

CASE FOR SUPPORT

Promoting effective participation of indigenous and local communities

I. CONTEXT

A need for protection of traditional knowledge at the international level

- in 1998, WIPO launched a fresh policy initiative aimed at protecting traditional knowledge (TK) and traditional cultural expressions (TCEs) against their misuse and improper dissemination and for managing the interface between IP and genetic resources (GRs);
- indigenous and local communities are those mainly affected since their traditions, knowledge systems and cultural expressions form the basis of their identity and future development; and
- appropriate and effective protection requires a concerted approach by States. With that in mind, in 2001, the Member States decided to create a WIPO body expressly tasked with examining the standards which might be adopted at the international level to ensure this protection. This body is the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

A need to ensure the active participation of indigenous and local communities in the work of the IGC

- indigenous and local communities rightly consider that they should be able to participate in decision-making processes relating to matters which affect them;
- this concern is unanimously shared by the government delegations in the IGC which have recognized that “the participation of indigenous and local communities is of great importance for the work of the Committee”. These communities provide the IGC with experience, information and comments which are essential to ensuring that the decisions taken meet their expectations;
- Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the United Nations General Assembly on September 13, 2007, also stipulates that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights...”; and
- this need has without a doubt been ever more pressing since December 2009, when the IGC embarked on a formal phase of negotiations on one or more international legal instruments to provide effective protection.

Concrete measures to ensure the active participation of indigenous and local communities, including:

- since April 2001, in the IGC a fast-track accreditation procedure has been in operation for all non-governmental and intergovernmental organizations. The IGC currently has more than 240 accredited observers, many of whom represent indigenous and local communities;
- IGC sessions are opened with an indigenous panel, in which members of indigenous and local communities speak of their experiences and perspectives. The participation of the panelists is financed by WIPO; and
- one of the main measures was the creation in 2005 of the WIPO Voluntary Fund for Accredited Indigenous and Local Communities which is designed to finance their participation in IGC sessions..

II. THE VOLUNTARY FUND: OBJECTIVES, OPERATION AND RESULTS

- many indigenous and local communities had stressed that they encountered insurmountable difficulties in funding the travel and accommodation costs of their representatives during IGC meetings; and
- in order to address this legitimate concern, and following extensive consultations and a review of best practices prevailing within the United Nations system, the WIPO General Assembly took the decision in 2005 to create the WIPO Voluntary Fund.

This initiative has not gone unnoticed and was welcomed in May 2006 by the UN Permanent Forum on Indigenous Issues, which encouraged donors to contribute to the Fund

- the objective of the Fund and its rules of operation are set out clearly in decisions of the General Assembly. The text of that decision provides the legal basis of the Fund.

Objective

- the Fund is designed exclusively to finance the participation in the IGC process of accredited observers representing indigenous and local communities or the customary holders or custodians of TK and TCEs;
- the funding is designed to cover the purchase of a return economy class ticket by the cheapest route, as well as a daily allowance or fixed stipend and in some cases an additional flat rate to cover incidental expenses incurred by the financed participant at the time of departure and arrival; and
- a decision¹ was taken by the WIPO General Assembly in September 2010 to allow the Fund to finance the participation of the representatives of indigenous and local communities in the Intersessional Working Groups (IWGs) of the IGC set up in accordance with the IGC's mandate adopted in September 2009.

Operation of the Fund: transparent, independent, efficient and not subject to deductions for administrative costs

Transparency

- the list of candidates for financial support and the list of accepted candidates are communicated to the IGC at regular intervals as laid down by the Fund's rules;

¹ See document WO/GA/39/14 Prov., paragraph 214 to 218, Draft report of the General Assembly (39th session)

- the nine members of the Fund Advisory Board, which selects candidates to receive funding, are elected by the IGC plenary on the proposal of its Chairperson. Their mandate expires in practice at the end of the IGC session which elected them; and,
- the funding criteria, including geographical balance criteria, as well as the conditions governing financial support from the Fund, are clearly established by the Fund's rules.

Independence

- the nine members of the Fund Advisory Board serve independently and take their decisions in their personal capacity;
- three members of the Advisory Board are from accredited observers representing one or more indigenous or local communities; and,
- the Advisory Board's recommendations are binding on the WIPO Secretariat which merely provides the necessary administrative support and implements these recommendations.

Efficiency: No deductions from the Fund for administrative costs

- the members of the Advisory Board meet during the IGC session in which they are participating. They are not paid or compensated for the tasks that they carry out;
- the Advisory Board is required to conclude its deliberations before the end of the session during which it meets;
- candidates for funding are required to provide documents to support their application, in practice in the form of an application form and curriculum vitae, which facilitates the review of their application based on the funding criteria;
- the WIPO Secretariat is not authorized to draw on the Fund to cover any administrative costs; and,
- an express clause in the Fund's rules is designed to keep administrative costs to a strict minimum.

III. CONTRIBUTIONS TO THE FUND

- since its creation in 2005, the Fund has benefited from contributions from the Swedish International Biodiversity Programme (SwedBio/CBM), France, the Christensen Fund, the Swiss Federal Institute of Intellectual Property, South Africa and Norway, totaling 501,989.53 Swiss francs. The Swiss contribution of 250,000 Swiss francs accounted for half of this sum.²
- To ensure continued participation of indigenous and local communities in future meetings of the IGC, additional funds will be necessary.

Provisions relating to contributions

- the Fund relies exclusively on voluntary contributions. There are no restrictions on who may contribute;

^{2,3} The financial data relating to the balance of the Fund are made public at every session of the IGC. See for example Information Note WIPO/GRTKF/IC/17/INF/4

- the names of the contributors and the level of contributions and pledges received are communicated by the WIPO Director General to the IGC before each Committee session through an Information Note³. Contributors are also publicly acknowledged and thanked by WIPO and further opportunities for doing so can be discussed with contributors. However donors may remain anonymous if they so wish;

The Information Note also contains inter alia the amount available in the Fund and the names of the funded applicants from the previous IGC session, the present and the upcoming IGC session.

- all contributions are allocated directly to financing the participation of accredited indigenous and local communities in the sessions of the IGC. No administrative costs are borne by the Fund;
- the rules of operation of the Fund are clearly set out in the General Assembly decisions. Taking into account that it is a collective fund, it is not possible to depart from those rules in relation to any particular contribution;
- contributions cannot be earmarked by the donor for a particular category of beneficiary or expense. It is the Fund's Advisory Board which independently selects candidates for support. If the contributor is represented within the IGC (as a Member State or accredited observer), it may stand for election as a member of the Fund's Advisory Board;
- contributions are used in the order received in the Voluntary Fund's bank account;
- a standard report is prepared which gives donors information on the use of the Fund. In the exchange of letters formalizing the contribution agreement between the donor and WIPO, a specific clause may be included to provide for a detailed periodic financial report on the use of the contribution. The operation of the Fund is also subject to internal auditing.

For more information...

Rules concerning the objective and operation of the Voluntary Fund

www.wipo.int/export/sites/www/tk/en/ngoparticipation/voluntary_fund/amended_rules.doc

Brochure on the Voluntary Fund available online

www.wipo.int/freepublications/en/tk/936/wipo_pub_936.pdf

Home page of the Voluntary Fund

www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html