

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

**Twenty-Second Session**  
**Geneva, July 9 to 13, 2012**

### **PARTICIPATION OF OBSERVERS**

*Document prepared by the Secretariat*

1. At its Twenty-First Session, held from April 16 to 20, 2012, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the IGC” or “the Committee”) requested the Secretariat to prepare an information document in view of its Twenty-Second session, providing information on the practical, procedural and budgetary implications of the following suggestions put forward by the Indigenous Caucus, supported by one Delegation, namely that: (1) a new status being that of Indigenous Peoples, separate from observers, be established within the Committee, (2) indigenous peoples be represented, as a matter of course, within any “Friends of the Chair” groups that may be established from time to time, (3) representatives of indigenous peoples be, as a matter of course, appointed as co-chairs of working and drafting groups, (4) equal representation with Member States on the Advisory Board of the WIPO Voluntary Fund (in other words, the Board would comprise four representatives of Member States, four representatives of indigenous and local communities, and the Chair of the Board who is a Vice-Chair of the Committee), (5) the Secretariat consult with the Chair of the Indigenous Caucus, inter-sessionally, regarding selection of panelists for the Indigenous Panel, and (6) panelists of the Indigenous Panel be invited to address the substantive working documents of the Committee session concerned in order to contribute directly to the development of the work of the IGC (see the Decision on item 7 of the Twenty-First session of the IGC<sup>1</sup>).

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<sup>1</sup> See [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_21/wipo\\_grtkf\\_ic\\_21\\_ref\\_decisions.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_ref_decisions.doc)

2. The present document provides information on the practical, procedural and budgetary implications of those six suggestions made by the Indigenous Caucus. In doing so, the present document refers, as appropriate, to previous documents and IGC decisions that relate to observers' participation and which might be of relevance to this particular document.

3. In order to assist in the preparation of the present document, IGC participants were invited, at the Twenty-First session, to send to the WIPO Secretariat written submissions in respect of the suggestions (1) to (6) above. One submission was received from a Member State delegation<sup>2</sup>. The submission will be available on the WIPO website for consultation<sup>3</sup>.

4. Following up on a request made by some Member States at the Twenty-First session of the IGC<sup>4</sup>, it is recalled that the intergovernmental character of the IGC is to be considered as a fundamental feature of its present constitution, as paragraph 17 of the longer and more complete version of document WIPO/GRTKF/IC/20/7<sup>5</sup> already emphasized. Under the General Rules of Procedure of WIPO<sup>6</sup>, Member States are presently the only category of entities within the IGC which may be represented by delegates who are entitled to submit proposals, amendments and motions, as well as to vote. The suggestions made by the Indigenous Caucus might have a larger or lesser impact on the intergovernmental character of the Committee as it is presently defined, as they, or some of them, might impact on the exclusive nature of the rights accorded to Member States.

5. Member States and other IGC participants alike are therefore invited to reflect on the suggestions put forward by the Indigenous Caucus, not only from a procedural, practical and budgetary point of view, but also in terms of the intergovernmental character of the IGC.

6. Although the present document has been prepared within the framework as suggested by the Indigenous Caucus, it is also relevant to mention that some Member States reminded the IGC at its Twenty-First session that they wished to see IGC documents complement any reference to indigenous peoples with a reference to "local communities".<sup>7</sup>

#### IMPLICATIONS OF THE SUGGESTION THAT "A NEW STATUS BEING THAT OF INDIGENOUS PEOPLES, SEPARATE FROM OBSERVERS, BE ESTABLISHED WITHIN THE COMMITTEE" (SUGGESTION 1)

7. Presently, indigenous peoples and local communities which wish to participate in the IGC may do so by applying for the right to be represented as *ad hoc* observers through an *ad hoc* accreditation mechanism that applies to certain States and non-governmental and intergovernmental organizations. They may be granted this right upon decision of the IGC in conformity with Rule 8(2) of the General Rules of Procedure of WIPO.

8. A new status for indigenous peoples at the IGC, separate from observers, would imply, within the IGC context, that indigenous peoples would be entitled to the right to be represented at and participate in the IGC not as observers, but as a different category of participants.

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<sup>2</sup> Mexico.

<sup>3</sup> <http://www.wipo.int/tk/en/igc/index.html>.

<sup>4</sup> See Initial Draft Report of the Twenty-First session (WIPO/GRTKF/IC/21/7 Prov. (forthcoming)).

<sup>5</sup> "Draft Study on the Participation of Observers in the Work of the IGC". This version is available as a non-paper at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_20/wipo\\_grtkf\\_ic\\_20\\_7-annex1.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_20/wipo_grtkf_ic_20_7-annex1.doc).

<sup>6</sup> The WIPO General Rules of Procedure (publication No.399 Rev.3) are available at

[http://www.wipo.int/export/sites/www/freepublications/en/general/399/wipo\\_pub\\_399.pdf](http://www.wipo.int/export/sites/www/freepublications/en/general/399/wipo_pub_399.pdf).

<sup>7</sup> See Initial Draft Report of the Twenty-First session (WIPO/GRTKF/IC/21/7 Prov. (forthcoming)).

9. As recalled in paragraph 4 of the document WIPO/GRTKF/IC/1/2 regarding the rules of procedure of the IGC<sup>8</sup> as approved by the IGC at its First session in April 2001, “the WIPO General Rules of Procedure apply to the Intergovernmental Committee, subject to any special rules of procedure that the Intergovernmental Committee may wish to adopt.” So far, no special rule of procedure has been adopted by the IGC regarding the categorization of participants within the IGC. Consequently, the WIPO General Rules of Procedure presently apply to this categorization.

10. Under the WIPO General Rules of Procedure, participants in the IGC may fall in either of the two following categories: they may be recognized as “delegates” under Rule 7 of the General Rules of Procedure, “delegates” being representatives of States; or, they may be recognized as “observers” under Rule 8 of the General Rules of Procedure.

11. The recognition of a new status, as separate from observers, for “Indigenous Peoples” might imply either that those participants would be categorized as “delegates” (option 1), or that a new category be introduced for indigenous peoples (option 2).

12. Should the IGC wish to pursue option 2, the IGC would have then to decide to introduce, as far as its own rules of procedure are concerned, an amendment in order to create a third category of participants for those who represent indigenous peoples. Such an amendment would not make any substantial difference unless it would include, in addition, that this new category of participants be granted at least one of the two following rights which are explicitly denied to observers under the WIPO General Rules of Procedure, namely the right to submit proposals, amendments and motions (which is denied to observers under Rule 24(2)), at least directly<sup>9</sup>, and/or the right to vote (which is denied to observers under Rule 39).

13. An amendment, by decision of the IGC, would also be required in so far as option 1 is concerned, that is, the recognition of representatives of indigenous peoples as “delegates”<sup>10</sup>. Indeed, only WIPO Member States, under the General Rules of Procedure, as well as Member States of the Paris Union for the Protection of Industrial Property that are not Members of WIPO under the special rule that was adopted by the IGC at its First session, are presently granted the right to be represented by “delegations” at the IGC. Should such an amendment be adopted, the rights to submit proposals and to vote, as they are presently granted to all “delegates”, would be automatically extended to the delegates who represent indigenous peoples, unless the IGC were to decide to limit those rights.

14. From a procedural and practical point of view, the exercise of the rights to submit proposals and to vote might entail as well that the participants in the IGC who represent indigenous peoples should be entitled, as a matter of principle, to participate fully in informal working or drafting groups, and chair or co-chair those groups.

15. The suggestion made by the Indigenous Caucus might imply as well, from a procedural and practical point of view within the IGC, that indigenous peoples would need to be differentiated from all other non-governmental organizations, including from “local communities” and non-governmental organizations which represent or work for and with indigenous peoples. This step would entail some mechanism which would enable indigenous peoples to be identified as such.

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<sup>8</sup> This document is available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_1/wipo\\_grtkf\\_ic\\_1\\_2.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_1/wipo_grtkf_ic_1_2.doc).

<sup>9</sup> In the practice of the IGC, however, drafting proposals made by observers are taken into account if supported by at least one Member State.

<sup>10</sup> The present information note leaves aside another option which would be for Member States to include, within their own delegations, the representatives of indigenous peoples wishing to participate in the IGC. In that case, those representatives would, from a procedural point of view, participate in the IGC as Member State delegates not as representatives of indigenous peoples *per se*.

16. Other practical implications of the suggestion made by the Indigenous Caucus, should it be agreed to, would range from the location of the seats of the participants who represent indigenous peoples in the plenary room to the name plates which would be used to identify the indigenous peoples that those participants represent.

17. Budgetary implications of such suggestion would be limited, unless the WIPO General Assembly were to agree that representatives of indigenous peoples, because of their new status, should be entitled to financial support in view of their participation in the IGC along the lines that currently apply to Member States delegates from developing countries and countries in transition. Otherwise, amendments to the rules of the WIPO Voluntary Fund would need to be introduced in order to enable representatives of indigenous peoples, as separate from representatives of accredited observers who represent local communities, to apply for and receive support from the Fund and possibly exclude, to a larger or lesser extent, representatives of accredited observers who represent local communities from funding.

IMPLICATIONS OF THE SUGGESTIONS THAT “INDIGENOUS PEOPLES BE REPRESENTED, AS A MATTER OF COURSE, WITHIN ANY “FRIENDS OF THE CHAIR” GROUPS THAT MAY BE ESTABLISHED FROM TIME TO TIME” AND THAT “REPRESENTATIVES OF INDIGENOUS PEOPLES BE, AS A MATTER OF COURSE, APPOINTED AS CO-CHAIRS OF WORKING AND DRAFTING GROUPS” (SUGGESTION 2 AND 3)

18. It seems appropriate to join both suggestions under the same heading, as both appear to have similar procedural implications.

19. It is relevant to recall that document WIPO/GRTKF/IC/20/7 (paragraph 8), as well as the longer and more complete version<sup>11</sup> of this document (paragraphs 26 and 27), contextualized and formulated the proposal that the IGC invite observers to nominate a representative to form part of any “Friends of the Chair groups” and nominate, subject to compliance with the Rules of Procedure, a representative of observers to co-chair or co-facilitate sub-working groups. It is also appropriate to recall that the IGC, in respect of this proposal, “noted”, as part of the decisions it took at its Twentieth session<sup>12</sup>, “that it is always within the discretion of the Committee’s Chair, with the Committee’s approval and in accordance with the Committee’s Rules of Procedure, to invite representatives of observers to join any “Friends of the Chair” groups that may be established and/or to co-chair working and drafting groups”.

20. The suggestions made by the Indigenous Caucus would imply that the decision taken by the IGC at its Twentieth session would be converted into a rule (“as a matter of course”) and that it apply only to a particular group of observers, namely representatives of indigenous peoples, and not all observers. There would be no budgetary implications were this suggestion to be agreed to.

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<sup>11</sup> Draft Study on the Participation of Observers in the Work of the IGC”. This version is available as a non-paper at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_20/wipo\\_grtkf\\_ic\\_20\\_7-annex1.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_20/wipo_grtkf_ic_20_7-annex1.doc).

<sup>12</sup> Those decisions are available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_20/wipo\\_grtkf\\_ic\\_20\\_ref\\_decisions.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_20/wipo_grtkf_ic_20_ref_decisions.doc).

IMPLICATIONS OF THE SUGGESTION THAT “THE ADVISORY BOARD OF THE WIPO VOLUNTARY FUND WOULD COMPRISE FOUR REPRESENTATIVES OF MEMBER STATES, FOUR REPRESENTATIVES OF INDIGENOUS AND LOCAL COMMUNITIES, AND THE CHAIR OF THE BOARD WHO IS A VICE-CHAIR OF THE COMMITTEE” (SUGGESTION 4)

21. Presently, Article 7 of the rules of the WIPO Voluntary Fund<sup>13</sup>, as they have been adopted by the WIPO General Assembly, provides that

” The Advisory Board will comprise nine members, including:

- the Chair of the Committee, appointed *ex officio* or, where that proves to be impossible, one of the Vice-Chairs nominated by the Chair as his or her deputy;
- five members from the delegations of WIPO Member States taking part in the Committee, reflecting an appropriate geographical balance; and
- three members from accredited observers representing indigenous and local communities or other customary holders or custodians of TK or TCEs.”

22. The suggestion made by the Indigenous Caucus aims at introducing equal representation within the Fund’s Advisory Board between, on the one hand, the representatives of accredited observers who represent indigenous and local communities and, on the other hand, the members from delegations of WIPO Member States taking part in the Committee by increasing the number of the former members by one and by decreasing the number of the latter members by one.

23. This suggestion would require an amendment of Article 7 of the rules of the Voluntary Fund to be adopted by the WIPO General Assembly, possibly upon recommendation by the Committee.

24. It is relevant to note that a decrease in the number of members from the delegations of WIPO Member States could have an impact on the geographical balance among such members within the Advisory Board. Presently, at least the five formal regional groups can nominate one candidate each for membership, in accordance with Articles 7 and 8 of the rules of the WIPO Voluntary Fund. There would be no budgetary implications were this suggestion to be agreed to.

IMPLICATIONS OF THE SUGGESTION THAT “THE SECRETARIAT CONSULT WITH THE CHAIR OF THE INDIGENOUS CAUCUS, INTER-SESSIONALLY, REGARDING SELECTION OF PANELISTS OF THE INDIGENOUS PANEL” (SUGGESTION 5)

25. In November 2004, at its seventh session of the IGC, the IGC decided that future sessions of the IGC should be preceded by panel presentations chaired by a representative of indigenous and local communities, and this has occurred at each subsequent session.<sup>14</sup> The panelists comprise participants from indigenous and local communities from different socio-cultural regions. The panels do not form a formal part of the IGC sessions. However, summary records of their proceedings are included in the reports of the IGC sessions. Presentations by panel participants are also made available on the WIPO website.<sup>15</sup>

26. Since the inception of the indigenous and local communities’ panels, the Secretariat has been inviting indigenous and local communities’ experts to join the panel based on their experience and knowledge relevant to the theme of the panel as well as on geo-cultural

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<sup>13</sup> The rules of the WIPO Voluntary Fund are available at [http://www.wipo.int/export/sites/www/tk/en/ngoparticipation/voluntary\\_fund/amended\\_rules.doc](http://www.wipo.int/export/sites/www/tk/en/ngoparticipation/voluntary_fund/amended_rules.doc).

<sup>14</sup> WIPO/GRTKF/IC/7/15, subpara 63(iv).

<sup>15</sup> See [http://www.wipo.int/tk/en/ngoparticipation/ind\\_loc\\_com/index.html](http://www.wipo.int/tk/en/ngoparticipation/ind_loc_com/index.html).

distribution. In respect of the panel's theme and members, informal research and consultations with relevant experts are conducted intersessionally by the Secretariat. The suggestion made by the Indigenous Caucus would imply that the Secretariat includes the Chair of the Indigenous Caucus in those consultations between sessions of the IGC.

27. One important implication of this suggestion is that the Indigenous Caucus elects a Chair not only for the duration of the session of the Committee but also for the intersessional periods. Until now, the Caucus has not identified an intersessional Chair. Should the Caucus do so, the Secretariat would be pleased to consult him/her.

28. There would be no budgetary implications to be expected following on this suggestion.

IMPLICATIONS OF THE SUGGESTION THAT "PANELISTS OF THE INDIGENOUS PANEL BE INVITED TO ADDRESS THE SUBSTANTIVE WORKING DOCUMENTS OF THE COMMITTEE SESSION CONCERNED IN ORDER TO CONTRIBUTE DIRECTLY TO THE DEVELOPMENT OF THE WORK OF THE IGC" (SUGGESTION 6)

29. Up to now, the themes of the panels as selected by the Secretariat have been of broad scope, relevant to the needs and expectations of indigenous and local communities and focusing on the intellectual property issues under discussion in the IGC. As such, they have been connected with the work of the Committee, although it was left to the discretion of each panelist as to how directly to address substantive working documents of the Committee in making his or her presentation.

30. The suggestion made by the Indigenous Caucus would imply that the panelists would be explicitly invited to address IGC working documents. Practically, it would also imply that participation in the panel would require from the panelists sufficient familiarity with those documents as well as the underlying process that relates to those documents.

31. There would be no budgetary implications associated with this suggestion, should it be agreed to by the IGC.

32. It is relevant to recall that while the indigenous panel does not form part of the formal proceedings of the IGC, delegates and observers alike are strongly encouraged to attend the panel sessions, engage in a dialogue with the panelists and draw information from the panelists' presentations. A proposal was formulated in document WIPO/GRTKF/IC/21/6 (paragraphs 7 and 8) in order to change the present format of the indigenous panel<sup>16</sup>. The IGC decided at its Twenty-First session to keep this format unchanged<sup>17</sup>.

33. *The Committee is invited to take note of the contents of this document.*

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<sup>16</sup> Document WIPO/GRTKF/IC/21/6 is available at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_21/wipo\\_grtkf\\_ic\\_21\\_6.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_6.doc).

<sup>17</sup> See the IGC decision taken at its Twenty-First session under item 7 at [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_20/wipo\\_grtkf\\_ic\\_20\\_ref\\_decisions.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_20/wipo_grtkf_ic_20_ref_decisions.doc).