

Comments by Switzerland on first drafts of the required 'gap analyses' on TK

We thank and commend the Secretariat for the elaboration of the two draft gap analyses regarding traditional knowledge (TK) and traditional cultural expressions (TCEs). In the view of Switzerland, the two documents address in a careful and comprehensive way the issues specified in the relevant decisions of the 12th session of the IGC.

The gap analyses are well structured and provide a very useful overview of the issues that the IGC needs to address in its discussion on the protection of TK and TCEs. We consider Chapter II on definitions to be of great value, as it clearly indicates the need for clarifying terminology and concepts, something Switzerland has been continuously pointing out during the discussions of the IGC.

Chapters III to VI are most helpful, as they provide an overview of what obligations, provisions and possibilities for protection are already in place, where and what gaps exist, and in what manner these gaps could be addressed. We also consider the distinction between IP and other areas of public international law in Chapter III to be a promising approach, as it allows the IGC to focus its work on those areas within its mandate.

In our view, the contents, structure and chapter titles of both gap analyses should be drafted in a parallel manner, to the extent possible. The same applies to the working definitions of relevant terms, such as in particular the definition of "gap" and "protection." This parallelism will simplify the comparison of both gap analyses and the ensuing discussions in the IGC.

Specific comments on and proposals for amendments to the draft gap analysis on TK: *

Both documents state at the outset that there exists no internationally agreed definition of TK and TCEs. As Switzerland stated at previous IGC-meetings, it considers the clarification of the two concepts to be a crucial prerequisite for the further successful work of the IGC. Such definitions need not be final ones; rather, working definitions would be sufficient. In the view of Switzerland, the definitions used in the IGC documents mentioned in the gap analyses and the definitions put forward in the gap analyses provide a good basis for the further work of the IGC on definitions.

As pointed out by Switzerland previously, TK may exist outside of indigenous and local communities. This is, for example, the case for TK found in Switzerland. Thus, in the view of Switzerland, the definition of the concept of TK (see paras. 3, 4 and 41 of the draft gap analysis) should be broad enough to also cover these forms of TK. Accordingly, even though TK of indigenous and local communities is likely to be in foreground, other TK should not be excluded.

In para. 2, we suggest to add a further lemma with the following text: "traditional knowledge relevant to animal breeding and production"; the respective footnote would refer to para. 12 of the Interlaken Declaration on Animal Genetic Resources.

In para. 3, third line, we suggest to add animal genetic resources in the list of more specific concepts ("knowledge relevant to plant or animal genetic resources").

In para. 5, we suggest to amend the wording of the last bullet point as follows: "Agricultural related knowledge that is traditional knowledge relevant to plant and animal genetic resources for food and agriculture"; the respective footnote would refer to Para. 12 of the Interlaken Declaration on Animal Genetic Resources.

In Chapter III(b) (paras. 33 and following), we suggest to add a new subtitle concerning the Interlaken Declaration on Animal Genetic Resources and the following text: Para. 12 of this Declaration "affirm[s] the desirability, as appropriate, subject to national legislation, of respecting, preserving and maintaining traditional knowledge relevant to animal breeding and production as a contribution to sustainable livelihoods[.]"

We furthermore suggest to add a new subtitle concerning the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 2003, and provide brief information on this convention.

In para. 51, we suggest to add an additional bullet point referring to the Interlaken Declaration on Animal Genetic Resources: "The adoption of the Interlaken Declaration on Animal Genetic Resources, which provides for respecting, preserving and maintaining traditional knowledge relevant to animal breeding and production."