



# **IGC 45: Informal Information Session**

Presentation by the Secretariat

November 25, 2022



# 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



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## Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources

On July 21, 2022, the WIPO General Assembly decided to convene a Diplomatic Conference to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources no later than 2024.

The Diplomatic Conference will be preceded by the Special Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore from September 4 to 8, 2023 and by the Preparatory Committee of the Diplomatic Conference from September 11 to 13, 2023.

- [WIPO General Assembly Decision on the Diplomatic Conference](#) [PDF](#)
- [Chair's Text of a Draft International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources](#) [PDF](#)
- [Consolidated Document Relating to Intellectual Property and Genetic Resources](#) [PDF](#)





# Program

- Practical arrangements for the *ad hoc* expert group and IGC 45
  - Ms. Tana McCauley, Consultant, Traditional Knowledge Division
- Traditional Knowledge/Traditional Cultural Expressions: Issues for IGC 45
  - Ms. Daphné Zografos Johnsson, Senior Legal Officer, Traditional Knowledge Division
- Discussion



# Practical arrangements for the *ad hoc* expert group and IGC 45

**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)

**IGC 46**  
TK/TCEs  
(Feb. 27 –  
Mar. 3, 2023)

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

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

**Preparatory  
Committee of  
the Diplomatic  
Conference**  
(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 45:
  - The Co-Chairs will report to the IGC plenary at IGC 45 on the outcomes of the *ad hoc* expert group's work.





# IGC 45 Logistics

- Hybrid
- Physical attendance: no limited number per delegation (registration required)
- Virtual attendance: via Interpretify (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/45/1 Prov.)

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. Establishment of an *Ad Hoc* Expert Group(s)
8. Any other Business
9. Closing of the Session



# Agenda Item 3 – Update the list of *ad hoc* observers

- 436 NGOs with only 23.1 NGOs attending the IGC sessions in the last 8 sessions
- It is proposed to update the list of *ad hoc* observers
- WIPO/GRTKF/IC/45/2



# Working Documents under Agenda Item 6

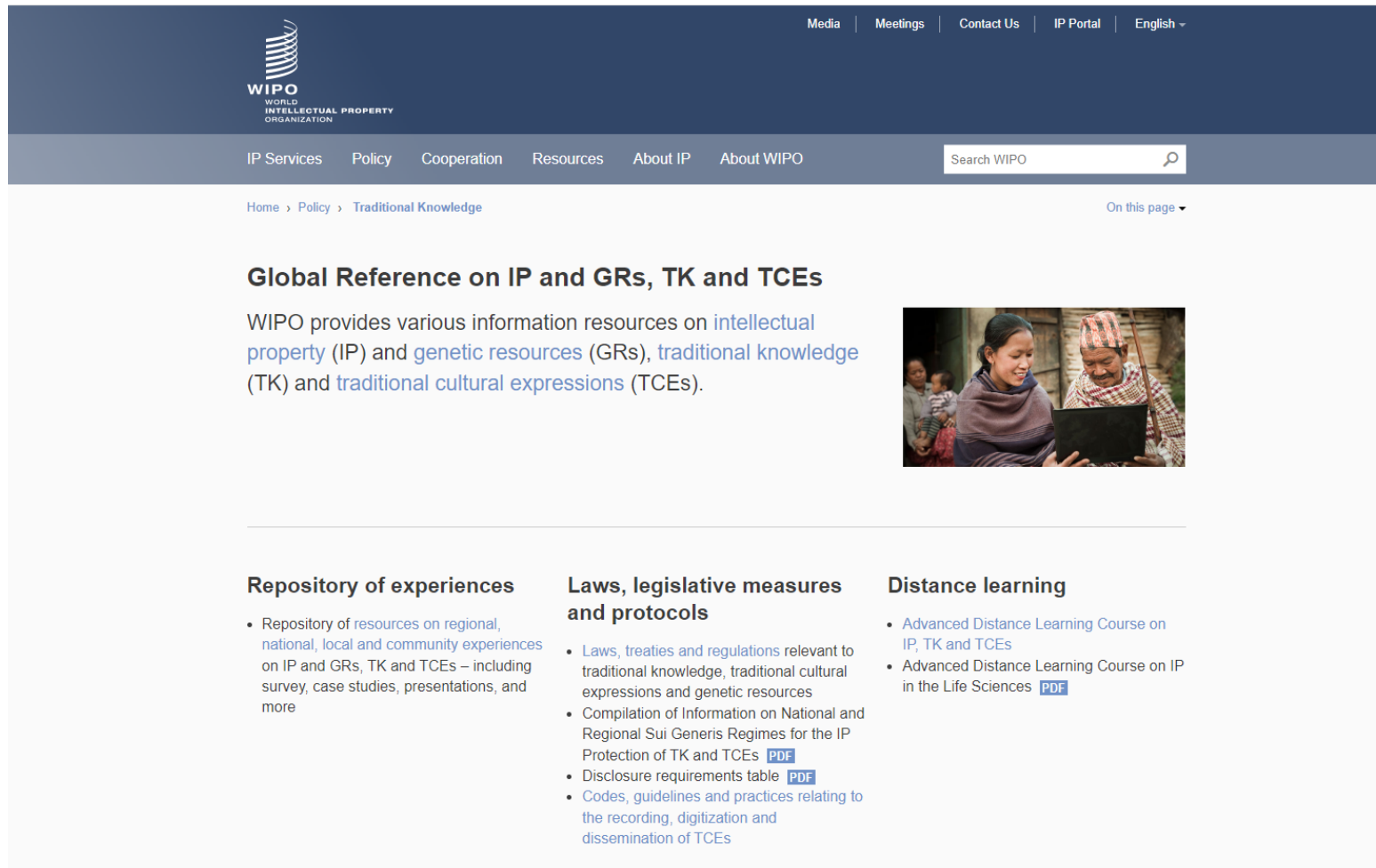
- The Protection of Traditional Knowledge: Draft Articles (WIPO/GRTKF/IC/45/4)
- The Protection of Traditional Cultural Expressions: Draft Articles (WIPO/GRTKF/IC/45/5)
- The Protection of Traditional Knowledge: Updated Draft Gap Analysis (WIPO/GRTKF/IC/45/6)
- The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis (WIPO/GRTKF/IC/45/7)
- Report on the Compilation of Materials on Databases Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/45/8)
- Report on the Compilation of Materials on Disclosure Regimes Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/45/9)



# 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/45/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/45/INF/8)

# Additional Resources (1)

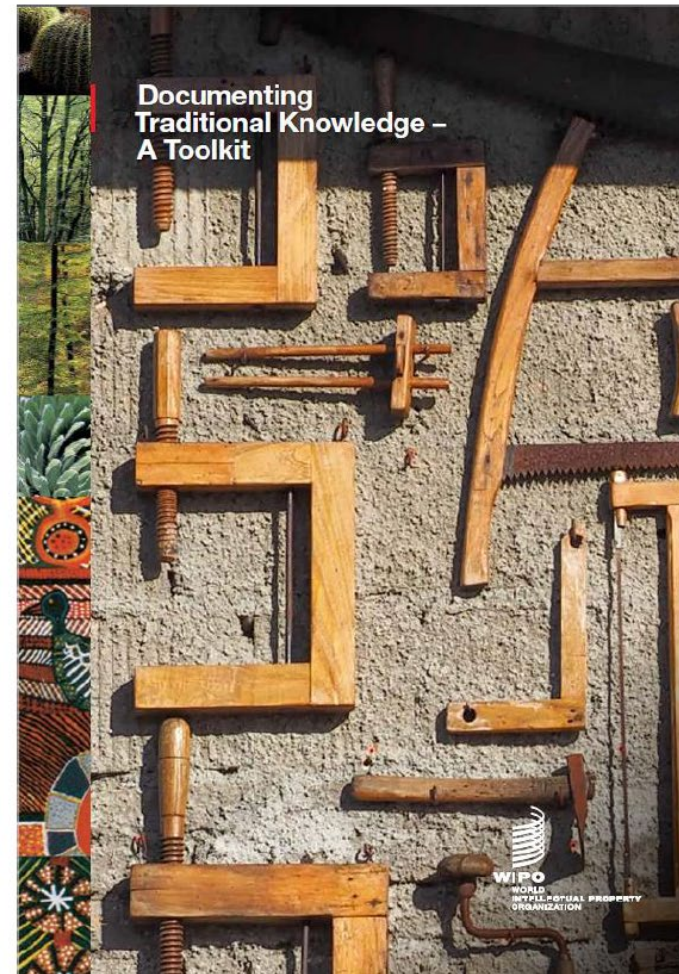


The screenshot shows the WIPO website interface. At the top, there is a dark blue header with the WIPO logo and navigation links for Media, Meetings, Contact Us, IP Portal, and English. Below the header is a secondary navigation bar with links for IP Services, Policy, Cooperation, Resources, About IP, and About WIPO, along with a search bar labeled 'Search WIPO'. The main content area features a breadcrumb trail: Home > Policy > Traditional Knowledge. The title of the page is 'Global Reference on IP and GRs, TK and TCEs'. The introductory text states: 'WIPO provides various information resources on intellectual property (IP) and genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs)'. To the right of this text is a photograph of a woman and a man looking at a laptop. Below the main text, there are three columns of resources:

- Repository of experiences**
  - Repository of resources on regional, national, local and community experiences on IP and GRs, TK and TCEs – including survey, case studies, presentations, and more
- Laws, legislative measures and protocols**
  - Laws, treaties and regulations relevant to traditional knowledge, traditional cultural expressions and genetic resources
  - Compilation of Information on National and Regional Sui Generis Regimes for the IP Protection of TK and TCEs [PDF](#)
  - Disclosure requirements table [PDF](#)
  - Codes, guidelines and practices relating to the recording, digitization and dissemination of TCEs
- Distance learning**
  - [Advanced Distance Learning Course on IP, TK and TCEs](#)
  - [Advanced Distance Learning Course on IP in the Life Sciences](#) [PDF](#)

[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 45

## Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, December 4

## Indigenous Panel

- Monday, December 5, around 11h00
- Theme: “Customary Laws, Traditional Knowledge/Traditional Cultural Expressions and Intellectual Property”
- Three panelists:
  - Ms. Bibi Barba, who is Aboriginal from Australia, and is the Director of Lulu Jiji Design, Consultants and Brokerage
  - Ms. Hortencia Hidalgo Cáceres, who is Aymaran from Chile, and leads the Indigenous Women Program of FILAC
  - Ms. Sue Noe, who is Native American and is a Senior Staff Attorney at the Native American Rights Fund (NARF)



# To note...

## WIPO Voluntary Fund

- 3 funded participants at IGC 45
- Nominations by Groups for the Advisory Board to please be sent to [grtkf@wipo.int](mailto:grtkf@wipo.int) by 3pm, Monday, December 5, 2022



# **Traditional Knowledge/Traditional Cultural Expressions: Issues for IGC 45**

**Ms. Daphné Zografos Johnsson, Senior Legal Officer,  
Traditional Knowledge Division**



# Negotiating texts

[https://www.wipo.int/meetings/en/details.jsp?meeting\\_id=73489](https://www.wipo.int/meetings/en/details.jsp?meeting_id=73489)

- The Protection of Traditional Knowledge: Draft Articles
  - WIPO/GRTKF/IC/45/4
  
- The Protection of Traditional Cultural Expressions: Draft Articles
  - WIPO/GRTKF/IC/45/5

# 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
- Art 11: Formalities
- Art 12: Transitional measures
- Art 13: Relationship w. international agreements
- Art 14: Non-derogation
- Art 15: National treatment
- Art 16: Transboundary cooperation

# 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
- Art 9: Formalities
- Art 10: Sanctions
- Art 11: Transitional measures
- Art 12: Relationship w. international agreements
- Art 13: National treatment
- Art 14: Transboundary cooperation
- Art 15: Capacity building and awareness raising

# Scope of protection

- Seeks to determine
  - Which specific acts in respect of TK and TCEs should be prohibited/prevented
  - What specific rights should be granted to the beneficiaries of protection
- Different approaches and options present in both texts
  - “Rights-based” and/or “measures-based”
  - “Right to say no” and/or “right to be compensated”
  - “Economic” and “moral” types of rights
  - Tiered or differentiated approach
  - Approaches not necessarily mutually exclusive

# The 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**

- TK context: opportunity to respond to the reality of the differences amongst:
  - Secret TK
  - Narrowly diffused TK
  - Widely diffused TK
  
- TCEs context:
  - TCEs of particular spiritual or cultural value or significance
  - Secret TCEs
  - Other TCEs

# Scope of protection

- **Member States may wish to consider**
  - Which is the appropriate approach (for example: rights-based, measures-based or a combination)
  - The level of detail of provisions at the international level



# Exceptions and limitations

- Both texts contain a number of alternatives that follow **two approaches**
  - Leave flexibility at the national level to fully regulate exceptions and limitations
  - Provide a framework with lists of general and specific exceptions for Member States to regulate at the national level
    - **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
- **Member states may consider**
  - Whether the provision on exceptions should follow a tiered approach

# Term

- Different approaches in TK and TCEs texts
- **TK text** only one option that is linked to the scope and to the continuous fulfillment of criteria of eligibility
- **TCEs text** contains three options
  - Option 1: term of protection related to the eligibility criteria and provides an indefinite term for moral rights
  - Option 2: term of protection linked to the continuous enjoyment of the scope of protection
  - Option 3: only concerned with the duration of the economic aspects of TCEs, which are limited in time
- **Member States may wish to consider**
  - Whether the options in the TCEs text can be merged and whether a similar approach can be agreed on in both texts



# Formalities

- TK and TCEs texts share some paragraphs and include some additional elements each
  - Both have options either requiring formalities or not
  - TK text: raises the possibility to maintain registers or records in the interest of transparency and conservation
  - TCEs text: in case of required formalities, this would not apply to secret TCEs
- **Member States may wish to consider**
  - The merit of applying the tiered approach when discussing formalities

# Sanctions, remedies and exercise or rights

- Member States to 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?
- TK and TCEs texts contain several different concepts
- **Member States may wish to consider**
  - Simplifying the provisions / providing a general framework, leaving the details to national legislation

# Administration of rights

- Provision deals with how/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 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?
- **Member States may wish to consider**
  - The level of flexibility to be left at the national level to implement arrangements related to competent authorities



# 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
- **Member States may wish to consider**
  - Reconcile the different views and opt for the clearer expression of where agreement lies
  - Align the drafting of the paragraphs in the TK and TCEs texts



# Relationship with international agreements

- Both texts share similar concepts
- The TK text includes a non-derogation clause as a separate article while a similar clause is included in the relationship with international agreements article in the TCEs text
- **Member States may wish to consider**
  - The placement of the non-derogation clause
  - The adoption of the same wording in both texts, to avoid confusion



# National treatment

- The TK text, which includes three alternatives and the TCEs text differ slightly
- **Member States may wish to consider**
  - Making appropriate changes to ensure consistency





# Transboundary cooperation

- Provision deals with issues of TK/TCEs shared across national borders
- Language similar but variations in terminology
- **Member States may wish to consider**
  - Agreeing on the most suitable formulation and harmonizing the provision in both texts



# Capacity building and awareness raising

- This provision is only included in the TCEs text
- **Member states may wish to consider**
  - Including a provision on capacity building in the TK text as well or adopting a uniform approach to the issue



# Discussion