



# The WIPO TK Documentation Toolkit – Consultation draft

**Geneva  
April 24  
2013**

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# 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 IP rights being granted over TK, for example, those which do not fulfill the existing requirements of novelty and inventiveness in patent applications (also known as “defensive protection”), and/or
  - Creating new IP rights through scientific validation of the TK and collaborative research and development.

# Documentation

- Identifying, collecting and organizing TK and TCEs has become a widely discussed option to guarantee indigenous peoples' and local communities' social, cultural and economic interests. Documenting TK and TCEs 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 and TCEs from unwanted uses.
- Yet, the mere documentation of TK or TCEs cannot stand alone as an effective strategy for protecting TK and TCEs. TK and TCEs 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 and TCEs in the “[public domain](#)”, the loss of control, the making of TK and TCEs publicly available, the loss of the secret nature of some TK and TCEs, etc.

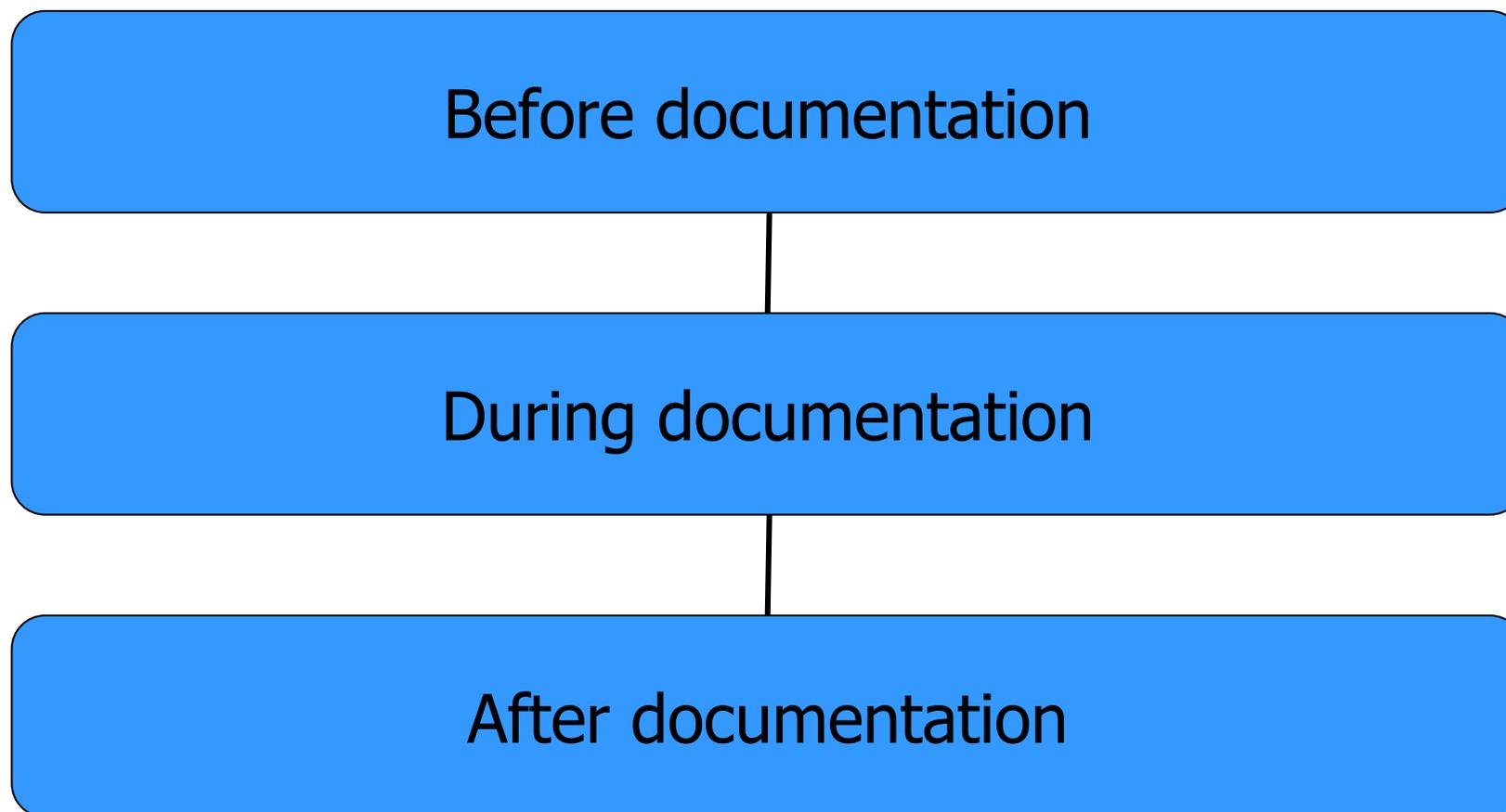
# The WIPO TK Documentation Toolkit

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

# The WIPO TK Documentation Toolkit<sup>5</sup>

- 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 IP 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 IP laws nor interpret IP 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.

# Three Phases



# Before Documentation – Check List

- Plan carefully.
- Consult as widely as possible among indigenous peoples, local communities and key stakeholders at an early stage.
- Consider and clarify the role of the different stakeholders involved (researchers, government agencies, communities, etc.).
- Ponder on indigenous peoples and local communities expectations and how best to respond to and reflect them.
- Identify customary laws applicable to sharing, collection and documentation of TK, as well as related to decision-making within indigenous peoples and local communities.

# Before Documentation – Check List

- Consider how to effectively apply prior informed consent (PIC) principles – take note of ‘shared TK’ issues.
- Set out documentation objectives, including IP objectives and develop an IP strategy if and when needed.
- Consider the widest possible range of options to meet these objectives.
- Develop a monitoring and verification plan to provide assurances that documented TK will be used as determined in the documentation process.
- Consider that legal issues may arise in the contexts of existing access to genetic and biological resources policies, and legal frameworks and regulations (ABS).
- Distinguish between non-confidential TK and TK which may be secret (due perhaps to its sacredness) and which may require additional conditions and securities (if it were to be documented).

# During Documentation – Check List

- Ensure appropriate PIC documentation (or evidence) has been obtained (or is obtained during this phase of the process).
- Document TK in a precise and standardized manner (including through indigenous and local nomenclature or classifications or local management systems).
- Do not disclose non-disclosed or confidential TK, unless a conscious decision is taken to do so and it is part of a strategy.
- Follow agreed guidelines or codes of conduct, obligations and legislation and regulations (including ABS) in place.

# During Documentation – Check List

- Regularly inform stakeholders, especially indigenous peoples and local communities, about advances and progress in the documentation process.
- Verify whether technological safeties for processing and managing data are operational (safety of the database or registration devices).
- Adapt technology to local needs (if documentation involves interaction directly with indigenous peoples and local communities).
- Ensure appropriate disclaimers are developed and made visible.

# After Documentation – Check List

- Verify that TK documentation planning objectives have been met.
- Verify that comments and inputs made by stakeholders (especially indigenous peoples and local communities) have been appropriately addressed.
- Check who is accessing and using TK (as the case may be).
- Check whether and how national IP offices are using the documented TK, especially if TK was documented for defensive purposes.
- Review periodically the extent to which documented TK is accessed.

## After Documentation – Check List

- Inform indigenous peoples and local communities about the progress and results of the TK documentation process.
- Carry out periodic reviews of compliance with requirements of storage, maintenance and control.
- Ensure management of the database or register is in hands of competent and technologically savvy professionals (or a well trained community member(s) if they are to ultimately create and manage the database).
- Take measures to ensure the continued secrecy of non-disclosed TK.
- Review possibilities of protecting TK through IP and other mechanisms.

- Thank you!
- <http://www.wipo.int/tk/en>
- Email: [grtkf@wipo.int](mailto:grtkf@wipo.int)