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## **THE PROMOTION AND PROTECTION OF AFRICA'S CULTURAL PRODUCTS**

### **ADVOCACY STATEMENT**

THE DEPARTMENT OF TRADE AND INDUSTRY

## **A way of life, part of our everyday life**

Products in which is embedded artistic or literary creations deriving from a culture may be considered to be cultural products. Cultural products consist of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such a community. The knowledge of creating cultural products is usually handed down orally, in writing, or both orally and in writing, and also through practice, imitation and observation. A society's creative expression and artistic forms, as well as its traditional knowledge and practices, often leads to the production of numerous articles and other things such as paintings, sculptures, carvings and textiles. African cultural products are found all over the continent, deriving from the wealth of cultures on the continent and the ingenuity of the people of Africa. However, African cultural products are increasingly being made in other parts of the world without deference to the African originators.

A specific category of African cultural products is African textiles, (fabrics, costumes, garments, and carpets.) A variety of superb African textile art is represented in the glorious Ashanti strip weaving and kente cloth of Ghana; in the beautiful bark cloth created by the Mubuti (Pygmy women) of Congo; in the baule cloth of Ivory Coast; in the hausa textile of Niger; in the khanga pure cotton cloth of East Africa; and in the fascinating kuba raffia cloth embroideries of the Congo. African textiles involve elaborate techniques of production that include the preparation of the fibers, the softening of the cloth, the use of dyes, weaving and stitching. This is a multiple stage process which involves the participation of children, men and women of the same community.

African fabrics represent wealth and culture, and may also distinguish rank. They communicate, with or without, words. They can represent a sophisticated vocabulary of elaborate decorative patterns, such as the embroidered raffia textiles produced by the Kuba which are simultaneously bold and intricate, dramatic and subdued, irregular and ordered, as well as asymmetrical and balanced: in all cases they are fluid, visually engaging and full of surprises. The East African khanga, a rectangle of pure cotton cloth with a border all around it and printed in bold designs and bright colors, is as long as a person's outstretched arm and wide enough to cover from neck to knee, or from waist to

toe. Khangas can be used as tablecloths and decorative wall hangings, and use a variety of African sayings, idioms, proverbs, slogans, expressions, idioms and riddles in Swahili and English.<sup>1</sup>

All too often, third parties exploit these African textile designs without authority, acknowledgement or benefit-sharing, and, in some cases, even obtain intellectual property rights over their 'new' or 'original' designs. One of the claims most frequently heard is that the 'style' of an indigenous design has been misappropriated. There have been complaints as well from some communities that their cultural products and representations are being used without their authority in disrespectful and inappropriate ways, causing cultural offense and harm.

### **Support cultural products, support a way of life**

Cultural products reflect a living culture and evolve despite being based on traditional forms and know-how. Also referred to as traditional cultural expressions or expressions of folklore, cultural products derive from culture - the distinctive material, intellectual, spiritual and emotional features that characterize a society or social group.

As traditional cultural expressions or expressions of folklore, cultural products consist of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such a community. The life styles and traditions of the community are characterized by a common identity and folklore. Folklore is itself the product of the creative ideas of the people who express such creativity through verbal, artistic or material forms, which is in turn transmitted orally, or in written form, or through some other medium, from one generation to the other, belonging to a literate or non-literate society, tribal or non-tribal, rural or urban people. The knowledge of creating cultural products is thus handed down orally, in writing, or both orally and in writing, and also through practice, imitation and observation.

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<sup>1</sup> *Collection of, and Commentary on, 308 Sayings on East African Cloth (Misemo Kwenye Khanga za Afrika Mashariki)*, Collected and edited by Rev. Joseph G. Healey, M.M. Revised 10 July, 2002

Although usually involving low technological activities, some cultural products require great creativity, involving intricate detail and complexity reflecting not only great skill, but originality as well. Some of the cultural products express or convey some form of symbolic meaning, which endows them with a cultural value or significance distinct from whatever commercial value they may possess.

Being products of a living culture, it must be acknowledged that cultural products are different from other products, and deserve different and/or exceptional treatment that sets them apart from the day to day standardized mass consumption.

### **Protect cultural products, promote local economies**

The production, distribution, exhibition and preservation of cultural products can be a source of inspiration and creativity for cultural industries, generating considerable income and employment fuelled by the growing demand for cultural goods and services in an expanding marketplace. Many businesses today, small, medium and large, create wealth using the forms and materials of traditional cultures. Local cooperatives have been formed in some countries to produce and market handmade crafts, textiles that employ traditional designs, audio recordings of traditional music, pharmaceuticals that use indigenous knowledge of healing plants, and entertainment that employs various forms of traditional representations for motion pictures, amusement theme parks and children's toys.<sup>2</sup> Trade in cultural products can contribute to the quality of life in the places they are produced, and can enhance the image and prestige of the local area. Some cultural products can also play an important role in community food security, nutrition and health. Their benefits are relatively more important for poorer households, women and disadvantaged groups.

Sadly, the commercialisation of cultural products has often not benefited the countries of origin, particularly in the fields of music, film, video production, visual arts, crafts and performing arts and dance.<sup>3</sup> And despite their economic potential, most cultural products are hardly researched and rarely feature in national economic statistics. Against this background, an appropriate context within which to view the protection of cultural

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<sup>2</sup> Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions, WIPO/GRTKF/IC/5/3, May 2 2003.

<sup>3</sup> International Network on Cultural Policy (INCP) October 2002, [www.incp-ripc.org](http://www.incp-ripc.org).

products would be; protection against misappropriation, preservation, promotion of creativity and innovation, economic exploitation where desired by the holders on terms agreeable and acceptable to them, and respect for cultural products.

While intellectual property protection could be relevant in the protection of cultural products in certain cases, two main features of intellectual property make it largely inappropriate to protect most cultural products. The first is that while intellectual property confers exclusive, private property rights in individuals, the producers of cultural products are often subject to complex rules, regulations and responsibilities, more akin to usage or management rights, which are communal in nature. The second is that the limited term of protection of intellectual property rights is inappropriate for expressions of folklore and traditional cultures as it fails to meet the need to protect expressions of folklore in perpetuity.

It should be possible to develop a specific system, other than that of intellectual property rights, to define, take notice of and protect cultural products of communities and individuals. The objective of the system would be to sustain and promote cultural products as key to the prosperity, security and participation of communities in the social, economic and cultural life of societies. The system should recognize the special role played in societies by cultural goods and services, and should enable countries to maintain policies that promote these. Such a system would enable and facilitate access to and use of cultural goods as a basis for further creativity and innovation, and commercial uses. The system would place an obligation on a user to acknowledge the source, share equitably in any benefits derived from the use, and to not make derogatory, libelous, defamatory or fallacious uses of the cultural products under any circumstances. The protection of sacred and secret expressions against all forms of use and commercial exploitation would have to be ensured under any such system.

With specific reference to African textiles, it has been seen that the imitation of traditional textile designs causes not only economic prejudice but threatens to destroy traditional textiles and weaving crafts as well. The feasible, appropriate response in the circumstances would be authenticity labels; denoting authenticity and quality and indicating to consumers that the textiles are truly African and are of a particular quality.

## **Everyone has a part to play**

The global community, through a variety of multilateral fora, has recognized the need to protect cultural products. What is clear, however, is that the existing instruments do not address the full range of cultural products related issues that especially African countries would wish to see addressed.

In various international fora, African countries have participated, and continue to do so, in the discussion of the need to protect traditional knowledge, genetic resources, and traditional cultural expressions (folklore), and in that regard, cultural products. Most of the discussions are ongoing, with some far from being finalized. The priority for African countries remains the need to ensure that cultural products are protected against misappropriation and misuse through appropriate and suitable international laws, and that African communities and individuals should be able to derive economic benefit from their cultural products, if they so wish.

As stated in the African Union's Pan-African Cultural Manifesto, in the gigantic effort to recover Africa's cultural heritage and adapt it to the needs of technological civilization, the artist, the thinker, the scientist and the intellectual have all their part to play.

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