

Communication of the African Group on CBD's invitation to WIPO

With reference to the invitation by the Director General of WIPO to all member States to submit proposals and suggestions concerning the invitation of the Conference of the Parties of the Convention on Biological Diversity for WIPO to "examine, and where appropriate address, taking into account the need to ensure that this work is supportive of and does not run counter the objectives of the CBD, issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications" before December 15 2004, the African Group wishes to make the following remarks and suggestions :

- 1) At the outset, the African Group wishes to emphasize the importance it attaches in the wording of the invitation of the Conference of the Parties of the CBD for WIPO, to the reference that "the work is supportive and and does not run counter to the objectives and principles of the CBD". This must be a fundamental guiding principle in WIPO's work when examining, and where appropriate addressing, the interrelation of access to genetic resources and disclosure requirements in intellectual property rights. In this connection, the African Group wishes to highlight the objectives and principles enshrined in articles 3, 15 and 16 of the CBD.
- 2) The African Group wishes also to point to the fact that the interrelation between access to genetic resources and disclosure requirements in intellectual property rights, particularly patent applications, is a matter which has been the subject of discussions and deliberations at a number of different international fora and bodies, both within WIPO and outside of it, in recent years. Different views and opinions have been made by countries on how to approach this matter and specific proposals have been presented, in particular by developing countries.
- 3) In this connection, the African Group is of the view that WIPO's response to the CBD invitation should fully take into account these opinions and proposals and be without prejudice to any position taken by its member states on these matters. Given the ongoing debates in this area, it would not be appropriate for WIPO to advocate any specific approach to the detriment of others. The Group wishes to recall that this consideration was already stated when the 30th Session of the General Assembly decided to forward to the CBD the technical study prepared by WIPO on disclosure.
- 4) The African Group's views on the interrelation between access to genetic resources and disclosure requirements in intellectual property rights are well known, as the Group has repeatedly argued in many WIPO bodies that only internationally legally binding measures could effectively contribute to combating the misappropriation of genetic resources and the traditional knowledge associated with these resources.

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5) The African Group has expressed this view in the context of the Working Group on the Reform of the PCT, the Standing Committee on the Law of Patents and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Since the First session of the IGC, the African Group has advocated the establishment of an internationally legally binding instrument for the protection of genetic resources, traditional knowledge and folklore. At the Sixth session of the IGC, the African Group submitted a document containing possible objectives, principles and elements of such an instrument (WIPO/GRTKF/IC/6/12). This document mentioned among the principles "introducing a disclosure requirement in patent laws as well as evidence of compliance with national access and benefit sharing laws of the country of origin of the genetic resource in claimed invention and of the associated traditional knowledge use in the invention".

6) The African has also expressed its support for the introduction of an internationally legally binding disclosure requirement as well as evidence of compliance with national access and benefit sharing laws of the country of origin of the genetic resource, through the amendment of international patent law related legal instruments such as the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), at the World Trade Organization. The African Group wishes to make reference in this regard to the proposals it has presented to the TRIPS council on this matter; the latest being the one contained in documents IP/C/W/404. These could be of particular relevance in WIPO's response to the CBD invitation.

7) In light of the above, the African Group considers that it is not appropriate for WIPO to examine in point a) of the CBD invitation, options for model provisions on proposed disclosure requirements, as model provisions would not constitute an effective measure for combating the misappropriation of genetic resources, taking into consideration, its previously stated opinion that the effective solution to this global problem should be a mandatory universal disclosure requirement implemented in all countries. WIPO's response to the CBD invitation should take this opinion into account.

8) In conclusion, the African Group wishes to underline the importance it attaches to the mutual supportiveness mentioned in the invitation between CBD and WIPO. This mutual supportiveness entails making the intellectual property system, and in particular the patent system, supportive of the protection bio-diversity, through the introduction of legally binding measures such as the disclosure of the source and country of origin of the biological resources and associated traditional knowledge used in the invention and evidence of compliance with national access and benefit sharing laws of the country of origin of the genetic resources, as requirements for the granting of patents.