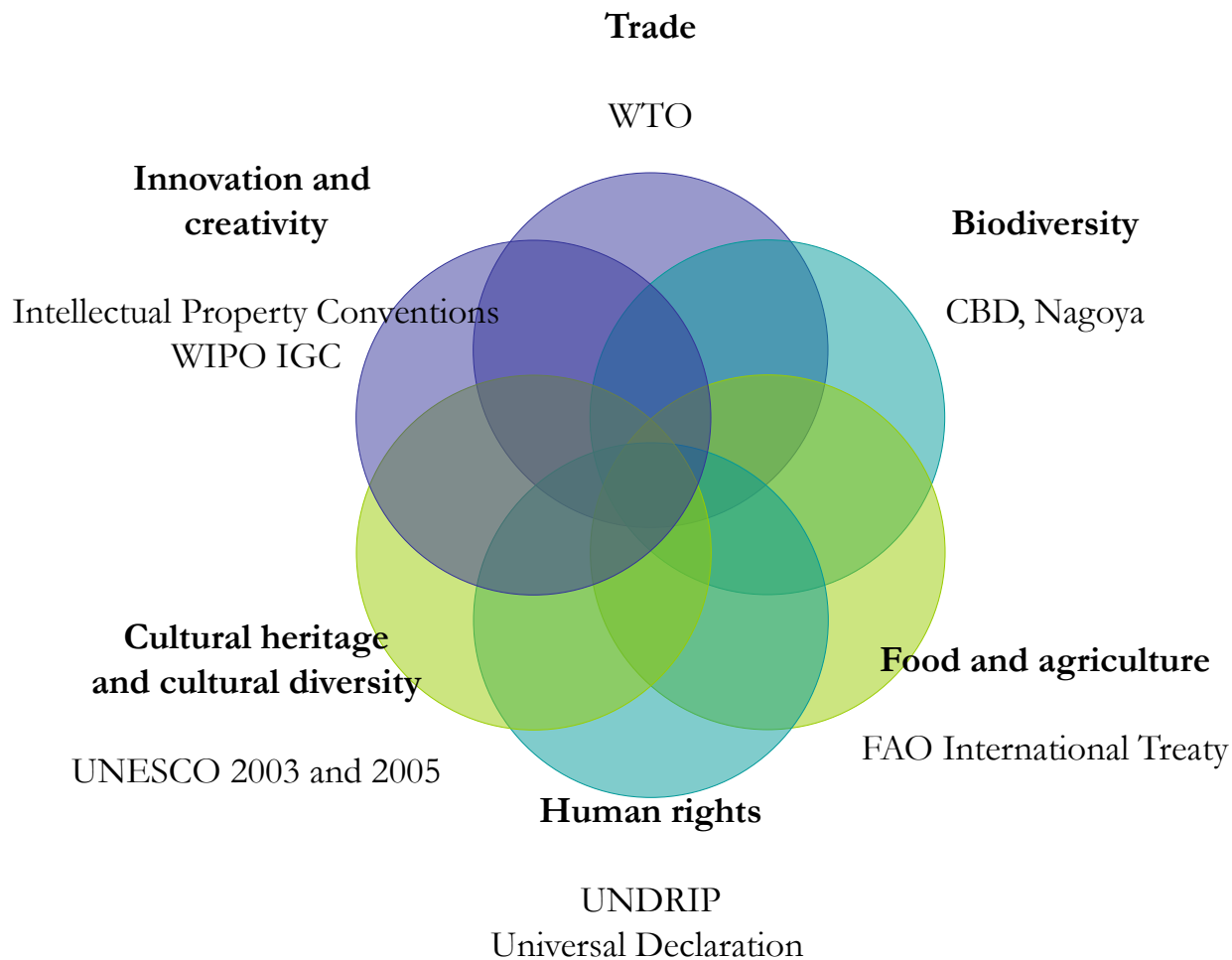




**Results and state of the
Intergovernmental Committee on
Intellectual Property and Genetic
Resources, Traditional Knowledge
and Folklore**

Addis Ababa, February 23, 2015



Role of WIPO

- WIPO is an international organization (188 Member States) dedicated to ensuring that the rights of creators and owners of intellectual property are protected worldwide and that authors are thus recognized and rewarded for their ingenuity.
- WIPO is a forum to create and harmonize rules and practices to protect intellectual property rights
- WIPO also provides international registration systems for patents, trademarks, appellations of origin and industrial designs ... these greatly simplify the process for simultaneously seeking intellectual property protection in a large number of countries.

What do these have in common?



International Norm-building Activities

- WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the IGC”)
 - Established in 2000
 - Inclusive approach: TCEs, TK and GRs
 - Membership include:
 - WIPO Member States
 - Accredited observers, incl. indigenous representatives



- WIPO, in 2000, established the IGC as a policy forum for discussions on GRs, TK and TCEs among WIPO Member States and accredited observers.
- Preceded by several years of fact-finding, consultation, research
- Since its creation, IGC discussions have proceeded on the understanding that the three themes (GRs, TK and TCEs) are closely interrelated and none may be addressed without considering aspects of the others.

Why does the IGC matter?

- For indigenous peoples and local communities:
 - New collective rights to prevent unauthorized use and/or share in benefits, internationally
- For international IP law-making:
 - “A profound re-imagining of the IP system”
 - “First developing country-led normative process of this breadth and complexity”

Statement of the African Group at IGC 26

- There were several good reasons for international action to protect GRs, TK and TCEs to the same extent as other innovations: first, intellectual property rights (“IPRs”) on TK should not be granted to persons other than the communities from which TK derived. In other words, the purpose was to ensure that the holders of TK had exclusive rights; and second, the appropriate protection of GRs from the illicit granting of IPRs should be enhanced. That would be achieved by making the disclosure of the source or origin mandatory.

IGC mandate 2014-2015

- . . . continue to expedite its work, with open and full engagement, on text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs
- a clearly defined work program . . . based on sound working methods . . . three sessions of the IGC in 2014, including thematic and cross-cutting/stocktaking sessions
- at the beginning of IGC 26, an Ambassadorial/Senior Capital-based Officials meeting, to share views on key policy issues . . . to further inform/guide the process . . . IGC might decide to hold further such meetings during future IGC sessions
- build on the existing work of the IGC . . . use all WIPO working documents, including 25/5, 25/6 and 25/7, which are to constitute the basis of the Committee's work . . . as well as any other textual contributions by members
- the Committee is requested to submit to the 2014 General Assembly the text(s) of an international legal instrument(s). With a view to finalising the text(s) within the biennium, the GA will take stock of and consider the text (s), progress made and decide on convening a Diplomatic Conference, and consider need for additional meetings, taking budgetary process into account
- studies or examples might be requested or provided by members . . . examples and studies not to delay progress . . .
- “without prejudice to the work pursued in other fora”

http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_mandate_1415.pdf

Text-based negotiations

- WIPO/GRTKF/IC/28/4: Consolidated document relating to Intellectual Property and Genetic Resources
http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_4.doc
- WIPO/GRTKF/IC/28/5: The Protection of Traditional Knowledge: Draft Articles
http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_5.doc
- WIPO/GRTKF/IC/28/6: The Protection of Traditional Cultural Expressions: Draft Articles
http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_6.doc

IGC 28 - African Group statement ... before the 2014 WIPO General Assembly

The Delegation of Kenya, speaking on behalf of the African Group, (...) noted that a lot of progress had been made in the IGC negotiations in all the three texts. (...) All the three texts before the Committee were mature, and reflected clearly the issues and where Member States stood in regard to the various provisions. The Delegation looked forward to a clear work program that would enable the IGC to deliver on the mandate, including the possibility of convening intersessional meetings.

IGC 28 - African Group Recommendation to the WIPO General Assembly

- Convene a diplomatic conference in 2015, and provide three sessions, and a possible fourth inter-sessional meeting, to further refine the texts in advance of the diplomatic conference.
- The sessions will follow a clearly defined work plan (...), based on sound working methods.

What happened?

- The [2014 WIPO General Assembly](#) did not make a decision on the work program of the IGC for 2015.

Text-based negotiations

- WIPO/GRTKF/IC/28/4: Consolidated document relating to Intellectual Property and Genetic Resources
http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_4.doc
- WIPO/GRTKF/IC/28/5: The Protection of Traditional Knowledge: Draft Articles
http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_5.doc
- WIPO/GRTKF/IC/28/6: The Protection of Traditional Cultural Expressions: Draft Articles
http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_28/wipo_grtkf_ic_28_6.doc

WIPO/GRTKF/IC/28/5 -- a *sui generis* system

- Preamble
- Objectives
- Use of Terms
- Article 1 Subject Matter of Protection
- Article 2 Beneficiaries of Protection
- Article 3 Scope of Protection
- Article 4 Sanctions, Remedies and Exercise of Rights/Application
- Article 4bis Disclosure Requirement
- Article 5 Administration of Rights
- Article 6 Exceptions and Limitations
- Article 7 Term of Protection
- Article 8 Formalities
- Article 9 Transitional Measures
- Article 10 Relationship with Other International Agreements
- Article 11 National Treatment
- Article 12 Transboundary Cooperation
- **Why protect?**
- **What to protect?**
- **Who should benefit?**
- **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?**

POLICY OBJECTIVES

This instrument should aim to:

- Provide Indigenous [Peoples] and [local communities] [and nations]/[beneficiaries] with the [legal and practical/appropriate] means, [including effective and accessible enforcement measures/sanctions, remedies and exercise of rights], to:
 - a. [prevent] the [misappropriation/misuse/unauthorized use/unfair and inequitable uses] of their traditional knowledge;
 - b. [control ways in which their traditional knowledge is used beyond the traditional and customary context;]
 - c. [promote [the equitable sharing of benefits arising from their use with prior informed consent or approval and involvement or approval and involvement]/[fair and equitable compensation], as necessary; and]
 - d. encourage [and protect] [tradition-based] creation and innovation.
- [Prevent the grant of erroneous intellectual property/[patent rights] over [traditional knowledge and [[traditional knowledge] associated [with] genetic resources].]]

Article 1 - SUBJECT MATTER OF [PROTECTION]/[INSTRUMENT]

The subject matter of [protection]/[this instrument] is traditional knowledge:

- (a) that is created, and [maintained] in a collective context, by indigenous [peoples] and local communities [or nations] [,whether it is widely spread or not];
- (b) that is [directly] [linked]/[distinctively associated] with the cultural [and]/[or] social identity and cultural heritage of indigenous [peoples] and local communities [or nations];
- (c) that is transmitted from generation to generation, whether consecutively or not;
- (d) which may subsist in codified, oral or other forms; and [or]
- (e) which may be dynamic and evolving.

[Criteria for Eligibility

Protected traditional knowledge is traditional knowledge that is [distinctively] associated with the cultural heritage of beneficiaries as defined in Article 2, that is generated, [maintained], shared and transmitted in a collective context, is intergenerational and has been used for a term as has been determined by each [Member State]/[Contracting Party] [but not less than 50 years].]

Article 2 - BENEFICIARIES OF PROTECTION

2.1 Beneficiaries [of protection] are indigenous [peoples] and local communities [and/or nations] who create, [hold], maintain, use and/[or] develop the [subject matter]/[traditional knowledge] [meeting the criteria for eligibility defined in Article [1]/[3].]

Alternative

2.1 [Beneficiaries of [protection] are indigenous [peoples] and local communities[[1]] who create, [hold], maintain, use and/[or] develop the [subject matter]/[traditional knowledge] defined in Article 1.]

[End of alternative]

2.2 [Where the [subject matter]/[traditional knowledge] [is not claimed by specific indigenous [peoples] or local communities despite reasonable efforts to identify them,] [Member States]/[Contracting Parties] may designate a national authority as custodian of the [benefits]/[beneficiaries] [of protection under this instrument] where the [subject matter]/[traditional knowledge] [traditional knowledge meeting the eligibility criteria in Article 1] as defined in Article 1:

- (a) is held by a community [whose] in a territory [is] that is entirely and exclusively coterminous with the territory of that [Member State]/[Contracting Party];
- (b) [is not confined to a specific indigenous [people] or local community;
- (c) is not attributable to a specific indigenous [people] or local community; or
- (d) [is not claimed by a specific indigenous [people] or local community.]

Article 3 – Scope: “tiered approach”

- Introduced at IGC 27 (pyramid, matrix)
- Different kinds of rights for different kinds of TK (degree of dissemination)
 - publicly available → moral rights
 - access- and use-restricted → economic rights

- 3.1 Where the [subject matter]/[traditional knowledge]/[protected traditional knowledge] is [sacred], [secret] or [otherwise known] [closely held] within indigenous [peoples] or local communities, [Member States]/[Contracting Parties] [should]/[shall]:
- [ensure that beneficiaries have the exclusive and collective right to]/[provide legal, policy and administrative measures, as appropriate and in accordance with national law that allow beneficiaries to]:
 - [create,] maintain, control and develop said [subject matter]/[traditional knowledge]/[protected traditional knowledge];
 - discourage the unauthorized disclosure, use or other uses of [secret] [protected] traditional knowledge;
 - [authorize or deny the access to and use/utilization of said [subject matter]/[traditional knowledge]/[protected traditional knowledge] based on prior and informed consent; and]
 - [be informed of access to their traditional knowledge through a disclosure mechanism in intellectual property applications, which may [shall] require evidence of compliance with prior informed consent or approval and involvement and benefit sharing requirements, in accordance with national law and international legal obligations],
- [ensure that]/[encourage] users [to]:
- attribute said [subject matter]/[traditional knowledge]/[protected traditional knowledge] to the beneficiaries;
- [provide beneficiaries with [a fair and equitable share of benefits]/[fair and equitable compensation], arising from the use/utilization of said [subject matter]/[traditional knowledge] based on mutually agreed terms;]
- *Alternative*
- ii. enter into an agreement with the beneficiaries to establish terms of use of the [subject matter]/[traditional knowledge]/[protected traditional knowledge];
- *[End of alternative]*
- use/utilize the knowledge in a manner that respects the cultural norms and practices of the beneficiaries as well as the inalienable, indivisible and imprescriptible nature of the moral rights associated with the [subject matter]/[traditional knowledge]/[protected traditional knowledge].

- 3.3 [Where the [subject matter]/[traditional knowledge]/[protected traditional knowledge] is [publicly available, widely known [and in the public domain]] [not covered under Paragraphs 2 or 3], and protected under national law, [Member States]/[Contracting Parties] [should]/[shall] [ensure that]/[encourage] users of said [subject matter]/[traditional knowledge] [to]:
- (a) attribute said [subject matter]/[traditional knowledge]/[protected traditional knowledge] to the beneficiaries;
 - (b) use/utilize the knowledge in a manner that respects the cultural norms and practices of the beneficiary as well as the inalienable, indivisible and imprescriptible nature of the moral rights associated with the [subject matter]/[traditional knowledge]/[protected traditional knowledge][;] [and]
 - (c) where applicable, deposit any user fee into the fund constituted by such [Member State]/ [Contracting Party].]

WIPO/GRTKF/IC/28/4 – IP and GRs

- Use of Terms
- Preamble
- Policy Objectives
- Article 1 Subject Matter of Instrument
- Article 2 Scope of Protection
- Article 3 Disclosure Requirement
- Article 4 Exceptions and Limitations
- Article 5 Relationship with PCT and PLT
- Article 6 Sanctions and Remedies
- Article 7 No new Disclosure Requirement
- Defensive Measures
- Article 8 Due diligence
- Article 9 Prevention of the erroneous grant of patents and Voluntary Codes of Conduct
- Database Search Systems
- WIPO Portal Site
- Article 10 Relationship with International Agreements
- Article 11 International Cooperation
- Article 12 Transboundary Cooperation
- Article 13 Technical Assistance, Cooperation and Capacity-Building

POLICY OBJECTIVE[S]

[The objective of this instrument is to [contribute to the prevention of] [prevent] the [misappropriation] of genetic resources [their derivatives] and [associated traditional knowledge] [traditional knowledge associated with genetic resources] [through the] [in the context of the] [IP] [patents] rights system by:]

- Ensuring that [IP] [patent] offices have access to the appropriate information on genetic resources [their derivatives] and [associated traditional knowledge] [traditional knowledge associated with genetic resources] to prevent the granting of erroneous [IP] [patent] rights;
- [Enhancing transparency in the [IP][patent] [and access and benefit sharing] system]; and,
- [Ensuring] [promoting] [facilitating] [complementarity] [mutual supportiveness] with international agreements relating to the protection of genetic resources [their derivatives] and/or [associated traditional knowledge] [traditional knowledge associated with genetic resources] [and those relating to IP].

Intellectual Property issues associated with GRs

- **Should and, if so, how could the intellectual property system help track the appropriate access and use of GRs?**
- A question that arises is whether, and to what extent, the intellectual property system should be used to support and implement these obligations, for example, through a mandatory disclosure requirement?
 - A number of countries have enacted domestic legislation putting into effect the CBD obligations that access to a country's GRs should depend on securing that country's prior informed consent and agreeing to fair and equitable benefit-sharing

The disclosure requirement

- The TK and GRs texts both propose the development of disclosure requirements
- i.e. provisions which require patent (and perhaps other IP) applications to provide information related to TK and GRs

Disclosure requirements

http://www.wipo.int/export/sites/www/tk/en/documents/pdf/genetic_resources_disclosure.pdf

- Andean Community
- Belgium
- Brazil
- China
- Costa Rica
- Cuba
- Denmark
- Egypt
- European Union
- Germany
- India
- Italy
- Kyrgyzstan
- Norway
- Peru
- Philippines
- Romania
- South Africa
- Switzerland

http://www.wipo.int/export/sites/www/tk/en/documents/pdf/genetic_resources_disclosure.pdf

Disclosure Requirements Table

Explanatory Note and Disclaimer: The following table comprises a non-exhaustive selection of extracts from existing national and legislative texts which, in one way or another, provide for a specific disclosure requirement related to genetic resources and/or traditional knowledge. The extracts are taken directly from the legislative texts as contained in WIPO Lex (WIPO's collection of laws). The table contains no interpretation or commentary, and the extracts appear in the languages in which the laws appear in WIPO Lex. In order to facilitate the reading and comprehension of the table, some relevant parts of the extracts may appear in bold, but this highlighting does not appear in the original legislative texts. All information provided is for information purposes only, and is not a substitute for legal advice. The WIPO Secretariat makes every effort to ensure, but cannot guarantee, the accuracy of the data contained in this selection. In particular, WIPO assumes no responsibility for any discrepancy that may occur in the electronic manipulation of the said data. The WIPO Secretariat will continue to add to and update the table over time. Additional contributions to the table, and any corrections and comments, would be appreciated and may be sent to grtkf@wipo.int.

Country/ Region	Title	Subject Matter	Trigger of Disclosure	Content of Disclosure	Consequences of non-compliance
Andean Community	Decision No. 486 Establishing the Common Industrial Property Regime (2000)	(Article 26) 1. genetic resources or products derived therefrom 2. traditional knowledge	Article 26. The application for a patent shall be filed with the competent national office and shall contain the following: ... (h) where applicable, a copy of the access contract	Article 26. The application for a patent shall be filed with the competent national office and shall contain the following: ... (h) where applicable, a copy of the access contract	Article 39. If it emerges from the examination as to form that the application does not meet the conditions specified in Articles 26 and 27, the competent national office shall inform the applicant accordingly, so that he may meet

[ARTICLE 3]

[DISCLOSURE REQUIREMENT]

3.1 Where the [subject matter] [claimed invention] within a [IP Rights] [patent] application [includes utilization of] [is directly based on] [is consciously derived from the] genetic resources [their derivatives] and/or [associated traditional knowledge] [traditional knowledge associated with genetic resources] each Party shall/should require applicants to:

- Disclose the [country of origin [and]] [or if unknown,] source of the genetic resources, [their derivatives] and/or [associated traditional knowledge] [traditional knowledge associated with genetic resources].
- [Provide relevant information, as required by the national law of the [IP] [patent] office, regarding compliance with ABS requirements, including PIC, [in particular from indigenous [people[s]] and local communities], where appropriate.]
- If the source and/or country of origin is not known, a declaration to that effect.

The disclosure requirement

- Some key questions to consider
 - What should be the subject matter of disclosure?
 - What should trigger disclosure?
 - What should be the content of the disclosure?
 - What should be the nature of the obligation to disclose?
 - Should IP/patent offices have to verify the content of disclosure?
 - Should there be exclusions from disclosure?
 - What should be the consequence of non-compliance?
 - Should liability be strict?
 - How should the requirement be implemented?
 - Relationship with PCT and PLT?

[ARTICLE 7]

[NO NEW DISCLOSURE REQUIREMENT]

7.1 [IP] [patent] applicants may only be required to state where the genetic resource can be obtained if that location is necessary for a person skilled in the art to carry out the invention. Therefore no disclosure requirements can be imposed upon patent applicants or patentees for patents related to genetic resources, [their derivatives] and [associated traditional knowledge] [traditional knowledge associated with genetic resources], for reasons other than those related to novelty, inventive step, industrial applicability or enablement.]

Thank you!

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