



# **IGC 46: Informal Information Session**

Presentation by the Secretariat

February 17, 2023



# Welcome and Introduction

**Ms. Fei Jiao**

**Program Officer, Traditional Knowledge Division**

# PROTECTING AND PROMOTING GENETIC RESOURCES AND INDIGENOUS AND LOCAL COMMUNITY INNOVATION AND CREATIVITY FOR THE GOOD OF EVERYONE



FACILITATION OF  
INTERNATIONAL  
NEGOTIATIONS



POLICY AND LEGISLATIVE  
ASSISTANCE TO  
REGIONAL AND NATIONAL  
AUTHORITIES



ENGAGEMENT  
WITH INDIGENOUS  
PEOPLES  
AND  
LOCAL COMMUNITIES

## 7 SERVICE AREAS OF WIPO'S

### TRADITIONAL KNOWLEDGE DIVISION



GLOBAL REFERENCE ON  
IP AND GRs, TK AND TCEs

COMMUNITY  
ENTERPRISES PROGRAM



DOCUMENTATION  
OF  
TK AND TCEs



IP RIGHTS MANAGEMENT  
IN GENETIC RESOURCES  
AND DATA



SHAPING THE FUTURE OF THE  
GLOBAL IP ECOSYSTEM



REACHING OUT WORLDWIDE  
AND PROVIDING HIGH QUALITY  
KNOWLEDGE



SUPPORTING USE OF IP AS A TOOL FOR  
GROWTH AND SUSTAINABLE  
DEVELOPMENT



# Program

- Practical arrangements for the *ad hoc* expert group and IGC 46
  - Ms. Tana McCauley, Consultant, Traditional Knowledge Division
- Traditional Knowledge/Traditional Cultural Expressions: Issues for IGC 46
  - Ms. Begoña Venero Aguirre, Senior Counsellor, Traditional Knowledge Division
- Discussion



# **Practical Arrangements for IGC 46**

**Ms. Tana McCauley**  
**Consultant, Traditional Knowledge Division**

# 2022

# 2023

“Undertake negotiations on TK and/or TCEs with a focus on addressing unresolved and crosscutting issues and considering options for a draft legal instrument(s)”

**IGC 42**  
GRs  
(Feb. 28 –  
Mar. 4,  
2022)

*Ad hoc*  
**expert group**  
**IGC 43**  
GRs  
(May 29 –  
June 3, 2022)

**IGC 44**  
TK/TCEs  
(Sep. 12 –  
16, 2022)

*Ad hoc*  
**expert group**  
**IGC 45**  
TK/TCEs  
(Dec. 4 – 9,  
2022)

*Ad hoc*  
**expert group**  
**IGC 46**  
TK/TCEs  
(Feb. 26 -  
March 3, 2023)

**IGC 47**  
TK/TCEs  
(June 5 – 9,  
2023)

**IGC Special**  
**Session**  
(Sep. 4 – 8,  
2023)

**Preparatory**  
**Committee**  
(Sep. 11 – 13,  
2023)



# Ad hoc expert group on TK/TCEs

- Objective: to address specific legal, policy or technical issues
- Experts: in their personal capacities
- Co-Chairs:
  - Ms. Edwina Lewis of Australia
  - Mr. Anthony Kakooza of Uganda
- Reporting to IGC 46:
  - The Co-Chairs will report to the IGC plenary at IGC 46 on the outcomes of the *ad hoc* expert group's work.



# IGC 46 Logistics

- Hybrid
- Physical attendance: no limited number per delegation (registration required)
- Virtual attendance: via Zoom (registration required)
- Meeting hours: 10h00-13h00 and 15h00-18h00 (CET)





# IGC Bureau

## IGC Chair

- Ms. Lilyclaire Bellamy of Jamaica

## IGC Vice-Chairs

- Mr. Jukka Liedes of Finland
- Mr. Yonah Seleti of South Africa
- Mr. Felipe Cariño of the Philippines



# Draft Agenda (WIPO/GRTKF/IC/46/1 Prov.2)

1. Opening of the Session
2. Adoption of the Agenda
3. Accreditation of Certain Organizations
4. Participation of Indigenous Peoples and Local Communities
5. Reporting on the *Ad Hoc* Expert Group on Traditional Knowledge and Traditional Cultural Expressions
6. Traditional Knowledge/Traditional Cultural Expressions
7. Any other Business
8. Closing of the Session



# Working Documents under Agenda Item 6


- The Protection of Traditional Knowledge: Draft Articles (WIPO/GRTKF/IC/46/4)
- The Protection of Traditional Cultural Expressions: Draft Articles (WIPO/GRTKF/IC/46/5)
- The Protection of Traditional Knowledge: Updated Draft Gap Analysis (WIPO/GRTKF/IC/46/6)
- The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis (WIPO/GRTKF/IC/46/7)
- Report on the Compilation of Materials on Databases Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/46/8)
- Report on the Compilation of Materials on Disclosure Regimes Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/46/9)
- Legal Principles related to an International Instrument (WIPO/GRTKF/IC/46/10)
- Joint Recommendation on Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/46/11)
- Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources (WIPO/GRTKF/IC/46/12)
- Traditional Cultural Expressions: A Discussion Paper (WIPO/GRTKF/IC/46/13)
- Identifying Examples of Traditional Knowledge to Stimulate a Discussion of what should be Protectable Subject Matter and what is not Intended to be Protected (WIPO/GRTKF/IC/46/14)



# Information Documents under Agenda Item 6

- Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (WIPO/GRTKF/IC/46/INF/7)
- Update of the Technical Review of Key Intellectual Property-Related Issues of the WIPO Draft Instruments on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions within the Framework of Indigenous Human Rights (WIPO/GRTKF/IC/46/INF/8)

# Additional Resources (1)



**WIPO**  
WORLD  
INTELLECTUAL PROPERTY  
ORGANIZATION

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## Global Reference on IP and GRs, TK and TCEs

WIPO provides various information resources on [intellectual property \(IP\)](#) and [genetic resources \(GRs\)](#), [traditional knowledge \(TK\)](#) and [traditional cultural expressions \(TCEs\)](#).

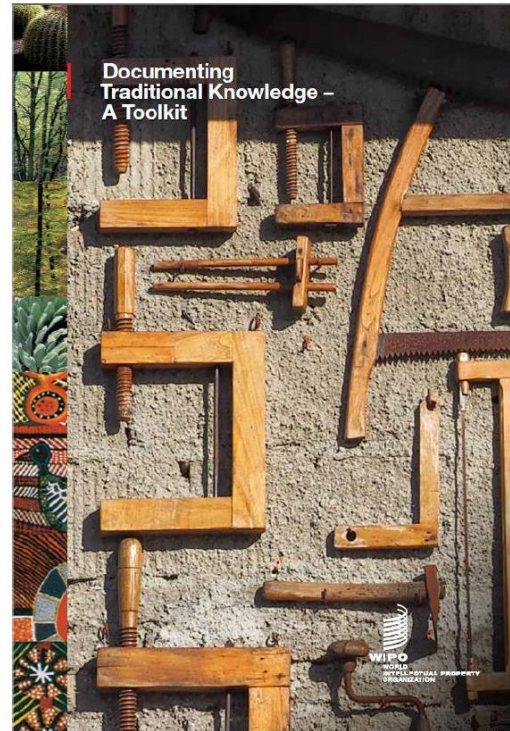


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<h3>Repository of experiences</h3> <ul style="list-style-type: none"><li>• Repository of resources on regional, national, local and community experiences on IP and GRs, TK and TCEs – including survey, case studies, presentations, and more</li></ul>	<h3>Laws, legislative measures and protocols</h3> <ul style="list-style-type: none"><li>• Laws, treaties and regulations relevant to traditional knowledge, traditional cultural expressions and genetic resources</li><li>• Compilation of Information on National and Regional Sui Generis Regimes for the IP Protection of TK and TCEs <a href="#">PDF</a></li><li>• Disclosure requirements table <a href="#">PDF</a></li><li>• Codes, guidelines and practices relating to the recording, digitization and dissemination of TCEs</li></ul>	<h3>Distance learning</h3> <ul style="list-style-type: none"><li>• <a href="#">Advanced Distance Learning Course on IP, TK and TCEs</a></li><li>• <a href="#">Advanced Distance Learning Course on IP in the Life Sciences</a> <a href="#">PDF</a></li></ul>
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[https://www.wipo.int/tk/en/global\\_reference.html](https://www.wipo.int/tk/en/global_reference.html)

# Additional Resources (2)





# Indigenous Participation in IGC 46

## Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, February 26

## Indigenous Panel

- Monday, February 27, around 11h00
- On the findings and recommendations from the Indigenous Expert Workshop
- Panelists:
  - Ms. Patricia Adjei who is Wuthathi, Mabuiag Islander and Ghanaian from Australia
  - Mr. Rodrigo de la Cruz who is Kichwa Kayambi from Ecuador
  - Ms. Lucy Mullenkei who is Maasai from Kenya
  - Ms. Polina Shulbaeva who is Selkup, a Taiga Peoples from the Russian Federation
  - Ms. Jennifer Tauli Corpuz who is Kankana-ey Igorot from the Philippines
  - Mr. Stuart Wuttke who is Garden Hill First Nations from Canada



# To note...

## WIPO Voluntary Fund

- 1 funded participant at IGC 46
- Nominations by Groups for the Advisory Board to please be sent to [grtkf@wipo.int](mailto:grtkf@wipo.int) by 3pm, Monday, February 27, 2023.





# **Traditional Knowledge/Traditional Cultural Expressions: Issues for IGC 46**

**Ms. Begoña Venero Aguirre,  
Senior Counsellor, Traditional Knowledge  
Division**



# Negotiating texts

[https://www.wipo.int/meetings/en/details.jsp?meeting\\_id=75328](https://www.wipo.int/meetings/en/details.jsp?meeting_id=75328)

- The Protection of Traditional Knowledge: Draft Articles
  - WIPO/GRTKF/IC/46/4
- The Protection of Traditional Cultural Expressions: Draft Articles
  - WIPO/GRTKF/IC/46/5



# Key questions in the negotiations on TK and TCEs

- Why protect? *Aims and objectives*
- What to protect? *Subject matter*
- Who should benefit? *Beneficiaries*
- What acts should be forbidden? *Scope*
- Should there be exceptions and limitations?
  
- For how long? *Term of protection*
- How should rights be managed?
- Should there be formalities?
- What sanctions or penalties apply?
- Should rights be retrospective?
- How should foreign right holders be treated?

# TK

- Preamble/introduction
- Art 1: Use of terms
- Art 2: Objectives
- Art 3: Protection criteria/eligibility criteria
- Art 4: Beneficiaries
- Art 5: Scope
- Art 5bis: Database, complementary and defensive protection
- Art 6: Sanctions
- Art 7: Disclosure requirement
- Art 8: Administration
- Art 9: Exceptions and limitations
- Art 10: Term of protection
- Art 11: Formalities
- Art 12: Transitional measures
- Art 13: Relationship with international agreements
- Art 14: Non-derogation
- Art 15: National treatment
- Art 16: Transboundary cooperation
- Art 17: Review

# TCEs

- Preamble/introduction
- Art 1: Use of terms
- Art 2: Objectives
- Art 3: Protection criteria/eligibility criteria
- Art 4: Beneficiaries
- Art 5: Scope
- Art 6: Administration
- Art 7: Exceptions and limitations
- Art 8: Term of protection
- Art 9: Formalities
- Art 10: Sanctions
- Art 11: Transitional measures
- Art 12: Relationship with international agreements
- Art 13: National treatment
- Art 14: Transboundary cooperation
- Art 15: Capacity building and awareness raising
- Art 16: Review



# Objectives

- Fundamental to development of operative text
- Link between objectives and substantive provisions
- Simple, direct and efficient wording
- What kind of harm(s) an IP instrument on TK and TCEs would seek to address? Which gaps ought to be filled?



# Subject matter and criteria of eligibility

- How to define subject matter?
  - First step: Define subject matter that is generally relevant (Use of terms)
  - Second step: Determine exactly which portion of the general subject matter is to be protected through criteria of eligibility



# Beneficiaries

- Who should benefit?
  - IPLCs
  - Should there be other beneficiaries beyond IPLCs?



# Scope of protection

- Seeks to determine
  - Measures to be adopted
  - Rights to be granted
  
- Tiered or differentiated approach:

Different kinds or levels of rights or measures would be available to rights holders depending on the nature and characteristics of the subject matter, the level of control retained by the beneficiaries and its degree of diffusion

- Restricted access + closely held
- Not restricted + not closely held





# Exceptions and limitations

- Should exceptions and limitations be established at an international level?
- Should there be flexibility at the national level to fully regulate exceptions and limitations?
- Should general and specific exceptions be established?
  - General exceptions
    - Test to be applied at the national level when developing limitations and exceptions / could include elements of the “classic” three-step test and moral-right components
  - Specific exceptions
    - Kinds of exceptions that should be allowed



# Term of protection

- Should the term of protection be linked to the continuous fulfillment of criteria of eligibility?
- Distinction between economic rights and moral rights?



# Formalities

- Should there be formalities? Registers or other records?
- Should formalities be a precondition for protection?



# Sanctions, remedies and exercise or rights

- Should Member States put in place/adopt/provide measures to address violations of the rights / infringements / to ensure the application of the instrument?
  - What kind of measures?
  - When should sanctions or remedies be applied?
  - What would be the role of the beneficiaries in this context, if any?
- Would a general framework and leaving the details to national legislation be sufficient?
- TK and TCEs texts contain several different concepts



# Administration of rights

- How and by whom rights and interests should be administered?
- Possibility to establish/designate a competent authority to administer the rights/interests provided for by this instrument
- No agreement on the extent of participation of the beneficiaries: in (close) consultation with / with the explicit consent of / in conjunction with / with the direct involvement and approval of / with the free, prior and informed consent of?
- Should flexibility be left to implement arrangements related to competent authorities at the national level?



# Transitional measures

- Consensus in both texts that the instrument should apply to all TK/TCEs which, at the moment of entry into force, fulfill the criteria of protection
- Drafting not identical
- Different options presented on the question of acquired rights of third parties



# Relationship with international agreements

- Mutually supportive manner?
- Should a non-derogation clause be included? Either separately or in this provision?



# National treatment

- Should foreign beneficiaries be granted the same rights and benefits as national beneficiaries?





# Transboundary cooperation

- How to deal with TK/TCEs shared across national borders?
- Would cooperation, with the involvement of IPLCs be a solution?



# Review

- Should a review be undertaken?
- What should this review cover?
- When would this review be undertaken?



# Discussion