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

Twenty-First Session
Geneva, April 16 to 20, 2012

PARTICIPATION OF OBSERVERS

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, and on the basis of comments received from IGC participants, the Secretariat of WIPO prepared a draft study on the participation of observers in the work of the IGC (see document WIPO/GRTKF/IC/20/7) that outlined “current practices and potential options”, in accordance with the decision of the WIPO General Assembly.² In line with WIPO’s Language Policy, this draft study was an executive summary of a longer and more complete version that was made available as a non-paper.³

¹ WO/GA/40/19 Prov., para. 180

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

³ The non-paper version was and is available at http://www.wipo.int/meetings/en/details.jsp?meeting_id=25008.

2. The IGC discussed document WIPO/GRTKF/IC/20/7 at its Twentieth Session (February 14 to 22, 2012) under Agenda Item 8 and took several decisions in this regard⁴.
3. One of these decisions was to request the Secretariat to prepare a document that describes the practical implications of three of the proposals formulated in document WIPO/GRTKF/IC/20/7, namely Proposal 1 (revision of the application form for *ad hoc* accreditation to the IGC and the establishment of a standing advisory mechanism on accreditation applications), Proposal 3 (revisions to the format of the Indigenous Panel) and Proposal 6 (establishment of a standing Advisory Board for the WIPO Voluntary Fund for Accredited Indigenous and Local Communities). The present document has been prepared by the Secretariat in order to meet this request.

Revision of the application form for *ad hoc* accreditation to the IGC and the establishment of a standing advisory mechanism on *ad hoc* accreditation applications (Proposal 1)

4. In line with Proposal 1 (see document WIPO/GRTKF/IC/20/7, paragraph 7), the revision of the accreditation application form would imply the introduction by the Secretariat of additional questions to the application form concerning, in particular, the objectives and activities of applying organizations. Furthermore, applying organizations which identify themselves as representing and accountable to indigenous peoples and local communities would be requested to provide documentation that would facilitate an appreciation of their representativeness and accountability in this regard. Such documentation could include: statutes, by-laws, rules, terms of reference, as well as other relevant information pertaining to the activities of the applying organizations. The revised application form as suggested appears in Annex I to the present document. Should the IGC so decide, it could be used for the first time to process applications for accreditation that will be submitted for consideration by the IGC at its Twenty-Third Session in 2013. Because new applications for accreditation have already been received for consideration by the IGC at its Twenty-Second Session in July 2012, it is not possible to introduce this change more immediately.

5. As proposed in the draft study (document WIPO/GRTKF/IC/20/7, paragraph 7) and as discussed in paragraph 20 of the longer non-paper version, the establishment of a standing advisory mechanism to help the Committee in taking its decisions regarding accreditation could strengthen the accreditation process. This mechanism could be referred to as the "Accreditation Advisory Board". Especially if the changes to the accreditation application form above are made, whereby additional information would be requested of applicants, this standing Board would enable applications and their supporting documentation to be thoroughly examined. The members of the Board would be appointed by the IGC, on the suggestion of the IGC's Chair, for the length of the IGC's biennial mandate, and the Board would operate intersessionally and electronically. Final decisions on accreditation would be made by the IGC, based on recommendations made by the Board to the IGC. Further principles and guidelines related to implementation of this proposal are set out in Annex II to the present document.

6. It is suggested that, for practical purposes, this change be introduced for purposes of accreditation applications to be considered at the Twenty-Third Session of the IGC in 2013. In other words, members of the Accreditation Advisory Board would be elected by the IGC, on the suggestion of the IGC's Chair, at the Twenty-Second Session of the IGC in July 2012. These members would serve for the remainder of the IGC's mandate for the 2012-2013 biennium.

Revision to the format of the Indigenous Panel (Proposal 3)

7. As discussed in paragraph 9 of the draft study (document WIPO/GRTKF/IC/20/7) and further discussed in paragraphs 37 to 39 of the longer non-paper version, a revision of some of the current modalities of the indigenous and local community panel might contribute to enhancing mutual

⁴ See Draft Report of the Twentieth Session (WIPO/GRTKF/IC/20/10 Prov.).

engagement and true dialogue between Member States and indigenous peoples and local communities.

8. In terms of implementation, in line with the Proposal 3 (see document WIPO/GRTKF/IC/20/7, paragraph 9), this may imply the following:

- (a) Panels would continue to be convened at each IGC session;
- (b) At each session, the IGC would identify the specific theme(s) or issue(s) to be addressed by the panel at its next session under the agenda item relating to indigenous and local community participation, based on a list of options suggested by the Chair;
- (c) In view of the next session, the Secretariat would invite panelists that comprise representatives of indigenous peoples or local communities from different socio-cultural regions and who have particular expertise on the theme(s) or issue(s) as so identified by the IGC;
- (d) The panel would take place as a formal part of the IGC's proceedings, under the agenda item relating to indigenous and local community participation;
- (e) The presentations by the members of the panel would be followed by an exchange of views involving the panel, the Member States and observers;
- (f) The presentations by the panelists as well as the subsequent exchange of views will proceed under the chairmanship of the Chair, or one of the Vice-Chairs of the IGC, as any other formal part of the IGC agenda;
- (g) The entire time taken up by the panel and subsequent exchange of views, if any, would not exceed the time currently allotted to the panel in its current format, namely about two hours;
- (h) The presentations and subsequent exchange of views, if any, would be summarized in the usual way in the sessions' reports.

Establishment of a standing Advisory Board for the WIPO Voluntary Fund (Proposal 6)⁵

9. It was suggested, in paragraphs 34 and 35 of the longer non-paper version and paragraph 13 of the draft study, that the establishment of a standing Advisory Board for the WIPO Voluntary Fund whose members would be appointed for the duration of the IGC's mandate, that is, for a biennium, could enhance continuity and consistency in decision-making and increase the credibility of the Voluntary Fund. It was also proposed that such a standing Board could work intersessionally and take its decisions electronically. It was added that intersessional work by such a standing Advisory Board of the WIPO Voluntary Fund could reduce the burden currently experienced by Board members who have to work in the margins of the IGC sessions and enable the Board to assist with awareness-raising and soliciting funds between sessions.

10. In line with the decision taken by the IGC at its Twentieth Session, a more in-depth analysis has been conducted by the Secretariat regarding the practical steps that would be necessary for the Voluntary Fund Advisory Board to be established as a standing body that would work intersessionally through electronic means.

11. One important implication that the IGC might wish to consider is the impact that the envisaged change would have on the transparency, inclusiveness, confidentiality and accountability of the Board's decision-making process. The Board takes sensitive decisions concerning how funds contributed by States, foundations and others are expended, and experience has shown that its decisions should be taken in an interactive, collective, transparent and duly formalized fashion, with the full and actual involvement of all its members, particularly those members who are representatives of indigenous and local communities. Interpretation services are also required and currently provided. In these circumstances, the current modality,

⁵ For reference purposes, the rules of the Voluntary Fund are annexed to document WIPO/GRTKF/IC/21/3.

which enables face-to-face meetings of its members in accordance with well defined decision-making procedures as provided by the rules of the Fund, might constitute indeed the best guarantee that the recommendations for funding adopted by the Advisory Board are taken in the most transparent, inclusive, confidential and accountable manner. It appears as well, for the same reasons, that such meetings should be held physically and not electronically.

12. In the event that the IGC retains the current modality of face-to-face meetings of the Board, then it is more practical also to retain the current practice of selecting a new Board at the commencement of each session. Under the present rules of the Fund, except for the Chair of the Board who is elected *ex officio* from one of the Vice-Chairs of the IGC, a guarantee of inclusive participation is provided by the fact that the meetings of the Advisory Board take place on the margins of the IGC sessions and that the mandate of the members of the Advisory Board, who are appointed at the beginning of an IGC session among the participants physically present at this particular session, lapses at the beginning of the next session, when the Advisory Board is supposed to hold its next meeting. In contrast, it would not be possible to elect the members of the Board, in advance for each biennium, because it would not be known, at the time this election takes place, which persons would attend which sessions of the IGC in that biennium.

13. It is therefore suggested that, for these reasons, the IGC may wish to maintain the current modalities unchanged for the time being. It might be that, in due course, lessons learned from the establishment of a standing Accreditation Advisory Board might cause the IGC to revisit the option of a standing Voluntary Fund Advisory Board at a later stage.

14. As already mentioned above, the present rules of the Fund provide under Article 8 that “[a]part from the *ex officio* member, the members of the Advisory Board will be elected by the Committee on the second day of each of its sessions, on a proposal by its Chair, following consultation with the Member States and their regional groups and, respectively, representatives of accredited observers.” Should this rule be kept unchanged as suggested, the IGC is invited to devote special attention to the need to ensure that the members of the Advisory Board are quickly nominated by regional groups and accredited observers at the beginning of each IGC session in order to enable the Advisory Board to start meeting as soon as possible and to complete its work in accordance with the rules of the Voluntary Fund.

15. *The IGC is invited:*
- (a) *to consider the practical implications of Proposals 1, 3 and 6 as described in the present document;*
 - (b) *to approve the changes to be introduced in the application form for ad hoc accreditation, as suggested in Annex I of the present document, in view of the submission of applications for accreditation for consideration by the IGC at its Twenty-Third Session;*
 - (c) *to establish, at its Twenty-Second Session, a standing Accreditation*

Advisory Board for the remainder of the 2012-2013 biennium, whose work would proceed in accordance with the principles and guidelines as described in Annex II of the present document; (d) to amend the format of the indigenous and local community panel in accordance with the procedure that is described in paragraph 8 of the present document, and to identify a theme or issue to be addressed by the panel at the Twenty-Second Session of the IGC.

[Annexes follow]

Revised application form for accreditation as an *ad hoc* observer to the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

BIOGRAPHICAL DETAILS OF THE APPLICANT ORGANIZATION

Full name of the Organization:

Description of the Organization: (maximum 150 words)

¹ Please note that the decision on accreditation will not be made by the Secretariat, but by the Member States at the beginning of the session of the Intergovernmental Committee. It is therefore possible that certain organizations may not receive accreditation. Therefore, if the requesting organization is not based in Geneva, it might not be advisable to travel to Geneva for the sole purpose of participating in the session of the Committee until accreditation has been granted.

Please note that this application form may be presented to the Committee exactly in the form received. Please therefore, as far as possible, complete the form using a type-writer or word processor. The completed form should preferably be emailed to grtkf@wipo.int

Is your Organization a representative or governance body or structure of an indigenous people or local community? Does it report to and/or is it accountable to an indigenous people or local community? If so, please provide copies of supporting documentation, such as a constitution/charter and/or statutes/by laws and/or letters or other documents, as appropriate, evidencing the constituency that the Organization represents.

Main objectives of the Organization: (Please use a bulleted list)

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Main activities of the Organization: (Please use a bulleted list)

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Relationship of the Organization with intellectual property matters, including a full explanation of why you are interested in the issues under discussion by the Committee (Maximum 150 words)

Country/Countries in which the Organization is primarily active:

Does your Organization already hold accreditation with any organs, funds, programs or specialized agencies of the United Nations? If so, please specify.

Additional Information:

Please provide any additional information which you feel may be relevant (maximum 150 words)

Full contact details of the Organization:

Postal address:

Telephone number:

Fax number:

Email address:

Web site:

Name of Organization Representative and Title:

[Annex II follows]

Establishment of an Accreditation Advisory Board
to the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore

Proposed principles and guidelines

1. Mandate

- (a) The standing Advisory Board on *ad hoc* accreditation (the “Accreditation Advisory Board”) will be requested to make non-binding recommendations regarding applications for *ad hoc* accreditation for transmission to the IGC;
- (b) Based on its review of the applications, the Accreditation Advisory Board will recommend to the IGC either that accreditation be granted or rejected, or that further examination is required before it can make any recommendation.

2. Membership

The Accreditation Advisory Board would be composed of:

- (a) Five members of the delegations of WIPO Member States taking part in the Committee, reflecting an appropriate geographical balance;
- (b) Two members from accredited observers who represent indigenous and local communities;
- (c) Two members from accredited observers who do not represent indigenous and local communities.

3. Tenure and designation

- (a) The members of the Accreditation Advisory Board would be elected by the IGC on a proposal by its Chair, following consultation with the Member States and their regional groups and, respectively, representatives of accredited observers;
- (b) The election of its members would take place at the first session of the Committee that takes place during a particular biennium;¹
- (c) The mandate of those members would expire at the opening of the first Committee session that takes place during the next biennium;
- (d) The Chair of the Accreditation Advisory Board would be proposed among its members by the Chair of the IGC after due consultation.

¹ [Note not forming part of these principles and guidelines]: The members of the Accreditation Advisory Board for the remainder of the 2012-2013 biennium would be selected at the Twenty-Second Session of the IGC taking place in July 2012.

4. Criteria

- (a) In making its recommendations, and based on the documentation before it, the Accreditation Advisory Board would take into account the following criteria:
 - (i) Applying organizations wishing to be accredited to the IGC should be concerned with intellectual property matters and have a direct interest in the work of the IGC;
 - (ii) The aims and purposes of the applying organization must be in conformity with the spirit, purposes and principles of WIPO and the United Nations; and,
 - (iii) Applying organizations must have the authority to represent their members through their authorized representatives.
- (b) The Accreditation Advisory Board would consider the applications forms and documentation as submitted by applying organizations, as well as any relevant information its members may gather through consultation or personal research.

5. Working procedures of the Accreditation Advisory Board

- (a) Deliberations would only take place within the format of a restricted and secure electronic platform, such as a wiki page or any other means deemed necessary to allow for interactive deliberations among the members of the Board;
- (b) A recommendation for granting accreditation would require the express agreement of at least seven members of the Advisory Board;
- (c) Its members will serve on an individual basis and will conduct their deliberations independently, notwithstanding any consultations that they might consider as appropriate;
- (d) The Advisory Board's deliberations and consultations among its members would take place in English.

6. Deadlines

In view of their consideration at a particular IGC session:

- (a) The applications for accreditation and supporting documentation would be made available, in the restricted and secure electronic platform, to the Accreditation Advisory Board by the WIPO Secretariat as they are received and in any event at least forty-five days before the opening of the IGC session;
- (b) The Advisory Board should complete its review of all the accreditation applications and transmit its recommendations to the IGC, through the WIPO Secretariat, at least 20 days before the beginning of the IGC session;
- (c) The Secretariat would, on behalf of the Accreditation Advisory Mechanism, and in the form of a working document, make available to the IGC a list of the organizations recommended for accreditation, together with each Organization's full name, objectives, country/countries of operation and contact details;
- (d) Decisions as to which organizations should be accredited would be taken by the IGC under an agenda item reserved for this purpose.

7. Support from the Secretariat to the Accreditation Advisory Board and administrative costs

- (a) In the implementation of the above, the Accreditation Advisory Board will be provided with administrative assistance by the WIPO Secretariat as may be necessary.

- (b) The operation of the Accreditation Advisory Board should not entail any additional funding beyond that already provided for in the WIPO Program and Budget for the 2012-2013 biennium (Program 4).

[End of Annexes and of document]