

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Twentieth Session
Geneva, February 14 to 22, 2012

DRAFT STUDY ON THE PARTICIPATION OF OBSERVERS IN THE WORK OF
THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND
GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

EXECUTIVE SUMMARY

Document prepared by the Secretariat

BACKGROUND

1. The WIPO General Assembly, at its Fortieth (20th Ordinary) Session, held from September 26 to October 5, 2011, agreed on the mandate for the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) for the 2012-2013 biennium.¹ The WIPO General Assembly further invited the IGC to review its procedures with a view to “enhancing the positive contribution of observers” to the IGC process. In order to facilitate this review, the Secretariat of WIPO was requested to prepare a study on the participation of observers in the work of the IGC. According to the decision of the WIPO General Assembly, the study should outline “current practices and potential options” in this regard.²

¹ WO/GA/40/19 Prov., para. 180

² Full text of the decision is set out in WO/GA/40/7, para. 16.

2. As mandated by the WIPO General Assembly, the draft study reviews current practices and mechanisms for observer engagement in the work of the IGC and outlines potential options for enhancing the positive contribution of observers based on relevant information received from IGC participants through submissions made to the WIPO Secretariat through a commenting process, as well as on the Secretariat's own research of good practices pertaining to the participation of observers in other UN and intergovernmental processes.

3. In line with WIPO's Language Policy, this is an Executive Summary of the draft study. This Executive Summary is made available in all six United Nations languages. The full draft study is available as a non-paper in English, and translations into any of the other official United Nations languages may be requested by a Member State. Such translations will be made available as soon as possible after the current session of the IGC.

SUMMARY OF POTENTIAL OPTIONS FOR ENHANCING PARTICIPATION AND POSITIVE CONTRIBUTION OF OBSERVERS TO THE IGC PROCESS

4. The following part identifies in brief terms the main, concrete options that arise from the draft study. The options are described in broad terms, and, should the IGC so wish, the Secretariat could be tasked with developing the necessary administrative arrangements necessary for their implementation in the most pragmatic, efficient and cost-effective manner possible. None of the proposals below would entail any additional funding from WIPO beyond that already provided for in the Program and Budget for 2012-2013 (Program 4). The options identified are not necessarily alternatives, but could be seen as a 'package' of complementary steps.

Proposal 1: Clarifying relationship with diverse categories of observers

5. The work of the IGC has, since its inception, involved the valuable participation of various categories of observers, including UN bodies and programs, non-governmental and civil society organizations, the private sector, and, arguably the key stakeholders in the process, indigenous peoples and local communities and their organizations. While respecting the rights of civil society to self-organization and self-identification, at this critical stage of the IGC's deliberations it might be practically useful to recognize the heterogeneous nature of participating observers, and, in so doing, clarify the IGC's relationship with diverse categories of observers towards establishing a meaningful dialogue.

6. The distinction, drawn and explained above, between organizations representative of and accountable to indigenous peoples and local communities, on the one hand, and NGOs working with or for indigenous peoples, on the other, could be taken into account in this regard. This could be useful for enhancing the credibility and legitimacy of mechanisms, existing or proposed, for indigenous and local participation.

7. This would require some mechanism or procedure whereby organizations representative of and accountable to indigenous peoples and local communities could be identified by the Member States in the IGC. Such identification could be facilitated through introducing more specific questions to the applications forms for *ad hoc* accreditation concerning the objectives and activities of applying organizations, and requesting further supporting documentation from already accredited observers wishing to delegate representatives to attend future sessions of the IGC, as described above. To improve transparency, credibility and consistency of such a procedure, and a more detailed examination of accreditation applications, the IGC may consider establishing a standing advisory mechanism that would work intersessionally and by electronic means to review

applications and make recommendations for consideration by the IGC (see further paragraphs 9 to 20 of the draft study).

Proposal 2: Cooperating in a spirit of partnership

8. The IGC may wish to consider further strengthening its partnership with observers, particularly those representing indigenous peoples and local communities, through, for example, the IGC inviting observers to nominate a representative to form part of any “Friends of the Chair” groups that may be formed from time to time. The IGC could also, subject to compliance with the Rules of Procedure, nominate a representative of observers to co-chair or co-facilitate some sub-working groups, such as drafting groups, as was previously done at IWG 2 (see further paragraphs 24 to 27 of the draft study).

Proposal 3: Substantiating policy debate through enhanced engagement

9. The IGC may wish to consider reviewing some of the current modalities of the indigenous and local community panel presentations towards enhancing mutual engagement and true dialogue. Rather than the current panels, ‘interactive dialogues’ could be convened, by the Secretariat, as part of formal proceedings of the IGC and panels could be requested by the IGC to provide substantive information and advice on specific themes or issues identified by the IGC at a preceding session. The revised arrangements would allow for a debate among panelists, Member States and observers that would be reflected in the sessions’ reports (see further paragraphs 37 to 39 of the draft study).

Proposal 4: Facilitating coordinated expert advice and input

10. Indigenous peoples and local communities participating in the work of the IGC are in a position to contribute valuably to the process with their substantive expert advice. One of the challenges, however, is that they lack opportunities to consult with each other and coordinate before IGC sessions. The IGC may wish to consider authorizing a two day indigenous and local communities expert meeting to be convened by the Secretariat, prior to a next session of the IGC, with the funded participation of one or two recognized experts, representing an accredited community organization, from each of the seven socio-cultural regions recognized by the Permanent Forum on Indigenous Issues (PFII). Representatives of Member States and other accredited observers would be invited to participate in the meeting as observers. Costs for such an expert consultation are foreseen in the WIPO Program and Budget for the 2012/13 biennium.³

11. Such meeting could be a major contribution to enhancing indigenous peoples’ and local communities’ expert input into the IGC’s negotiations, and provide an opportunity for the IGC to request communities’ expert advice on certain issues or themes identified beforehand by the IGC. The United Nations Permanent Forum on Indigenous Issues (UNPFII) could be invited to cooperate on and provide substantive support to such an expert meeting (see further paragraphs 40 to 44 of the draft study).

³ The text of the WIPO Program and Budget for the 2012/13 biennium is available at http://www.wipo.int/export/sites/www/about-wipo/en/budget/pdf/budget_2012_2013.pdf

Proposal 5: Enhancing national and regional dialogue and awareness-raising

12. Despite a relatively high number of accredited observers, most indigenous and local communities in various regions of the world are still not sufficiently aware of the IGC process, and those actually participating in the IGC sessions rarely have the capacity to prepare for negotiations by holding national and/or regional preparatory meetings. The IGC may wish to invite Member States to organize national and/or regional consultations for and with accredited observers, especially representatives of indigenous and local communities. The Secretariat would probably have no funding for such meetings but could provide technical support to them (see further paragraphs 49 to 50 of the draft study).

Proposal 6: Fortifying financial and other means of support for direct participation

13. Regarding the WIPO Voluntary Fund, the IGC may wish to consider proposing amendments to the rules of the WIPO Voluntary Fund for the next session of the WIPO General Assembly so that the Board would be established once for each mandate of the IGC and work intersessionally, through electronic means. This would improve the efficiency of the operation of the Fund and consistent implementation of its rules, as well as enable the Board to assist with awareness-raising and soliciting funds (see further paragraphs 28 to 36 of the draft study). The standing mechanism for accreditation applications (option identified above in paragraph 7) and such a standing Board could eventually be merged.

14. In addition, the IGC may consider repeating its invitation to Member States to increase the participation of indigenous and local communities' representatives, as well as other observers as appropriate, in official delegations (see further paragraphs 7 to 8 of the main document).

Proposal 7: Expanding interaction through information exchange

15. The IGC may wish to consider inviting the Secretariat to re-launch lunch-time briefings for participating observers on the first day of a session of the IGC to better inform all interested observers of relevant substantive and procedural matters, as well as to take note of concerns and issues raised by observers and benefit from their advice (see further paragraph 45 of the draft study).

Proposal 8: Awareness-raising and communications tools

16. For future sessions of the IGC, the Secretariat could produce an information document briefly describing the resources available on the WIPO TK, TCEs and GRs website. Such an information document could assist IGC participants, particularly newcomers, to make better use of already available materials (see further paragraph 55 of the draft study).

17. The Secretariat may also be invited by the IGC to develop, based on and replacing various resources already available separately, a short and practical guide for observers representing or working with indigenous and local communities on the IGC's substantive agenda as well as on its procedures (see further paragraphs 51 to 56 of the draft study).

Proposal 9: Strengthening cooperation with other United Nations bodies, programs and agencies

18. The Secretariat is following closely the related activities of other UN bodies, programs and agencies, such as the UNPFII, the Office of the High Commissioner for Human Rights (OHCHR), the International Labor Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), Food and Agriculture Organization (FAO), the Convention on Biological Diversity (CBD), and others. The IGC could consider welcoming further coordination and interaction with such UN bodies on the matters of mutual concern at the international, regional and country levels, including in relation to awareness-raising, capacity-building and training activities with and for indigenous and local communities.

19. The IGC is invited to consider the above options for enhancement of the participation and positive contribution of observers in its work, and to comment thereon and provide the Secretariat with such direction as it deems appropriate.

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