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INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

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PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES

Document prepared by the Secretariat

I. OVERVIEW

1. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) and the WIPO General Assembly have both emphasized the need for enhanced involvement of representatives of indigenous and local communities in the work of the Committee. Since the inception of the current program in 1998, various steps have already been undertaken to facilitate the participation of indigenous and local communities in the work of WIPO in the Committee, and more generally concerning intellectual property and genetic resources, traditional knowledge and traditional cultural expressions/folklore. This document provides an update on current practical steps, and responds to a request for further work towards the design of a possible Voluntary Fund to support direct participation in the Committee’s future work.

2. At its sixth session, the Committee further discussed a set of proposals for enhanced involvement (WIPO/GRTKF/IC/6/10). The Committee welcomed the implementation in practice of a number of proposals from the fifth session, including the convening of an informal consultative forum for indigenous and local representatives in advance of sessions of the Committee and the creation of a web site to disseminate the perspectives of Committee observers to a wider audience. The Committee also discussed the further possibilities for the consideration and elaboration of possible establishment of formal structures for a Voluntary

Fund, depending upon the overall direction set for the Committee or other bodies within WIPO.

3. This document notes the steps already undertaken to enhance participation of indigenous and local communities, considering both qualitative involvement in substantive discussions and development of Committee documents, as well as practical measures to support attendance at Committee meetings. It notes that a comprehensive approach is necessary, combining qualitative support and enhanced work practices with logistical support for attendance. In the short term, this includes continuing to encourage voluntary donors to support the participation of representatives of accredited observers in the indigenous consultative forum and in the Committee itself. In the longer term, these voluntary funding initiatives may be formalized in the shape of a distinct Voluntary Fund. This paper therefore set out possible elements for a future Voluntary Fund for the Committee's decision. This brief proposal draws on past discussion in the Committee, consultation within the United Nations system, and the series of issues papers considered by the Committee in the past.

II. BACKGROUND

4. The Committee has progressively developed a range of proposals to enhance the participation of indigenous and local communities in its work, basing this on its own policy discussions, a series of Secretariat papers, and the reported experience of other international forums and processes. At its fifth session, the Committee considered the report it had commissioned on enhanced participation (WIPO/GRTKF/IC/5/11) and decided that:

“There was an unanimous view that the participation of local and indigenous communities is of great importance for the work of the Committee and that all appropriate measures should be undertaken to facilitate that participation. It was considered that Member States should make every effort to include representatives of these communities in their national delegations. It was also considered that both WIPO and Member States should increase their efforts to implement the practical measures for enhancing participation as set out in paragraphs 10 and 11 of the document under discussion.

“Furthermore, the Secretariat should establish a web site for publishing submissions by NGO observers, particularly those representing local and indigenous communities, on issues relating to the issues under the discussion in the Committee.

“As regards the source of the funding of participation of local and indigenous communities, there was no consensus in the Committee. Most delegations that spoke, however, favored funding on the basis of a voluntary fund scheme. In view of the differing opinions expressed concerning such a scheme, the Secretariat would, before the next meeting of the Intergovernmental Committee or any other body with similar tasks, further develop, in consultation with existing funding programs, a proposal for a voluntary fund and transparent selection mechanisms for funding the participation of representatives of accredited indigenous and local organizations, based on the principles set out in the document and the issues raised during the session.”¹

¹ Report of the fifth session of the Committee, document WIPO/GRTKF/IC/5/15, paragraphs 206 to 209.

5. Document WIPO/GRTKF/IC/5/11 reported that “[a]t the Committee’s fourth session members identified several principles that they stated ought to guide the consideration of possible funding modalities. These included:

(a) the mechanism used to determine the number of participants, the process for selecting those eligible to receive funding and the capacity in which they would participate in Committee sessions, should be transparent, representative and ensure equitable geographical distribution;²

(b) the funding of indigenous and local communities would be separate from their inclusion on national delegations;³

(c) there should be no negative impact upon WIPO’s technical cooperation work or the funding of government delegations to the Committee;⁴

(d) the selection of recipients of funding should be made in close consultation with Member States from which the relevant NGO or community originated, including consultations with regional and local groups. In other words, some form of governmental role should be built into the selection process;⁵

(e) funding of indigenous and local communities to participate in sessions of the Committee should not create a precedent for other WIPO committees;⁶

(f) the funding of indigenous and local communities should not detract from the Committee’s intergovernmental nature⁷ or the technical, intellectual property-related nature of its deliberations.⁸”

6. At its sixth session, the Committee considered a further report on the issue (WIPO/GRTKF/IC/6/10) and agreed:

“(i) to note the existing informal consultative processes and voluntary funding initiatives that contribute to the enhanced involvement of Indigenous and local communities in its work;

(ii) to welcome the creation of an informal consultative forum for Indigenous and local representatives in advance of sessions of the Committee, based on the elements in paragraph 11 of document WIPO/GRTKF/IC/6/10;

(iii) to encourage voluntary donors to support the immediate participation of representatives of accredited observers in any such consultative forum and in the Committee’s sessions; and

(iv) on the basis of an updated proposal, to continue its consideration and elaboration of possible establishment of formal structures for a Voluntary Fund, depending upon the overall direction set for the Committee or other bodies within WIPO.

² WIPO/GRTKF/IC/4/15, paras. 21, 23, 33.

³ WIPO/GRTKF/IC/4/15, para. 22.

⁴ WIPO/GRTKF/IC/4/15, paras. 22, 23, 27, 28.

⁵ WIPO/GRTKF/IC/4/15, paras. 23, 42, 56.

⁶ WIPO/GRTKF/IC/4/15, paras. 22, 24, 27.

⁷ WIPO/GRTKF/IC/4/15, para. 22.

⁸ WIPO/GRTKF/IC/4/15, paras. 22, 23.

The present document includes the updated proposal required in paragraph (iv) of this decision.

III. PRACTICAL STEPS TAKEN TO DATE

7. Following on from the Committee's decisions, most specific proposals for enhanced participation and involvement of indigenous and local communities have already been implemented:

- (i) A number of Member States have adopted the practice of funding NGO representatives of indigenous and local communities.
- (ii) The funds provided by WIPO to support Member State participation from developing countries have been used in some cases by such countries to support the participation of leaders of indigenous or local communities.
- (iii) Consultations and workshops at the national and regional level and other fora aimed at developing focussed input for the Committee have included representatives of indigenous and local communities as speakers and participants.
- (iv) The WIPO web site continues to update its Accredited Observer's web page designed to allow for the submissions of accredited observers on the issues before the Committee. Much of the material on this web page represents the perspectives of indigenous communities. Document WIPO/GRTKF/IC/7/INF/2 will list the documents available on this web page as at the time of the Committee's seventh session.
- (v) Specific briefings and consultations for NGO representatives, particularly representatives of indigenous and local communities, have been undertaken in the framework of Committee meetings and in WIPO's broader interaction with stakeholders.
- (vi) The Secretariat has continued its practice of consulting with interested representatives of indigenous and local communities on draft documents and other materials being developed for the Committee.
- (vii) The informal consultative forum for indigenous communities and holders of TK/TCEs has been established in advance of the sessions of the Committee. Existing informal consultative processes and voluntary funding initiatives continue to contribute to the enhanced involvement of Indigenous and local communities in its work.
- (viii) Steps have also been undertaken to encourage voluntary donors to support the immediate participation of representatives of accredited observers in any such consultative forum and in the Committee's sessions.
- (ix) WIPO has continued to work with the United Nations Permanent Forum on Indigenous Issues, having formally invited it to take part in its work, including the WIPO General Assembly and the Committee. WIPO hosted the 2003 meeting of the Interagency Support Group for the Permanent Forum, and took part in the Permanent Forum's meeting in May 2004, where the question of enhanced participation of indigenous communities was explored and recommendations developed.

IV. OPTIONS FOR A VOLUNTARY FUND TO SUPPORT PARTICIPATION

8. The Committee decided at its sixth session to “continue its consideration and elaboration of possible establishment of formal structures for a Voluntary Fund, depending upon the overall direction set for the Committee or other bodies within WIPO.” Currently, the participation of indigenous and local communities in the Committee is assisted by voluntary funding, on an *ad hoc* basis, from a range of governmental and non-governmental sources. Funding for other activities in Geneva also enables some representatives of indigenous communities to participate in the Committee’s work. Other logistical resources are provided to support the participation of indigenous representatives and to provide additional consultative forums (for example, in assisting with documentation and interpretation for consultations).

9. A more formalized Voluntary Fund to support participation in the Committee could help coordinate and enhance the effectiveness of these existing voluntary initiatives. By the same token, its planning should take account of the practical lessons from this experience, and respect the need not to duplicate or hinder existing programs.

10. If it were agreed to establish a distinct Voluntary Fund, it is unlikely that it could be fully implemented in practice before the eighth session of the Committee in 2005. The operation of a Voluntary Fund would therefore be linked to decisions about the future work program of the Committee beyond 2005, or of any future WIPO body tasked with work in this area. This suggests that the immediate emphasis should continue to be laid on strengthening, encouraging and coordinating voluntary funding, so as to ensure optimal contribution to the current mandate of the Committee.

Elements of an agreed framework for a Voluntary Fund

11. Wide support has been expressed for the increased participation of representatives for indigenous and local communities. Concrete steps to establish a formalized funding system will inevitably raise a number of complex practical, administrative and policy issues. Even so, the following points have been widely supported and could shape the general approach to developing a Voluntary Fund:

(i) There is unanimous support for enhanced involvement and participation of indigenous and local communities in the Committee’s work. The number and diversity of accredited *ad hoc* observers has increased with each meeting, as has the proportion of accredited observers representing indigenous communities.

(ii) The United Nations Permanent Forum has established an important position within the United Nations system in integrating indigenous issues within the UN system and in coordinating the involvement of indigenous communities in the work of the UN.

(iii) Voluntary funding for participation appears to be accepted as the preferred approach, given budgetary constraints, policy questions and concerns about restricting funding for Member States that may arise in the event of funding from the central WIPO budget. The concern has been expressed that no arrangement should diminish financial support for the participation of developing countries.

(iv) Voluntary funding for indigenous participation has been the option chosen in other United Nations contexts.⁹ In an analogous development, funds in trust have been established within WIPO to support technical cooperation activities.

(v) Eligibility for participation in the Committee would continue to be determined by the existing rules of procedure, and in particular the mechanism for accrediting ad hoc observers. Any mechanisms for funding participation could not pre-empt or displace the existing accreditation process. Accordingly, funding for travel to Geneva should be reserved for those organizations which have already been accredited to the Committee.

Possible establishment of formal structures for the development of a Voluntary Fund

12. At the CBD's Conference of Parties' seventh meeting, it was decided to establish a voluntary funding mechanism under the Convention to facilitate the participation of Indigenous and local communities in meetings under the Convention. Priority would be given to those from developing countries and countries in economic transition and small island developing States. In terms of the formal structure of the voluntary funding mechanism, the criteria is to be developed by the Conference of Parties in consultation with indigenous and local communities, taking into account any United Nations practice in this area.

13. To further the discussion, a possible basic structure could be formulated as an example to guide the Committee. Being a voluntary fund and not a part of the WIPO budget, the voluntary fund would operate independent of the regular budget process of WIPO. As the funds would be obtained from donors and are not part of WIPO's regular budget, the voluntary funds could be treated as a distinct funds-in-trust arrangement, and used according to a consultative and management process as would be developed by the Committee, and could be agreed by the WIPO General Assembly.

14. Various concerns have been raised on the possible role of Member States and regional groups in its role in the selection process; in large measure, these can be met by clarifying that the existing rules of procedure concerning accreditation and participation would not be affected by any funding mechanism, any more than existing voluntary funding programs impinge on accreditation and entitlement to participate. The existing accreditation process would be the sole means of determining which organizations would be entitled to attend Committee meetings. The mechanism of a formalized Voluntary Fund would therefore, for practical reasons, need to be available for representatives of those organizations already accredited to the sessions of the Committee. In addition, the mechanism of a voluntary fund would focus especially on the enhanced participation of Indigenous and local communities, rather than non-governmental organizations in general.

15. The following elements are suggested as the potential basis for an agreed structure for a Voluntary Fund. The Committee is due to conclude its current mandate in 2005. This suggests that, if the Committee were to develop a concrete proposal for a Voluntary Fund, it would entail formal consideration by the Committee before its mandate concludes. It would not be realistic to aim to develop, agree and implement in time such a framework. However,

⁹ The WIPO Secretariat attended the "Technical Seminar to evaluate the United Nation's Voluntary Fund for Indigenous Populations and the Voluntary Fund for the International Decade of the World's Indigenous People", held in Geneva, July 15 - 16, 2004, to further explore the UN voluntary funding mechanism.

as an example, a possible structure for the mechanism is presented to the Committee to be used as a starting point. A basic structure would be based on the following points.¹⁰

16. The *source of funds*. The main source of funds would be from governmental and non-governmental donors, to be held in trust by the Secretariat, distinct from the regular WIPO budget, and administered by an agreed process. Expressions of willingness in principle to contribute to a Voluntary Fund, and indications of the likely levels of support, should be encouraged from potential donors, guided by the necessary scale of support required (see below).

17. The *scale of support*. Establishing an appropriate level of support entails considering budgetary constraints and the need for reasonable geographic distribution. An indicative minimum target of five funded representatives per session of the Committee could be considered. This would entail a budget of at least CHF 20,000 to 25,000 per session of the Committee; if two sessions per year are envisaged, this would entail an annual budget of at least CHF 40,000 to achieve this level of participation. Clearly, a higher level of support would be desirable, and perhaps ten funded representatives could be established as a preferred target, with five per session seen purely as a minimum level. It should be noted that this refers only to those representatives specifically funded by a new Voluntary Fund; clearly many more representatives of Indigenous and local communities would be able to continue to participate through other resources.

18. The *capacity of participation*. As discussed in earlier documents, it would be advisable for funding to be reserved for accredited observers so as to ensure that funded participants have full access to the Committee's activities;¹¹ funded participants would therefore participate as representatives of accredited organizations.

19. The *selection criteria*. Some form of selection process would be needed to ensure that funding was appropriately distributed among possible organizations. Possible selection criteria were discussed in document WIPO/GRTKF/IC/5/11 (paragraph 35): in brief, these proposed that funding recipients should be:

- authorized representatives of indigenous and local communities and their organizations;
- representatives of organizations that are already be accredited to WIPO as observers, or have received ad hoc accreditation to the Committee;
- if possible, persons living in their own community and country and able to report back to and receive instructions from their community;
- unable to attend meetings of the Committee without financial assistance; and
- able to contribute to the Committee's discussions by virtue of knowledge of and experience with intellectual property and the protection of traditional knowledge and traditional cultural expressions, or access to genetic resources and benefit-sharing.

20. It was also suggested that the selection for each session should:

- ensure that the funded recipients, as a group, have expertise or experience in all three of the Committee's themes,

¹⁰ Document WIPO/GRTKF/IC/5/11, paras 28 to 38.

¹¹ Document WIPO/GRTKF/IC/5/11, para. 34.

- aim at a broad geographical distribution and gender equity, and
- strike a balance between maintaining a degree of continuity among the persons receiving funding from one Committee session to another, and the need for equity in ensuring that a diversity of persons receive funding.

21. The *selection process*. Some form of selection process would be necessary to determine which organizations should receive funding for a particular session of the Committee, applying the agreed criteria. The relevant factors expressed in the Committee's discussion so far have included the need for transparency; the need to ensure that resources are not diverted into administration of the system; the need for an independent determination of eligible participants (distinct from the WIPO Secretariat), preferably including indigenous representation; and a possible consultative or advisory role for the UN Permanent Forum on Indigenous Issues. The selection of funding of accredited representatives should be determined by a pre-selected board, in consultation with the Secretariat. Some concerns that have been expressed by Member States may be addressed by ensuring that the established accreditation process will continue to apply to any participation in the Committee, whether specifically funded or not.

22. One possible process would be as follows: in consultation with regional groups and interested observers, the Chair of the Committee would appoint an *ad hoc* panel during each session of the Committee, to consider which accredited observers would receive funding support at the next session of the Committee. This panel could comprise four or five participants in the Committee (with at least two representatives of NGOs that represent indigenous communities), serving in an individual capacity. The Secretariat would offer ancillary coordination and logistical support for the panel as required. The panel would consult initially during the Committee session, and then by electronic communication as necessary, to determine the list of accredited observers which would be supported, on the basis of available funds. The selected organizations would then be advised at least three months prior to the next session of the Committee, and the Secretariat would undertake the necessary administrative support in parallel with its existing procedures for funded government delegates (the funds, however, being drawn from the Voluntary Fund). The panel would report to the Committee at each session, and a new panel would be appointed (which may include re-appointing existing panel members). Other possibilities may be proposed, and this model is simply suggested as an illustration of how a process could be relatively workable and transparent, ensuring that available resources were devoted to support participation by community representatives, than diverted into administration.

V. CONCLUSIONS

23. It is unlikely, for purely practical reasons, that a mechanism could be developed, agreed and implemented in time to make a significant difference to the current phase of the Committee's work. Nor is it an adequate solution for enhanced participation simply to fund a certain number of participants to be physically present at Committee meetings: advancing this goal entails a comprehensive approach, including, for instance, all the nine elements already described above (Section III). The need for enhanced participation has been highlighted as an urgent priority, requiring immediate outcomes as well as longer-term planning. Hence the Committee may wish to continue to promote the existing informal and consultative processes and voluntary funding initiatives that contribute to the enhanced involvement of Indigenous and local communities in its work, viewing this as a valuable but

interim step, bridging towards a more established structure. The Committee and its Members may wish therefore to encourage voluntary donors to support the immediate participation of representatives of accredited observers in the consultative forum and in the Committee's sessions.

24. If the Committee wished to pursue the possibility of a Voluntary Fund, then a specific proposal should be developed for consideration at the eighth session of the Committee. This would make it possible for a decision on a funding mechanism to be taken at that session, and then included in any recommendations concerning the future format and work of the Committee beyond 2005. If acceptable in principle, the elements set out above (paragraphs 17 to 23 in particular) could form the basis of a more formal proposal, in the light of further deliberation within the Committee.

25. The Committee is invited (i) to consider the above discussion, in the light of earlier Committee deliberations on this issue; (ii) to comment on possible mechanisms for an established Voluntary Fund, based on this and earlier documents; (iii) to request that a formal proposal for a Voluntary Fund be prepared on this basis of these comments for its consideration at its eighth session; (iv) to encourage continuing voluntary funding of representatives of indigenous and local communities, and other forms of enhancing their participation in the Committee and other WIPO activities.

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