	<ul style="list-style-type: none"> <li>▪ <b>Joint DENR-DA-PCSD-NCIP Administrative Order 1:</b> Implemented jointly by DENR, DA, Palawan Council for Sustainable Development (PCSD), National Commission on Indigenous Peoples (NCIP)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Evaluation of application for bioprospecting;</li> <li>▪ Assistance to prospective resource users to understand and comply with the requirements under the Guidelines;</li> <li>▪ Assistance to resource providers in evaluating proposals for purposes of PIC and in effectively negotiating for benefit-sharing;</li> <li>▪ Lead in assisting indigenous peoples who are resource providers; in documenting free PIC; and in negotiating for benefits under the bioprospecting undertaking; and,</li> <li>▪ Provide for common repository of all relevant information on bioprospecting activities.</li> </ul>
SIN	<ul style="list-style-type: none"> <li>▪ National Parks Board</li> <li>▪ Agri-Food &amp; Veterinary Authority of Singapore.</li> </ul>	<p><u>NParks:</u></p> <ul style="list-style-type: none"> <li>▪ To grant research permits to carry out taxonomic or ecological field studies or collection of material.</li> <li>▪ To negotiate a benefit-sharing agreement if the research has a commercial purpose.</li> <li>▪ To conduct checks on field collections at site.</li> </ul> <p><u>AVA:</u></p> <ul style="list-style-type: none"> <li>▪ To grant Letters of Authorization and/or Export Permits (in order to bring the collected biological specimens out of Singapore for research purposes).</li> <li>▪ To grant CITES permits (for the export of CITES specimens out of Singapore).</li> </ul>
CT	<ul style="list-style-type: none"> <li>▪ Sustainable development committee comprised of inter-government agencies, with a biodiversity working group responsible for administrative matters.</li> </ul>	<ul style="list-style-type: none"> <li>▪ To promote biodiversity research, conservation, utilization and fair and reasonable sharing;</li> <li>▪ To raise public consciousness and knowledge of biodiversity protection.</li> <li>▪ To participate in regional and global biodiversity conservation cooperation.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Wildlife Conservation Act (WCA)</li> <li>▪ Management Guidelines for using Animals and Plant's Breeding Materials for Academic Purposes of the Council of Agriculture (COA).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The COA receives and approves applications for protected wildlife utilization, sets up the database, and inspects the results of the utilization pursuant to the WCA.</li> <li>▪ Applications for animals and plants' breeding materials output for academic purposes must be submitted to the research institution that owns the required breeding materials. After approval, it is forwarded to the COA for final approval. After which, the research institute and the output user must sign an agreement guaranteeing such materials will not be used for commercial or other purposes, and also agreeing to give the COA uncompensated use of the breeds or breeding materials that result from the utilization of the output materials.</li> </ul>
THA	<ul style="list-style-type: none"> <li>▪ Department of Agriculture</li> <li>▪ Department of Intellectual Property.</li> </ul>	NOT ANSWERED
US	<ul style="list-style-type: none"> <li>▪ The National Park Service</li> </ul>	<ul style="list-style-type: none"> <li>▪ To enter into benefit-sharing arrangement with the research community.</li> </ul>
VN	<ul style="list-style-type: none"> <li>▪ Ministry of National Resources and Environment</li> <li>▪ State Management System on Natural Resources and Environment in localities (Local Departments of Natural Resources and Environment)</li> </ul>	<ul style="list-style-type: none"> <li>▪ To approve the Biodiversity Preservation Planning</li> <li>▪ To appraise projects on the establishment of preservation zones; considering, proposing to insert or draw out from the list of preserved species;</li> <li>▪ To establish and manage biodiversity preservation areas</li> <li>▪ To authorize access to GR</li> <li>▪ To manage information sources and establish databases on GR and biodiversity</li> <li>▪ To grant bio-safety certifications on genetically modified organisms;</li> <li>▪ To disseminate and raise awareness on biodiversity</li> <li>▪ To inspect, examine and settle disputes and appeals as well as compensating for damages.</li> </ul>

**TABLE 9**  
**MECHANISMS OF REGIME FOR ACCESS TO GR**  
**(QUESTION 7)**

<b>ECONOMY</b>	<b>AUTHORIZATION FOR ACCESS TO GR</b> <b>PIC</b> <b>APPROVAL OF MUTUALLY AGREED TERMS FOR ACCESS TO GR</b> <b>AND BENEFITS-SHARING AGREEMENT</b>
	<ul style="list-style-type: none"> <li>▪ Governments control the access to GR but do not necessarily assert ownership over them.</li> </ul>

AUS	<ul style="list-style-type: none"> <li>▪ The entity which has the right to grant access must provide consent before an access permit is issued.</li> <li>▪ When indigenous peoples are the access providers, they must give informed consent to a benefit-sharing agreement concerning the access.</li> <li>▪ In some circumstances, more than one entity will be involved in providing access to biological resources. Private owners generally control access to biological resources found on freehold land. Those jurisdictions which have access legislations in place do not assert ownership over GR on private land. On leasehold land, an exclusive right of possession may allow the lessee to effectively control access to biological resources.</li> </ul>
CDA	<ul style="list-style-type: none"> <li>▪ No specific statute exists in Canada regulating access to GR, but some aspects are covered in a host of laws, regulations and practices, including intellectual property statutes.</li> </ul>
PRC	<ul style="list-style-type: none"> <li>▪ Ministry of Medicine (human GR)</li> <li>▪ Ministry of Agriculture</li> <li>▪ State Forestry Administration</li> </ul>
HGC	NOT APPLICABLE
INA	NOT DETERMINED YET
JPN	NOT ANSWERED
ROK	<ul style="list-style-type: none"> <li>▪ The heads of relevant authorities acknowledge the need for PIC.</li> <li>▪ The mutually agreed terms and benefit-sharing arrangements are based on a private contract system.</li> </ul>
MEX	NOT ANSWERED
NZ	
PNG	<ul style="list-style-type: none"> <li>▪ Papua New Guinea Institute of Biodiversity (PINBio) has a network of institutions to collaborate in utilizing knowledge to build and invest. In ABS, research proposals are linked to these institutions to reap benefits from the research on GR. However, GR is threatened with developmental projects. Current work on the development of a legislation to strengthen network in a more cohesive and understanding manner is underway.</li> </ul>
PE	<ul style="list-style-type: none"> <li>▪ The draft considers that national authorities are in charge of approving access to GR, mutually agreed terms and benefit sharing.</li> <li>▪ In case of GR in the territory of indigenous peoples, PIC must be granted by the designated authorities of such communities; when GR are located in lands of the State, PIC must be given by national authorities</li> </ul>
RP	<p>PIC is to be secured from the resource providers, which may include any of the following:</p> <ul style="list-style-type: none"> <li>▪ Concerned indigenous cultural communities/indigenous peoples, when prospecting is to be undertaken within their ancestral domains,</li> <li>▪ Municipal or city mayor of the local government, when prospecting will be done within their area of jurisdiction;</li> <li>▪ Protected Areas and Wildlife Bureau (PAWB), when prospecting will be within a protected area; or,</li> <li>▪ Private land owner, when within private land.</li> </ul>
SIN	<ul style="list-style-type: none"> <li>▪ The National Biodiversity Centre of the National Parks Board.</li> </ul>
CT	<ul style="list-style-type: none"> <li>▪ The Council of Agriculture is the competent authority for issuing PIC of protected wildlife utilization and for rendering final approval for genetic material output for academic purposes.</li> <li>▪ No specifications regarding benefit-sharing arrangements in the Wildlife Conservation Act.</li> <li>▪ The Council of Agriculture is competent for rendering final approval for genetic material output for academic purposes.</li> </ul>
THA	<ul style="list-style-type: none"> <li>▪ Government authority.</li> </ul>
US	<ul style="list-style-type: none"> <li>▪ The National Park Service</li> </ul>
VN	<ul style="list-style-type: none"> <li>▪ According to Draft Law on Biodiversity, organizations and individuals are permitted by the Government to manage GR (People Committee at commune level and state management agencies on environmental preservation).</li> <li>▪ To get the license for accessing to GR, it is advisable to register State management agencies of Natural Resources and Environment, negotiating with organizations and individuals in charge of GR management in written document for the permission of accessing GR and benefit-sharing</li> </ul>

	arrangement. This agreement is confirmed by People Committee for the access to GR.
--	--

**TABLE 10  
CONTROL MECHANISM TO VERIFY COMPLIANCE OF REQUIREMENTS  
FOR ACCESS TO GR AND BENEFIT-SHARING AGREEMENTS AND TO  
ENSURE PIC AND MUTUALLY AGREED TERMS ARE FAIR AND  
EQUITABLE  
(QUESTION 8)**

<b>ECONOMY</b>	<b>CONTROL MECHANISMS USED TO VERIFY COMPLIANCE OF REQUIREMENTS FOR ACCESS TO GR AND BENEFITS-SHARING ARRANGEMENT / MECHANISMS TO ENSURE PIC AND MUTUALLY AGREED TERMS ARE FAIR AND EQUITABLE</b>
AUS	<ul style="list-style-type: none"> <li>▪ Control mechanisms are incorporated in model ABS contracts, these include mandatory periodic reporting, provision for disposal of material at the conclusion of the contract, and terms restricting the transfer of material to third parties.</li> <li>▪ Australian jurisdictions have significant penalties in place for misappropriation of genetic resources.</li> </ul>
CDA	<ul style="list-style-type: none"> <li>▪ No specific compliance mechanism in place.</li> <li>▪ There is no mechanism to ensure PIC and mutually agreed terms are fair and equitable.</li> </ul>
PRC	Administrational examine and approve.
HKC	NOT APPLICABLE
INA	NOT DETERMINED YET
JPN	NOT ANSWERED
ROK	<ul style="list-style-type: none"> <li>▪ A fine is imposed for violation of the requirement of prior informed consent for some particular GR.</li> </ul>
MEX	NOT ANSWERED
NZ	NOT ANSWERED
PNG	<ul style="list-style-type: none"> <li>▪ A "Compliance Regime" is currently under reformation thus biological resources cannot be transferred.</li> </ul>
PE	Not determined yet, since national regulations on access to GR have not been implemented.
RP	<ul style="list-style-type: none"> <li>▪ The Bioprospecting Undertaking (BU) stipulates reporting requirements to verify compliance of the requirements for the access to GR. The resource user shall submit an Annual Progress Report with:               <ol style="list-style-type: none"> <li>(a) Status of the procurement of PIC;</li> <li>(b) Progress of collection samples;</li> <li>(c) Benefit sharing negotiations; and,</li> <li>(d) Progress on payment of benefits or other provisions of the BU.</li> </ol> </li> <li>▪ The resource user must include the following certifications, signed by the DENR/ DA/ PCSD regional representative, as proof of compliance, in the Annual Progress Report:               <ol style="list-style-type: none"> <li>(a) Certification of compliance to the proper procurement of PIC;</li> <li>(b) Certification of acceptance by resource providers of the monetary and/or non-monetary benefits provided in the BU; and,</li> <li>(c) Certification of compliance to collection quota.</li> </ol> </li> <li>▪ Other proof of compliance, such as photo documentation, shall also be submitted by the resource user, as may be required.</li> </ul> <p>To monitor whether the benefit sharing agreement can be considered fair and</p>

	equitable, a checklist of process and content indicators is used by the contracting parties and other stakeholders. The appropriate technical Committee uses these indicators in making its final evaluation.
SIN	Reporting requirements in benefit sharing contracts. There may be field check and enforcement during field collections by collectors.
CT	<ul style="list-style-type: none"> <li>▪ Monitoring activities by the Council of Agriculture to prevent inappropriate use.</li> </ul>
THA	<ul style="list-style-type: none"> <li>▪ Law and regulations which provide criminal punishment for non-compliance.</li> </ul>
US	<ul style="list-style-type: none"> <li>▪ The control mechanism would be specified in the benefit sharing agreement (contract), or relevant regulations relating to access.</li> </ul>
VN	<ul style="list-style-type: none"> <li>▪ State management agencies of Natural Resources and Environment have responsibility to receive and appraise applicant documents to get the license for accessing to GR, consisting of a proposal document and an agreement on accessing to GR, the plan of accessing, researching and producing commercial products from GR. The Draft defines basic contents and agreed terms relating benefit-sharing arrangement from the access to GR on the basis of harmonizing the benefits of 3 objects: the State, people communities and relevant organizations.</li> </ul>

Some economies have given additional details regarding questions 5, 6, 7 and 8. Although some of these questions are related to explain implementation of ABS regimes within member economies, some economies that have not implemented regulations yet, have submitted interesting information that will be detailed next. Since answers to questions 5, 6, 7 and 8 are highly bonded and some answers to one question, are also related to the others, the additional information or details given by each economy, will be presented as one, as follows:

#### **Australia:**

- **National Consistent Approach for Access to and Utilization of Australia's Native and Biochemical Resources, 2002:** Intergovernmental agreement that ensures the fair and equitable sharing of the benefits arising from the use of genetic and biochemical resources. All nine Australian jurisdictions agreed to this overarching policy on October 11<sup>th</sup>, 2002 to form the basis for Australia's implementation of the Bonn Guidelines. The agreement forms an accountable basis for all legislation and administrative action for the management of GR currently underway in each Australian jurisdiction.

This National Consistent Approach addresses the CBD's objectives related to the fair and equitable sharing of the benefits arising from the use of genetic resources, and in particular responsibilities set out at Articles 1, 3, 6, 8(j), 10(c), 15, 16 and 19. This regulation sets out the general principles on which legislation, administrative or policy frameworks are to be based in each jurisdiction.

Under the National Consistent Approach, the Australian Government controls access to resources found on Commonwealth lands and waters. State Territory Governments control resources found on state and territory lands and water up to three nautical miles from the coast.

- **Environment Protection and Biodiversity Conservation Regulations, 2000:** The Australian Government administers access to GR in lands and waters under its jurisdiction under this regulation (Part 8A). These regulations provide access to GR under permit. If the access is for commercial or potentially commercial purposes, a benefit-sharing arrangement must be entered into before the permit is issued. Streamlined permitting arrangements apply for non-commercial research.
- **Biodiscovery Act, 2004:** This Act is for Queensland jurisdiction.



- **Biological Resources Act, 2006:** This Act is for the Northern Territory jurisdiction.

Regarding the control mechanism used to verify compliance of the requirements for access to GR and benefits-sharing arrangement, Australia considers that the current administration of ABS regulations provide the necessary tools for securing compliance. One important aspect are model contracts, including options for recourse, appropriate choice of law provisions and options for cross-jurisdictional enforcement of the contract. Another aspect is appropriate legal mechanisms for the cross-jurisdictional prosecution for misappropriation of GR. The standard contracts of the Commonwealth of Australia, the Northern Territory and Queensland require the user to obtain the written consent of the provider before transferring material to a third party and periodic reporting by user of their aims, activities and findings.

Australia emphasizes the importance that requirements under the contract must be practical and not create unnecessary bureaucratic burdens, as this may act as a disincentive to access and maybe an incentive to operate outside the ABS regime.

Australian jurisdictions have significant penalties in place for misappropriation of GR, including prison sentences or large financial penalties.

**Canada:** Canada is currently developing a domestic ABS regime; however, most bio-based sectors and sub-sectors have existing legal or practice-based mechanisms for access to GR<sup>22</sup>. Broad principles and objectives have been developed with provinces and territories. The next step is to involve Aboriginal peoples and key stakeholders to shape a common cross-jurisdictional approach that is practical and cost effective.

There is no single institution responsible for management and control of access to GR. Management differs according to the different jurisdictions and sectors or communities controlling the GR in question. Therefore, organizations and institutions responsible for management and control of access to GR are varied and, in many cases, unknown.

Canada has 11% of land privately owned, 48%, provincial crown land; and, 41%, federal crown land. Depending on the specific regulations governing land tenure, access to GR either on public or private land may require the consent of the owner of that land (department, moral person or individual) and can otherwise lead to civil or criminal prosecution.

At the federal or provincial/territorial level there is no legislation focused on access to GR. Consequently, access to GR on public lands is generally unregulated and does not formally require authorization, PIC or mutually agreed terms other than in provincial and national parks. Several federal departments and agencies are responsible for administering crown lands and most have developed policies that may affect the protection of and access to GR in situ.

However, it must be stand out that the Northwest Territories and the territory of Nunavut have implemented a single legislation -Scientists Act- that, although not directly aimed at ABS, establishes the requirement of a permit for access to and collection of samples for scientific research.

Aboriginal governments may have jurisdiction over natural resources on the land as set out in a comprehensive claim agreement or self-government agreement.

Under Canadian law, biological and GR on privately held land fall under the ownership of the land owner, and unauthorized removal is subject to criminal and civil law regarding trespass. Access to privately held land and removal of GR from it requires the land owner's authorization. If an owner and a potential user sign a legally enforceable contract providing access to GR on the owner's land, this is understood as providing consent, and the contract represents mutually agreed terms between the owner and the potential user. A legally enforceable contract under Canadian laws ensures that both parties have freely agreed to the subject matter of the contract and to its terms, which ensures mutually agreed terms for owners and users of GR. It should be noted that wild animals are not considered the property of a private landowner, but of the provincial government. There is an important distinction, therefore, between plants and wild animals on privately owned land.

Federal and provincial governments, universities and private companies managing *ex situ* collections of GR and are responsible for giving consent and endorsing mutually agreed terms for access to them.

Governments in Canada have not established yet mechanisms for PIC and mutually agreed terms within the contracts regarding GR. The owners of GR establish the terms they require for the equitable sharing of benefits while negotiating contracts to give their consent to potential users of GR. These contracts rely on existing Canadian contract law.

**Mexico:** The NOM-126-ECOL-2000 establishes specifications for carrying out scientific collection of biological material of species of wildlife and other biological resources in national territory. This regulation does not apply to the collection for commercial purposes or research of germplasm.

Mexico is currently involved in a very active negotiating process internally and externally, with the design of specific national legislation and the creation of an international regime on access to GR. In both processes, a key concern has been to create a practical policy framework that does not impose unnecessary or excessive barriers on the fundamental research activities and that has low transaction costs, which are fully compatible with the facilitation of access.

Some issues have been identified as the minimum elements that should constitute the international regime:

- That access to GR is carried out under PIC and mutually agreed terms in the corresponding private contract.
- The benefits should be distributed in the provider country of GR.
- The determination of benefit-sharing will be established according to national law.
- If a permission or authorization for access to GR is required, national provisions on PIC and benefit-sharing shall be accomplished.
- The use of TK or collecting samples on the lands of local populations shall be conducted in compliance with national laws, practices and customs, as well as through agreements or contracts, providing complete information with the PIC of the State or local and indigenous communities, as appropriate.

Also, the regime should consider the following elements:

- To access and use GR in accordance with national legislation and in conformity with CBD.
- To access and use of knowledge, innovations and traditional practices associated with GR.
- The fair and equitable sharing of benefits arising from the access and utilization of GR and TK associated with them.
- In accordance with Article 16.3 of the CBD, ensuring that the countries that provide GR, have the facilitation to access to national capacity building and technology transfer.
- The Certificate of Compliance may be reviewed at different stages in the process of using GR.
- PIC in accordance with national laws on access to GR.
- The terms mutually agreed by the Parties, accordingly, with national laws on access to GR.
- The distribution of benefits, consistent with national laws on access to GR.
- To establish monitoring mechanisms that allows verify if the use of GR is taking place or has taken place under the conditions allowed and that the benefits are distributed on agreed terms.
- To establish measures to ensure compliance with the regime.

**Peru:** Decision 391 establishes a Common Regime on Access to Genetic Resources<sup>23</sup>. This regulation specifies that access to GR must be directly negotiated with the government, through the national authority, but also the applicant must negotiate with the provider of the biological resources that contain the GR. If there is TK involved and access to it is wanted, the applicant must negotiate, besides, with the main holders of this TK. Therefore, Decision 391 provides the following contracts:

- Access contracts: contracts between the government and the applicant.
- Accessory contracts: contracts between the applicant and the provider of biological resources.
- Annex: agreement between the applicant and the provider of TK.
- Deposit, Intermediation or Administration contracts: agreement between the government and universities, researchers and research centers.

The conditions that must be accomplished in the applications for access to GR and that must be included in the contracts are:

- Participation of nationals in research activities.
- Support for research that contributes to the conservation and sustainable use of the biological diversity.
- The strengthening of mechanisms for the transfer of know-how and technology, including biotechnology, that is culturally, socially and environmentally healthy and safe.
- The strengthening and development of the institutional capacity in regard to GR
- The strengthening and development of the capacities of the indigenous peoples related to GR.
- Deposit of duplicates of collected material.

Peru is currently developing a national regulation that will bring together the provisions settled in Decision 391 and will determine the national authorities in charge of regulating access to GR. This regulation considers as minimum the specifications contained in Decision 391 and embodies additional ones. This national framework determines that access to GR within indigenous lands and must consider the PIC given by indigenous peoples, as well as by the

government. Also, it establishes that the resolution granted is the instrument that assures the legal origin of the GR.

The additional provisions contained in the national regulation are:

- Clauses regarding the eventual IPR of the products or processes developed from the use of GR.
- Commitment to pay a percentage of the benefits obtained to the State (through the National Authority).
- To provide information regarding the purposes and risks of the activity, including potential uses of the resources and their value.
- Clauses regarding payment for bioprospection activities, to the resource provider.

### **Philippines:**

- **Executive Order-EO 247, 1995, Bioprospecting Law:** Establishes a legal framework for bioprospecting, based on the policy that it is in the interest of the State's conservation efforts to ensure that the research, collection and use of species, genes and their products be regulated, and to identify and recognize the rights of indigenous cultural communities to their TK and practices when this information is directly or indirectly put to commercial use. Under this regulation, prospecting of biological and GR within area of local communities is only allowed with PIC, which must be obtained in accordance with their customary laws. All benefits (direct or indirect) resulting from bioprospecting shall be shared equitably and upon mutual consent among the Philippine government, communities concerned, and the principal. This law governs all acts of collecting of biological diversity in the Philippine territory whether by nationals or foreigners, and covers all GR in public domain, including natural growths in private lands. It has three pillars:
  - A formal "research agreement" is required between anyone wishing to access biodiversity in the Philippines and the government. Basic rules include:
    - Duplicates of samples should be left with local agencies;
    - Filipino citizens retain full access to materials and products developed from them;
    - A separate agreement on sharing of royalties, technologies and other benefits should be made;
    - Ownership of resources shall remain with the State;
    - When the collector is merely an agent of someone else, the full relationship must be examined.
  - Any form of access to biodiversity is strictly illegal without the PIC of the local or indigenous community concerned.
  - An Inter-Agency Committee is responsible for the system implementation and review. This committee is under the Department of Environment and Natural Resources and involves other agencies of the government, academe, non-governmental organizations, and peoples' organizations with indigenous community memberships.
- **Republic Act 8371, 1997, Indigenous Peoples' Rights Act:** Recognizes further the rights of indigenous peoples to their ancestral domains and lands, to self-governance and empowerment, to self-justice and human rights and to cultural integrity. Also enunciates protection to community intellectual property rights; to religious, cultural sites and ceremonies; to indigenous knowledge and practices; and to biological resources. Any access to biological and genetic

resources and TK is only allowed with the free and informed consent of the communities, obtained in accordance with customary law.

- **Republic Law 8423, 1997, Traditional and Alternative Medicine Act:** This law provides that it shall be a State policy to seek legally workable basis by which indigenous societies would own their knowledge of traditional medicine. When such knowledge is used by outsiders, the indigenous societies can require the permitted users to acknowledge its source and can demand a share of any financial return that may come from its authorized commercial use. Among other, the objective of this law is to formulate policies for the protection of indigenous and natural health resources and technology from unwarranted exploitation, for approval and adoption by the appropriate government agencies.
- **Republic Act 9147, 2001, Wildlife Resources Conservation and Protection Act:** Its objectives are:
  - to conserve and protect wildlife species under their habitats to promote ecological balance and enhance biological diversity;
  - to regulate the collections and trade of wildlife
  - to pursue, with due regard to the national interest, the Philippine commitment to international conventions, protection of wildlife and their habitats; and,
  - to initiate or support scientific studies on the conservations of biological diversity.

This law is enforceable for all wildlife species found in all areas of the Philippines, including Protected Areas under Republic Act 7586 (National Integrated Protected Areas System or NIPAS Act) and critical habitats. It also applies to exotic species which are subject to trade, are cultured, maintained and/or bred in captivity or propagated in the country. Seven permits are covered under this law:

- Export permit: authorization to bring out wildlife from the Philippines to any other country;
  - Gratuitous permit: Issued for collecting wildlife for noncommercial, scientific or educational undertaking;
  - Import permit: authorization to bring in wildlife from another country;
  - Re-export Permit: Authorization to bring out of the country a previous imported wildlife;
  - Transport Permit: authorization to bring wildlife from one place to another within the national territory;
  - Wildlife collector's permit: Permit to take or collect from the wild certain species and quantities of wildlife for commercial purposes; and,
  - Wildlife farm/culture permit: Permit to develop, operate and maintain a wildlife breeding farm for conservation, trade and/or scientific purposes.
- **Joint DENR-DA-PCSD-NCIP Administrative Order N<sup>o</sup> 1, 2005:** Joint Administrative Order between the Department of Environment and Natural Resources (DENR), the Department of Agriculture (DA), the Palawan Council for Sustainable Development (PCSD) and the National Commission on Indigenous Peoples (NCIP). It provides Guidelines for Bioprospecting Activities in the Philippines. The Guidelines provide that PIC must be obtained from resource providers before any bioprospecting activity is allowed by the Philippines. The State shall ensure the fair and equitable sharing with the resource providers of benefits derived from the utilization of biological resources. The Guidelines apply to bioprospecting activities conducted by resource user, including government agencies. Such activities include: bioprospecting of any biological resource found in the Philippines (wildlife,

microorganisms, domesticated or propagated species, exotic species) and ex-situ collections of biological resources from the Philippines.

The Guidelines do not apply to the following uses of biological resources:

- Traditional use;
- Subsistence consumption;
- Conventional commercial consumption for direct use;
- Scientific researches on wildlife under Wildlife Act and on agrobiodiversity;
- Existing procedures of collection and transport of wildlife species exclusively for commercial or conservation breeding or propagation under the Wildlife Act;
- Ex-situ collections currently accessed under international agreements where the Philippines is a Party.

Other exemptions are scientific studies, conducted by researchers with no commercial interests and purely for academic purposes, using biological resources for taxonomy, provided that the subsequent transfer of these biological resources and use of research findings for commercial purposes, shall be considered bioprospecting and subject to the requirements of the Guidelines; and

development of medicinal plants for traditional and alternative medical use which is governed by Republic Act 8423.

**Singapore:** Research permits must be obtained from the National Parks Board of Singapore (“NParks”) prior to carrying out taxonomic or ecological field studies or collecting research material in a national park, nature reserve or parkland under the management and maintenance of NParks. Applicants for research permits must specify whether the research is for commercial or non-commercial purpose. If it is for commercial purpose, NParks will consult with other agencies and will negotiate a benefit sharing agreement. If the research is at present non-commercial, but there is a potential for commercial spin-offs later, the applicant will need to engage in a separate negotiation process at that time. A false declaration, or failure to specify commercial intent, may lead to withdrawal of an existing research permit and refusal of future research permits, for the researchers and their institutions.

Collecting samples/specimens that are not approved by NParks and that are not specified in the research permit is an offence under the Parks and Trees Act (Act 4, 1995). NParks’ officers also have the authority to confiscate any unauthorized samples/ specimens collected. NParks’ officers have the right to check the field collection(s) anytime at site. Research permits cannot be validly used in areas other than those specified.

To bring the collected biological specimens out of Singapore for research purposes, an application has to be made to the Agri-Food & Veterinary Authority of Singapore (AVA) for a Letter of Authorization and/or Export Permits (both valid for 1 month and for one-time usage only). Applications are subject to approval on a case-to-case basis.

For species protected under Convention on International Trade in Endangered Species of Wild Fauna and Flora-CITES, the export of specimens requires the application of an additional permit (CITES permit) from Agri-Food & Veterinary Authority, that would only be granted for legally acquired collected specimens.

**Chinese Taipei:** Although the current legislation –Wildlife Conservation Act– considers a prior permit when collecting wild fauna and flora, this provision is not derived from CBD. Wild and flora origins that are under management are

regulated by the Management Guidelines for Using Animals and Plant's for Academic Purposes. Its dispositions include PIC and benefit-sharing agreements. The Council of Agriculture is drafting the Genetic Resources Act, in order to regulate access and benefit-sharing of GR, based on CBD and Bonn Guidelines.

**United States:** The United States has implemented a regime for the access to GR found within some national parks, wherein the National Park Service has authority to negotiate benefits-sharing agreements with researchers. There are a variety of laws and policies that relate to Benefits-Sharing and the National Park Service. Following is a summary of the most significant:

- **National Park Service Organic Act, 1916:** Created to *"conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations"*.
- **National Parks Omnibus Management Act, 1988:** This law authorizes "negotiations with the research community and private industry for equitable, efficient benefits-sharing arrangements" in connection with research conducted in national parks. This law specifically allows the National Park Service to enter into benefits-sharing agreements with the research community and mandates increased scientific research in the national parks and the use of science in park management decisions. The law encourages the national parks to be places for scientific study by public as well as private sector researchers, and mandates long-term inventory and monitoring programs that provide baseline information and document trends relating to the condition of park resources.
- **Federal Technology Transfer Act, 1986:** This law establishes a framework for partnerships between federal laboratories and the private sector. One of the mechanisms authorized by this law is a cooperative research and development agreement <sup>24</sup>, which promotes private companies and other research collaborators to contribute with financial resources and expertise to a federal laboratory facility to augment its own research in exchange for rights in any resulting valuable discovery arising from the research.
- **Code of Federal Regulations:** This code settles the requirement of a research permit for research activities in the national parks, which stipulate various terms and conditions to protect park resources from impacts associated with the research. In addition, sale or commercial use of natural products is prohibited by regulation. Thus, only information and inventions developed after the conclusion of research specimen collection and analysis may be used commercially, not the specimens collected from the park.
- **National Park Services Management Policies, 2001:** Prohibits the extractive use of park resources for commercial purposes, except when specifically authorized by law or in the exercise of valid existing rights. Only under certain circumstances and under federal authority management, the collection of non-living or living material, or parts thereof, to support research that may lead to the development of commercial products is permitted.  
Also, this regulation prohibits repeated collection or harvesting.
- **National Environmental Policy Act, 1969:** This law requires consideration of the environmental effects of proposed federal actions. Its procedures ensure that environmental information is available to public officials and members of the public before decisions are made and actions are taken. Benefits-Sharing

Environmental Assessment is being prepared in accordance with the provisions of this act.

Summarizing the information obtained from question 5, it can be noticed that two economies (Hong Kong, China and Japan) have no regulations on access to GR and do not report working in internal processes for the design of these regulations; six economies (Australia; China; Korea; Philippines; Singapore and United States) have national regulations on access to GR; five economies (Canada; Indonesia; Mexico; New Zealand and Viet Nam) are in process of developing national legislation in this item. It is important to notice the answers of Papua New Guinea; Peru and Thailand, which have answered this question pointing out two options: the existence of national regulations and been in the process of designing regulations.

It is important to stand out, as it can be noticed from the review of Tables 8 to 10, that there are several regulations and authorities in charge of access regimes. This situation is a consequence of the complexity when managing biodiversity, where some resources fall over the competence of more than one authority. This issue must be considered when implementing national regulations for access to GR, in order to avoid overlapping of functions that can lead to long and complicated procedures with high costs for the applicant. Indeed, some economy members (Australia and Mexico) have clearly stated their concern in the establishment of practical requirements and procedures, since unnecessary barriers may disincentive legal access to GR.

Regarding PIC, the CDB states that access to GR should be granted on mutually agreed terms and subject to PIC of the provider of the resources. From the information given by the different member economies, it can be noticed that in some economies PIC is obtained from government authorities; in others, PIC must be obtained from indigenous peoples and private landowners and in some economies, from both.

**TABLE 11  
CURRENT STATISTICS ON THE NUMBER OF PROJECTS INVOLVING  
ACCESS TO GR  
(QUESTION 9)**

ECONOMY	a) No	b) Yes	c) NA	ADDITIONAL DETAILS / COMMENTS
AUS		✓		<ul style="list-style-type: none"> <li>▪ 55 access permits issued</li> <li>▪ 1 benefit-sharing agreement issued</li> <li>▪ To June 30<sup>th</sup>, 2007</li> </ul> These have been issued by the Australian Government Department of Environment, Water, Heritage and the Arts, and accredited organizations since legislation was introduced in December, 2005. Further information: <a href="mailto:grm@environment.gov.au">grm@environment.gov.au</a>
CDA		✓		The Agriculture and Agri-Food Canada keeps records on the number of specimens obtained and provided on the annual basis by the institutions it operates.
PRC	✓			---
HKC	✓			---



INA			✓	---
JPN			✓	---
KOREA			✓	---
MEX	NOT ANSWERED			
NZ			✓	
PNG		✓		NO ADDITIONAL INFORMATION GIVEN
PE		✓		<ul style="list-style-type: none"> <li>▪ 1 access contract issued</li> <li>▪ To december, 2007</li> <li>▪ This contract has been issued over the basis of provisions of Forestry and Wildlife Fauna Law.</li> </ul>
RP		✓		<ul style="list-style-type: none"> <li>▪ 1 research agreement has been approved by the IACBGR, involving the collection of marine biological specimens.</li> <li>▪ To 2002</li> <li>▪ The Protected Areas and Wildlife Bureau of the Department of Environment and Natural Resources is the official depository of all original and official documents such as research agreements.</li> </ul>
SIN		✓		<ul style="list-style-type: none"> <li>▪ About 50 projects are evaluated per year.</li> <li>▪ NParks maintains a list.</li> </ul>
CT		✓		<ul style="list-style-type: none"> <li>▪ More than 390 permits of Protected Wildlife Utilization had been issued under the Wildlife Conservation Act (period 1997 – 2007).</li> <li>▪ 1 permit issued under the Management Guidelines for Using Animals and Plants' Breeding Materials for Academic Purposes (permit issued in 2007)</li> </ul>
THA	✓			---
US	✓			---
VN	✓			<ul style="list-style-type: none"> <li>▪ The Draft Law on Biodiversity has not come into force yet.</li> <li>▪ Under current regulations, no policy on accessing GR.</li> </ul>

**TABLE 12  
ENCOURAGEMENT IN RESEARCH AND DEVELOPMENT IN GR  
(QUESTION 10)**

ECONOMY	a) NO	b) YES	DETAILS ABOUT THE WAY IN WHICH ENCOURAGEMENT IS GIVEN
AUS		✓	<ul style="list-style-type: none"> <li>▪ Providing legal certainty for investment in research and development in GR, through Australia's legal and administrative systems to manage access to biological resources.</li> <li>▪ Providing support for R&amp;D activities through a range of research and innovation initiatives, which includes: <ul style="list-style-type: none"> <li>- funding provided by the Australian Research Council for projects to develop management plans to conserve the genetic diversity of Australian plant populations and to establish a robotic facility for generating archival quality DNA;</li> <li>- funding provided under the Cooperative Research Centre (CRC) Program supports research and development into GR<sup>25</sup>.</li> <li>- Research conducted by the Commonwealth Scientific and Industrial Research Organisation (CSIRO).</li> </ul> </li> </ul>
CDA		✓	Publicly supported research in the sustainable use of GR is carried out by the Research Branch of the federal department of Agriculture and Agri-Food of Canada (AAFC), by several provincial governments and several universities. The AAFC has 19 research enters and a staff of

			600 scientists and research professionals, producing each year scientific publications. For more details in research activities, see complete Survey. Some provinces are also encouraging and investing in R&D on GR.
PRC		✓	<ul style="list-style-type: none"> <li>▪ Some funds are established.</li> </ul>
HKC		✓	<ul style="list-style-type: none"> <li>▪ Providing support for the research on genetic related areas through the provision of Innovation and Technology Fund managed by the Innovation and Technology Commission (<a href="http://www.itc.gov.hk/en/welcome.htm">http://www.itc.gov.hk/en/welcome.htm</a>)</li> <li>▪ Providing support for midstream/downstream research and R&amp;D projects undertaken mainly by universities, industry support organizations, professional bodies and trade and industry associations<sup>26</sup></li> </ul>
INA		✓	<p>The Government has issued various laws which are related to research and development of GR, even though it is not always related to support and encourage R&amp;D of GR, as follows:</p> <ul style="list-style-type: none"> <li>• Law N 29, 2000, regarding Plant Variety Protection;</li> <li>• Law N 18, 2002, regarding National Research and Development System and Implementation of Science and Technology;</li> <li>• Law N 21, 2004, regarding Ratification of Cartagena Protocol on Bio-safety to the CBD;</li> <li>• Government Regulation N 21, 2005, regarding Bio-safety on Genetic Engineering Product.</li> </ul>
JPN		✓	<ul style="list-style-type: none"> <li>▪ National Institute of Technology and Evaluation (NITE) has been conducting joint projects with Asian countries to study microorganisms from taxonomical and ecological standpoints.</li> </ul>
ROK		✓	<ul style="list-style-type: none"> <li>▪ Providing funding for research and by building capability of researchers.</li> </ul>
MEX		✓	<ul style="list-style-type: none"> <li>▪ Supporting the research development on biological and GR, through agencies like CONACYT, UNAM, CINVESTAV.</li> </ul>
NZ		✓	NO ADDITIONAL DETAILS GIVEN
PNG	✓		<ul style="list-style-type: none"> <li>▪ Although no research is encouraged, the existing policy under PINBio enabled Government funding for Public Investments Projects over the last 8 years.</li> </ul>
PE		✓	<ul style="list-style-type: none"> <li>▪ Research activities done by public institutions</li> <li>▪ Funds from government organizations, which finance projects related with bioprospection activities.</li> </ul>
RP		✓	<ul style="list-style-type: none"> <li>• Allowing prospecting of biological and GR, provided that a research agreement, be it commercial or academic, has been entered into with the Philippine government (Executive Order 247).</li> <li>• Initiating or supporting scientific studies on the conservation of biological diversity and allowing bioprospecting (research, collection and utilization of biological and GR) upon execution of an undertaking (Wildlife Resources Conservation and Protection Act).</li> <li>• Encouragement of scientific research on and develop traditional and alternative health care systems that have direct impact on public health care, including products or phytomedicines (herbal medicines) in purified form or natural state, nutraceuticals derived from medicinal plants, and food supplements based on medical plants. These undertakings are only allowed when free and prior informed consent is given by the communities living where the resources are found (Traditional and Alternative Medicine Act, 1997).</li> </ul>
SIN		✓	<ul style="list-style-type: none"> <li>• Singapore encourages research on its biodiversity as it has an interest in documenting as much of Singapore's biodiversity as possible.</li> <li>• Singapore encourages R &amp; D in all areas of benefit to Singapore, including areas related to genetic resources.</li> </ul>
CT		✓	<ul style="list-style-type: none"> <li>• The Council of Agriculture supports projects to collect, preserve and survey wild fauna and flora origins, as well as in the establishment of genetic databases.</li> <li>• Establishment of databases for crops (rice, fruits, vegetables,</li> </ul>

			flowers, aquatic organisms, farm animals). <ul style="list-style-type: none"> <li>• Support of research studies in the preservation and reproduction of fauna and flora.</li> </ul>
THA		✓	<ul style="list-style-type: none"> <li>• Science relates agencies provide funding research and development projects.</li> </ul>
US		✓	<ul style="list-style-type: none"> <li>• Promoting R&amp;D through the patent and plant variety protection system.</li> <li>• Promoting R&amp;D into new products.</li> </ul>
VN		✓	<ul style="list-style-type: none"> <li>• According to the Draft, the State has the responsibility to preserve and maintain genetic samples of preserved species for a long time to support research, multiplication, application and development of natural GR.</li> <li>• The State encourages organizations and individuals to invest in preserving and maintaining those samples to develop GR for biodiversity preservation and socioeconomic development;</li> <li>• Encourage the assessment of GR and information supply to establish databases on GR.</li> </ul>

## 2.4 CONVENTION ON BIOLOGICAL DIVERSITY:

The CBD entered into force in 1993 and established, in its article 1, three objectives: (1) the conservation of biological diversity; (2) the sustainable use of its components; and, (3) the fair and equitable sharing of the benefits arising out of the utilization of GR.

To seek the accomplishment of the third objective certain provisions are established in article 15<sup>27</sup> of the CBD, through the recognition of sovereign rights of each party over their natural resources and by settling that each authority, within each national government, is the one to determine access to their GR, through mutually agreed terms and subject to PIC of the provider of the resources. Furthermore, article 8j)<sup>28</sup> include provisions regarding the respect, preservation and maintenance of indigenous knowledge, and encouragement of equitable sharing of the benefits arising from the utilization of TK.

During the sixth COP, a set of guidelines developed by the Ad Hoc Open-ended Working Group on Access and Benefit-sharing was adopted. These guidelines, known as the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization* are intended to guide the parties during the developing of policies for the implementation of CBD provisions.

Therefore, since the entry into force of the CBD and the adoption of Bonn Guidelines, CDB parties have been working to incorporate in their national regulations the provisions of CBD. Furthermore the Working Group on Access and Benefit-sharing continues moving forward negotiations in order to reach the adoption of the international regime by 2010.

Question 18 of the Survey, summarized in Table 13, shows the parties to CBD within economy members and gives details about the way in which these economies are implementing articles 8j) and 15 of CBD.

**TABLE 13**  
**PARTIES TO CBD AND IMPLEMENTATION OF ARTICLES 8j) AND 15 OF**  
**CBD**  
**(QUESTION 18)**

ECONOMY	a) No	b) Yes	IMPLEMENTATION OF ARTICLES 8j) AND 15 OF CBD
AUS		✓	<p><b>Article 8j:</b> Through several government programs<sup>29</sup> that support indigenous peoples to undertake land and sea management on their own country, and preserve, protect and maintain cultural and heritage sites/records.</p> <p><b>Article 15:</b> Refer to Australia's answer to Question 5 (mostly related to the implementation of Bonn Guidelines, through the development of the National Consistent Approach)</p>
CDA		✓	<p><b>Article 8j:</b></p> <ul style="list-style-type: none"> <li>▪ Assessing the number, impact and investment being made into programs and projects consistent to article 8j), as well as the manner in which indigenous peoples participate and/or lead in their implementation.</li> <li>▪ Ongoing discussions and negotiations with indigenous organizations, bands and councils form a key part of any mechanism for implementing activities that directly impacts upon indigenous peoples and their traditions.</li> <li>▪ Participation in working groups or fora (8j working group within CBD, WIPO IGC) where, among other things, is assessing the benefits and limits of existing intellectual property laws for the protection of TK.</li> </ul> <p><b>Article 15:</b> Although there is no access and benefit sharing legislation in Canada, policy development is currently in progress and provinces and relevant government departments are working on identifying its elements. A number of consultations and workshops have been held with diverse stakeholders (science, agriculture and forestry sectors), a policy scoping paper has been published and guiding principles have been endorsed by provincial and federal ministers to be used as a basis for policy development. A national focal point on access and benefit-sharing and a website (<a href="http://www.ec.gc.ca/apa-abs">www.ec.gc.ca/apa-abs</a>) has been created in order to raise public awareness on ABS and the domestic policy development process.</p>
PRC		✓	Still in discussion.
HKC	✓		---
INA		✓	In progress.
JPN		✓	<p>The Ministry of Economy, Trade and Industry (METI), a competent national authority, has been implementing CBD and the Bonn Guidelines. These guidelines have been translated into Japanese, and disseminated by organizing public seminars in major cities in Japan, in which users of GR emphasized a need for more user-specific and user-friendly guidelines to cope with their practical needs, since the Bonn Guidelines seemed too general to them. Based on these observations, METI and Japan Bioindustry Association (JBA) decided to develop such guidelines for the Japanese users on the basis of the Bonn Guidelines. The Guidelines on Access to Genetic Resources for Users in Japan were completed in April 2005, and METI and JBA also started their dissemination by public seminars.</p> <p>In addition, JBA established a specific website in Japanese for disseminating information on ABS-related policy, laws and regulation</p>

			of different countries to users of GR in Japan.
ROK		✓	<ul style="list-style-type: none"> <li>▪ Korea complies with the Bonn Guidelines and Articles 8j and 15 of the CBD.</li> </ul>
MEX		✓	<p><b>Article 8j:</b> Progresses and advances have been made in the:</p> <ul style="list-style-type: none"> <li>▪ Recognition and importance of TK and technologies of indigenous people that live in protected natural areas and in the preservation of biodiversity. (Achievements: better use of germplasm, conservation and use of associated knowledge).</li> <li>▪ Rescue of information regarding the use of cultivated genetic diversity (e.g., native cultures, cultures of economic importance); there are databases with information regarding genetic material.</li> <li>▪ Recognition of the value of the conservation of germplasm and TK<sup>30</sup>.</li> <li>▪ It contributes to the progress in implementing the strategies and action plans on biodiversity. On the other hand, there has been limited progress in regard to the knowledge on conservation and use of germplasm.</li> <li>▪ Although there is progress, it is necessary to carry out more work, especially at the community and regional level. Some difficulties have been identified (lack of dissemination of the CBD among communities and operational staff of the institutions; lack of coordination and support between involved agencies; lack of financial resources, material and human resources, as well as researchers interested in these issues).</li> </ul> <p><b>Article 15<sup>31</sup>:</b> Openness of international process to negotiate a regime on access to GR and benefit-sharing is a major step towards the effective implementation of the CBD.</p> <ul style="list-style-type: none"> <li>▪ A Legal framework ("Federal Law on Access and Management of Genetic Resources") which contains provisions to ensure access to GR and benefit-sharing in accordance with article 15 of CBD is being developed.</li> <li>▪ The NOM-126-ECOL-2000 provides specifications for carrying out scientific collection of biological material of plants and animals, wildlife and other biological resources. It has national implementation and does not apply to commercial collection or germplasm forest research.</li> <li>▪ Development of National Strategic Program on Biosafety, which includes guidelines and action proposals to protect biodiversity and access to biological material and benefit sharing</li> </ul>
NZ		✓	<p><b>Article 8j:</b> The Intellectual Property Policy Group in the Ministry of Economic Development is working on a three stage work program to examine the interface between IPR systems and TK. These stages are:</p> <ul style="list-style-type: none"> <li>▪ Capacity building, engagement and information sharing (currently, this is the stage that is been working);</li> <li>▪ Problem definition surrounding the relation between IP and TK; and,</li> <li>▪ Development of options, and consultations.</li> </ul> <p><b>Article 15:</b> Development of bioprospection policy by the Fuels and Crown Resources Group of the Ministry of Economic Development. In 2007 an initial round of consultation took place and this is to be followed in 2008 by a stocktake of bioprospecting activities and the establishment of working groups to consider issues identified as a priority during the consultation process.</p>
PNG		✓	NOT ANSWERED
			Through the development and implementation of national legislation, as:

PE		✓	<ul style="list-style-type: none"> <li>▪ Law 27811, for the protection of TK<sup>32</sup></li> <li>▪ Law 26839, Law for the Conservation and Sustainable Use of Biological Diversity</li> </ul> <p>Although, Decision 391 (Common Regimen for the access to GR) needs a national regulation, still in progress, the National Institute of Natural Resources is applying directly the provisions contained in Decision 391 and has already issued one access contract.</p>
RP		✓	<p>Through the implementation of several legislation in connection with protection of TK, the rights of indigenous peoples and bioprospecting. The most important are:</p> <ul style="list-style-type: none"> <li>▪ Executive Order 247, which states that the Inter-Agency Committee on Biological and Genetic Resources (IACBGR) is mandated to ensure protection of the rights of indigenous and local communities where the collection or researchers are being conducted.</li> <li>▪ Republic Act 8371 (Indigenous Peoples Rights Act),</li> <li>▪ Republic Act 8423 (Traditional and Alternative Medicine Act),</li> <li>▪ Republic Act 9147 (Wildlife Resources Conservation Act).</li> </ul>
SIN		✓	See answer to Question 5, related to regulations for the granting of permits from the National Parks Board of Singapore.
CT	✓		<p>Pursuant to Indigenous Peoples Basic Act, a number of related laws and regulations have been formulated to protect TK and natural resources of indigenous peoples, as.</p> <ul style="list-style-type: none"> <li>▪ Regulations for Collective Management of Regional Resources of Indigenous Peoples, which establishes the requirement of prior consent from the indigenous group for any use of regional natural resources, and further requires that such use must be managed jointly with the group of the said region;</li> <li>▪ Draft of Indigenous Biological Diversity Traditional Knowledge Protection Act (For complete information see answer to Question 12)</li> </ul>
THA		✓	In progress
US	✓		NOT ANSWERED
VN		✓	The license policy for utilizing GR and benefits-sharing arrangement shown in the Draft Law on Biodiversity is in conformity with Articles 8j and 15 of CBD, as a result, the State is the owner of National Genetic Resources and specific organizations and individuals are assigned to their management. Management agencies of Natural Resources and Environment have to coordinate with local authorities to manage accessing, utilizing and developing GR.

From the answers to question 18, it can be noticed that 14 economy members are parties to CBD (Australia; Canada; China; Indonesia; Japan; Korea, Mexico, New Zealand; Papua New Guinea; Peru; Philippines; Singapore; Thailand and Viet Nam) and three economies have reported not been parties to CBD (Hong Kong, China; Chinese Taipei and United States). Additionally, and from the information obtained from CBD's official website<sup>33</sup>, other APEC economy members that did not submit the Survey (Brunei Darussalam; Chile; Malaysia and Russia) are also parties to CBD.

All economy members, which are parties to CBD, are implementing their CBD obligations through various means. Examples include but are not limited to the following: the development of national legislation on protection of TK; national legislation on the conservation and sustainable use of biodiversity, national

regimes for bioprospection; national regimes for indigenous rights; the dissemination of CBD provisions within different target groups (users of GR, indigenous peoples, etc.); and the development of government programs, projects and policies focused to support preservation of TK and/or conservation of biodiversity, among others.

**TABLE 14**  
**OTHER FRAMEWORKS THAT SUPPORT DEVELOPMENT OF PUBLIC**  
**POLICIES AND/OR SPECIFIC NORMS INTENDED TO REGULATE ACCESS**  
**TO GR OR PROTECT TK**  
**(QUESTION 19)**

ECONOMY	a)	b)	c)	DETAILS ABOUT THE MOST RELEVANT ISSUES OF THESE FRAMEWORKS
AUS			✓	<ul style="list-style-type: none"> <li>▪ Refer to Australia's answer to Question 5, which details Australia's Nationally Consistent Approach for Access to and Utilization of Australia's Native Genetic and Biochemical Resources (NCA) and to Answer to Question 12 for protection of TK.</li> <li>▪ The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is the Australian Government's key piece of environmental legislation, which recognizes the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity, and creates an Indigenous Advisory Committee (IAC) that advises the Minister for the Environment, Heritage and the Arts on the operation of the Act, taking into account the significance of Indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity.</li> <li>▪ Indigenous protocol guides which provide information and advice on respecting Indigenous cultural heritage. These protocols have been developed by the Australian Government, through the Australia Council and cover the protocols surrounding the development of new media, performances, music, visual arts and literature which rely on Indigenous traditional cultural expressions.</li> </ul> <p>The Australian Government utilizes a whole-of-government framework in which to engage with and support Indigenous affairs within the economy; this overarching framework provides for the development of public policies which support the protection of TK. Various Australian Government programs advocate for the respect for ownership of stories, cultural techniques and forms of protection against unauthorized use.</p>
CDA			✓	<ul style="list-style-type: none"> <li>▪ Creation of Interdepartmental Committee on Access and Benefit Sharing (ICABS) which is composed of all the departments of the federal governments that have a role in ABS policy development.</li> <li>▪ Federal/Provincial/Territorial Working Group on ABS composed of representatives of the interested federal departments and of representatives of all the provinces and territories, in order to foster communication and collaboration amongst federal, provincial and territorial governments in support of a domestic policy dialogue on ABS of GR.</li> </ul>
PRC			✓	Discussion on legislation in the field of GR management.
				<ul style="list-style-type: none"> <li>▪ Legal framework that protects plant varieties, by which the owner of the plant variety or plant breeders can apply for the proprietary right over cultivated plant varieties that they have bred or</li> </ul>

HKC			✓	discovered and developed under Plant Varieties Protection Ordinance. The grantee shall have the exclusive rights to produce, sell or offer, import or export the reproductive material of the protected plant for commercial purpose or to license anyone to perform the above activities. The Director of Agriculture, Fisheries and Conservation shall be the Registrar of Plant Variety Rights. The Register of the Plant Variety Rights shall be kept by the Registrar and is open for public inspection.
INA			✓	<ul style="list-style-type: none"> <li>▪ Draft law of Protection and Utilization of Genetic Resources, which is based on Article 8j of CBD and Bonn Guidelines. This law also attempts to protect TK related to utilization of GR. The process of the preparation started in 2003, but it has not been finalized because it Indonesia is considering to merge this law with the Access and Benefit Sharing Regime which is still in the process of negotiation internationally.</li> <li>▪ National Working Group on Genetic Resources, Traditional Knowledge, and Folklore by the Decree of Minister of Justice and Human Rights, 2005. One of the tasks of the working group is to give ideas, suggestions and any other consideration regarding regulation of access to GR or protection of TK.</li> </ul>
JPN	✓			-----
ROK		✓		-----
MEX			✓	The NOM-126-ECOL-2000 provides specifications for carrying out scientific collection of biological material of plants and animals, wildlife and other biological resources. It has national implementation and does not apply to commercial collection or germplasm forest research.
NZ	✓			-----
PNG	✓			-----
PE			✓	<ul style="list-style-type: none"> <li>▪ Document IP/C/W/447, 2005 states that it results of the utmost importance the revision of TRIPS Agreement and its examination of its relationship with CBD, addressing the issue of incorporating the requirement of legal provenance and disclosure of origin under the exclusions from patentability and under the conditions required for patent applications (Articles 27 and 29, respectively). Peru has consistently maintained its position regarding disclosure of origin and legal provenance at different fora (CBD, WTO, WIPO).</li> <li>▪ National Biodiversity Strategy</li> <li>▪ General Environmental Law</li> <li>▪ Decision 523 that approves the Regional Biodiversity Strategy for the members of Andean Community.</li> </ul>
RP			✓	The 1987 Philippine Constitution specifically provides that <i>"The State shall recognize, respect and protect the right of indigenous cultural communities to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national plans and policies"</i> . This is a constitutional mandate and therefore, obligatory.
SIN	✓			-----
CT			✓	<ul style="list-style-type: none"> <li>▪ Chinese Taipei, through the working of the inter-agency Coordination Taskforce for IP Enforcement, provides guidance for protection of cultural relics and TK IPR.</li> <li>▪ Copyright Act also provides protection to performances, including performance in the form of folklore expression. Therefore, performance of folklore expression can be protected independently by the Copyright Act.</li> </ul>



THA			✓	The cabinet has approved the policy, measure and action plan on sustainable preservation and utilization of biodiversity for 2008-2112.
US				NOT ANSWERED
VN			✓	<ul style="list-style-type: none"> <li>▪ According to the Draft Law on Biodiversity, besides State management system working on Biodiversity State management, others State management agencies on landing, forest, aquatic products, water resources, and tourism have responsibility to take the State management in their own fields to ensure sustainable development and preservation for Natural Genetic Resources.</li> <li>▪ Criminal Code 1999 defines infringement acts for violating regulations of natural resources preservations zones, those of valuable wild animals, infringements acts of widespreading dangerous diseases for human-being, animals and plants and destroying aquatic product resources, deforestation, air pollution, water and landing contamination.</li> </ul>

- \*  
(a) No  
(b) Unknown information  
(c) Yes

## 2.5 PARTICIPATION IN FORA, AGREEMENTS AND CONVENTIONS:

**TABLE 15  
PARTICIPATION IN INTERNATIONAL FORA  
(QUESTION 20)**

ECONOMY	a) No	b) WIPO committee	c) CBD	d) WTO	e) Yes, other fora
AUS		✓ IGC	✓ <ul style="list-style-type: none"> <li>▪ Ad Hoc Open-ended Working Group on Access and Benefit Sharing;</li> <li>▪ Ad Hoc Open-ended Working Group on Article 8(j) and related provisions</li> </ul>	✓ TRIPS council	✓ FAO
CDA		✓ IGC	✓ Ad Hoc Open-ended Working Group on Access and Benefit Sharing	✓ TRIPS council (dialogue on GR and TK)	✓ <ul style="list-style-type: none"> <li>▪ G8 Heiligendam Process;</li> <li>▪ WHO (meeting of Influenza virus-sharing and benefit-sharing);</li> <li>▪ OECD</li> </ul>
PRC		✓	✓	✓	

HKC		✓		✓	
INA		✓ IGC	<ul style="list-style-type: none"> <li>▪ COP</li> <li>▪ Other related for a</li> </ul>	✓ TRIPS council (discussions regarding the relationship between TRIPs and CBD)	✓ Asian African Conference on Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources, June, 2007, West Java, Indonesia.
ROK		✓ IGC	✓ Ad Hoc Open-ended Working Group on Access and Benefit Sharing	✓ TRIPS council	
JPN		✓ IGC	<ul style="list-style-type: none"> <li>▪ Ad Hoc Open-ended Working Group on ABS;</li> <li>▪ CBD/COP</li> </ul>	✓ TRIPS council	
MEX		✓ IGC	<ul style="list-style-type: none"> <li>▪ CBD/COP</li> <li>▪ Group of ABS</li> <li>▪ Group of article 8j and related provisions</li> </ul>	✓ TRIPS Council	UPOV Council Meetings Mexico is part of the International Union for the Protection of New Varieties of Plants (UPOV) and has signed and ratified Act of 1971 and 1978, and UNESCO Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage.
NZ		✓ IGC	<ul style="list-style-type: none"> <li>▪ COP</li> <li>▪ Group of article 8j</li> </ul>	✓ TRIPS Council	✓ APEC IPEG meetings
PNG		✓ IGC	✓ Committee on Article 8(j) and 15	✓ TRIPS Agreement	✓ Other UN fora
PE		✓ IGC	<ul style="list-style-type: none"> <li>▪ National expert group is preparing a proposal for the International Regime on ABS</li> <li>▪ Also, Peru</li> </ul>	✓ TRIPS council	

			participates on groups debating TK issues		
RP		<ul style="list-style-type: none"> <li>▪ IGC ✓</li> <li>▪ SCP</li> </ul>	✓	✓	
SIN		<ul style="list-style-type: none"> <li>▪ IGC ✓</li> <li>▪ PCT</li> <li>▪ SCP</li> </ul>	Working group on ABS	Trips council	UPOV council (adopted the document "Access to Genetic Resources and Benefit Sharing" in 2003)
CT				✓	Various international cultural heritage organizations <sup>34</sup>
THA		<ul style="list-style-type: none"> <li>▪ WIPO Assembly ✓</li> <li>▪ IGC</li> </ul>	CBD meetings	Trips council	
US		<ul style="list-style-type: none"> <li>▪ IGC ✓</li> </ul>		✓	UNESCO (Convention on Intangible Cultural Heritage and the Convention On The Diversity Of Cultural Expressions)
VN		WIPO Committee meetings on TK ✓	CBD meetings as a full-member	WTO meetings as a full-member	APEC workshops and seminars on TK ✓

Some additional information given by member economies is detailed next:

**Canada:** Canada is active in discussions at the WIPO - IGC on the intellectual property-related aspects of genetic resources, traditional knowledge and traditional cultural expressions. At the Convention on Biological Diversity Ad hoc Open-ended Working Group on Access and benefit-sharing and at the Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions, Canada is taking part in discussions respectively on the access and benefit-sharing aspects of genetic resources and associated traditional knowledge, and protection of traditional knowledge. Canada also participates in the dialogue on Genetic Resources and Traditional Knowledge at the World Trade Organization (WTO) Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs), where these issues are under discussions.

Canada ratified the legally-binding *International Treaty on Plant Genetic Resources for Food and Agriculture* in 2002, which covers all crop genetic resources for food and agriculture.

Canada is also engaged in discussions related to access to marine genetic resources in various fora<sup>35</sup>.

Canada also takes part in discussions related to access to GR, protection of TK and/or fair benefit-sharing in other international forums, including: the G8 Heiligendamm Process; the World Health Organization (WHO) meeting of Influenza virus-sharing and benefit-sharing; and the Organization for Economic Cooperation and Development (OECD).

**Indonesia:** Indonesia actively participates in WIPO Intergovernmental Committee of Genetic Resources, Traditional Knowledge and Folklore since first IGC meeting. The Indonesian position is in general in line with other developing countries. However, Indonesia still needs to carefully considerate all proposals related to this matter.

**Mexico:** Mexico participates in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO) and in the Conference of the Parties to the Convention on Biological Diversity (Group of access and benefit sharing and Group of article 8j) and related provisions). In such meetings participation of indigenous representatives has been promoted as part of the Mexican delegation. Furthermore, Mexico participates in the Council of trips TRIPS in the World Trade Organization. Mexico also participates in other fora like the Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage.

**Peru:** In the past years Peru has been actively involved in the debate of GR and TK, through participation in several fora, as follows:

- **WIPO:** Peru has had a regular participation in WIPO IGC, especially by submitting several papers on these issues or related issues (*“Experience of Peru in protecting traditional knowledge”*, *“Potencial cases of Biopiracy”*). Peru has been proposing, along with other megadiverse countries, the development and establishment of an International Regime for the Sui Generis Protection of TK. However, direct participation of indigenous communities in this forum is not often, due mainly to lack of economic and financial resources.
- **CBD:** COP / ABS Working Group / Article 8j) Working Group. Although Peru does not have a permanent delegation to represent its interests in CBD working groups, it is usual a delegation of one or two official delegates.
- **WTO:** Peru, along with other megadiverse countries, had been proposing the disclosure of origin requirement within patent applications. In order to avoid GR and TK misappropriation, such requirement would have to be mandatory and would enable to identify their origin and/or source and to prove compliance with ABS legislation. Peru has proposed, with other megadiverse countries, the incorporation of the disclosure requirement<sup>36</sup>.

**Philippines:** Philippines is a member of WIPO, CBD and WTO bodies that discuss issues related to GR, TK and folklore. Regularly send delegates to attend and participate in its meetings.

In WIPO, the Intellectual Property Office of the Philippines had consistently participated in IGC and SCP meetings, where outstanding proposals for the protection of TK and GR, including disclosures of origin of biological resources in patent applications are been discussed.

In CBD, the participation has been through the Department of Environment and Natural Resources (DENR) and/or the Department of Agriculture (DA).

In WTO, the participation has been through Permanent Mission of the Philippines to the WTO which consistently represents the Philippines in meetings that discuss GR and TK issues. The Intellectual Property Office provide this Mission with guidance on policy matters that involve IPR relating to GR and TK.

**Thailand:** Thailand regularly participates at WIPO Assembly and IGC on TKGRF, CBD meetings and TRIPS Council. Thailand also supports the inclusion of CBD's provision in TRIPS Agreement.

As it can be noticed all economy members participate in diverse fora where protection of TK and access to GR are being debated and discussed. Mostly, participation is foreseen at WIPO, CBD and WTO fora; however, some economies report active participation at FAO, UNESCO, UPOV, etc.

**TABLE 16**

**ADOPTION OF MEASURES OR COMMITMENTS ASSUMED  
RELATED TO ACCESS TO GR AND PROTECTION OF TK AS PART  
OF BILATERAL ECONOMIC AGREEMENTS  
(QUESTION 21)**

<b>ECONOMY</b>	<b>a) No</b>	<b>b) Yes, some measures have been adopted</b>	<b>c) Yes, some commitments have been assumed</b>
AUS	✓	---	---
CDA	✓	---	---
PRC	✓	---	---
HKC	✓	---	---
INA	✓	---	---
JPN	✓	No concrete measures or commitments have been adopted. However, regarding GR and TK, the functions of the Sub-Committees on Intellectual Property established in accordance with the Japan-Thailand EPA and the Japan-Indonesia EPA include discussing or exchanging views on TK and GR.	
ROK		✓	
MEX	✓	---	---
NZ		---	✓ The Intellectual Property Chapter of Free Trade Agreements negotiated by New Zealand contain provisions allowing the parties to the agreement to establish measures, consistent with their international obligations, to protect GR and TK
PNG	✓	---	---
PE	✓	---	---

RP	✓	---	---
SIN			<p style="text-align: center;">✓</p> <p>Article 10.3.3 of the Trans Pacific Special Economic Partnership Agreement (involving Brunnei, Chile, Singapore and New Zealand) states “<i>Subject to each Party’s international obligations the Parties affirm that they may ... (d) establish appropriate measures to protect traditional knowledge</i>”</p>
CT			<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> <li>▪ FTA with the Republic of Panama</li> <li>▪ FTA with the Republic of Nicaragua</li> <li>▪ FTA with the Republic of Guatemala.</li> </ul> <p>In these agreements are provisions related to the protection of TK, the protection of folklore and the relation between access to GR and intellectual property.</p>
THA	✓		
US		✓	
VN	✓		

From the answers to question 21, it can be noticed that with the exception of five economies (Japan; New Zealand; Singapore; Chinese Taipei; and United States), the rest of economies do not report having adopted any bilateral agreement where measures or commitments relating the protection of TK or the access to GR had been included.

## 2.6 GENDER:

**TABLE 17**  
**ROLE OF INDIGENOUS WOMEN WITHIN THE DYNAMIC OF USE**  
**AND PRESERVATION OF TK**  
**(QUESTION 22)**

ECONOMY	a)	b)	c)	d)	e)	f)	g)
AUS					✓		
CDA					✓		
PRC	NOT ANSWERED						
HKC	NOT APPLICABLE						
	Applying the definition of “indigenous peoples” given under footnote 2 of this Survey, Hong Kong does not have a population of indigenous women in the community.						
INA							✓
JPN	NOT ANSWERED						
ROK							✓
MEX					✓		
NZ					✓		
PNG				✓	✓	✓	

PE	✓	✓	✓	✓			
RP						✓	
SIN							✓
CT						✓	
THA							✓
US					✓		
VN						✓	

- \* (a) Preservation  
(b) Application  
(c) Dissemination  
(d) Another labor  
(e) It depends. Can not be generalized.  
(f) Multiple labors  
(g) Unknown information

Question 22 of the Survey, pretends to explore what is the role of indigenous women within the dynamic of use and preservation of TK. Since, most of the economies answered this question indicating that it depended and, though, it can not be generalized (six economies); that the information was unknown (four economies); or, that indigenous women were in charge of multiple labors, no substantive information can be extracted from these answers.

#### IV CONCLUSIONS

The results obtained from the 17 economy members that did complete the Survey and submitted their answers show that:

- a) The importance of TK is recognized within economy members and there is concern for its loss. Most economies provide for the preservation of TK and are developing preservation strategies. These activities include the creation of museums and heritage centers, the preservation of indigenous languages (archives, school lessons, dictionaries, etc.), the promotion of national, local or regional performances of traditions, myths or songs, conservation of biological resources with traditional knowledge involved, agreements within indigenous communities in order not to give some information related to TK, the establishment of registers of TK, among others.
- b) Traditional knowledge is protected by almost all economy members either by using existing IP systems or by the implementation of *sui generis* regimes. Existing IP mechanisms (copyrights, patents, trademarks, trade secrets, etc.) are used by those economies that had not developed *sui generis* systems, provided that the creation fulfills the requirements needed. Moreover, some economies protect their TK by documenting it in order to use such documentation as prior art to avoid the granting of patents that do not fulfill patentability criteria, and by applying existent laws to deal with such cases when unauthorized reproduction of indigenous art is reported. Although, these systems have helped to give some sort of protection, some economies have reported problems with the limited protection obtained, arisen, in some cases, in the fact that some aspects are not covered by these regulations. Those economies that have *sui generis* regimes for protection of TK achieve protection in different ways: protection against unauthorized use for TK, provided that TK is not in public domain; recognition of full ownership of indigenous peoples of their cultural and intellectual rights and over plant and GR with TK involved;

protection against commercial use of crafts and indigenous art in a manner that falsely suggests and indigenous origin, among others.

- c) According to the provisions of CBD, PIC is required to grant access permits for the use of TK and GR. Although, CBD establishes that the resource provider must give the PIC, it can be noticed from the answers of the different economy members that the resource provider is in some occasions understood as the indigenous peoples, and in other cases, local or national authorities. In fact, among economy members different groups are in charge of granting this requirement: indigenous peoples (in some cases through the representatives of their organizations), relevant government authority, private owners in case the resources are in private lands.
- d) From the analysis of the Survey regarding access to GR regulations, it can be noticed that there is a wide spectrum of regulations and authorities in charge of access regimes within one economy. As it was mentioned before, in some cases this is due to the fact that some resources fall over the competence of more than one authority. Economy members must take into account these issues in order to avoid overlapping of functions; long and complicated procedures; lack of clarity in the requirements needed and in the procedure itself; and high costs for the applicant.
- e) Most of the economies have databases regarding TK or are in the process of compilation of documentation. These databases are managed by different institutions/organizations: by partnerships with governmental organizations, universities and private enterprises; by different governmental institutions (including IP authorities and Plant Variety Protection authorities); by indigenous communities, among the principal. It can be noticed that the economies do not report the existence of one unique database that gathers information relating TK. On the contrary, information of this nature is disseminated in various databases administered by different organizations/institutions.
- f) The analysis of the Survey shows that economies have adopted differentiated approaches towards the protection of TK and GR. While some economies have developed and implemented sui generis national regulations, others protect TK and GRs using the traditional IP system or by generic cultural preservation laws. Therefore, it would be interesting to continue information sharing between economies with more experience in this issue, with those just beginning to explore these items, and also to examine the effectiveness of TKGR-related legislation in achieving its objectives. The scope of practical outcomes and cooperation on these issues will be constrained until basic concepts have been identified and agreed within WIPO. Moreover, it must be noticed that this report analyzes data from 17 economy members; therefore, there is no data available from four economies that have not completed this Survey.

## VII GLOSSARY

- **ABS:** Access and benefit-sharing
- **AUS:** Australia
- **CBD:** Convention on Biological Diversity
- **CDA:** Canada



- **CITES:** Convention on International Trade in Endangered Species of Wild Flora and Fauna
- **COP:** CBD Conference of the Parties
- **CT:** Chinese Taipei
- **FAO:** Food and Agriculture Organization
- **GR:** Genetic resources
- **HKC:** Hong Kong, China
- **IGC:** WIPO
- **ILO:** International Labor Organization
- **INA:** Indonesia
- **IP:** Intellectual Property
- **IPR:** Intellectual Property Rights
- **ITPGRFA:** FAO International Treaty on Plant Genetic Resources for Food and Agriculture
- **JPN:** Japan
- **MEX:** Mexico
- **NZ:** New Zealand
- **PE:** Peru
- **PIC:** Prior Informed Consent
- **R&D:** Research and development
- **PNG:** Papua New Guinea
- **PRC:** People's Republic of China; China
- **RP:** Philippines
- **ROK:** Korea
- **SIN:** Singapore
- **SCP:** WIPO Standing Committee on Patents
- **TCE:** Traditional Cultural Expressions
- **THA:** Thailand
- **TK:** Traditional Knowledge
- **TRIPS:** Trade-Related Aspects of Intellectual Property Rights
- **UPOV:** International Union for the Protection of New Plant Varieties
- **US:** United States
- **VN:** Viet Nam
- **WIPO:** World Intellectual Property Organization
- **WTO:** World Trade Organization

---

<sup>1</sup> Binding legal agreement adopted by FAO conference on November 2001.

<sup>2</sup> CBD entered into force in 1993 and the ITPGRFA, on June 2004, after the ratification of 40 member states. In 2002, COP 6 of CBD adopted Bonn Guidelines on Access and Benefit Sharing, to help countries to design their access regulations.

<sup>3</sup> The economies that answered the survey were: Australia (AUS); Canada (CDA); Hong Kong, China (HKC); China (PRC); Indonesia (INA); Japan (JPN); Korea (ROK); Mexico (MEX); New Zealand (NZ); Papua New Guinea (PNG); Peru (PE); Philippines (RP); Singapore (SIN); Chinese Taipei (CT); Thailand (THA); United States (US) and Viet Nam (VN).

<sup>4</sup> WIPO (1999) "Intellectual Property Needs and Expectations of traditional knowledge Holders", WIPO. Report on Fact-Finding Missions 1998-1999, WIPO, GENEVA. (Publication number 768E)

<sup>5</sup> Aboriginal languages, knowledge relating medicine and healing procedures, songs, dances, stories, myths, performances, handcraft, textiles designs, etc.

---

<sup>6</sup> The Survey completed by Canada mentions the Arctic Indigenous Languages Symposium, supported by the Department of Canadian Heritage, which will be held in Tromsø, Norway, October 20-21, 2008 and that will bring together circumpolar states and indigenous peoples to share best practices, build networks of common interest, and promote international cooperation in the area of language preservation and promotion.

<sup>7</sup> For additional information regarding examples, refer to Survey completed by Philippines. Question 4

<sup>8</sup> For complete information about the National Commission for Culture and the Arts, see footnote 3 in the answer to Question 4.

<sup>9</sup> Protection Act for the Traditional Intellectual Creations of Indigenous Peoples, Article 3.

<sup>10</sup> United States answer to Question 3 of Survey details knowledge of fishing in New England, shared between generations of fishermen, but also studied by researchers investigating the declining fisheries. Also, farming communities preserve their TK by sharing the information within their community, as well as outside of their community through agricultural fairs and groups, and by documenting the knowledge in a variety of media.

<sup>11</sup> Indigenous Knowledge and its protection in India, in *Trading in Knowledge*. Pag 173

<sup>12</sup> During the last term of 2008, Mexico has started a Consultation process on the Protection Mechanism of the Rights of Traditional Knowledge, Cultural Expressions, and the Natural, Biological and Genetic Resources of the Indigenous Peoples, which aims to know the opinion of indigenous peoples of Mexico on these topics, in order to have key elements for the Mexican position in the international related fora, as well as for the elaboration of a national protection law.

<sup>13</sup> See Survey completed by Australia. Question 11. Case of *Bulun Bulun vs R & T Textiles (1998)*

<sup>14</sup> Australia's answer to Question 12 of the Survey points out the existence of the following programs that support the maintenance and continued development of indigenous culture in communities, and that help to preserve and protect cultural and heritage sites:

- The National Arts and Crafts Industry Support Program
- The Indigenous Culture Support Program
- Indigenous visual arts special initiative
- The Australian Cultural Ministers Council
- Working on Country Program
- The Indigenous Heritage Program
- The Indigenous Protected Areas Program
- Maintenance of Indigenous Languages and Records Programs

For more information of each initiative, refer to Survey completed by Australia, Question 12.

<sup>15</sup> Development of new media, performances, music, visual arts and literature, which rely on indigenous TCE..

<sup>16</sup> Hong Kong, China refers to registered patent involving chinese medicine, publication N° 1102089, 1076751 and 1068279.

<sup>17</sup> For complete information refer to Survey completed by Mexico. Question 11. Case *Arte Seri*.

<sup>18</sup> For complete information refer to Survey completed by Mexico. Question 11. Cases of *Olinala* and *Tequila*.

<sup>19</sup> Article 42, Law 27811.

<sup>20</sup> Ministry of Research and Technology; Ministry of Industry; Agency of the Assessment and application of Technology; Ministry of Agriculture; Ministry of Environment; Ministry of Culture and Tourism; Indonesia Science Institutions; and, some universities.

<sup>21</sup> Article 15 of the CBD.

<sup>22</sup> Canada's response to Question 5 indicates that within the agricultural sector access practices for crop genetic resources are different from access to farm animal GR, to agricultural microbes or to biosystematics specimens, etc. The FAO 's ITPGRFA includes Multilateral System for ABS for crop GR. For farm animals, access is almost exclusively provided by contract. Forestry sector has practices in place for granting access to ex situ forest GR. For examples see complete answer to Question 5.

<sup>23</sup> This Common Regime is applicable in all member states of Andean Community (Bolivia, Colombia, Ecuador and Peru).

<sup>24</sup> United States' answer to question 6, defines a Cooperative Research and Development Agreement as "any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or

---

other resources toward the conduct of specified research or development efforts which are consistent with the mission of the laboratory... "

<sup>25</sup> For example, the Cooperative Research Centers for Beef Genetic Technologies, for Innovative Grain Products and for Molecular Plant Breeding.

<sup>26</sup> The Innovation and Technology Fund (ITF)( <http://www.itf.gov.hk/>) is administered by the Innovation and Technology Commission which aims to increase the added value, productivity and competitiveness to Hong Kong economy, by providing financial support to the establishment of a variety of biotechnology facilities and applied R&D projects that contribute to upgrading in biotechnology industry.

<sup>27</sup> **Article 15: Access to genetic resources**

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.
2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.
3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.
4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.
5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.
6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.
7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

<sup>28</sup> **Article 8:** Each Contracting Party shall, as far as possible and as appropriate:

j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

<sup>29</sup> Working on Country Program, Indigenous Heritage Program, Indigenous Protected Areas Program, Indigenous Culture Support Program and Maintenance of Indigenous Languages and Records Program

<sup>30</sup> In this issue Mexico considers that although some progresses have been reported, much remains to be done on farmer participation in the benefits to be gained by using the preserved germplasm and the generated knowledge.

<sup>31</sup> Mexico's answer to Question 18 points out the serious constraints they have faced in implementing this article. Particularly, by the cross boundary nature of access to GR, their use and exploitation, which generate profits that should be shared with the supplier country. Therefore, Mexico has supported vigorously in international forums, for more specific and binding measures to effectively assist the coordination between countries in monitoring and enforcing national laws on access to GR.

<sup>32</sup> For the implementation of this law, Indecopi, the national authority, has been carrying out workshops to disseminate within indigenous communities the contents of this law and other issues related to protection of TK and access to GR.

<sup>33</sup> <http://www.cbd.int/convention/parties/list/>

<sup>34</sup> Chinese Taipei, reports in its answer to Question 20, been member of the South Pacific Islander Forum, founded in 2008 by the Council of Indigenous Peoples (for the purposes of this forum refer to Survey, Question 20) and through the Headquarters for Administration of Cultural Heritage (HACH) of the Council of Cultural Affairs, of the following organizations:

- ICOMOS: International Council on Monuments and Sites
- ICOM: International Council on Museums
- IIC: International Institute for Conservation of Historic and Artistic Works;
- AAM: American Association of Museums;
- AIC: American Institute for Conservation;
- JSCCP: The Japan Society for the Conservation of Cultural Property
-

---

<sup>35</sup> Canada refers, in answer to Question 20, its participation at the United Nations Ad Hoc Open-ended Informal Working Group, where issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction and by the Antarctic Treaty Consultative Parties are studied.

<sup>36</sup> For more information regarding this issue, Peru refers to document IP/C/W/447, submitted to WTO on 2005.