



**Options for creating national  
systems for the protection and  
utilisation of aTK**

**Addis Ababa, February 26, 2015**

# Protect? How?

Use of intellectual property tools and principles to prevent unauthorized or inappropriate uses of TK by third parties ... misuse/misappropriation

■ Positive protection ... granting of rights that empower communities to promote their TK, control their uses by third parties and benefit from their commercial exploitation.

■ Defensive protection ... to stop people outside the community from acquiring intellectual property rights over TK.

# Protect? How?

- Policy initiatives?
- Legislative initiatives?
- Databases? Registers?
- Guidelines? Toolkits?

# Key questions

- Is it necessary? Is this the right time?
- What would be protected?
- What for?
- Who should be involved?
- Who would be responsible for conducting the process /managing government coordination?
- Who would be responsible for implementation?
- What is the problem that needs to be addressed?
- What options are there?
- Would a feasibility study be necessary?
- Is there a need for consultations?

# Legislative initiatives

■ Botswana

■ Burundi

■ Ethiopia

# Issues to consider

- **Why protect?**
- **What to protect?**
- **Who should decide? Who should benefit? Individually? Collectively?**
- **What acts should be forbidden?**
- **Should there be exceptions and limitations?**
- **For how long?**
- **Should there be formalities?**
- **What sanctions or penalties apply?**
- **Should rights be retrospective?**
- **How should foreign right holders be treated?**

# Peru

- Law 27811 on Protection of collective traditional knowledge of indigenous peoples associated to biological resources
  - Prior informed consent
  - License to use traditional knowledge
  - Fund for the development of indigenous peoples
  - Public Register / Confidential Register / Local registers
  - Role of the State
  - References to Customary Law

# South Africa

4 No. 28319

GOVERNMENT GAZETTE, 9 DECEMBER 2005

Act No. 20, 2005

PATENTS AMENDMENT ACT, 2005

“(3A) Every applicant who lodges an application for a patent accompanied by a complete specification shall, before acceptance of the application, lodge with the registrar a statement in the prescribed manner stating whether or not the invention for which protection is claimed is based on or derived from an indigenous biological resource, genetic resource, or traditional knowledge or use. 5

(3B) The registrar shall call upon the applicant to furnish proof in the prescribed manner as to his or her title or authority to make use of the indigenous biological resource, genetic resource, or of the traditional knowledge or use if an applicant lodges a statement that acknowledges that the invention for which protection is claimed is based on or derived from an indigenous biological resource, genetic resource, or traditional knowledge or use.” 10

# Traditional Knowledge & Traditional Cultural Expressions Laws

Find laws, treaties and regulations on the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs).

Subject Matter

\*\*\*\* Any \*\*\*\*  
Traditional Knowledge  
Traditional Cultural Expressions  
Genetic Resources

Issue(s)

\*\*\*\* Any \*\*\*\*  
Subject Matter of Protection  
Beneficiaries or Rightholders  
Scope of Protection  
Exceptions and Limitations

Country / Organization \*

\*\*\*\* Any \*\*\*\*  
Afghanistan  
Albania  
Algeria  
Andean Community  
Angola  
Antigua and Barbuda  
ARIPO  
Armenia  
Azerbaijan

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## Related links

[Legal texts relevant to genetic resources](#)

[Treaties on TK and TCEs](#)

[IP laws & treaties \(WIPO Lex\)](#)

<http://www.wipo.int/tk/en/databases/tklaws/>

# Defensive protection: National Commission against Biopiracy of Peru

- Task: Developing actions to identify, prevent and avoid acts of biopiracy with the aim of protecting the interests of the Peruvian State.
- Main functions:
  - provide protection against acts of biopiracy;
  - identify and follow up patent applications made or patents granted abroad that relate to Peruvian biological resources or collective knowledge of the indigenous peoples of Peru;
  - make technical evaluations of the above-mentioned applications and patent grants;
  - issue reports on the cases studied;
  - lodge objections or institute actions for annulment concerning the above-mentioned patent applications or patent grants;

# Members of the National Commission against Biopiracy of Peru

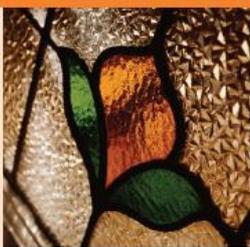
- INDECOPI (Chair), Ministry of Foreign Relations, Ministry of Foreign Trade and Tourism (MINCETUR), National Environmental Council (CONAM), Commission for the Promotion of Exports (PROMPEX), National Institute for Natural Resources (INRENA), National Institute for Agricultural Research and Extension (INIEA), International Potato Centre (CIP), National Centre for Intercultural Health (CENSI), National Commission of Andean, Amazonian and Afro-Peruvian Peoples (CONAPA), National Assembly of Governors (ANR), Peruvian Environmental Law Society (SPDA) (representing the NGOs), and Peruvian Institute for Natural Products (IPPN) (representing business associations).



RECURSO	PATENTE O SOLICITUD	OFICINA	ESTADO
Maca	A preparation for fertility treatment (WO2008012628)	EPO	Rejected
Yacón	"Method for recovering and ameliorating diabetes" (2011-079806)	Japan	Abandoned
Maca	"Agent for preventing on treating osteoporosis" (2010-235533)	Japan	Abandoned
Maca	Compositions and methods for their preparation from <i>Lepidium</i> (WO 0051548 )	EPO	Rejected
Maca	Functional Food Product Containing Maca (Publicación N° 2004-000171)	Japan	Rejected
Maca	Ameliorant for sleep disturbance (JP2007031371)	Japan	Rejected
Maca	The manufacturing method and composition of a maca extract (Kr20070073663)		Rejected
Maca	Testosterona increasing composition (jp2005306754)	Japan	Rejected
Sacha inchi	An extract of a plant belonging to the genus <i>Plukenetia volubilis</i> and its cosmetic use. (WO/2006/048158 )	PCT	Withdrawn
Sacha inchi	Utilisation d'huile et de protéines extraites de graines de <i>Plukenetia volubilis</i> linneo dans des préparations cosmétiques, dermatologiques et nutraceutiques. (FR 2880278)	France	Rejected
Camu camu	Preserves of fruit of <i>Myrciaria dubia</i> (Publicación N° 09 – 215475)	Japan	Abandoned
Pasuchaca	Inhibidor de $\alpha$ -glycosidase (P2005-200389A)	Japan	Abandoned

# Defensive protection: The Traditional Knowledge Digital Library (TKDL)

- Objective: Prevent misappropriation of Indian TK
  - Break language and format barriers
- Input: Ayurvedic, Unani, Siddha and Yoga systems of medicine in local languages
- Output: Multilingual database (English, French, Spanish, German and Japanese)
  - For use of International Patent Offices, in the framework of access and non disclosure agreements: For search and examination only ... can give print outs to patent applicants for citation purposes
  - The content should not be disclosed to third parties



# THE WORLD INTELLECTUAL PROPERTY ORGANIZATION TRADITIONAL KNOWLEDGE DOCUMENTATION TOOLKIT

# The WIPO TK Documentation Toolkit

- A Consultation Draft (November 1, 2012) has been published for consultation and field-testing and is available, in English, French and Spanish, at:

[http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk\\_toolkit\\_draft.pdf](http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_toolkit_draft.pdf)

- Comments would be appreciated and may be sent to WIPO's TK Division at [grtkf@wipo.int](mailto:grtkf@wipo.int).

# Documentation

- Documentation is primarily a process by which TK is identified, collected, organized, registered or recorded in some way, as a means to dynamically maintain, manage, use, disseminate and/or protect TK (positively or defensively) according to specific goals.
- Documentation involves a planned, conscious and informed action of knowledge organization which may serve many purposes, including:
  - Preserving, safeguarding or promoting TK and transmitting it to future generations,
  - Establishing positive rights for TK,
  - Helping in designing benefit-sharing schemes,
  - Making TK available in a more systematized manner to a wider audience (researchers, students, entrepreneurs, etc.),
  - Using TK for specific community-oriented objectives (education, awareness, cultural preservation, etc.),
  - Broader awareness raising,
  - Preventing intellectual property rights being granted over TK, for example, those which do not fulfill the existing requirements of novelty and inventive step/non-obviousness in patent applications (also known as “defensive protection”), and/or
  - Creating new intellectual property rights through scientific validation of the TK and collaborative research and development.

# Documentation

- Identifying, collecting and organizing TK has become a widely discussed option to guarantee indigenous peoples' and local communities' social, cultural and economic interests. Documenting TK has emerged as one of the tools which may play a role in impeding further loss of TK, maintaining TK over time, supporting benefit-sharing and, ultimately, protecting TK from unwanted uses.
- Yet, the mere documentation of TK cannot stand alone as an effective strategy for protecting TK. TK documentation should not take place within a legal and policy vacuum.
- Indeed, concerns and questions have been raised regarding documentation and its potential effects on the rights, culture and livelihoods of indigenous peoples and local communities, including through the placing of TK in the “public domain”, the loss of control, the making of TK publicly available, the loss of the secret nature of some TK, etc.

# TK Documentation and intellectual property rights

- The recording and “fixation” of the TK into material form (a register, database, file, etc.) is often the point where intellectual property rights come into existence and then there is a need to evaluate: rights in the TK itself (including rights in genetic/biological materials) and rights in the fixation itself, including the actual compilations, databases, translations and reproductions (see section on Intellectual Property and TK).
- The process of documentation may create new rights in the recorded material. For example, copyright will probably vest in a written version of a remedy that was previously only held and transmitted orally.
- Copyright and *sui generis* database protection can protect databases as such (distinct from and regardless of whether the material in the database is itself protectable or not). For instance, TK may be protected indirectly by the copyright protection afforded to databases that are original by reason of the selection or arrangement of their contents. However, in these cases, the copyright extends only to the ways in which the TK is expressed and not to the ideas or the content of the TK itself. It is generally the person or entity responsible for the fixation or recording of the TK (such as biologists or other researchers and collectors) that owns the copyright or related rights in the recording of the TK, no matter who the TK holders might be.

# TK Documentation and intellectual property rights

- A crucial step in the documentation process is the recording, or ‘fixation’, of the TK in a material form or when TK is transferred from one medium to another. This occurs, for example, when:
  - A spoken tradition is written down or taped;
  - A traditional method is filmed; or
  - An ancient manuscript is scanned or copied.
- This step is critical, since it is often at this point when intellectual property rights in the expression are determined.
- As indicated earlier, there might be rights in the fixation, such as copyright or *sui generis* database protection in compilations, adaptations, and translations.
  - Whoever writes down TK-related information may be entitled to a copyright in the way the TK has been put into words. In this case, the idea (the TK itself) would not be protected but its expression.
  - Whoever wishes to translate that TK-related information expressed in words may need to ask for the authorization of the person who wrote down the TK. However, the translator may have his/her own rights in the translation.
  - Whoever films someone explaining how to use TK may be entitled to rights in the recording.
  - Whoever scans a manuscript and includes that information in a database may be entitled to rights in the selection and arrangement of its contents.
- Legislation in force may allow these rights to exist, while not recognizing any rights of the indigenous peoples or local communities who developed and preserved the TK.

# The WIPO TK Documentation Toolkit

- Is intended to provide useful practical guidance on how to undertake a TK documentation exercise as a process and how to address critical IP-related issues and questions, as they surface during this effort.
- It aims to empower indigenous peoples and local communities to decide for themselves whether they wish to have their TK documented or not, and to make the right decisions regarding how to safeguard their interests and keep control of their intellectual property rights, interests and options.
- does not seek to promote documentation,
- is not *per se* an instrument for the protection of TK ,
- does not prejudge or suggest that TK should be placed in the public domain or made publicly available,
- does not promote the disclosure of non-disclosed or confidential TK,
- does not replace expert legal advice with regards to more case-specific and thornier issues,
- does not suggest or prefer any form of ownership rights over TK,
- does not provide information with regards to specific intellectual property laws nor interpret intellectual property in any particular way,
- does not provide any specific option to protect TK,
- does not offer advice with regards to whether and how to collect or research in biological and genetic resources which may be related to TK, and
- does not constitute the official view of any WIPO Member State nor that of WIPO.

## Technical assistance and capacity building

### Training

The [Cultural Documentation and IP Management Training Program](#) offers hands-on training for Indigenous Peoples and local communities on how to safeguard their music, performances, art, designs and other traditional cultural expressions (TCEs).

### Practical guides

- [IP and Arts Festivals](#)
- [IP and Traditional Handicrafts](#)
- [IP and Museums, Libraries & Archives](#)

### Toolkit

The [TK Documentation Toolkit](#) provides practical guidance on how to undertake a TK documentation exercise.



Video: [Digitizing Traditional Culture in Kenya](#).

## Resources

### Databases

[Laws, treaties and regulations](#)

[Biodiversity-related access and benefit-sharing agreements](#)

[Codes, guidelines and practices relating to the recording, digitization and dissemination of TCEs](#)

[Non-WIPO databases and registries of traditional knowledge and genetic resources](#)

### Publications and documents

[General information and background briefs](#)

Information materials by topic:

- [Protection of TK and TCEs](#)
- [Access, benefit-sharing and disclosure](#)
- [IP management](#)
- [Customary law](#)

### Traditional knowledge updates

Traditional knowledge newsletter

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