

# **IGC 40: Informal Information Session**

Presentation by the Secretariat

June 6, 2019


Geneva



# Welcome and Introduction

**Mr. Wend Wendland**

**Director, Traditional Knowledge Division**



## Capacity-building support services from the Traditional Knowledge Division, WIPO

Legislative  
and policy  
assistance

Practical  
workshops

Publications

Distance  
learning  
course

Training



Canada-Finland-Sweden- WIPO  
Practical Workshop, Iqaluit,  
Canada, May 14-16, 2019





# Practical arrangements for IGC 40

**Ms. Fei Jiao**

**Assistant Program Officer, Traditional Knowledge  
Division**

2018

2019

- “Undertake negotiations on TK/TCEs with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s)”
- Stocktaking on GRs/TK/TCEs and making a recommendation

IGC 35  
GRs  
(March 19  
to 23)

*Ad hoc*  
expert  
group on  
GRs  
(June 24)

IGC 36  
GRs  
(June 25 to  
29)

IGC 37  
TK/TCEs  
(August 27  
to 31)

*Ad hoc*  
expert  
group on  
TK/TCEs  
(December  
9)

IGC 38  
TK/TCEs  
(December  
10 to 14)

*Ad hoc*  
expert  
group on  
TK/TCEs  
(March 17)

IGC 39  
TK/TCEs  
(March 18  
to 22)


IGC 40  
TK/TCEs  
(June 17 to  
21)



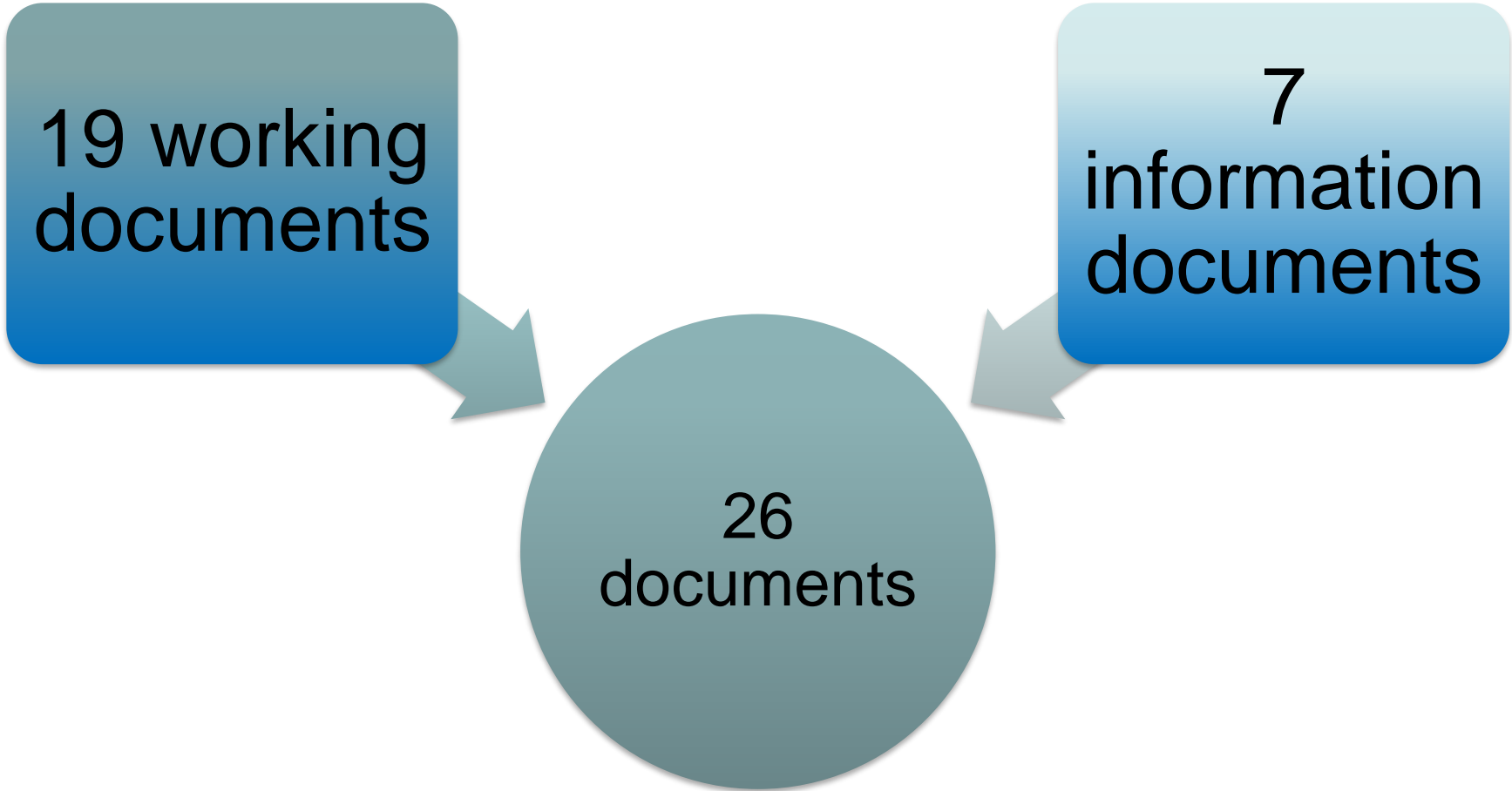
# IGC 40 Agenda Items

- Traditional Knowledge/Traditional Cultural Expressions
- Taking Stock of Progress and Making a Recommendation to the General Assembly
- Contribution of the IGC to the Implementation of the Respective Development Agenda Recommendations





19 working  
documents



```
graph TD; A[19 working documents] --> C((26 documents)); B[7 information documents] --> C;
```

The diagram consists of two blue rounded rectangular boxes at the top. The left box contains the text '19 working documents' and the right box contains '7 information documents'. Arrows from both boxes point towards a central grey circle at the bottom containing the text '26 documents'.

7  
information  
documents

26  
documents



# Working documents for agenda item 6 (1/2)

- The Protection of Traditional Knowledge: Draft Articles (WIPO/GRTKF/IC/40/4).
- The Protection of Traditional Cultural Expressions: Draft Articles (WIPO/GRTKF/IC/40/5).
- The Protection of Traditional Knowledge: Updated Draft Gap Analysis (WIPO/GRTKF/IC/40/7).
- The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis (WIPO/GRTKF/IC/40/8).
- Report on the Compilation of Materials on Databases Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/40/9).
- Report on the Compilation of Materials on Disclosure Regimes Relating to Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/40/10).

# Working documents for agenda item 6 (2/2)

- The Economic Impact of Patent Delays and Uncertainty: U.S. Concerns about Proposals for New Patent Disclosure Requirements (WIPO/GRTKF/IC/40/11).
- 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/40/12).
- Traditional Cultural Expressions: A Discussion Paper (WIPO/GRTKF/IC/40/13 Rev.).
- Proposal for a Study by the WIPO Secretariat on Existing *Sui Generis* Systems for the Protection of Traditional Knowledge in WIPO Member States (WIPO/GRTKF/IC/40/14).
- Joint Recommendation on Genetic Resources and Associated Traditional Knowledge (WIPO/GRTKF/IC/40/15).
- Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources (WIPO/GRTKF/IC/40/16).
- Proposal for the Terms of Reference for the Study by the WIPO Secretariat on Measures Related to the Avoidance of the Erroneous Grant of Patents and Compliance with Existing Access and Benefit-Sharing Systems (WIPO/GRTKF/IC/40/17).



# Working documents for agenda item 7

- Consolidated Document Relating to Intellectual Property and Genetic Resources (WIPO/GRTKF/IC/40/6).
- The Protection of Traditional Knowledge: Draft Articles (WIPO/GRTKF/IC/40/18).
- The Protection of Traditional Cultural Expressions: Draft Articles (WIPO/GRTKF/IC/40/19).



# Notes being prepared by the IGC Chair

- Chair's Information Note on Traditional Knowledge and Traditional Cultural Expressions
- Chair's Information Note on Future Work

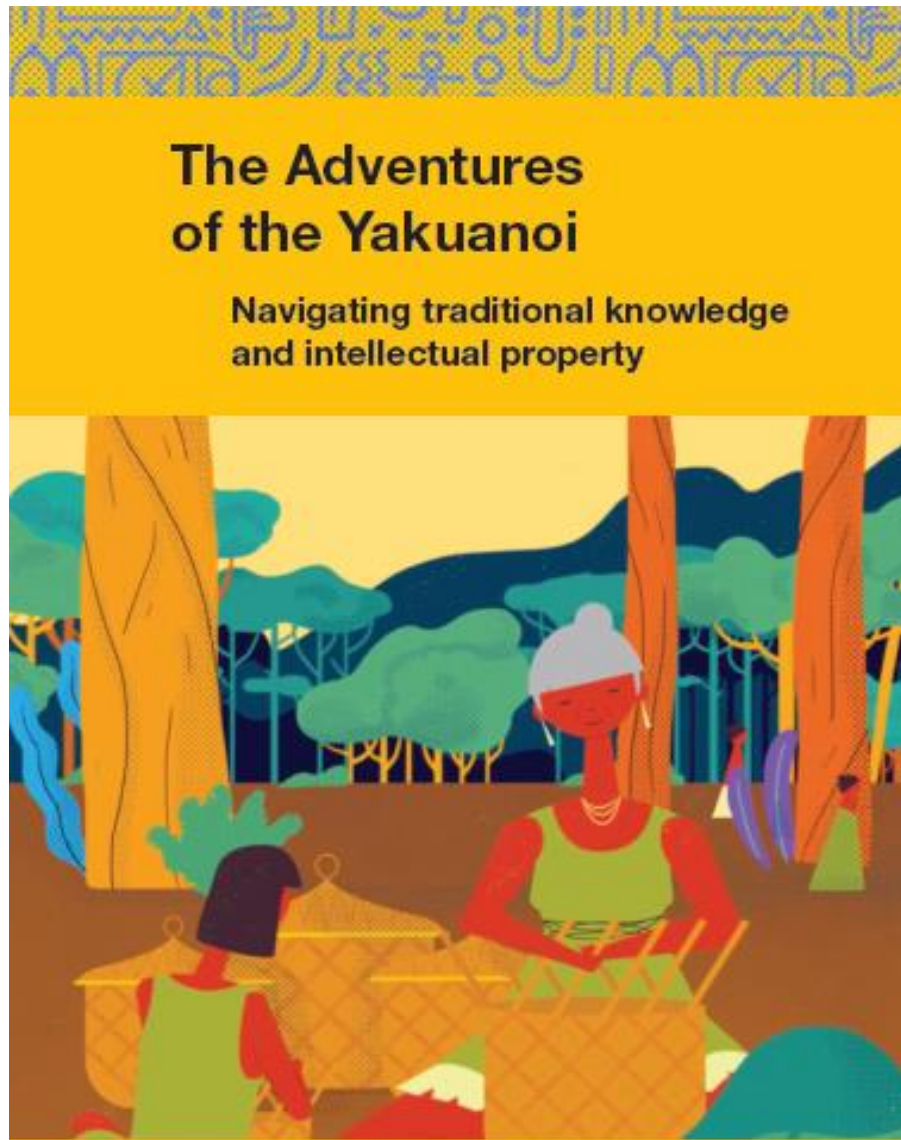


# Chair's Text

- Chair's Draft on International Legal Instrument relating to Intellectual Property, Genetic Resources and Traditional Knowledge associated with Genetic Resources, dated April 30, 2019
  - Prepared solely under his own authority
  - A contribution to the negotiations
  - Available in six languages

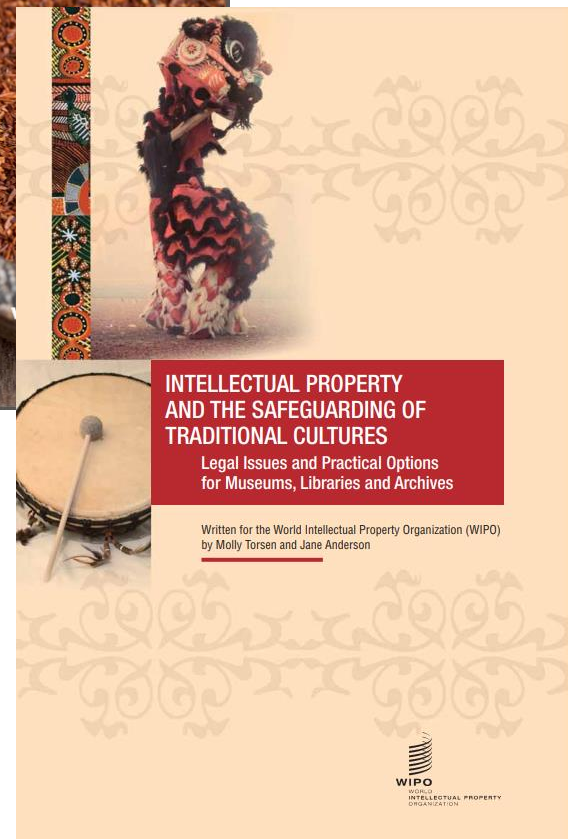


# Resources (1/4)





# Resources (2/4)



# Resources (3/4)

[Home](#) > [Policy](#) > [Traditional Knowledge](#) > [Intergovernmental Committee](#) > [IGC Preparation Kit](#)

## IGC Preparation Kit (IGC 40)

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) meets several times a year in Geneva.

The [Fortieth Session of the IGC](#) (June 17 to 21, 2019) will address [traditional knowledge](#) and [traditional cultural expressions](#), and take stock of progress and make a recommendation to the General Assembly.

### Shortcuts

- [Agenda](#)
- [TK Text](#)
- [TCEs Text](#)
- [GRs Text](#)
- [Indigenous Panel](#)
- [Documents](#)
- [Indigenous portal](#)
- [Regional, National, Local and Community Experiences](#)
- [IGC webcast](#)

## Informal information session

At preparatory informal information sessions, the WIPO secretariat provides member state representatives in Geneva with information on the key issues under discussion at each upcoming IGC session, as well as on practical arrangements.

The informal information session for IGC 40 will take place at WIPO Headquarters (Room NB 0.107) on June 6, 2019, at 10:00 a.m.

## Working documents

The working documents for the 40th session of the IGC are:

[The Protection of Traditional Knowledge: Draft Articles](#)

[The Protection of Traditional Cultural Expressions: Draft Articles](#)

[Consolidated Document Relating to Intellectual Property and Genetic Resources](#)

## Key background materials


[IGC Mandate 2018/2019](#) [PDF](#)

[Background brief No. 1: Traditional Knowledge and Intellectual Property](#) [PDF](#)

[Background brief No. 2: The WIPO IGC](#) [PDF](#)



# Resources (4/4)



WIPO  
WORLD INTELLECTUAL PROPERTY ORGANIZATION

Media | Meetings | Contact Us | My Account | English ▾

IP Services | Policy | Cooperation | Reference | About IP | Inside WIPO

Search WIPO 🔍

Home | Policy | Traditional Knowledge | Resources

## Regional, National, Local and Community Experiences

This page includes resources available on WIPO's website on regional, national, local and community experiences regarding intellectual property and genetic resources, traditional knowledge and traditional cultural expressions.

### Table of contents

1. Laws, legislative measures and protocols
2. Fact-finding missions, surveys, submissions by member states and observers
3. Case studies
4. Lectures and presentations
5. Other resources

---

### 1. Laws, legislative measures and protocols

- [Laws, treaties and regulations](#) relevant to traditional knowledge, traditional cultural expressions and genetic resources
- [Disclosure requirements table](#) [PDF](#)
- [Codes, guidelines and practices](#) relating to the recording, digitization and dissemination of TCEs

---

### 2. Fact-finding missions, surveys, submissions by member states and observers

#### Report on fact-finding missions

- [Intellectual Property Needs and Expectations of Traditional Knowledge Holders \(WIPO Report on Fact-Finding Missions\)](#) [PDF](#)



# Indigenous Participation in IGC 40

## ■ Indigenous Consultative Forum

- Not a formal committee session or official WIPO meeting, but endorsed by the Committee and facilitated by the Secretariat
- Sunday, June 16

## ■ Indigenous Panel

- Monday, June 17, around 11h00
- Theme: “Intellectual Property and Traditional Knowledge/Traditional Cultural Expressions: Indigenous Peoples’ and Local Communities’ Perspectives on Objective”
- Three panelists:
  - Mr. Wilton Littlechild, who is a Cree chief and lawyer and has worked both nationally and internationally to advance indigenous rights;
  - Ms. Lucy Mullenkei, who is a Maasai from Kenya, and is the Executive Director of the Indigenous Information Network; and
  - Ms. Valmaine Toki, who is of Ngapuhi Ngati Wai Ngat Whatua descent, and an Associate Professor of Law, Faculty Chair at the University of Waikato.





# To note...

- WIPO Voluntary Fund
  - Canadian contribution funds 5 indigenous representatives
  - Nominations by Regional Groups for the Advisory Board to please be sent to [grtkf@wipo.int](mailto:grtkf@wipo.int) by 12pm, Monday, June 17, 2019.




## Calendar of Side Events

Time	Title	Venue	Organizer(s)
<b>June 17</b>  1:15pm – 2:45pm	<b>National Approaches to Protecting Traditional Knowledge: Lessons, Challenges and Opportunities for the WIPO IGC</b>	Room NB 0.107	Centre for International Governance Innovation
<b>June 20</b>  1pm – 3pm	<b>Handling Indigenous Knowledge Content: Libraries, Archives, Museums: What are the current problems of the proper ethical and legal handling of indigenous knowledge content in institutions located outside of indigenous communities?</b>	Room B	University of California, Los Angeles



# Reminder:

- Meeting with the IGC Chair
  - Regional Coordinators and interested Member States
  - Tuesday, June 11, at 11am
  - Uchtenhagen Room



# **Traditional Knowledge and Traditional Cultural Expressions: Documents and Cross-Cutting Issues for IGC 40**

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

**Ms. Daphne Zografos Johnsson, Legal Officer,  
Traditional Knowledge Division**



# Outline

- Documents
- Cross-cutting issues to be addressed by IGC 40
- Other issues





# Documents

WIPO/GRTKF/IC/40/4

The Protection of Traditional Knowledge:  
Draft Articles

WIPO/GRTKF/IC/40/5

The Protection of Traditional Cultural Expressions:  
Draft Articles



# Cross-cutting issues to be addressed by IGC 40

- Scope of protection
- Exceptions and limitations
- Objectives
- Subject matter /Criteria for eligibility



# Scope of protection

Art 5 TK – Art 5 TCEs

- 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

# Scope of protection

Art 5 TK – Art 5 TCEs

- Different approaches and options present in both texts
  - «Rights-based» and/or «measures-based»
  - «Right to say no» and «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.

The tiered approach:

- Is a tiered approach feasible?
- Appropriate determination of the tiers





# The tiered or differentiated approach

(examples based on WIPO/GRTKF/IC/40/4 and WIPO/GRTKF/IC/40/5)

- 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
  - Other TCEs
- Consideration of the practicality and legal implications of the tiers



# Scope of protection

- Level of detail of the provisions
  - **Lower level** – more flexibility for States to determine the scope through domestic implementing legislation and measures
  - **Higher level** – ensures maximum harmonization



# Exceptions and limitations

Art 9 TK – Art 7 TCEs

- Alternatives follow two approaches:
  - Leave flexibility at the national level to fully regulate exceptions and limitations
  - Provide general and/or specific exceptions



# Exceptions and limitations

Art 9 TK – Art 7 TCEs

## ■ 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 included/allowed



# Exceptions and limitations

- Tiered approach to exceptions?
  - Various degrees of excepted acts mirror various kinds of subject matter and the tiered rights applied to them



# Objectives

Art 2 TK - Art 2 TCEs

- Fundamental to development of operative text
- Consider perspectives of all interested parties (rightsholders, users, public)
- IP-related and relevant policy objectives
- The issue of the public domain





# Definition of TK and TCEs

## Art 1 TK – Art 1 TCEs

### TK text

- General definition

### TCEs text

- General definition
- Criteria for eligibility in a separate article



# Criteria for eligibility

Art 3 TK – Art 3 TCEs

TK text

- 2 alternatives
- + Alternative Art 3: Subject matter of the instrument

TCEs text

- 2 alternatives
- Should temporal criteria be included?



# Other issues

- Principles/preamble/introduction
- Beneficiaries
- Sanctions, remedies and exercise of rights/application
- Administration of rights/interests
- Term of protection
- Formalities
- Transitional measures
- Relationship with other international agreements
- National treatment
- Transboundary cooperation
- Capacity-building and awareness raising
- Non-derogation



# Discussion and Closing Remarks

**Facilitated by Mr. Wend Wendland**



Sign up for our TK e-Updates!

Copy of this presentation will be made available on the  
“IGC Preparation Kit”.