

**Thirteenth Session of the United Nations Permanent Forum on  
Indigenous Issues  
New York, May 12 to 23, 2014**

**Information Note**

**from the Secretariat of the World Intellectual Property Organization  
January 2014**

**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 towards the development of an international legal instrument or instruments for the effective protection of traditional cultural expressions and traditional knowledge, and to address the intellectual property aspects of access to and benefit-sharing in genetic resources, (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 and its Twelfth Session in May 2013.

More specifically, the Note reports on *inter alia* an Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, , organized by WIPO in cooperation with the Secretariat of the Permanent Forum, and a Practical workshop for Indigenous Peoples and Local Communities on Intellectual Property and Traditional Knowledge, which took place respectively in April 2013 and December 2013; the participation by indigenous experts in drafting groups which meet in the framework of the negotiations underway in WIPO; and, developments in WIPO's program of outreach to indigenous peoples and local communities.

**INTRODUCTION**

The United Nations Permanent Forum on Indigenous Issues (UNPFII or the Permanent Forum), at its Eleventh Session (May 7 to 18, 2012), held a Comprehensive Dialogue with the Secretariat of WIPO, and at its Twelfth Session (May 20 to 31, 2013), WIPO reported in detail on its activities undertaken and those planned to implement the recommendations addressed by the UNPFII to WIPO at the Eleventh Session.

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

(i) recent developments in the negotiations being undertaken at WIPO within the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC);

(ii) measures to facilitate the participation and contribution of indigenous peoples and local communities in the work of the IGC; and,

(iii) follow-up by the WIPO Secretariat on the Permanent Forum's recommendations to date.

## RECENT DEVELOPMENTS IN THE WIPO 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 2001<sup>1</sup>.

WIPO Member States decided in 2009 that the IGC should undertake “text-based negotiations” regarding the effective protection of GRs, TK and TCEs<sup>2</sup>. Since then, 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 2014 and 2015 and reads as follows: “The Committee will, during the next budgetary biennium 2014/2015, and without prejudice to the work pursued in other fora, continue to expedite its work with open and full engagement, on text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.”<sup>3</sup>

In September 2013, the WIPO General Assembly adopted a work program for 2014, comprising three IGC sessions, which will take place in February, March/April and July 2014. It requested the IGC to “submit to the 2014 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs”<sup>4</sup>.

In accordance with the decision taken by the WIPO General Assembly in 2013, “[w]ith a view to finalizing the text(s) within the biennium, the General Assembly in 2014 will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference, and will consider the need for additional meetings, taking account of the budgetary process.”<sup>5</sup>

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

Member States of WIPO have repeatedly expressed their support for involving, to the greatest extent possible, representatives of indigenous peoples and local communities in the work of the IGC. Since the beginning 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.

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<sup>1</sup> 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](http://www.wipo.int/export/sites/www/tk/en/documents/pdf/background_briefs-e-nx2-print.pdf)

<sup>2</sup> 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](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/export/sites/www/tk/en/documents/pdf/unpfii.pdf>.

<sup>3</sup> The full text of the 2014-2015 mandate is available at: [http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc\\_mandate\\_1415.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_mandate_1415.pdf).

<sup>4</sup> Idem

<sup>5</sup> Idem

In order to enhance the modalities of participation of 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 2012<sup>6</sup>. Decisions have been taken by the IGC in this regard<sup>7</sup>. Further suggestions made by the Indigenous Caucus at IGC 21<sup>8</sup> 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:

### **Accreditation, funding, invitations**

A fast-track accreditation procedure for all non-governmental and intergovernmental organizations has been in place since the beginning of the IGC in 2001<sup>9</sup>.

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 peoples and local communities, and other customary holders or custodians of TK and TCEs, which are already accredited to the IGC<sup>10</sup>. WIPO welcomed the supportive statements made by the Permanent Forum at its Fifth, Eleventh and Twelfth<sup>11</sup> 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 pursues 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 regarding the Fund.

The WIPO General Assembly has extended a formal invitation to the Permanent 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.

### **Contributions to the IGC negotiations**

In accordance with the General Rules of Procedure of WIPO<sup>12</sup>, 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 drafting suggestions by observers as formal proposals to be considered by the IGC. Further, the Chair of the IGC has invited indigenous caucus representatives to participate in informal consultations and drafting groups on the texts being negotiated at the IGC. On several occasions, drafting proposals by indigenous representatives have been taken up in the negotiating texts.

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<sup>6</sup> See the draft study on observer participation in the work of the IGC (WIPO/GRTKF/IC/20/7): [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=196197](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=196197)

<sup>7</sup> See the decisions of the Twentieth and Twenty-First IGC sessions: [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_20/wipo\\_grtkf\\_ic\\_20\\_ref\\_decisions.pdf](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](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_ref_decisions.pdf).

<sup>8</sup> See [http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_22/wipo\\_grtkf\\_ic\\_22\\_inf\\_10.doc](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_inf_10.doc).

<sup>9</sup> See the accreditation form: [http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc\\_accreditation\\_form.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_accreditation_form.pdf)

<sup>10</sup> Details on the WIPO Voluntary Fund are available at: <http://www.wipo.int/tk/en/igc/participation.html>

<sup>11</sup> See for example the Report on the Twelfth Session of the UNPFII (E/2013/43-E/C.19/2013/25) Paragraph 68.

<sup>12</sup> See [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)

An Indigenous Consultative Forum is organized on the day preceding IGC sessions at the WIPO premises. The WIPO Secretariat is on hand at the 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.

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 Indigenous Consultative Forum on the day before the session and during the daily meetings of the indigenous caucus. Such support significantly facilitates developing the information and communications capacity of participating representatives and is highly appreciated by indigenous observers.

A distinct WIPO webpage on the WIPO TK website is dedicated to comments, submissions and papers from observers, including drafting suggestions on the IGC negotiating texts and other working documents for consideration by Member States<sup>13</sup>.

Each IGC session is preceded by a panel presentation by indigenous peoples' and local community's experts<sup>14</sup>. The presentations are a rich source of information on the experiences, concerns and aspirations of indigenous peoples and local communities on the protection, promotion and preservation of TK, TCEs and GRs. The summary records of their proceedings are included in the reports on the sessions. Presentations by panel participants are also made available on WIPO's TK webpage<sup>15</sup>.

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

### **Participation and contributions by Indigenous Peoples in the IGC**

WIPO welcomes the comprehensive statements made by the Permanent Forum at its Twelfth Session<sup>16</sup>, noting the importance for indigenous peoples of the negotiations at the IGC. The IGC recognizes that the participation of indigenous peoples and local communities is one of the key elements in this process. Different ways of enhancing this participation were developed during 2013 as described above and below.

### **Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions**

Following up on a decision by the IGC, which was welcomed by the UNPFII at its Eleventh Session and acknowledged at its Twelfth Session<sup>17</sup>, WIPO and the UNPFII Secretariats jointly

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<sup>13</sup> See <http://www.wipo.int/tk/en/igc/ngo/index.html>

<sup>14</sup> Indigenous panel flyer [http://www.wipo.int/export/sites/www/tk/en/igc/pdf/indigenous\\_panel\\_igc26.pdf](http://www.wipo.int/export/sites/www/tk/en/igc/pdf/indigenous_panel_igc26.pdf)

<sup>15</sup> See <http://www.wipo.int/tk/en/igc/panels.html>

<sup>16</sup> Report on the Twelfth Session of the UNPFII (E/2013/43-E/C.19/2013/25) Paragraph 67. "The Permanent Forum, noting the significance for indigenous peoples of the negotiations under way at WIPO on intellectual property and genetic resources, traditional knowledge and traditional cultural expressions, strongly encourages representatives of indigenous peoples to participate in those negotiations, consistent with article 18 of the United Nations Declaration on the Rights of Indigenous Peoples."

<sup>17</sup> Report on the Twelfth Session of the UNPFII (E/2013/43-E/C.19/2013/25) Paragraph 69. "The Permanent Forum, recalling the comprehensive dialogue held with the WIPO secretariat at its eleventh session, in 2012, and the recommendations that it then addressed to WIPO, acknowledges the activities

organized an Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (the Expert Workshop), in April 2013, preceding IGC 24.

WIPO funded the participation of seven invited experts, one each from the seven geo-cultural regions recognized by the UNPFII, together with Mr. Kanyinke Sena, Member of the Permanent Forum, and a member of the Secretariat of the Permanent Forum. The selection of the experts was conducted by WIPO in close cooperation with the Secretariat of the Permanent Forum.

The Workshop focused on identifying key legal, policy, and institutional issues, addressing substantive issues, specific comments on substantive issues on the IGC negotiation texts, conclusions and recommendations. Its report was submitted by the Secretariat of the Permanent Forum, to the IGC, as an information document.<sup>18</sup>

### **Study to examine challenges in the African region to protecting traditional knowledge, genetic resources and folklore**

In accordance with its recommendation, the Permanent Forum appointed Mr. Kanyinke Sena 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 provided financial and technical assistance to Mr. Sena. WIPO is pleased to report that Mr. Sena's study has been completed and submitted by him to the Forum.

### **Technical review of the current texts of the IGC**

Following an UNPFII recommendation, the WIPO Secretariat is discussing with the Secretariat of the Permanent Forum plans to commission a technical review, in 2014, of the IGC drafting texts, from an indigenous rights and human rights framework. The results of this review could be provided to the IGC by the Permanent Forum.

### **Practical Workshop for Indigenous Peoples and Local Communities on IP and Traditional Knowledge**

The WIPO Secretariat is pleased to report that a Practical Workshop for Indigenous Peoples and Local Communities on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore<sup>19</sup> took place in Geneva, from December 4 to 6, 2013.

The objectives of the Practical Workshop were (i) impart basic knowledge of the main principles of the IP system from a TK perspective, emphasizing both the potential value that IP could bring in support of TK protection and the gaps within the IP system that might need to be filled; (ii) explain the rationale, objectives and methodology of the negotiations that are taking place in the IGC; (iii) raise awareness of the available IP tools and WIPO materials that are relevant to the protection of TK.

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undertaken by WIPO to date in response to the recommendations and welcomes, in particular, the holding of an indigenous expert workshop in April 2013, jointly organized by the secretariats of the Forum and WIPO, as recommended by the Forum."

<sup>18</sup> See the Report of Indigenous Expert Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (WIPO/GRTKF/IC/25/INF/9):

[http://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_25/wipo\\_grtkf\\_ic\\_25\\_inf\\_9.pdf](http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_25/wipo_grtkf_ic_25_inf_9.pdf)

<sup>19</sup> See <http://www.wipo.int/tk/en/indigenous/workshop.html>

The Workshop included thirteen participants from each of the 7 geo-cultural regions recognized by the Permanent Forum. Professor Rebecca Tsosie served as an external speaker and moderator of the Workshop. Mr. Kanyinke Sena was invited to join the practical Workshop as a UNPFII Member.

Participants were selected following a public call for expressions of interest. The limited number of participants facilitated the interactive and practical character of the Workshop. A similar workshop is planned for late 2014 and a similar public call for expressions of interest will be launched in due time.

### **Outreach to indigenous peoples and capacity-strengthening**

WIPO undertakes a systematic program of outreach to indigenous peoples, in conjunction with its capacity strengthening activities; both are aimed at ensuring effective indigenous peoples' participation at the IGC and in the work of WIPO.

As part of the outreach program, for example, an "Indigenous Portal" has been established on the WIPO website<sup>20</sup>. 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.

Since 2009, WIPO offers the opportunity for an Indigenous Fellow to participate directly in the delivery of core program outputs of WIPO's Traditional Knowledge Division and facilitate outreach toward indigenous peoples. Following an open and competitive selection process, four successive Indigenous Fellows have been selected to work at WIPO so far. Mr. Q'apaj Conde Choque, who is an *aymar arxatiri* from the Plurinational State of Bolivia, is currently the WIPO Indigenous Fellow.

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, such as sessions of the Permanent Forum and the Global Indigenous Preparatory Conference on the World Conference on Indigenous People, which took place in June 2013, Alta, Norway.

The WIPO Secretariat participated as an observer in a Regional Capacity-Building Workshop for Latin America and the Caribbean Region on Traditional Knowledge under the Convention on Biological Diversity, which took place in December, 2013, in Cochabamba, Bolivia.

In parallel, part of the WIPO's outreach program has been to develop, in an ongoing and informal manner, contacts with local, national and regional indigenous and local community organizations to and from which WIPO can collect and disseminate indigenous peoples' concerns and views concerning intellectual property issues from their own perspective.

[End of the Information Note]

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<sup>20</sup> See <http://www.wipo.int/tk/en/indigenous/>