

# IP AND DOCUMENTATION OF TK AND TCEs

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# IP and documentation of TK & TCEs

- African proverb: ‘When an elder dies, a library is depleted’;
- TK is knowledge handed down orally from generation to generation;
- Nothing is documented;
- A wealth of knowledge is dying with the knowledge holders, so important to document the knowledge

# IP and documentation of TK & TCEs

- Many did not regard TK as a system of knowledge that required legal protection;
- Thus, the knowledge was plundered and stolen, without recognition to the community that owned it;
- However, a large number of countries and communities across the world have demanded that TK be regarded and respected as being a system of knowledge triggered by the intellectual activities of the right holders, which is their intellectual property

# IP and documentation of TK & TCEs

- Since the inception of the CBD and the UN Declaration on the Rights of Indigenous Peoples, there was an international push for policy makers, researchers and civil societies to protect creativity and innovation of indigenous communities

# What is TK documentation?

- In WIPO's TK toolkit:
  - Primarily a process by which TK is identified, collected, organised, 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 goal's;
  - Is a conscious way to safeguard TK and TCEs in a more fixed and permanent way;
  - Type of defensive protection mechanism

# Why document TK and TCEs?

- Preservation of heritage, culture and knowledge;
- Prevention of bio-piracy;
- A way of protecting TK and TCEs through creating databases as proof of existing knowledge;
- Defensive protection instrument and will help in identifying where the TK and TCEs originate from;
- Will help to safeguard communities' social , cultural and economic interests;
- Seen as a possible tool to prevent further loss of TK and TCEs;
- Support future benefit-sharing arrangements and help to try to control diffusion

# Why document TK and TCEs?

- Types of documentation:
  - Videotaping;
  - Writing down medical recipes, folktales/ histories;
  - Photographing;
  - Digitising;
  - Databases; etc.
- Other IP rights are triggered;
  - Rights in the recordings/ fixations;
  - Copyrights in the writings and photographs

# How to document TK and TCEs

- Clear and unequivocal discussions between stakeholders (local communities, government, indigenous peoples);
- Understand the needs of the communities;
- Lay out specific contexts, interests and objectives of the communities – do they want the documentation in the first place?
- Outline the various methods and let them choose, if they do want to document their TK;
- Ensure ownership is known (shared TK issues);
- Once documented what is to be done? IP rights acquisition?

# The way forward ...

- Documentation process cannot exist without adequate policies that make this possible;
- Varying questions must be answered, like:
  - Who benefits from the process?
  - How will ownership be determined?
  - Who will manage the process?
  - Will the documentation have a negative effect on TK as protected within the communities? Etc.

ALWAYS BEAR THE WISHES OF THE COMMUNITY  
IN MIND