

**Twelfth Session of the Permanent Forum on Indigenous Issues
New York, May 20 to 31, 2013**

**Information Note from the Secretariat of
the World Intellectual Property Organization**

March 2013

EXECUTIVE SUMMARY

In this Information Note, the Secretariat of the World Intellectual Property Organization (WIPO) reports on (i) recent developments in the norm-setting negotiations being undertaken within WIPO, (ii) measures to facilitate the participation and contribution of indigenous peoples and local communities in these negotiations and in the work of WIPO more generally, and (iii) follow-up to date by the WIPO Secretariat on the Permanent Forum's recommendations made in respect of WIPO at its Eleventh Session in May 2012. More specifically, the Note reports on *inter alia* an Indigenous Expert Workshop, co-organised by the Secretariats of WIPO and the Permanent Forum, and taking place at WIPO from April 19 to 21, 2013; the participation by indigenous experts in expert drafting groups which meet in the framework of the negotiations underway in WIPO; the recent appointment of WIPO's Indigenous Fellow for 2013; and, an "Indigenous Portal" established on WIPO's website, as part of WIPO's program of outreach to indigenous peoples and local communities.

INTRODUCTION

The United Nations Permanent Forum on Indigenous Issues (UNPFII or Permanent Forum), at its Eleventh Session (May 7 to 18, 2012), held a Comprehensive Dialogue with the Secretariat of the World Intellectual Property Organization (WIPO). This Dialogue was an important opportunity for WIPO to inform the Permanent Forum about the norm-setting activities being undertaken by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) and the existing measures and mechanisms in support of the participation of accredited representatives of indigenous peoples in the work of the IGC. Pursuant to this Comprehensive Dialogue, the Permanent Forum addressed several recommendations to WIPO, as reflected in the Report of the Eleventh Session (E/2012/43-E/C.19/2012/13) (the Permanent Forum's recommendations).

In this Information Note, the WIPO Secretariat would like to provide information regarding:

- (i) recent developments in the negotiations being undertaken by the WIPO IGC;
- (ii) measures to facilitate the participation and contribution of indigenous peoples and local communities to the work of the IGC;
- (iii) follow-up by the WIPO Secretariat on the Permanent Forum's recommendations to date.

RECENT DEVELOPMENT IN THE IGC NEGOTIATIONS

The General Assembly of WIPO established the IGC in 2000 as a forum where WIPO Member States and observers could discuss the intellectual property (IP) issues that arise in the context of access to and benefit-sharing in genetic resources (GRs) and the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs). The First Session of the IGC (IGC 1) took place in April 2001¹.

After detailed discussions and studies, WIPO Member States decided in 2009 that the IGC should undertake “text-based negotiations” regarding the effective protection of GRs, TK and TCEs². Since then, considerable progress has been made in pursuing international agreement on such protection.

The negotiating mandate of the IGC was renewed by the WIPO General Assembly for 2012 and 2013³ and reads as follows: “The Committee will [...] without prejudice to the work pursued in other fora, expedite its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.”

In October 2012, the WIPO General Assembly agreed to “continue intensive negotiations [...] towards concluding [such] text(s)” and adopted a workplan for 2013, with three additional IGC sessions in 2013. It requested the IGC to “submit to the 2013 General Assembly the text(s) of an international instrument(s) which will ensure the effective protection of GRs, TK and TCEs”⁴. In accordance with the decision taken by the General Assembly in 2012, the General Assembly that will take place from September 23 to October 2, 2013 “will take stock of and consider the text(s), progress made and decide on convening a diplomatic conference”.

IGC 23 took place from February 4 to 8, 2013 on GRs; IGC 24 will take place from April 22 to 26, 2013 on TK; IGC 25, scheduled from July 15 to 24, 2013, will be dedicated to TCEs, with the three last days to “review and take stock of the text(s) on the international legal instrument(s) ensuring the effective protection of TCEs, TK, and GRs and make a recommendation to the General Assembly”.

The negotiations of the IGC build on “negotiating texts” resulting from the intensive discussions and drafting that have taken place in IGC sessions since the beginning of the negotiations.

Most recently, IGC 23 developed, in February 2013, a revised and much more concise “Consolidated Document Relating to Intellectual Property and Genetic Resources” and transmitted this text to the WIPO General Assembly taking place in September 2013 for its

¹ For a detailed description of the Committee’s background, please refer to the Brief available at http://www.wipo.int/export/sites/www/tk/en/documents/pdf/background_briefs-e-nx2-print.pdf.

² For an overview of the questions raised regarding such protection, see the following publication “Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: An Overview” available at http://www.wipo.int/freepublications/en/tk/933/wipo_pub_933.pdf. A presentation of the issues involved was also made at the Eleventh Session of the Permanent Forum. See: <http://www.wipo.int/tk/en/indigenous/>.

³ The full text of the 2012-2013 mandate is available at http://www.wipo.int/export/sites/www/tk/en/documents/pdf/decision_assemblies_2011.pdf.

⁴ The full text of this WIPO General Assembly decision is available at http://www.wipo.int/export/sites/www/tk/en/documents/pdf/igc_workprogram_2013_gadecision_en.pdf.

consideration⁵. The forthcoming session taking place in April 2013 (IGC 24) will consider a negotiating text on TK that resulted from IGC 21⁶, while IGC 25, scheduled in July 2013, will consider a negotiating text regarding TCEs developed at IGC 22⁷.

PARTICIPATION OF AND CONTRIBUTION BY INDIGENOUS PEOPLES IN THE WORK OF THE IGC

Member States of WIPO have repeatedly expressed their unanimous support for directly involving as much as possible representatives of indigenous peoples and local communities in the work of the IGC. Since the inception of the IGC and in active dialogue and cooperation with those representatives, the WIPO Secretariat, with WIPO Member States' support, has taken measures ensuring and enhancing the participation of indigenous peoples in the IGC in the framework of their status as observers. The practical experience and, most recently, the recommendations made by the Forum members, have always been welcome inputs to achieving this goal.

In order to enhance the modalities of participation of the observers in the IGC, a detailed and extensive study, completed with concrete proposals, was commissioned by the WIPO General Assembly in October 2011 and completed by the Secretariat in January 2012⁸. Decisions have been taken by the IGC in this regard⁹. Further suggestions made by the Indigenous Caucus at IGC 21¹⁰ have also been studied by the Secretariat of WIPO and taken note of by the IGC at IGC 22 in July 2012.

The most important measures regarding the participation of observers in the IGC include the following:

Accreditations, invitations, funding

- (i) A fast-track accreditation procedure for all non-governmental and intergovernmental organizations has been in place since the beginning of the IGC in 2001. More than 300 organizations have received accreditation, many of them representing indigenous peoples¹¹.
- (ii) The WIPO General Assembly has extended a formal invitation to the Forum to take part in sessions of the IGC and many participants have welcomed the active and direct participation of the Permanent Forum in the IGC.

⁵ The consolidated document on GRs is available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_23/wipo_grtkf_ic_23_www_230222.pdf. An update on the results of IGC 23 is also available at http://www.wipo.int/tk/en/news/2013/news_0004.html.

⁶ The current negotiating text on TK is available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_24/wipo_grtkf_ic_24_4.pdf.

⁷ The current negotiating text on TCEs is available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_ref_facilitators_text.pdf.

⁸ See the draft study on observer participation in the work of the IGC (document WIPO/GRTKF/IC/20/7): http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=196197.

⁹ See http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_20/wipo_grtkf_ic_20_ref_decisions.pdf and http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_ref_decisions.pdf

¹⁰ See http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_inf_10.doc

¹¹ On the fast-track accreditation procedure and the list of accredited observers, see <http://www.wipo.int/tk/en/igc/accreditation.html>

- (iii) A number of Member States have adopted the practice of funding the participation of representatives of indigenous and local communities in IGC sessions.
- (iv) Consultations and workshops at the national and regional level and other forums aimed at developing focused input for the IGC have included representatives of the Forum and indigenous and local communities as speakers and participants.
- (v) The WIPO General Assembly established the WIPO Voluntary Fund for Accredited Indigenous and Local Communities (the Fund) in 2005. The Fund facilitates the participation in sessions of the IGC of representatives of indigenous and local communities, and other customary holders or custodians of TK and TCEs, which are already accredited to the IGC¹². WIPO welcomed the supportive statements made by the Permanent Forum at its Fifth and Eleventh Sessions regarding the Fund. It is worth noting that the extent of support that the Voluntary Fund can provide depends on the resources donated to it. In this regard, the WIPO Secretariat has initiated a fund-raising drive in order to have the Fund replenished with new donations. Any potential donors are encouraged to contact the WIPO Secretariat for further information.

Contributions by indigenous representatives to the IGC negotiations

- (i) In accordance with the General Rules of Procedure of WIPO¹³, accredited observers to the IGC can take the floor on any agenda item and can make any relevant suggestion regarding any issue on the agenda, including submitting suggested drafting text. Member States may then decide to endorse suggestions by observers as formal proposals to be considered by the IGC, and often do so.
- (ii) In addition to statements made by representatives of accredited observers during IGC plenary sessions, indigenous accredited observers may make suggestions, comments or observations through different channels:
 - a. a distinct WIPO webpage on the WIPO TK website is dedicated to comments, submissions and papers from observers, including drafting suggestions on IGC negotiating texts and other working documents for consideration by Member States¹⁴;
 - b. consultations in the margins of the IGC are regularly organized by the WIPO Secretariat with NGO representatives, particularly representatives of indigenous peoples and local communities. Most of those consultations involve the Chair of the IGC. As a key part of those consultations, an Indigenous Consultative Forum is organized on the day preceding IGC sessions at the WIPO premises. The Secretariat is on hand at the

¹² Details on the WIPO Voluntary Fund are available at http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html.

¹³ 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.

¹⁴ <http://www.wipo.int/tk/en/igc/ngo/ngopapers.html>.

Consultative Forum to provide input on substantive and organizational issues, if so invited. The Consultative Forum may always invite Member State delegates and the Chair of the IGC to participate in the Consultative Forum as appropriate. The WIPO Secretariat has continued its practice of directly consulting with interested representatives of indigenous and local communities on draft documents and other material or publication being developed for the IGC, as well as related capacity-building and awareness documents;

- c. following up on a recommendation made by IGC 20 in February 2012, the Chair of the IGC may invite indigenous representatives of accredited observers to participate in informal consultations regarding the texts presently negotiated at the IGC. As an example of such practice, two indigenous persons, elected by indigenous peoples present at the session, and seconded by two additional indigenous persons, were part of the informal “expert group” that helped to develop a further version of the negotiating document on GRs at IGC 23 in February 2013. A similar practice was followed at IGC 22 in July 2012;
- d. an Indigenous Expert Workshop will take place from April 19 to 21, 2013 in Geneva, just before IGC 23, in accordance with a decision taken by Member States at IGC 20 in February 2012 and in line with a recommendation formulated by the Permanent Forum at its Eleven Session¹⁵. The Workshop will constitute an opportunity for indigenous peoples’ experts to formulate comments and, should they so opt, formulate drafting suggestions regarding the texts presently negotiated at the IGC (see further below); and,
- e. the IGC decided in November 2004 that each future session of the Committee should be preceded by panel presentations chaired by an indigenous or local community representative. The panels comprise participants from indigenous peoples and local communities in the geo-cultural regions recognized by the Forum. Their participation is funded by WIPO. Panels constitute a significant opportunity for the States and other participants in the negotiations to engage with indigenous peoples and local communities and for the latter to register their substantive inputs on the issues under negotiation at the IGC. The members of the panel are identified by the WIPO through informal consultation involving *inter alia* the Permanent Forum.

Briefings, guides, administrative support

- (i) Specific briefings for NGO representatives, particularly representatives of indigenous peoples and local communities, are regularly undertaken in the margins of the meetings of the IGC.

¹⁵ More details are provided on the Indigenous Expert Workshop

- (ii) A practical guide for observers, with a focus on elements of interest for indigenous representatives, was issued in 2012¹⁶. A regular information note on the relevant resources available on the WIPO website, as a measure to help observers, has also been published in view of each IGC since 2012¹⁷.
- (iii) During the IGC, WIPO finances the logistical, secretarial, interpretation and translation support that is provided by the Indigenous Peoples' Center for Documentation, Research and Information (DoCip) for the meetings of the indigenous peoples and local communities' representatives. Such support significantly facilitates developing the information and communications capacity of participating representatives and is highly appreciated by indigenous observers.

Other relevant capacity building and outreach initiatives: indigenous WIPO fellowship, WIPO side-events, capacity-building workshop

Different measures are being undertaken by the WIPO Secretariat to enhance its outreach towards indigenous peoples. Some are mentioned below as part of the follow-up by the WIPO Secretariat on the recommendations made by the Permanent Forum. The most important ones are the following:

- (i) Since 2009, WIPO offers the opportunity for an Indigenous Fellow to work at WIPO, directly participate in the delivery of core program outputs of WIPO's Traditional Knowledge Division and facilitate outreach toward indigenous peoples¹⁸. Following an open and competitive selection process, four successive Indigenous Fellows have worked at WIPO for a period of six to nine months. Mr. Q'apaj Antonio Conde Choque from the Plurinational State of Bolivia was appointed as WIPO Indigenous Fellow in February 2013, succeeding Mrs. Jennifer Tauli Corpuz from the Philippines, who was the Fellow in 2012.
- (ii) Upon invitation or on its own initiative, the WIPO Secretariat also provides briefings on the work of the IGC for representatives of indigenous peoples and local communities, directly or in the margins of other UN meetings on related matters. As an example, in May 2012, during the Eleventh Session of the Permanent Forum and in parallel with the Comprehensive Dialogue between the Forum and the WIPO Secretariat, WIPO organized a side-event on "Intellectual property and the safeguarding of indigenous cultures: best practices of museums, libraries and archives". In the margins of the Fourth Session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) of the Human Rights Council in July 2011, WIPO organized a panel discussion on indigenous peoples' TK and IP, the IGC process and the status of the negotiations. Representatives of indigenous peoples were invited to participate in each of these events as speakers.

¹⁶ See http://www.wipo.int/export/sites/www/tk/en/igc/doc/observers_practical_guide.pdf

¹⁷ See for example http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_23/wipo_grtkf_ic_23_inf_9_add.doc.

¹⁸ For further details, see <http://www.wipo.int/tk/en/training/fellowship/index.html>

- (iii) A capacity-building workshop for indigenous peoples and local communities is planned for the second half of 2013 as part of a capacity-building initiative¹⁹.

FOLLOW-UP BY WIPO ON THE PERMANENT FORUM'S RECOMMENDATIONS

Participation and contribution of experts on international human rights law specifically concerning indigenous peoples in the IGC²⁰

Many accredited representatives of indigenous peoples at the IGC have extensive expertise in the field, contribute to the IGC's work, influence the IGC's negotiations and pursue drafting language that would be in line with the international human rights law and norms, particularly the United Nations Declaration on the Rights of the Indigenous Peoples (the UNDRIP).

In addition, since the Eleventh Session of the Permanent Forum, and in response to this particular recommendation, WIPO has sought specifically to invite indigenous and local community experts who are familiar with human rights law as speakers, and has sought to introduce a human rights perspective into the topics of the Panels of Indigenous Peoples and Local Communities (the Panel) that precede each IGC session²¹.

For example: the Panel organized at the IGC 22 in July 2012 addressed the issue of "Intellectual Property, Traditional Cultural Expressions and the United Nations Declaration on the Rights of Indigenous Peoples: Perspectives of Indigenous Peoples". Two members of the Permanent Forum participated on the Panel, namely Ms. Valmaine Toki as a keynote speaker and Mr. Paul Kanyinke Sena as a panel member, together with Mr. Robert Les Malezer and Dr. Mattias Åhrén, who are both human rights law experts.

IGC 23 that was held in February 2013 was preceded by a Panel on "Intellectual Property and Genetic Resources: Perspectives of Indigenous Peoples and Local Communities". Professor James Anaya, Special Rapporteur on the Rights of Indigenous Peoples, was the keynote speaker, and his presentation was entitled "Indigenous Peoples' Rights to Genetic Resources and Traditional Knowledge". In addition, Dr. Anil K. Gupta, Ms. Tarcila Rivera Zea and Mr. Godber W. Tumushabe made presentations as members of the Panel. Ms. Lucia Fernanda Inació Belfort, an indigenous Kaingang from Brasil, chaired the Panel.

Indigenous Panel presentations are made available on WIPO's TK webpage²².

The Indigenous Expert Workshop that is to take place in April 2013 (see further below) may also be considered as a follow-up to this particular recommendation made by the Permanent Forum.

¹⁹ More details are provided below.

²⁰ E/2012/43-E/C.19/2012/13, para. 46. "The Permanent Forum recommends that WIPO seek the participation of experts on international human rights law specifically concerning indigenous peoples so that they provide input into the substantive consultation process, in particular with reference to the language in the draft text where indigenous peoples are "beneficiaries" and other language that refers to indigenous peoples as "communities", as well as the general alignment of the draft text of the Intergovernmental Committee with international human rights norms and principles."

²¹ Further information on the Panels is contained above.

²² See http://www.wipo.int/tk/en/ngoparticipation/ind_loc_com/index.html

Study to examine challenges in the African region to protecting traditional knowledge, genetic resources and folklore²³

In accordance with its recommendation, the Permanent Forum appointed Mr. Kanyinke Sena, a member of the Permanent Forum, to undertake a study to examine challenges in the African region regarding protection of TK, GRs and folklore and to provide it to the Forum in 2014. The WIPO Secretariat is most willing to assist Mr. Sena, should he so wish, and has had meetings and communications with him regarding a work plan and terms of reference for the study.

Indigenous Expert Workshop²⁴

The holding of an Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions preceding one session of the IGC follows up on a decision by the IGC. It was welcomed by the UNPFII at its Eleventh Session, as part of its recommendations. The WIPO Secretariat is pleased to report that preparations for this event are well advanced. The Expert Workshop is taking place from April 19 to 21, 2013, at the Headquarters of WIPO, and it is being organized jointly by WIPO and the UNPFII Secretariats.

The purpose of the Workshop is to facilitate the formulation of technical, substantive and concrete contributions to the work of the IGC. The IGC may benefit from the Workshop, since the Workshop is invited to: (i) review and analyze the draft texts being negotiated by the IGC on GRs, TK and TCEs; (ii) identify key policy and legal issues relevant for indigenous peoples in the context of those negotiations; (iii) formulate feasible ways, including textual proposals, to address the key issues identified. Findings of the Workshop could, should the experts so decide, contain substantive conclusions and recommendations adopted by the experts.

The results of the Workshop would be reported to the IGC for its consideration. It will be reported on as well to the Twelfth Session of the Permanent Forum.

WIPO is funding the participation of seven invited experts, one each from the seven geo-cultural regions recognized by the UNPFII, a Member of the Permanent Forum and a member of the Permanent Forum Secretariat. The selection of the experts was conducted by WIPO in cooperation with the Permanent Forum Secretariat²⁵. The Chair and

²³ E/2012/43-E/C.19/2012/13, para. 48: "The Permanent Forum appoints Mr. Paul Kanyinke Sena, a member of the Forum, to undertake a study to examine challenges in the African region to protecting traditional knowledge, genetic resources and folklore, and to report thereon to the Forum in 2014."

²⁴ E/2012/43-E/C.19/2012/13, para. 49. "The Permanent Forum welcomes the decision of the Intergovernmental Committee to organize, in cooperation with the Forum, expert preparatory meetings on the Intergovernmental Committee process for indigenous peoples representing the seven geopolitical regions recognized by the Forum.

²⁵ The invited experts are as follows:

For Africa: Mr. Eliamani Laltaika

For the Arctic: Mr. Jon Petter Gintal

For Asia: Mrs. Jennifer Tauli Corpuz

For Latin America: Mr. Estebancio Castro Díaz

For North America: Mr. Stuart Wuttke

For the Pacific Region: Mr. Les Malezer

For the Region Eastern Europe, Russian Federation, Central Asia and Transcaucasia: Ms. Gulnara Abbasova

The invited Permanent Forum member is Mr. Kanyinke Sena

The invited member of the Permanent Forum Secretariat is Ms. Sonia Smallacombe

Rapporteur of the Workshop will be elected by Workshop experts among themselves.

Outreach to indigenous peoples and capacity-strengthening²⁶

In response to the Permanent Forum's recommendations in this regard, WIPO is developing a structured and sustained program to reach out to indigenous peoples, in conjunction with its capacity-strengthening activities; outreach and capacity-strengthening are both aimed at ensuring effective indigenous peoples' participation.

As part of the outreach program, for example, an "Indigenous Portal" has been established on the official WIPO website²⁷. The "Indigenous Portal" contains information and links to information of particular interest to and concerning indigenous peoples and local communities in relation to intellectual property issues, including training programs, publications and news on current developments. All information is available in English, French and Spanish. An online presentation regarding IP and TK has also been prepared; this provides basic information about WIPO's work, specifically for indigenous peoples. It has been prepared by WIPO's Indigenous Fellows.

A second part of WIPO's outreach program has been to develop, in an ongoing manner, an "Indigenous Network", namely a network of local, national and regional indigenous and local community organizations through which WIPO can disseminate comprehensive and useful information and, moreover, receive indigenous peoples' concerns and views concerning intellectual property issues. Thus, the outreach program is both to *disseminate* and to *listen*.

Further, a capacity-building workshop for indigenous peoples and local communities is planned for the second half of 2013. This workshop will be aimed at providing accessible information on IP and TK, TCEs and GRs, and allow for discussion and interactive sessions among the participants. The precise timing, venue and modalities are still being worked out.

[End of the Note]

²⁶ E/2012/43-E/C.19/2012/13, para. 54. "The Permanent Forum calls upon WIPO to strengthen its efforts to reach out to indigenous peoples and to continue to provide practical assistance and capacity strengthening for and in cooperation with indigenous peoples."

²⁷ <http://www.wipo.int/tk/en/indigenous/>.