

# **Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs): An overview of policy and legal issues from an Intellectual Property (IP) perspective**

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# Traditional Knowledge (TK)

- TK refers to the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations.
- It is not limited to any specific technical field, and may include agricultural, environmental, and medicinal knowledge, and knowledge associated with genetic resources.

# Traditional Cultural Expressions (TCEs)

- May be considered as the forms in which traditional culture is expressed;
- Form part of the identity and heritage of a traditional or indigenous community / nation;
- Are passed down from generation to generation.
- Are integral to the cultural and social identities of indigenous and local communities / nations, they embody know-how and skills, and they transmit core values and beliefs.



Shavante Indians using Buriti sticks to make a fire (UN Photo/Joseane Daher)



A woman from the Ndebele tribe carries a traditional beer container (UN Photo/P Mugubane)

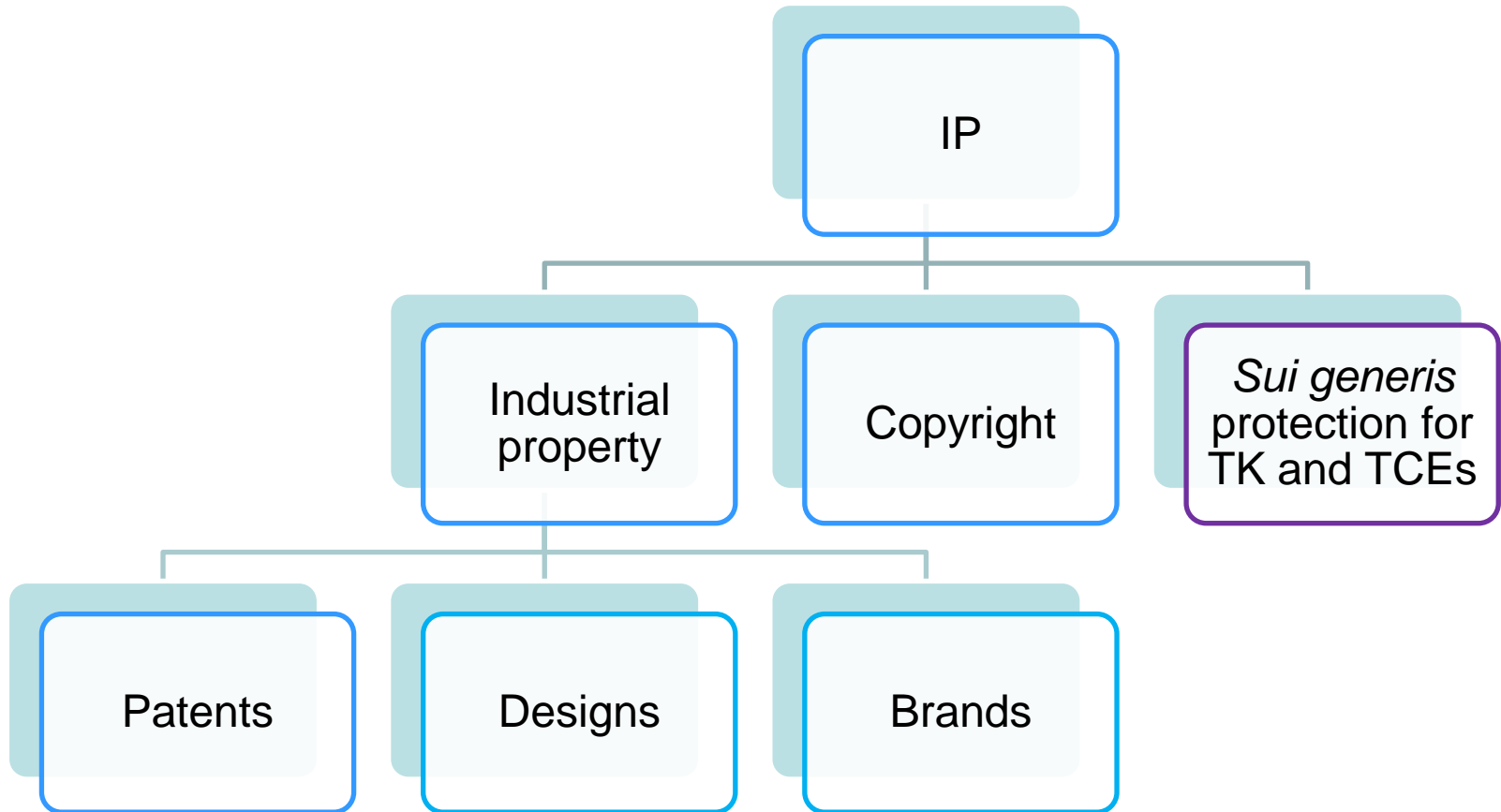


Timorese in traditional dress take part in a ceremony (UN Photo/Martine Perret)



Traditional dancers perform during the pre-independence march and rally of the Sudan People's Liberation Movement (UN Photo/Paul Banks )

# The intellectual property family tree



# What are the intellectual property issues related to TK and TCEs?

- Innovations and creations based on TK/TCEs can be protected using patents and copyright (“works inspired by folklore”)
- But the ‘underlying’ TK/TCEs are unprotected, despite the fact that they are valuable and important
- **Should underlying TK/TCEs be “protected” in the intellectual property sense?  
... and, if so, what does “protected” mean?**

# What is Protection?

- Treating TK/TCEs as intellectual property: Holders have a say over **access and use** of TK/TCEs by third parties
- Using intellectual property principles and values to prevent unauthorized or inappropriate uses of TK/TCEs by third parties (misuse and misappropriation)
- *Sui generis* protection: Intellectual property adapted to respond to the particular features of TK/TCEs
- Different from preservation and safeguarding

# Protect? How?

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

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



# Protect? How?

- Legal measures?
- Practical measures?

- At a national level?
- At a regional level?
- At an international level?

# Positive protection: Peru - Law No. 27811 of 24 July 2002

Protection regime for the collective knowledge of indigenous peoples derived from biological resources

- Collective knowledge connected with biological resources
- Prior informed consent
- License contracts for the use of collective knowledge
- Benefit-sharing / Fund for the Development of Indigenous Peoples
- Public register / Confidential register / Local registers
- Role of the State
- References to customary laws

# Positive protection: Algeria - Copyrights and neighboring Rights Act, 2003

## Article 8

- Works of traditional cultural heritage (...) shall be granted special protection as provided for in the provisions herein.

Works of traditional cultural heritage shall consist of the following:

- Traditional classic music works,
- Musical works and popular songs,
- Popular expressive forms produced, developed and deep-rooted in the national community, and have the characteristics of traditional culture of a nation,
- Anecdotes, poems, dances and folklore shows,
- Works of popular arts such as drawings, oil paintings, sculptures, carvings, pottery and mosaic,
- Handcrafts on metal and wood, jewels, baskets, needle works, Zaraby tricot and textiles.

## Article 139

- The National Bureau of Copyrights and Neighboring Rights shall protect works of public property and traditional cultural heritage.

# Other examples

- Tunisia: Law No. 94-36 (1994) on Literary and Artistic Property
- Egypt: Law No. 82 (2002) pertaining to the protection of intellectual property rights, copyrights and neighboring rights
- Malaysia: Act 634 (2004) on the Protection of New Plant Varieties
- Zimbabwe: Law No. 42 (2004) Copyright and Neighbouring Rights Act (Chapter 26:05)

# 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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Reset

## 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/>

# Examples of Defensive Protection

- National Commission against Biopiracy of Peru
  - Created by Law N° 28216 (2004)
  
- Traditional Knowledge Digital Library of India (TKDL)

# 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;

# The Traditional Knowledge Digital Library (TKDL) of India

- 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



- Should underlying TK/TCEs be “protected” in the intellectual property sense?
- At the national level: is there a need to establish legal measures or use practical mechanisms to protect TK and TCEs?
- What is needed at the international level?

Thank you!



# **Towards Developing a National Strategy and Policy on IP, TK and TCEs: Issues and Key Questions**

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- Key questions with the view to developing an IP strategy regarding the protection of TK and TCEs

# PURPOSE

To help policy-makers to decide, in relation to their national cultural and creativity policy, and in consultation with communities and stakeholders,

1) if TK and TCEs should be protected in the IP sense, and if so,

2) how to define the objectives and legal means of their protection.

# Four steps

- 1° Identifying TK/TCEs and holders' interests
- 2° Assessing the existing IP system and other existing legal systems of protection
- 3° Considering, as an option, a *sui generis* system for protection
- 4° Assessing implementation means and costs

# 1° : identifying interests

- Survey of TK/TCEs in the country
- Survey of the indigenous and local communities that hold, practise and maintain them
- Orphan TK/TCEs? Vulnerable and misappropriated TK/TCEs?
- Potential and expectations for using them as economic assets for the communities' development?
- What would be the purpose of legal protection? Defensive, positive protection? Protection against cultural harm?
- Other non IP policy issues to be taken care of?

## 2° : assessing the existing IP system

- What does the existing IP system already cover in terms of protecting TK/TCEs?
- Are those existing tools efficiently and fully used?
- What does the IP system not cover in terms of protection (gaps)
- Are there customary law and protocols that ensure protection ?
- What is the status of TK/TCEs in terms of public disclosure and availability?



# 3° : the option of a *sui generis* system

- Definition of the subject matter of protection?
- Identification of the right/holders and/or beneficiaries?
- Identification of threats : what forms of behavior should be considered unacceptable or illegal (threats)?
- What form of protection is needed and what rights would be granted?  
Role for customary law?
- Strike a balance with public interest: exceptions and limitations ?  
Duration of protection?
- Formalities, such as registration, if any?
- Should newly recognized rights have retrospective effect?
- How should foreign right-holders/beneficiaries be treated? What about TK/TCES that are transboundary?

# 4° : assessing means and costs

- How should the IP rights related to TK/TCEs be managed and how will implementation be ensured?
- Would that management require inventories or databases of TK/TCEs, both in terms of defensive/and/or positive protection?
- What other practical measures and tools would there be (guidelines and protocols, capacity-building and raising awareness initiatives, model contracts)?
- Should, and how would cultural and creative industries be involved?
- What forms should judicial procedures and dispute take?
- What costs would an enhanced system of protection involve for IP offices and/or other public offices?

# Conclusion / Further considerations

- Consultations before, during and beyond the normative process
- National experiences (WIPO GRTKF databases)
- International development (IGC)
- Further reading (Brief nr. 3) / supportive role of WIPO and legislative advice



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[www.wipo.int/tk/en](http://www.wipo.int/tk/en)**

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