

# WIPO



WIPO/GRTKF/IC/7/14

ORIGINAL: English

DATE: November 2, 2004

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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

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

Seventh Session  
Geneva, November 1 to 5, 2004

NEW ZEALAND PROPOSAL - PRACTICAL PARTICIPATION OF INDIGENOUS AND  
LOCAL COMMUNITIES

*Document submitted by the Delegation of New Zealand*

1. On November 1, 2004, the Delegation of New Zealand submitted a document to the seventh session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
2. The document which is entitled "New Zealand Proposal for Informal Consultation - Practical Participation of Indigenous and Local Communities" is reproduced in the Annex.
3. *The Intergovernmental Committee is invited to take note of this document and the Annex to it.*

[Annex follows]

ANNEX

NEW ZEALAND PROPOSAL - PRACTICAL PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES

*Background*

1. While funding is essential to facilitate the attendance of members of indigenous and local communities, effective participation also depends on other factors, such as being provided sufficient opportunity to participate in IGC deliberations. To date the rules of procedure have perhaps hindered participation, by limiting the amount of time that members of these communities have to express their views. While WIPO is obviously an organisation of Member States, the subject matter that this committee is considering - traditional knowledge- means that indigenous and local communities have a very high stake in the outcomes of its deliberations.

2. At the last session of the IGC, New Zealand proposed that more time and opportunities be afforded for indigenous and local communities to make interventions or statements during committee sessions. Despite best endeavours the committee inevitably runs short of time to hear the views and suggestions of members of the indigenous and local communities that are accredited observers to the IGC.

*Proposal*

3. New Zealand proposes that the Committee consider some practical changes to the meeting procedure for the IGC to enable the more effective participation of indigenous and local community observers. We submit these proposals under part 4 of the decision paragraph as another form of enhancing participation.

4. The practical changes we suggest include the following:

(i) Greater speaking time facilitated by the opportunity to intervene earlier in discussions, perhaps interspersed with States.

- (ii) Changes to seating arrangements, as a measure of respect and in recognition of the value that members and indigenous cultures and local communities can add to our discussions.
  - (iii) the election of an indigenous co-chair for the IGC. There is precedent for this and refer the Committee to a WIPO process prior to the fact finding missions. The secretariat could elaborate.
  - (iv) The incorporation of panel presentations by members of indigenous and local communities as part of the IGC plenary, similar to previous sessions of the IGC plenary, similar to previous sessions of the IGC that have enabled the committee to learn from the experiences of member States. Such panel presentations would be chaired by the indigenous co-chair.
5. A number of these proposals have precedent in the Convention on Biological Diversity in its working group on Article 8(j) and TK issues. Member States and NGOs may have further suggestions. A copy of the statement made by the representative of the Kaska Dena Council on behalf of a number of indigenous participants is attached as an example of these (see Appendix).
6. If sufficient support was garnered for any or all of these proposals, it is suggested that they be implemented for the next session of the IGC.

[Appendix follows]

APPENDIX

STATEMENT BY KASKA DENA COUNCIL

- 1.0 Thank you Mr. Chairman for this opportunity to speak to this Committee. It is my honour to deliver a consensus statement developed by the Indigenous Peoples organizations that attended the *informal consultative forum*, that proceeded this meeting.
- 2.0 We take this first opportunity to thank you for your continued chairmanship of our important work. We appreciate your judicious accommodation of Indigenous Peoples' interests. In our submission, it is *wholly* appropriate that we should be given this opportunity to speak first to this item related to Indigenous Peoples' participatory rights.
- 3.0 We also thank the Secretariat for their exemplary development of the documents. Their continuing efforts to brief and consult Indigenous representatives in our preparations is truly committed. We particularly appreciate their *impartial* facilitation of the informal consultative forum. On that point, it is my privilege to deliver this consensus statement deliberated upon at our forum.
- 4.0 Mr. Chairman, we are taking an *atypical* position. We oppose the adoption of the decision paragraph 25 of this document 7/12, as it is currently drafted. We have additional text that we ask this Committee to consider. We oppose this text for a simple reason. It is our position that the efforts of this Committee to enhance Indigenous Peoples' participation and involvement has *not* sufficiently progressed. This Committee's form and procedure does not reflect the integral role that Indigenous Peoples must play in discussions that speak to the protection of *our* Knowledge.
- 5.0 Since the Fifth Session, an enhanced role for participation of Indigenous peoples has been *unanimously* supported by member participants. Yet, we continue to *not* receive support in a tangible and concrete manner. Despite the fact that 80% of Traditional Knowledge is Indigenous Knowledge, despite the fact that our knowledge is the very subject matter of much our discussions in this Committee, we remain disempowered, we remain a minority in this majority.
- 6.0 We believe this is most clearly indicated in our representation at this Committee. Among the 120 member states, we are less than 10% of the participants. Past Sessions demonstrate that despite the increased number and diversity of accredited observers, our attendance at these meeting remains [insert statistics].
- 7.0 Mr. Chairman, this a poor or at best marginal track record. This is barely participation – let alone effective or enhanced participation. It is in this light that we make the following concrete proposals:

ESTABLISHMENT OF VOLUNTARY FUND

- 8.0 First, we strongly support the immediate establishment of a Voluntary Fund. We believe that the selection criteria should be lead by Indigenous Peoples

representatives. The criteria should be impartial and transparent, not subject to the discretion of contributing parties. We submit that appropriate criteria includes:

- (a) Regional representation – we suggest that 3 representatives from the 7 Indigenous regions is a minimal standard;
- (b) Proportional representation placing particular emphasis gender equality, Elders and Indigenous youth; and, of course
- (c) Financial need.

9.0 We submit that this criteria and funding should apply to all Intergovernmental Committee–related meetings, including informal consultative meetings with the Secretariat.

10.0 We note that paragraph 12 of this document 7/12 highlights the CBD Conference of the Parties' recent decision to establish a Indigenous participant voluntary fund. We particularly note that the criteria is to be developed in close consultation with Indigenous Peoples' organizations. We strongly suggest that the criteria for any IGC voluntary fund should be similarly developed. This is fundamental to the Fund's credibility.

#### PROCEDURAL EQUALITY

11.0 Mr. Chairman, we also request an immediate review of the procedural equality of this Committee. That is, we propose modifications to the form and procedure of this Committee that better reflects our integral role in these discussions.

12.0 We note the CBD's *Ad Hoc Inter–Sessional Open–Ended Working Group on Article 8(j) and Related Provisions*, the UN Draft Declaration on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues as instructive models. In particular, we note progressive modifications such as:

- (a) An Indigenous Peoples member of the Secretariat;
- (b) Indigenous Co–chairs – nominated by Indigenous Peoples' caucus;
- (c) Indigenous Peoples representatives informally invited to participate in the Bureau;
- (d) Amendment to the procedure related speaking order – as opposed to the current practice of Indigenous Peoples' being relegated to make our submissions following member states – which often leaves us with less than 10 minutes of floor time each day;
- (e) Designated seating for Indigenous Peoples' organizations; and
- (f) Separate accreditation for Indigenous Peoples' organizations that clearly distinguishes our organizations from non–governmental organizations.

- 13.0 Mr. Chairman, we take this opportunity to remind the member States that these procedural modifications are not only within the discretion of UN procedure but the member States themselves have been instrumental in supporting these changes in other UN Fora. Our request is simple – we ask for parity.
- 14.0 Finally, we would ardently advise that these proposals are absolutely imperative to our future participation in this Committee. These changes are fundamental to the credibility of our work here and we look forward to this Committee supporting progressive procedural changes.
- 15.0 We have prepared amended text that we would be pleased to provide to the Secretariat and would ask for an opportunity to discuss our suggestions through informal consultations with member States. On this point, we ask that this Committee reserve on the decision paragraph 25 under this item to allow member States an informed opportunity to consider our concrete proposals.
- 16.0 Mr. Chairman, we thank you for this opportunity to speak and your indulgence on this important item. Thank you, Mr. Chairman.

[End of Annex and of document]