

Please provide to following details on the origin of this report

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Date of submission:	29. 12. 2000

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

Methodology for preparation of the detailed thematic report on benefit-sharing

The report is compiled by *Mr. Ken Kalling (M.A.), Director of scientific research, Tartu University History Museum, Ülikooli 18, 50090 Tartu, Estonia*

The following activities were performed:

Review of existing documentation – *Estonian Biodiversity Strategy and Action Plan*. Tallinn-Tartu, 1999.

Riigi Teataja. Tallinn, 1991-2000;

Eesti Rahva Muuseumi Aastaraamat / The Yearbook of the Estonian National Museum. Tartu, 1925-1999 passim.;

Eesti Rahvakultuuri Leksikon, A. Viires (Ed.), Tallinn 1995

Mereleksikon, O. Luhamaa (Ed.), Tallinn 1996.

Meetings with key stakeholders – University of Tartu

Agricultural University

Estonian National Museum

National Heritage Protection Department

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

Intellectual property and traditional knowledge related to genetic resources

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

It must be stated that the topic of biological diversity, when related to traditional or indigenous communities, customary laws, and deriving from them know-how, is irrelevant to modern Estonia. Also the term of “profit sharing”, as understood in the present context, becomes meaningless. (The situation could have been entirely different 10 years ago – Estonia then annexed by the USSR, and the whole Estonia could be viewed in a position of an indigenous nation, facing the problems of imported environmentally hazardous economics – mining, agriculture, industries etc.)

The only “semi-indigenous” (semi-traditional) groups in Estonia could be the so called Setu People in SE Estonia, at the borderlands with Russia and the Old-Believer (*Raskolnik*) Russians at the shores of Lake Peipsi. Also the traditional islanders/coastal dwellers could be added. But – all they represent traditional European agricultural/(fisherman) communities, rather extensive by their economic foundations.

Intellectual knowledge deriving from traditional way of life, related more or less to the issues of biological diversity, does of course exist in Estonia – there is an abundance of landscapes emerging from customary use, there are traditional cattle breeds etc. But again – as we are dealing mainly with an European agricultural community, accepting most of the habits of the Western culture, the customary laws have been ousted by the state laws. In this way the breeding of local cattle breeds is already for a long time period being controlled by scientific institutions, the use of curative mud has become something done at medical institutions, not in fishermen’s saunas etc. In this way the benefit-sharing can not be the issue – there are no legally defined minorities (indigenous people), there are no customary laws conducting the lives of living populations. The local customary laws, if remembered, have turned into traditions, the know-how is either “share-ware” or forgotten.

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

See point (a)

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

See point (a)

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

The groups mentioned in the connection of Estonia were named “semi-indigenous” (semi-traditional) as their legal situation is not really different from other citizens and communities of the country. Just in some cases, the state or local communities, in their legislation, try to take into accordance some of the particular needs of the particular groups. In most cases these needs are cultural, religious or geographical, not related to environmental aspects. As an example one can bring some differences corresponding to border crossing or the yieldings in the minimal number of inhabitants for keeping a school. Yet these cases are far from being connected to customary laws or habits.

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

The legislation regulating National Heritage Protection (1994) does not see folklore and other kind of know-how as a subject to special protection.

(f) How to ensure that granting intellectual property rights does not preclude continued customary use of genetic resources and related knowledge;

See point (a)

Intellectual property rights and access and benefit-sharing agreements

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

The extensive character of the local agrarian/fisherman communities must be stressed to point out that it could be wrong to expect from this direction some particular environmental thinking – quite contrary: the Estonian waters have been fished empty after the Soviets, not permitting the coastal dwellers to use boats and practice seafaring (i.e. inhibiting customary ways of life), have left, and Estonia has become independent.

From the coastal areas comes the only outstanding attempt of present Estonian authorities to rely in their legislation on some customary habits. From the beginning of the 1990ies all the dwellers of Estonian islands – the biggest of which is 2673 sq km and has 38 000 inhabitants, were permitted to run coastal fishery. The results have proven to be rather catastrophic. Recently the privilege was limited (starting from the beginning of 2001) only to people possessing land-properties at the shoreline.

The created environmental surroundings – meadows, alvars etc – are a by-product, not the intention of the traditional dwellers. They are dying out due to economic reasons, not due to some changes in tradition, shift in culture or loss of know-how.

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

The preserving of the biodiversity of Estonia is at the first hand to be organised from the “top” by the state or international organisations, by conducting the local legislation, directing land use, taxation etc, or by direct support for the dwellers ready to continue traditional ways of economies, important for biological diversity.

This attitude is fixed also in the *Estonian Biodiversity Strategy and Action Plan*, touching among others the issues of traditional economies (i.e. pages 83-86 – “Semi-natural areas”, “Breeding of farm animals”).

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

See point (g)

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

See point (g)