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**Special theme: Millennium Development Goals and indigenous peoples****Ongoing priorities and themes****Information received from the UN system****WIPO\*****EXECUTIVE SUMMARY**

In this Information Note, WIPO responds to the recommendations of the Permanent Forum on Indigenous Issues (the Permanent Forum) made at its fourth session in 2005. In particular, attention is drawn to: (i) draft instruments for the protection against misappropriation and misuse of traditional cultural expressions/expressions of folklore (TCEs/EoF) and of traditional knowledge (TK) being discussed by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC); (ii) the establishment by the WIPO General Assembly of the WIPO Voluntary Fund for Accredited

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\* The present document was submitted late in order to ensure the inclusion of the most recent information.

Indigenous and Local Communities; (iii) the initiation by WIPO of consultations and studies on the relationship between customary law and intellectual property; and, (iv) WIPO's ongoing program of consultations and capacity-strengthening with indigenous peoples and local communities, often in cooperation with other United Nations agencies and organizations, as well as the Forum.

This Note also reports on WIPO's participation in the "Technical Workshop on Indigenous Traditional Knowledge", which took place in Panama City, Panama from September 21 to 23, 2005 and was convened by the Inter-Agency Support Group on Indigenous Issues (IASG), organized by the Secretariat of the Forum and hosted by the Regional Office for Latin America and the Caribbean of the United Nations Children's Fund (UNICEF).

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**I. RESPONSES TO RECOMMENDATIONS ADDRESSED OR RELEVANT TO WIPO BY THE PERMANENT FORUM AT ITS FOURTH SESSION; AND, OBSTACLES TO IMPLEMENTATION OF RECOMMENDATIONS OR OTHER POLICIES RELEVANT TO INDIGENOUS PEOPLES**

1. The recommendations of the fourth session of the Permanent Forum that addressed or were otherwise relevant to WIPO continue to guide not only the work of the IGC itself, but also the broader activities of WIPO on related issues.
2. In response to these recommendations, this Information Note provides the following more detailed information.

**Draft instruments on the protection of traditional cultural expressions and traditional knowledge against misappropriation and misuse**

3. The protection of TK and TCEs against misappropriation and misuse is the subject of active policy development, norm-building and capacity-building programs at WIPO. Policy development and norm-building take place mainly within the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC).
4. WIPO Member States have called for accelerated progress in this area, stressed the “international dimension” of these questions and emphasized that no outcome of WIPO’s work

in this area is excluded, including the possible development of an international instrument or instruments. They have also underscored that WIPO's work should not prejudice developments in other forums.

5. More recent sessions of the IGC have examined draft principles and objectives<sup>1</sup> that could shape *sui generis* instruments on TK and TCEs. This approach to protection could recognize, amongst other things, collective interests in traditional know-how and expressions of traditional cultures which are "characteristic" of a distinct cultural identity. These interests would be respected for as long as a traditional community continues to be associated with the knowledge or cultural expressions.

6. These drafts include compliance with the "free, prior and informed consent" (FPIC) principle and the recognition of customary laws and practices. In line with the views of many indigenous and traditional communities, the draft provisions do not require the assertion of new exclusive property rights over TK or TCEs, but accommodate this option should communities wish to take it up.

7. The drafts have not been adopted or endorsed by the IGC and may be developed further. They draw upon a wide range of community, national and regional experiences, and have been developed over several years by and in consultation with Member States, indigenous peoples

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<sup>1</sup> Current drafts are published as WIPO documents WIPO/GRTKF/IC/9/4 (TCEs) and WIPO/GRTKF/IC/9/5 (TK), both dated January 9, 2006. Available at [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=9765](http://www.wipo.int/meetings/en/details.jsp?meeting_id=9765). Comments received on earlier drafts are available at [http://www.wipo.int/tk/en/consultations/draft\\_provisions/comments.html](http://www.wipo.int/tk/en/consultations/draft_provisions/comments.html) (February 16, 2006).

and other traditional and cultural communities, civil society organizations and a range of other interested parties. Earlier drafts of the objectives and principles were the subject of an open commenting process established by the IGC.

8. These draft materials are being used as points of reference in a range of national, regional and international policy discussions and standard-setting processes. Details of the background to these documents, and the wide range of materials and perspectives that shaped them, can be found on WIPO's website.<sup>2</sup>

9. While the draft objectives and principles have no formal status, they illustrate some of the perspectives and approaches that are guiding work in this area, and could suggest possible frameworks for the protection of TCEs and TK against misappropriation and misuse.

10. There are two distinct sets of draft objectives and principles, the first dealing with traditional cultural expressions ("expressions of folklore") and the second with traditional knowledge as such. This responds to the choice made in many cases to address distinctly the specific policy and legal questions raised by these two areas. The draft materials are prepared, though, in the understanding that for many communities these are closely related, even integral, aspects of respect for and protection of their cultural and intellectual heritage. The two sets of draft objectives and principles are therefore complementary. Some jurisdictions protect both traditional cultural expressions and traditional knowledge in a single instrument, while others

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<sup>2</sup> See <http://www.wipo.int/tk/en/index.html>

use a range of laws and instruments to address the two areas, or specific aspects of them, distinctly.

11. The objectives and principles contained in the draft instruments will be discussed again by the IGC at its ninth session taking place from April 24 to 28, 2006.

12. All working documents, comments, papers, studies, databases, questionnaires, and other material prepared for consideration by the IGC, as well as comprehensive reports of its sessions, are publicly available, in English, French and Spanish at

*<<http://www.wipo.int/tk/en/igc/documents/index.html>>.*

### **Participation of indigenous peoples and local communities; WIPO Voluntary Fund**

13. The Member States of WIPO have repeatedly stressed the priority attached to enhancing the participation of the Forum and indigenous representatives in IGC sessions. There is continuing exploration and consultation on options and modalities for facilitating and generally improving the participation of indigenous peoples in WIPO's work on these issues. The practical experience and guidance of the Forum and its members are invaluable inputs to achieving this goal. Member States of WIPO have expressed their "unanimous support for directly involving as much as possible representatives of Indigenous and local communities in the work of the Intergovernmental Committee."<sup>3</sup>

14. In this regard, a number of practical steps have already been undertaken, including:

(i) A fast-track accreditation procedure for all non-governmental organizations (NGOs) has been in place since the first session of the IGC in April 2001. More than 120 NGOs have received accreditation, the majority representing indigenous peoples. No applicant has been denied accreditation. See <http://www.wipo.int/tk/en/igc/index.html#accreditation>

(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 participation of the Forum.

(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) The funds provided by WIPO to support Member State participation from developing countries have been used in some cases by such countries to support the participation of leaders of their indigenous or local communities.

(v) Consultations and workshops at the national and regional level and other fora aimed at developing focussed input for the IGC have included representatives of the Forum and indigenous and local communities as speakers and participants.

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<sup>3</sup> Report of IGC's Fourth Session (document WIPO/GRTKF/IC/4/15, para. 60).

(vi) The WIPO web site provides for written contributions by accredited NGOs on the issues before the IGC. See <http://www.wipo.int/tk/en/igc/ngo/index.html>

(vii) Specific briefings and consultations for NGO representatives, particularly representatives of indigenous and local communities, are undertaken within the framework of meetings of the IGC.

(viii) The WIPO Secretariat has continued its practice of consulting with interested representatives of indigenous and local communities on draft documents and other material being developed for the IGC, as well as related capacity-building and awareness documents, including a series of case studies and a distance learning course contributed to by indigenous experts.

(ix) The WIPO General Assembly has recently established the WIPO Voluntary Fund for Accredited Indigenous and Local Communities. This new Fund is intended to facilitate 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 IGC. The extent of support that this Voluntary Fund can provide depends on the resources donated to it. Any potential donors are encouraged to contact the WIPO Secretariat for further information. Even modest contributions will contribute to the success of the Fund. See further [http://www.wipo.int/tk/en/ngoparticipation/voluntary\\_fund/index.html](http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html)

(x) The IGC decided in November 2004 that future sessions of the Committee should be preceded by panel presentations chaired by a representative of an indigenous or local community. Such a panel, with the theme “Indigenous and Local Communities’ Concerns and Experiences in Promoting, Sustaining and Safeguarding their Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources”, was held at the commencement of the eighth session of the IGC (June 6 to 10, 2005). The panel comprised seven participants from indigenous and local communities in Canada, Indonesia, Papua New Guinea, Peru, Sweden, Ukraine and Zambia, all of whose participation was funded by WIPO. The participant from Canada was Mr. Wilton Littlechild, a member of the Permanent Forum. A similar panel will be held before the upcoming ninth session of the IGC (April 24 to 28, 2006).

### **Consultations and studies on customary laws and intellectual property**

15. WIPO has initiated a process of study and consultation on two related questions: (i) the role of the customary laws and protocols of indigenous and local communities in relation to their TK, genetic resources and TCEs, and (ii) the relationship of customary laws and protocols with the IP system. This work builds on an extensive past background of consultation and reflection on the role of customary laws and protocols, both within the IGC and in WIPO’s broader dialogue with indigenous communities (such as the fact-finding consultations in the late 1990’s that set directions for WIPO’s work in this area. As noted above, the draft provisions for the protection of TK and TCEs already take account of the role of customary

law, and the study process would complement these developments. The full background is described in an issues paper (see below) which has been developed to facilitate further consultations on this question.

16. Several mechanisms have been put in place to encourage and facilitate participation in this work by indigenous peoples and local communities. Interested parties are invited to submit papers, including commentaries, case studies, and analysis, dealing with the relationship between customary law and protocols and (i) the protection of TCEs and TK against misuse and misappropriation; or (ii) IP law in general and the administration and development of the IP system. These papers may respond to a draft background and issues paper that has been prepared<sup>4</sup>, but need not. A set of suggested guidelines<sup>5</sup> has been prepared to stimulate papers. For more information, see [http://www.wipo.int/tk/en/consultations/customary\\_law/index.html](http://www.wipo.int/tk/en/consultations/customary_law/index.html)

### **Access to genetic resources and benefit-sharing**

17. With respect to genetic resources, WIPO's work does not concern the protection of genetic resources *as such*. Genetic resources (such as microbes or plants) are physical resources, not IP, even though they are often integrally associated with TK and practices. WIPO does, however, deal with IP issues related to genetic resources (such as a biotech invention derived from a genetic resource). Because of the close association of genetic resources with some TK, some national biodiversity laws protect both genetic resources and TK. A "disclosure of origin" requirement in patent applications is regarded by many States and others as an

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<sup>4</sup> See [http://www.wipo.int/tk/en/consultations/customary\\_law/issues.pdf](http://www.wipo.int/tk/en/consultations/customary_law/issues.pdf)

instrument to ensure the traceability of genetic resources and associated TK, and to support compliance with FPIC and fair and equitable benefit-sharing, in furtherance *inter alia* of the objectives of the CBD. Others call for alternative approaches to strengthening the link between equitable benefit-sharing and the IP system. Discussions on these issues continue in WIPO and in other forums. WIPO cooperates closely with the Secretariat of the CBD in relation to these questions, and has prepared technical studies at the request of the CBD.<sup>6</sup>

### **Capacity-building**

18. The program of activities in this area includes a range of complementary practical activities, such as capacity-building, legislative assistance, awareness-raising and training, and cooperation with a broad spectrum of national, regional and international initiatives. Recent examples include a sub-regional meeting in Tashkent, Uzbekistan in which the Forum was invited by WIPO to participate (see below) and a workshop for indigenous peoples, especially indigenous women, of Panama held in Panama in October 2005 entitled “Traditional Knowledge, Folklore and Gender”.

### **Contribution of expertise and experience by the Forum**

19. The Forum is represented at sessions of the IGC and has been represented at other national and regional events organized by WIPO. In 2002, the WIPO General Assembly, by a consensus decision, extended a specific invitation to the Forum to take part in IGC sessions. The Forum has played a prominent role in IGC discussions on the enhancement of indigenous participation

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<sup>5</sup> See [http://www.wipo.int/tk/en/consultations/customary\\_law/guidelines.pdf](http://www.wipo.int/tk/en/consultations/customary_law/guidelines.pdf)

<sup>6</sup> For more information, please see <http://www.wipo.int/tk/en/genetic/> and <http://www.wipo.int/tk/en/genetic/proposals/index.html>

in the IGC, and contributed in particular to the development of the proposal for a WIPO Voluntary Fund for Indigenous and Local communities, which has now been established. The Forum has taken part in two WIPO regional conferences on the protection of TK/TCEs. WIPO was, for example, very pleased that the Forum accepted WIPO's invitation to participate in a sub-regional meeting on TK, TCEs and genetic resources held in Tashkent, Uzbekistan from October 18 to 20, 2005.

20. WIPO and the Forum and its Secretariat have an excellent working relationship. At the most recent session of the IGC, the representative of the Forum stated that the Forum wishes “to maintain an important collaborative partnership with WIPO”, and we would agree fully. WIPO considers that the Forum has already played a significant role in contributing expertise and experience to its activities and appreciates the mutual cooperation between the Forum and WIPO.

### **Recent publications**

21. The following publications may be of interest:

- Booklets on “Intellectual Property and Traditional Cultural Expressions/Folklore” and “Intellectual Property and Traditional Knowledge”;
- *Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions*, by Ms. Terri Janke, Australia;
- *National Experiences with the Protection of Expressions of Folklore/Traditional Cultural Expressions*, by Mrs. Valsala Kutty, India;

- Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions/Expressions of Folklore;
- WIPO-UNEP Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the use of Biological Resources and Associated Traditional Knowledge.

22. These publications are available upon request from the WIPO Secretariat and at <http://www.wipo.int/tk/en/publications/index.html>

23. A collation of the presentations made by participants in the indigenous panels at the last and the upcoming sessions of the IGC will also be published.

#### **Cooperation with other organizations and agencies**

24. As requested by WIPO's Member States and as recommended by the Permanent Forum, WIPO continues to cooperate with other organizations and agencies on issues of concern to the Forum, and to ensure that its work on recognition and protection of TCEs and TK is complementary to and supportive of their work. These include: the Secretariat of the Convention on Biological Diversity (SCBD), the Food and Agricultural Organization (FAO), the International Labor Organization (ILO), the International Trade Centre (UNCTAD/WTO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Environment Programme (UNEP), the United Nations Conference on Trade and Development (UNCTAD), the Office of the High Commissioner for Human Rights (OHCHR), the World Health Organization (WHO), the United Nations Development Program (UNDP) and the United Nations Industrial Development Organization (UNIDO). WIPO has also

coordinated with the World Bank and the World Trade Organization, and a range of regional bodies and NGOs.

## **II. OTHER SIGNIFICANT INFORMATION**

25. WIPO participated actively in the “Technical Workshop on Indigenous Traditional Knowledge’ convened by the Inter-Agency Support Group on Indigenous Issues (IASG), organized by the Secretariat of the Forum and hosted by the Regional Office for Latin America and the Caribbean of the United Nations Children’s Fund (UNICEF). WIPO also funded the participation of an indigenous expert from Papua New Guinea. WIPO provided a written “Information Note” for this workshop, available at [http://www.wipo.int/tk/en/cooperation/documents/indigenous\\_tk.pdf](http://www.wipo.int/tk/en/cooperation/documents/indigenous_tk.pdf)

## **III. INFORMATION AND SUGGESTIONS REGARDING THE SPECIAL THEME OF THE FIFTH SESSION “MILLENNIUM DEVELOPMENT GOALS AND INDIGENOUS PEOPLES: REDEFINING THE GOALS”**

26. As the excellent presentations made by the indigenous experts at the IASG/Forum Secretariat/UNICEF Indigenous Traditional Knowledge Workshop in Panama in September 2005 made clear, indigenous traditional knowledge not only sustains indigenous and local communities in their daily lives, but is also a key element of their identities and self-determination. This knowledge of indigenous communities, which reflects their holistic worldviews, also contributes to the world’s cultural and biological diversity and is a source of cultural and economic wealth for the communities and for humanity as whole. Yet, indigenous

knowledge systems are under a variety of threats. In response, numerous practical, legislative and policy initiatives are underway at community, national, regional and international levels to enhance the protection of indigenous traditional knowledge. However, as stressed by the indigenous experts who took part in the Panama Workshop, respect for indigenous peoples' rights and in particular their human rights are at the heart of their concerns about the preservation, promotion and protection of the traditional knowledge and cultural expressions. Taking these concerns and perspectives into account, preserving, promoting and protecting the traditional knowledge and cultural expressions of indigenous communities bears directly on and can contribute towards the achievement of the Millennium Development Goals (MDGs).

#### **IV. LIST OF RELEVANT CONFERENCES AND OTHER MEETINGS IN 2005-2006**

27. Ninth Session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Geneva, April 24 to 28, 2006.

28. Tenth session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Geneva, tentatively scheduled for November or December 2006 (subject to confirmation).