

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

Third Intersessional Working Group Geneva, February 28 to March 4, 2011

WIPO/GRTKF/IC/17/10: "PROPOSAL OF THE AFRICAN GROUP ON GENETIC RESOURCES AND FUTURE WORK"

Document prepared by the Secretariat

1. At its seventeenth session, held from December 6 to 10, 2010, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee') "requested the Secretariat to make available copies of all relevant documents for the third Intersessional Working Group taking place from February 28 to March 4, 2011 (IWG 3), including: [...] WIPO/GRTKF/IC/17/10 [...]".
2. Pursuant to the decision above, the Annex to this document comprises document WIPO/GRTKF/IC/17/10 ("Proposal of the African group on Genetic Resources and Future Work").
3. *The Intersessional Working Group is invited to take note of this document and the Annex to it.*

[Annex follows]



WIPO/GRTKF/IC/17/10
ORIGINAL: ENGLISH
DATE: DECEMBER 8, 2010

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

Seventeenth Session
Geneva, December 6 to 10, 2010

PROPOSAL OF THE AFRICAN GROUP ON GENETIC RESOURCES AND FUTURE WORK

Document prepared by the Secretariat

1. On December 8, 2010, the Delegation of Angola, on behalf of the African Group, submitted a working document in relation to agenda item 8 ("Genetic Resources") for the seventeenth session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee").

2. *The Committee is invited to take note of this document and the Annex to it.*

[Annex follows]

ANNEX

PROPOSAL OF THE AFRICAN GROUP ON GENETIC RESOURCES AND FUTURE WORK

7 DECEMBER 2010

INTRODUCTION

1. The Proposal has been compiled taking into consideration the various documents on Genetic Resources within the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) and the objectives and principles of the Convention of Biological Diversity (CBD) and the Nagoya Protocol on “Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation” (the Nagoya Protocol).
2. Work on this Proposal is guided by the presumption that:
 - (i) Work of the IGC should be mutually supportive of the CBD and the Nagoya Protocol and it should not run counter to the objectives of the CBD and the Nagoya Protocol (Article 3 *bis* of the CBD Nagoya Protocol)
 - (ii) The IGC negotiations should be without prejudice to the negotiations in the WTO on the mandatory disclosure proposal in the context of the implementation related issues of “examining the relationship between the TRIPS Agreement and the CBD”
3. The relevant WIPO documents for this proposal are:
 - “Declaration of the Source of Genetic Resources and Traditional Knowledge in Patent Applications: Proposal by Switzerland” (document WIPO/GRTKF/IC/11/10);
 - “Genetic Resources: Revised List of Options and Factual Update” (document WIPO/GRTKF/IC/17/6);
 - EU Proposal “Disclosure of Origin or Source of Genetic Resource and Associated Traditional Knowledge in Patent Applications” (document WIPO/GRTKF/IC/8/11);
 - “Submission by Australia, Canada, New Zealand, Norway and the United States of America” (document WIPO/GRTKF/IC/17/7).
4. In line with the WIPO IGC document “Genetic Resources: Revised List of Options and Factual Update” (document WIPO/GRTKF/IC/17/6) which has been on the table together with the proposal from the Delegation of Switzerland entitled, “Declaration of the Source of Genetic Resources and Traditional Knowledge in Patent Applications: Proposal by Switzerland” (document WIPO/GRTKF/IC/11/10), the following is proposed, as a starting point, for substantive negotiations on Genetic Resources within the IGC in line with the current mandate of the WIPO IGC to “undertake text-based negotiations with the objective of reaching agreement on a text of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.”. Noting the need to ensure that the work of the WIPO IGC complements the work of the CBD, with the recent adoption of the CBD Nagoya Protocol “Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation”, the following proposal is made:

OVERVIEW OF THE PROPOSAL

5. Based on the options listed in document WIPO/GRTKF/IC/17/6, option B1 on a mandatory disclosure requirement should be the basis for the negotiations on Genetic Resources in the IGC.
 - 5.1 *Option B 1 – Mandatory disclosure requirement*
 - (i) Under this option, and as a starting point, the consideration of the proposal made by the Delegation of Switzerland (document WIPO/GRTKF/IC/11/10) and that of the European Union (EU) (WIPO/GRTKF/IC/8/11) for substantive negotiations on a mandatory disclosure requirement.
 - (ii) It is therefore proposed to commence negotiations on a mandatory disclosure requirement and an appropriate way to ensure prior informed consent and fair and equitable benefit sharing, in line with the Nagoya Protocol. The draft text for negotiations will be based upon: a) the two current proposals on a mandatory disclosure requirement, namely, the “Declaration of the Source of Genetic Resources and Traditional Knowledge in Patent Applications: Proposal by Switzerland” (document WIPO/GRTKF/IC/11/10) and EU Proposal “Disclosure of Origin or Source of Genetic Resource and Associated Traditional Knowledge in Patent Applications” (document WIPO/GRTKF/IC/8/11) with a view to amending the Patent Cooperation Treaty (PCT) and the Patent Law Treaty (PLT) to reflect a mandatory disclosure requirement of the origin of the genetic resource; b) incorporation of the “internationally recognized certificate of compliance” as stipulated in the Nagoya Protocol; c) any other submission that may be tabled by member countries;
6. The following ones have been selected for consideration for further work:
 - 6.1 *Option A 3 – Guidelines and recommendations on defensive protection*

“Under this option, it is proposed to have recommendations or guidelines for search and examination procedures for patent applications to ensure that they better take into account the disclosure of the origin of genetic resources.” The use of available databases on GR and/or associated TK could also be considered.
 - 6.2 *Option C 1– Online database of IP clauses on MAT*

“Consideration of options for expanded use, scope and accessibility of the online database on IP clauses in MAT for access and equitable benefit sharing. The contents of the online database would be published in additional, more accessible forms for wider accessibility and easier use by all relevant stakeholders.”

6.3 *Option C.2 - Draft Guidelines for contractual practices*

“Considering options for stakeholder consultations on and further elaboration of the draft guidelines for contractual practices.”

7. In order to advance the adoption of clear objectives and principles on genetic resources and/or associated traditional knowledge, the following amendments are proposed to the “Submission by Australia, Canada, New Zealand, Norway and the United States of America” (document WIPO/GRTKF/IC/17/7), which is contained as an Appendix to this document.

[Appendix follows]

APPENDIX

COMMENTS TO DOCUMENT WIPO/GRTKF/IC/17/7¹

Objectives and Principles

Objective 1

- Ensure inventors/users using genetic resources and/or associated traditional knowledge comply with requirements for prior informed consent and fair and equitable access and benefit sharing.

Principles:

- Recognise the sovereign rights of States over their genetic resources and/or associated TK
- ~~Subject to national legislation, persons accessing traditional knowledge associated with genetic resources from the knowledge holder and applying that knowledge in the development of an invention should obtain the approval from the knowledge holder and seek their involvement.~~

Objective 2

- Prevent patents being granted in error and/or bad faith for inventions that are not novel or inventive in light of genetic resources and/or associated traditional knowledge
- Prevent patents being granted where there is no prior informed consent, no fair and equitable benefit sharing, and disclosure requirements have not been met.

Principles

- ~~Patent applicants should not receive a monopoly on inventions that are not new of inventive~~
- The patent system should provide certainty of rights for legitimate users and providers of genetic resources and/or associated TK
- The patent system must provide for a mandatory disclosure requirement ensuring that the IP Offices becomes a key checkpoint for disclosure and monitoring the utilization of genetic resources and/or associated TK (in line with Article 13 of the CBD Nagoya Protocol)
- Administration and/or judicial authorities shall have the right to prevent (a) the further processing of an application or (b) the granting of a patent as well as (c) to revoke, subject to Article 32 of the TRIPS Agreement, or render unenforceable a patent when the applicant has either failed to comply with these objectives and principles or provided false or fraudulent information.

¹ These are initial amendments and comments without prejudice to further comments which may be submitted.

Objective 3

- Ensure patent offices have available the information needed to make proper decisions on patent granting
- The information should include measures to ensure that prior informed consent has been obtained through a mandatory disclosure requirement and an internationally recognised certificate of compliance.

Principles:

- Patent offices must have regard to all relevant prior art when assessing the patentability of an invention
- Patent applications must indicate the background art relevant for which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention
- ~~There is a need to recognise that some holders of TK may not want their knowledge documented.~~

Objective 4

- Relationship with relevant international agreements and processes

Principles:

- Respect for and consistency with other international and regional instruments and processes.
- The work of the IGC should not prejudice the work pursued in other fora.
- Promotion of cooperation with relevant international and regional instruments and processes.

Objective 5

- ~~Maintain~~ Recognise and maintain the role of the IP system in promoting innovation and transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare while also contributing to the protection of traditional knowledge, genetic resources and traditional cultural expressions

Principles:

- ~~Maintain~~ Recognise and maintain the role of the IP system in promoting innovation and in the protection of traditional knowledge, genetic resources and traditional cultural expressions and fair and equitable sharing of benefits arising from their use.
- Promote certainty and clarity of IP rights and obligations with respect to the protection of traditional knowledge, genetic resources and traditional cultural expressions and certainty and clarity for prior informed consent and fair and equitable benefit sharing.
- Protect creativity, reward investments and ensure prior informed consent and fair and equitable benefit sharing made in developing a new invention

- Promoting transparency and dissemination of information by disclosing country of origin and publishing and disclosing technical information related to new inventions, where appropriate and where publicly available, so as to enrich the total body of technical knowledge accessible to the public.

[End of Annex and of document]