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REPORT ON THE TOOLKIT FOR MANAGING INTELLECTUAL PROPERTY WHEN
DOCUMENTING TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES

Document prepared by the Secretariat

I. OVERVIEW

1. Many programs are currently planned or already in progress to document traditional knowledge (TK) and genetic resources, for diverse purposes such as preserving TK, conducting research, or enabling the wider use of TK. Documentation programs can raise intellectual property (IP) questions for holders of TK and custodians of genetic resources. At the point when their TK or genetic resources are documented (or fixed or recorded in permanent form), vital decisions need to be taken to ensure that this step does not unintentionally undermine or effectively waive IP interests. Conscious consideration of IP implications is particularly important during the documentation process.

2. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee") has agreed on the development of a toolkit to provide practical assistance to TK holders and custodians of genetic resources who are faced with this challenge. The toolkit focuses on management of IP concerns during the documentation process, and also takes the documentation process as a starting point for a more beneficial management of TK as a community's intellectual and cultural asset. This document reports on the development of the toolkit and the consultations held with stakeholders. A summary and introduction to the toolkit are annexed. Finalization of the toolkit will be based on continuous input from WIPO Member States, other participants in the

Committee's work and a wider range of other stakeholders, with an emphasis on field -testing the toolkit in cooperation with the communities concerned and with other TK -related initiatives.

II. BACKGROUND

3. The need for practical guidance on IP aspects of documentation has been expressed by holders of TK and genetic resources in WIPO's work since 1998. In response to these needs, the Committee considered the following proposal to develop a 'toolkit' at its third session in June 2002:

"One very practical contribution that the Committee could make would be to consider ... in more detail ... the intellectual property implications arising out of the recording of traditional knowledge. For instance, the Committee could consider the compilation and publication of an "Intellectual Property Documentation Toolkit for Traditional Knowledge Holders." Not only could this Toolkit inform and educate traditional knowledge holders and their representatives of the intellectual property implications of publication of traditional knowledge, and thereby enable any consent to such publication and dissemination to be 'informed consent,' but the Toolkit could also place a particular, and very pertinent, emphasis on the intellectual property implications of recording traditional knowledge (whether in a written format, by audio -tape or by video-tape) by traditional knowledge holders themselves."¹

4. Following wide support by Committee participants,² the Committee adopted this proposal,³ specifying that the toolkit should be developed in close cooperation with representatives of indigenous and local communities, and other relevant organizations, such as the Secretariat of the Convention on Biological Diversity (CBD).⁴ The Chair noted that several delegations had proposed that the toolkit be 'simple, balanced and developed with an advisory body.'⁵ A draft outline of the toolkit was prepared by the Secretariat after wide - ranging consultations with stakeholders, and this draft was extensively reviewed by the Committee at its fourth session, in December 2002.⁶ In the discussion, there was continued stress on the need for the toolkit to be developed with the advice of experts and community representatives who have practical experience with IP and the documentation of TK and genetic resources,⁷ and the Chair concluded that it be developed with an advisory body.⁸ Subsequent work on the toolkit was therefore undertaken in consultation with a range of interested groups and the experts who had delivered presentations on documentation of TK

¹ See document WIPO/GRTKF/IC/3/5, paragraph 19.

² The Delegations of Bolivia, Cameroon, Canada, Côte d'Ivoire, Egypt, Japan, New Zealand, Norway, Panama, Peru, Switzerland and Venezuela, as well as the representatives of the Inuit Circumpolar Conference and the Saami Council supported the development of the Toolkit. See paragraphs 99 to 106 of document WIPO/GRTKF/IC/3/17 ("Report").

³ See document WIPO/GRTKF/IC/3/17, paragraph 130.

⁴ See document WIPO/GRTKF/IC/3/17, paragraphs 106 to 110.

⁵ See document WIPO/GRTKF/IC/3/17, paragraph 130.

⁶ document WIPO/GRTKF/IC/4/5

⁷ See statements by the Delegations of India, Turkey, Venezuela, Zambia and the representative of the Saami Council in document WIPO/GRTKF/IC/4/15 ("Report").

⁸ See document WIPO/GRTKF/IC/4/15 ("Report").

and genetic resources at the Committee's third session in June 2002. This informal advisory group considered and commented on the draft toolkit and will review future draft versions of the toolkit as requested by the Committee. All comments from these and other stakeholders have been incorporated into the draft toolkit, and future input will be included into subsequent redrafts.

III. CONSULTATIONS AND DEVELOPMENT OF THE TOOLKIT

5. The toolkit has been developed through a broad consultative process involving a wide range of stakeholders, in particular indigenous and local community organizations. Specific sessions for consultations on the draft toolkit were held at the WIPO Asia-Pacific Regional Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and the WIPO Workshop on Technical Aspects of Databases and Registries of Traditional Knowledge and Associated Biological Resources, held in Cochin, India, from November 11 to 13, 2002, and the WIPO Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore for Nordic Countries (Denmark, Finland, Iceland, Norway and Sweden), held in Stockholm, Sweden, from November 6 to 8, 2002. Further consultations are programmed for a series of regional and national seminars in a wider range of locations in the period up to the fifth session of the Committee.

6. Within the CBD processes the draft toolkit has been extensively discussed and further developed as a part of the ongoing cooperation between the Secretariats of the CBD and WIPO.⁹ The toolkit was first considered at the global Scoping Meeting on Capacity Building Approaches for Access to Genetic Resources and Benefit-sharing, which was convened in Kuala Lumpur, Malaysia, from October 7 to 9, 2002, by the United Nations Environment Programme (UNEP) and the United Nations University (UNU). The Scoping Meeting reported its findings, including those on toolkits for access and benefit-sharing, to the CBD Open-ended Expert Workshop on Capacity-building for Access to Genetic Resources and Benefit-sharing, which took place in Montreal, Canada, from December 2 to 4, 2002 (see document UNEP/CBD/ABS/EW-CB/1/INF/1, paragraph 13). Furthermore, the Toolkit was added to the Provisional Agenda of the Ad Hoc Technical Expert Group on Traditional Knowledge and Clearing-House Mechanism of the Convention on Biological Diversity, which took place in Santa Cruz de la Sierra, Bolivia, from February 24 to 26, 2003 (see document UNEP/CBD/AHTEG/TK-CHM/1/1, item 7.1).

7. In addition to these consultation sessions at international and intergovernmental meetings, the draft Toolkit has been discussed and consulted upon in focused, bilateral discussions with the Tulip Tribes in the United States of America, the Peoples' Biodiversity Registers (PBR) Initiative of India, the Society for Research Into Sustainable Technologies and Institutions (SRISTI), the M.S. Swaminathan Research Foundation (MSSRF), the Institute of Advanced Studies of the United Nations University (IAS/UNU), the Foundation for the Revitalization of Local Health Traditions (FRLHT), the African Regional Intellectual Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI). Extensive demand for a simple, practical and empowering toolkit was expressed by these counterparts. Useful comments and improvements were received, in particular from

⁹ This cooperation is part of the Memorandum of Understanding entered into by the two Secretariats in 2002.

community-based and non-governmental organizations, and were incorporated into the draft toolkit.

IV. FURTHER STEPS FOR DEVELOPMENT OF THE TOOLKIT

8. The next steps in the development of the toolkit may be summarized in the following four stages: consultations, field-testing, translation, and dissemination. The following paragraphs provide options and suggestions for consideration by the Member States at each of these stages. They also seek the support of Committee participants in achieving these steps with maximum effectiveness and to the maximum benefit of the relevant stakeholders.

Consultations

9. The most important prerequisite for an effective and balanced toolkit is that all stakeholders have been fully consulted and their comments taken into account, especially TK holders and custodians of genetic resources themselves. As noted above, the Secretariat has already carried out consultations with a diverse range of stakeholders and is continuing to seek wide-ranging input. A completed draft text of the toolkit will be circulated to Committee participants in advance of the fifth session of the Committee. Committee participants will be able to provide comments on this draft, both at the fifth session and in writing thereafter. It is proposed that a first published version of the toolkit be finalized before the end of 2003. It would therefore be appreciated if comments could be received by August 30, 2003. Written comments may be sent to the Traditional Knowledge Division at grtkf@wipo.int at WIPO, 34, chemin des Colombettes, 1211, Geneva 20 (Switzerland), Fax 41 22 338 8120. Ideally, comments could propose specific textual changes to the draft toolkit (including information about particular examples or case studies), rather than present general observations on the nature of the toolkit. All comments will be taken into account when finalizing the draft toolkit.

10. Successive drafts and updates of the toolkit will be made available on the webpage of the Traditional Knowledge Division of WIPO,¹⁰ with provision for comments to be submitted up to August 30, 2003. At this point, following one year of consultations, the commenting period for the first version of the toolkit will close, so that the document can go for reproduction and field-testing. This will lead in turn to further updates and revised versions in subsequent years, based on further comments and feedback from field users.

11. The support of the Committee participants is solicited in facilitating consultations at the national, regional and local levels on the toolkit. The use and discussion of the draft toolkit is encouraged at all stakeholder meetings and initiatives, and feedback developed on the draft is requested to be sent to WIPO.

Field-testing

12. After a thorough consultation process, the toolkit will be ready to be field-tested by communities, organizations and institutions which are documenting TK and genetic resources, especially by TK holders and custodians of genetic resources. Field-testing of the toolkit in

¹⁰ The webpage address is: <http://www.wipo.int/globalissues/index.html>.

actual documentation projects will provide valuable feedback for improvements which can enhance the practical utility of the toolkit.

13. As a further consultative and field -testing initiative, the initial outline of the toolkit has been incorporated into the draft Peoples' Biodiversity Registers Methodology Manual,¹¹ which is currently being developed and field -tested in workshops and community consultations. The Peoples' Biodiversity Registers (PBR) will form a part of the Biodiversity Information System (BIS) that will support the three -tiered management structure envisaged by the Indian Biological Diversity Act of 2002.¹² The PBRs are the component of the BIS that functions at the level of a village or a group of villages which constitute a *panchayat*. The PBR and BIS will address *inter alia* "intellectual property rights, customary as well as through the modern legal regime, over biodiversity resources."¹³ In this context, the draft PBR Methodology Manual has identified that an "important limitation is the difficulty of recording special knowledge of possible commercial value and of ensuring that benefits from the use of such knowledge flow to the knowledge holders."¹⁴ In order to manage IP implications of such documentation work, the PBR Methodology Manual incorporates the toolkit outline which was adopted by the Committee at its fourth session. In the context of the PBR methodology development, the toolkit will thus be field -tested through community-level consultations.

14. The Honeybee Network¹⁵ and the Society for Research Into Sustainable Technologies and Institutions (SRISTI)¹⁶ which were established to strengthen the creativity of grassroots inventors and innovators and TK holders engaged in conserving biodiversity, have documented more than 22,000 grassroots innovations and other TK elements in the Honeybee Database and other mechanisms. SRISTI has helped the government of India to establish the National Innovation Foundation (NIF), which is building a national register of grassroots innovations and outstanding TK, and has operationalized a prior informed consents system for it. The SRISTI Board Meeting will review and comment upon toolkit during one of its forthcoming meetings, in order to provide feedback from its extensive experience with the documentation of TK and genetic resources.

15. The M.S. Swaminathan Research Foundation (MSSRF),¹⁷ which conducts research *inter alia* on biodiversity, biotechnology and sustainable agriculture with local and tribal communities in six states of Southern India, has been documenting agricultural crops and traditional conservation practices in Tamil Nadu. The MSSRF has undertaken to field -test the pilot version of the toolkit in its ongoing work with tribal communities for the documentation of TK and genetic resources.

16. Any additional opportunities for field -testing the toolkit in practical documentation project, which the Committee participants may facilitate in their own countries, communities

¹¹ Downloadable at <http://ces.iisc.ernet.in/hpg/cesmg/pbr_nov212002.htm>.

¹² See, Gadgil, Madhav. People's Biodiversity Register: A Methodology Manual. Preliminary Discussion Draft. Centre for Ecological Studies, November 12, 2002: page 6.

¹³ *Ibid.*, page 9, item (h).

¹⁴ *Ibid.*, page 13.

¹⁵ See <<http://www.sristi.org/honeybee.html>>

¹⁶ See <<http://www.sristi.org>>

¹⁷ See <<http://www.mssrf.org>>

or organizations, would improve the effectiveness, balance and practical value of the toolkit and would be highly appreciated by the Secretariat. Such opportunities for field-testing of the toolkit could be identified to the Secretariat of WIPO, so that sufficient copies of the toolkit and additional support could be provided. Opportunities could be identified at any subsequent sessions of the Committee and feedback from the field-tests could be provided to the Traditional Knowledge Division at < grtkf@wipo.int > or at WIPO, 34, chemin des Colombettes, 1211, Geneva 20 (Switzerland), Fax +41 22 338 8120.

17. Comments, experiences and lessons learned from these field-tests will be provided to expert advisors for collective consideration as to how best to incorporate this material into the toolkit. The experts will also be requested to review and amend the pilot version of the toolkit in accordance with the feedback received from the field-testing.

18. To advance this process, it may be appropriate for Committee participants to facilitate the field-testing of the toolkit in real-life documentation projects in their countries and communities; to advise the Secretariat of any opportunities to incorporate the draft toolkit in national and regional consultations and documentation programs; and to provide feedback from such field-tests to enhance the practical utility of the toolkit.

Translation into local languages and United Nations languages

19. The practical use of the toolkit depends on its availability in languages which are accessible to its end-users. This will require translation of the toolkit into all United Nations languages, including Arabic, Chinese, English, French, Russian and Spanish. Subject to budgetary and resource considerations, WIPO will seek to produce these translations once the toolkit has been finalized. However, the full effectiveness of the toolkit will also require the translation of the toolkit, or parts thereof, into local languages of indigenous peoples and other TK holders and custodians of genetic resources. At the fourth session, the Delegation of South Africa stated that “the use of indigenous languages was central... and Member States would need to play a role in this regard.”¹⁸ In this respect, the Committee participants are invited to facilitate the translation of the toolkit into local and indigenous languages for maximum accessibility to their communities, TK holders and custodians of genetic resources.

20. Committee participants may wish to consider the possibilities, when the toolkit is in final form, to facilitate its translation into local and indigenous languages to improve its accessibility for TK holders and custodians of genetic resources.

Dissemination and application support

21. After the toolkit has been finalized and translated into relevant languages, its wide dissemination, along with necessary support for its application, will be important in order for it to be used in practice. The CBD Secretariat has undertaken to disseminate the toolkit through its Clearing-House Mechanism, including through the Indigenous Clearing House Mechanism, which is currently under development (see the Report of the Ad Hoc Technical Expert Group preferred to above). Furthermore, the toolkit will be made available, with necessary capacity building and training activities, in the context of WIPO's cooperation for

¹⁸ See statement of the Delegation of South Africa, paragraph 113, document WIPO/GRTKF/IC/4/15.

development programme and through the eWIPO Worldwide Academy, which is offering a Distance Learning Course on Intellectual Property Rights and Traditional Knowledge.

22. Whether the toolkit actually reaches its intended end-users, however, depends vitally on Committee participants and their ability to disseminate and use the toolkit at meetings, activities and projects which they are organizing in their territories. Committee participants are therefore invited to use the finalized toolkit at any activities which they may be undertaking for the documentation of TK and genetic resources. The Secretariat will seek to support any such activities as far as its resources allow.

V. CONCLUSION

23. The draft Toolkit should be considered a dynamic document, to be developed and disseminated in a flexible way. Further development may include special modules, for example giving guidance on particular national laws, or dealing with documentation issues for specific subject matter, such as documentation of traditional medical knowledge or of traditional ecological knowledge. The *WIPO Practical Guide for the Legal Protection of Traditional Cultural Expressions*¹⁹ will also provide a valuable adjunct, given the overlap that may arise between documentation of TK on the one hand and the protection of traditional cultural expressions and folklore on the other.²⁰ Continued emphasis will be placed on the practical field-testing by documentation projects in various countries and communities. The further evolution of the toolkit depends on the active facilitation of field-testing, feedback, translation and dissemination of the toolkit by the Committee participants, in particular indigenous and local communities.

24. *The Committee is invited to:*
 (i) *not the contents of this document;*
 (ii) *incorporate the field-testing of the draft toolkit in actual documentation projects, and advise the Secretariat of opportunities to use the toolkit in national and regional consultations and documentation programs;*
 (iii) *provide feedback from field-tests to enhance the practical utility of the toolkit, as well as facilitate its translation into local and indigenous languages to improve its accessibility for TK holders and custodians of genetic resources; and*
 (iv) *provide comments on the draft toolkit at the fifth session of the Committee or submit comments in writing before August 30, 2003.*

[Annex follows]

¹⁹ See document WIPO/GRTKF/IC/3/10, paragraph 155.

²⁰ See discussion in document WIPO/GRTKF/IC/5/12

ANNEX

SUMMARY AND INTRODUCTION TO THE TOOLKIT FOR MANAGING
INTELLECTUAL PROPERTY WHEN DOCUMENTING TRADITIONAL KNOWLEDGE
AND GENETIC RESOURCES

This Annex contains the summary and introduction of the draft toolkit to illustrate the general approach taken in the preparation of the overall publication. A complete text of the draft toolkit is being circulated separately to promote widespread consultations and further development.

SUMMARY OF THE TOOLKIT

Many communities are taking part in programs to record, write down or document their traditional knowledge (TK) and to record information about the plants they have traditionally used (often called 'biological resources'). This may be to help preserve the TK and biological resources for future generations, or to help others use it.

Depending on how documentation is carried out, it can promote a community's interests or damage those interests. This is because important intellectual property (IP) rights may be lost or strengthened when TK is documented. This Toolkit helps the holders of TK and the custodians of genetic resources to take care of their interests, if they decide to document their TK.

The Toolkit should empower you to take decisions about how to safeguard your interests and to keep control over your IP rights and options. You can use it to define your goals and strategies before, during and after the documentation. This list summarizes four key steps at each stage:

A. Before documenting:

1. Consult widely with all in the community who have an interest in the TK and biological resources, and work out what is needed to make sure they have agreed in advance to the documentation process and are fully aware of the implications ('prior informed consent').
2. Set your objectives for the documentation project and identify any concerns about IP.
3. Assess your TK and all your IP options, before disclosing your TK.
4. After considering your options, set your IP strategy to implement your objectives.

B. During documentation:

1. Do not disclose your TK to anyone beyond the traditional circle, unless you have taken a conscious decision to do so.
2. Record your TK and associated genetic resources, but don't make the records or documents publicly available unless or until this fits in with your strategy.
3. Identify those who provided the information and who claim ownership and record this information, including any conditions or limitations they impose on its use.
4. Clarify and structure your relationship with your project partners through contractual agreements (e.g. confidentiality agreements and research agreements).

C. After documentation:

1. Review possibilities of protecting your TK and genetic resources through IP and other rights - and work out what elements of your TK could be protected as IP;
2. Only disclose your TK and genetic resources if this is part of your strategy;
3. Decide whether you wish to use databases and registries to achieve your IP objectives;
4. Use and enforce your IP rights in your TK and genetic resources, if any

When your TK or biological resources are being documented, it's vital to remember that:

- Documentation does not ensure legal protection for your TK and genetic resources. In fact, in some cases it can destroy your rights and options, if you proceed without an IP strategy;
- “Documentation” is not the same as putting TK and genetic resources in the public domain, and documented TK and genetic resources can still be kept confidential or restricted; and
- There is no single way to approach documentation of TK and biological resources. The range of IP interests involved is as diverse as the range of traditional communities concerned. Since there are many ways of defining and protecting IP interests, you should carefully consider all your options and consult widely before undertaking a documentation project.

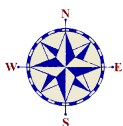
When using the Toolkit, look out for these icons:



The *caution* icon warns you of potential risks, problems or pitfalls.



The *balance* icon indicates a general principle or guideline that you should keep in mind, and try to apply in practice when documenting your TK.



The *direction* icon refers you to sources of further information and advice. It also provides you with tips on how to use this Toolkit.



The “Fasttrack” icon alerts you that you can skip some material which might not be relevant for you, and points you to other material that might be more important for you to consider.

INTRODUCTION

What is TK documentation?

Documenting TK includes recording it, writing it down, taking pictures of it or filming it - anything that involves recording your traditional knowledge in a way that preserves it and could make it available for others to learn about your knowledge. It is different from the traditional ways of preserving and passing on knowledge within the community. Documentation is especially important because it is often the way people beyond the traditional circle get access to traditional knowledge. For example, documentation activities could include:

- recording on audiotape of the traditional lullaby song of the Cree;
- videotaping the preparation and administration of *bathenduleaves*, *ajwain* and wheat flour to far animals in cases of diarrhoea/dysentery;
- photographing traditional *Kent* textile designs of the *Ashante*;
- writing down the traditional ‘entitlement stories’ of the *Nisgaia*;
- making an inventory of local biodiversity by recording bird species, medicinal plants or soil microbes.

In some cases, documentation could mean putting TK into new media or new languages. For example, it could involve scanning ancient texts into digital copies, or copying stone carvings that contain traditional knowledge. Documentation can mean recording both the knowledge itself, and the traditional cultural way it is expressed



‘Documentation’ does not mean publishing TK, making it available to the general public, or placing it in the public domain. Some documentation projects are intended just to preserve traditional knowledge for the community itself, and to keep it secret. You can choose to document your TK and biological resources without placing them in the public domain.

How? See Sections B.1 and C.1 below.

Traditional cultural expressions and folklore

TK documentation can include not just the knowledge itself, but the traditional way it has been expressed – for example, songs and chants, dances and performances, images, oral narratives and stories. This raises a further set of issues relating to the protection of traditional cultural expressions and folklore. There is more information available on the protection of traditional cultural expressions and folklore. In particular, WIPO is preparing a “WIPO Practical Guide for the Legal Protection of Traditional Cultural Expressions” which will supplement the advice in this toolkit and consider the steps you should take in seeking to protect traditional cultural expressions and folklore.

Who is this Toolkit for?

This toolkit is especially designed to be used by holders of TK or custodians of biological resources, especially indigenous and local communities and their representatives.

You might find this toolkit useful if you are:

- An institution which undertakes documentation of TK and biological resources (a museum, archive, gene bank, botanical garden, etc.);
- A legal or policy advisor of such custodians of biological resources and TK holders;
- A research institution (university, participatory breeding program, etc.);
- A government or public sector agency undertaking documentation projects; or
- A private sector partner.

Others might also find the toolkit useful. Anyone using this toolkit should, however, note this warning:



This toolkit does not give full advice, and just provides background information you should take into account when planning to document your TK. You should normally get further advice about your particular needs and interests, for example advice about the local rules and laws that might apply. The toolkit will alert you to some areas where you might especially need to get expert legal advice.

What is the Toolkit for?

When you document TK or biological resources, the choices you make can affect whether you can protect your rights and interests. For example, if you reveal secret knowledge to someone else, this can mean you lose rights that could help you control how that knowledge is used. Intellectual property (IP) rights and other legal tools may be available to protect the knowledge when it is documented, but only if the right steps are taken during documentation.

The toolkit should help you work out what you need to do to safeguard your interests when your TK or biological resources are documented. It will help you to assess your IP options, plan, and implement your own IP choices and strategies when documenting your TK or biological resources. Since different IP issues and practical needs will arise at each stage of your work, the toolkit discusses what you might need to do at each step in documentation:

- *Before* documentation: assessing your options and setting your objectives;
- *During* the documentation process: how to take care of your interests in practice; and
- *After* documentation: controlling the use of your documented TK and biological resources by using IP rights and other strategies.



This toolkit does not suggest or recommend anyone approach documentation. What works for one community may not work for another community. Instead, the Toolkit:

- describes some IP tools that are available,
- discusses how you can successfully use them, and thus
- enables you to make informed choices.

The Toolkit's aim is to allow you to determine whether IP rights are the appropriate legal and practical tools for you to implement your goals concerning your TK or biological resources.

What are traditional knowledge, genetic resources and biological resources?

Traditional knowledge

There is no clear -cut definition of 'traditional knowledge' – in fact, your perception of what is your traditional knowledge is likely to be just as important as any official definition.

'Traditional knowledge' refers to a very wide range of knowledge, and is not limited to any particular field – it could be knowledge about medical treatments, about agriculture, about caring for the environment. What sets it apart from other knowledge and makes it 'traditional' is the way it is associated with a particular local or indigenous community. Traditional knowledge is created, preserved, shared and protected within the traditional circle. The term "traditional" means 'handed down from generation to generation,' and in the case of "traditional knowledge" (TK), it usually refers to knowledge that has been accumulated by societies in the course of long experience in a particular location. It is often knowledge that is important to the very sense of identity of a community.

Another way of appreciating the concept of TK is to consider its normal characteristics. Traditional knowledge is normally:

- Constantly evolving
- Part of a cultural heritage
- Holistic in nature – that is, linked to the community's spiritual beliefs, way of life, relation to the environment, or practices
- Created and held within a traditional community

Case study :

Examples of TK to illustrate the range of its characteristics

TK is often part of a community's spiritual and religious beliefs and can be deeply rooted in the natural environment – so recording information about TK has to be done together with information about the environment, including plants and other biological resources.

Some elements of TK are only revealed or disclosed to one part of a traditional community – for example, it may only be permitted to reveal TK to tribal elders or to community members who have been initiated. Women and men in some traditional communities may hold different types of knowledge. Customary laws or protocols like this often control how TK should be held and passed down between delegations.

Some documentation projects have built on and strengthened these traditional rules and systems, by respecting them in the way the information is gathered and protected against access by others.

Biological resources

Many documentation projects gather information about specific plants, animals, insects or other living beings. For example,

- Documenting medicinal plants,
- documenting farmers' traditional plant varieties (landraces) by gene banks, or
- documenting biological resources in

biodiversity registers, so that the range of plants and other biological resources can be conserved ('the conservation of biological diversity'), and benefits shared by local and indigenous communities when the resources are used ('access and benefit-sharing').

Case study :

[Peoples' Biodiversity Registers]

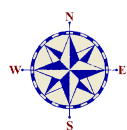
There are important issues to clear up when biological resources are being documented. Often, traditional knowledge about the resources is documented at the same time. This raises additional IP management issues.

The Convention on Biological Diversity (CBD) is an international treaty that creates rules for how biological resources should be conserved and accessed, and how the benefits from their use should be shared.

Case study :

[...SINGER or other CGIAR Case Study ...]

The Bonn Guidelines on Access to Biological Resources were recently drawn up to provide further guidance on how biological resources should be managed in line with the CBD. The CBD and the Bonn Guidelines are relevant to the practical guidance set out in this toolkit, but the toolkit is not intended to provide full or authoritative advice on these systems.



Where to go for more information about the CBD and access and benefit sharing?
[References]

The CBD defines 'genetic resources' as 'genetic material of actual or potential value.' 'Genetic material' is any material of plant, animal, microbial or other origin containing functional units of heredity. Documentation of a genetic resource can also cover its parts or components, such as organs, cells, cell organelles, genes, etc.

Biological resources

If you are documenting not only the plants themselves, but also the extracts, concoctions or biological

Case study :

African Pharmacopoeia case study with plant imagery

by products from those plants, you are documenting not only the *genetic* resource (i.e., the plant), but also other *biological* resources (i.e. including the extracts and by products).



TK and biological resources:

TK is often closely associated with biological resources. Some national laws especially protect TK that is linked with biological resources, and information about the knowledge and about the resource is often collected or documented at the same time. The CBD also draws a link between the two.

When using this Toolkit, you should assume that any discussion of TK also refers to any genetic and biological resources that are associated with the knowledge.

Setting IP in context

Intellectual property (IP) rights and systems can provide valuable tools for safeguarding your interests. IP can help ensure that when your TK is documented, you have a say in how the TK is used and managed beyond your community. The toolkit includes practical examples of how various IP systems have been used:

- To create positive rights over TK for the benefit of traditional communities; and
- To prevent others from taking out IP rights over TK when this offends or damages the interests of the traditional community.

As the later examples will show, a wider range of IP rights and IP systems have been used to protect interests in TK. These will be described in more detail later, but they include:

- Patents on inventions created with indigenous knowledge and measures to stop patents being granted on inventions that already form part of existing TK;
- Trademarks, collective and certification marks, and geographical indications that protect the reputation and special qualities of traditional products that make use of TK, and stop others from making misleading or offensive use of references to traditional communities and cultures;
- Copyright and folklore protection that covers the way TK is expressed in words, music, dance and other artistic works, and various ways of protecting databases and the information held in databases;
- Use of trade secrets and the law of confidentiality to protect TK against unauthorized disclosure and use; and
- Specific, tailor-made (*à sui generis*) laws (available in some countries only) that directly protect some forms of TK.

Before you consider using IP tools for your TK and genetic resources, you should remember that alongside or instead of these IP mechanisms, you can use a range of other mechanisms to preserve and protect your TK and biological resources. These alternative mechanisms are not covered in detail in this toolkit. They include:

- the application of customary law and protocols;
- cultural heritage legislation;
- contracts, licenses and other legal agreements that set conditions on how other people can use your TK or biological resources;

- security systems like passwords and codes that protect data that is in digital form and held in electronic databases, and
- non-IP *suigeneris* forms of protection, where these have been implemented.

When preserving and protecting your TK and genetic resources, it is best to balance your use of the IP system with your use of other mechanisms. You should therefore neither disregard nor overestimate the role of IP rights. For instance, whether you sign a particular contract or whether you seek patent protection or rely on trade secret protection can depend greatly on your specific situation and each element of your TK and genetic resources.



Using non-IP tools to protect your interests:

This tool kit concentrates on IP tools for use in protecting your interests when TK and biological resources are being documented.

You can find references to more information on other, non-IP mechanisms below [reference]

Putting IP tools to work

Remember that this toolkit gives very general advice and information. It is not based on any specific national laws, nor on any particular community's interests and culture. If you are considering putting these tools to work, you will need to adapt, modify and supplement this general advice. In fact, this toolkit will aim more to help formulate the questions you will need to reflect on and find answers for, rather than to provide ready-made answers.

These searches for specific answers for your own documentation project will need a wider range of information, especially on your own community's interests, and the laws and regulations that apply in your country. This can include:

- specialist legal advice, including advice on IP laws, laws on the environment and indigenous affairs, and contract law;
- stakeholder consultation as an integral part of your project planning;
- clarifying community needs and expectations;
- ensuring that you make IP-specific decisions with full awareness of their consequences;
- considering Codes of Conduct, ethical guidelines and documentation policies which have been developed by other documentation projects. A list of instruments containing such general principles is provided here.



Codes of Conduct, Ethical Guidelines and other general principles:

You will find valuable information on the approaches taken in other documentation initiatives in the guidelines and codes of conduct that have been drawn up. These include:

- The CBD Bonn Guidelines on Access and benefit-sharing
- The FAO Code of Conduct for Germplasm Collection
- The CBD Guidelines for Impact Assessment
- CIDOC
- Inuit Guidelines on Research

[Further examples and references to be included]

How to use this Toolkit

Remember that you should not use this Toolkit without customizing and localizing the information in it to your specific, case-by-case situation, and without obtaining additional legal advice. The Toolkit does not offer ready-made IP solutions for you, but only starting points for you to develop your own customized IP strategy which meets your needs.

You can use the Toolkit by moving through it section-by-section. It is written so that the advice it provides is relevant to each stage of a documentation project – first, planning and consultation; then the actual documentation; and then the practical steps after the TK has been documented. Each section therefore covers one of the main phases of most documentation projects, and you can use each section separately if that is more suitable for you. It will be best if you first skim the Toolkit all the way through, before you apply individual sections during discrete stages of your work.

But the Toolkit also contains sets of elements which you can use independently, such as checklists, decision making trees, and case studies. Here are some possible uses for such elements.

Using Checklists of ‘Do’s and Don’t’s’

Each Section begins with a short Checklist of “Do’s and Don’ts.” This checklist gives you a quick catalog of the main rules you should keep in mind. However, these rules do not in themselves safeguard your interest and you should therefore read the full chapters in detail.

Using individual sections independently

If your work does not cover all the documentation stages described in the Toolkit, you can use individual chapters of the Toolkit independently. For example, if you have already documented your TK many years ago and are no longer documenting, you could use the “After documentation” section on its own.

Using Decision Trees

Remember that the options and factors reflected in the Decision Trees are simplifications, and the actual decisions depend highly on the individual context and needs. You should make these decisions on a case-by-case basis, taking into account the special aspects of each individual case. The Decision Trees are therefore merely a starting point for your own decision making process. They do not give an exhaustive representation of all your options or your all the factors to take account of in your planning, consultation and decision-making.



What this Toolkit is Not

One theme of this toolkit is that it is only one part of the overall framework for preserving and protecting your TK and defending your interests when your TK is being documented. Balance between interests, and between different tools and techniques, is very important. It is important to remember that this toolkit has important limitations, and is not a stand-alone solution to some important questions. In particular, please bear in mind that this toolkit does:

- *not* suggest that you should put your TK or genetic resources into the public domain;
- *not* provide a full introduction to IP law and practice;
- *not* substitute for specific legal or technical advice on whether individual elements of your TK and genetic resources *can* or should be protected by IP rights;
- *not* propose or assess options for legislative action on TK or genetic resources;
- *not* give information on national or regional IP legislation, nor interpret these laws and international treaties;
- *not* provide advice on the protection for TK and genetic resources beyond national legal systems; and
- *not* advise you on practical methods for the collection of genetic or biological resources.

In any actual documentation project, you should only use this Toolkit together with alternative and more focussed sources of legal and other advice.

[End of Annex and of document]