

Questionnaire to the UN system agencies, funds and programmes and intergovernmental organizations

The United Nations Permanent Forum on Indigenous Issues was established by Economic and Social Council (ECOSOC) Resolution 2000/22. The Permanent Forum is mandated to provide expert advice and recommendations on indigenous issues to ECOSOC and through the Council to United Nations agencies, funds and programmes; to raise awareness and promote the integration and coordination of activities related to indigenous issues with the UN system; and prepare and disseminate information on indigenous issues.

The Permanent Forum's report of the sixteenth session of 2017 includes a number of recommendations within its mandated areas, some of which are addressed to UN system agencies, funds and programmes (attached).

The report can be found at:

<https://www.un.org/development/desa/indigenouspeoples/news/2017/06/new-16th-session-report-unpfi/>

The secretariat of the Permanent Forum on Indigenous Issues invites UN system agencies, funds and programmes and other inter-governmental organizations to complete the attached questionnaire on any action taken or planned in response to the Permanent Forum's recommendations and other relevant issues.

The responses will be compiled into two separate reports for the April 2018 session of the Permanent Forum: (a) Compilation of information received from the UN system and other entities on progress in implementation of PFII recommendations; and (b) Implementation of the System Wide Action Plan on Indigenous Peoples.

All responses will be placed on the DESA/DSPD website on Indigenous Peoples at:

<https://www.un.org/development/desa/indigenouspeoples>

If you have any objections for your response to be made available on our website, please inform our office accordingly.

Please submit your completed questionnaire by **29 December 2017** to:

Secretariat of the Permanent Forum on Indigenous Issues
Division for Social Policy and Development
Department of Economic and Social Affairs
Room: S-2954
United Nations Headquarters
New York, USA 10017
Telephone: 917-367-5100
Email: indigenous_un@un.org and sigurdarson@un.org

Questionnaire to UN system

The seventeenth session of the Permanent Forum on Indigenous Issues will be held at United Nations Headquarters from **16 to 27 April 2018**.

Provisional Agenda

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Follow-up to the recommendations of the Permanent Forum.
4. Implementation of the six mandated areas of the Permanent Forum with reference to the United Nations Declaration on the Rights of Indigenous Peoples.
5. Dialogue with indigenous peoples.
6. Dialogue with Member States.
7. Dialogue with the funds, programmes and specialized agencies of the United Nations system.
8. Discussion on the theme “Indigenous peoples’ collective rights to lands, territories and resources”.
9. 2030 Agenda for Sustainable Development.
10. Dialogue with the Special Rapporteur on the rights of indigenous peoples and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples.
11. Follow-up to the outcome document of the World Conference on Indigenous Peoples:
 - (a) Implementation of national action plans, strategies and other measures;
 - (b) Ways to enhance the participation of indigenous peoples at the United Nations;
 - (c) Implementation of the United Nations system-wide action plan on indigenous peoples.
12. Future work of the Permanent Forum, including issues considered by the Economic and Social Council and emerging issues.
13. Provisional agenda for the eighteenth session.
14. Adoption of the report of the Permanent Forum on its seventeenth session.

Questionnaire

The theme of the Permanent Forum's session in 2018 will be:
“Indigenous peoples’ collective rights to lands, territories and resources”

Note: The following answers and comments were provided by the Secretariat of the World Intellectual Property Organization (WIPO) in December 2017. Unless expressly stated, they do not necessarily reflect the views of WIPO Member States, taken as a whole or individually.

Please provide information on the following:

A. Recommendations of the Permanent Forum on Indigenous Issues

With respect to the implementation of the recommendations of the Permanent Forum addressed specifically to your agency, fund and/or programme:¹

- i. Please provide information on measures taken or planned to implement the recommendations of the Permanent Forum addressed specifically to your organization.

None of the recommendations that are listed in the report of the UN Permanent Forum on Indigenous Issues’ (UNPFII) sixteenth session are addressed specifically to WIPO.

Regarding Paragraph 67, the WIPO Secretariat reiterates that it remains in regular contact with both the UNPFII and the UNPFII Secretariat, including in terms of cooperating on specific initiatives. Members of the UNPFII have been invited as panellists or as participants to seminars and workshops organised by WIPO in the past. The UNPFII is an observer to the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the “WIPO IGC”) and is specially and systematically invited to attend IGC sessions. This year, Ms. Anne Nuorgam (Saami, Finland), Member of the UNPFII, attended the IGC 34 in June 2017 and met with the WIPO Secretariat. WIPO also regularly organizes side events to take place during the UNPFII sessions. This year, WIPO organized a side event during the margins of UNPFII 2017 on Tuesday 25 April where its new publication *Promote and Protect Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities* was pre-launched to Indigenous audiences. Current UNPFII members, Messrs Les Malezer and Elifuraha Laltaika, were guest speakers at this side event.

¹ See attached document entitled ‘Recommendations addressed to the UN Agencies’ to facilitate your responses.

Regarding Recommendation 68 (implementation of the UNDRIP and the SWAP in a few designated countries), please see our answers provided under B, below, specifically B1, 2, 3 and 4.

Regarding Recommendations 69 (consultation and participation of Indigenous Peoples) and 70 (adoption of policies to support the obtaining of the free, prior and informed consent of Indigenous Peoples), please see our answers provided under B, below, specifically B2 and 6.

- ii.* What are the enabling factors that facilitate your agency's implementation of the Forum's recommendations?

The WIPO Secretariat has implemented recommendations made by the UNPFII in the past, within the framework of its mandate, program of activities and budget as approved by its Member States and relevant procedures.

The preparation of recommendations in consultation with the relevant agencies, well before their adoption by the UNPFII, would facilitate follow up.

- iii.* What are some of the obstacles your agency has encountered in implementing the recommendations of the Permanent Forum?

As noted above, no recommendations from the 16th session of the UNPFII were specifically addressed to WIPO. However, as a general comment, and based on past experience, recommendations that are less able to be followed up would include recommendations drafted in such a way that does not take WIPO's mandate and approved program, budget and work plans into account, and/or recommendations addressed simultaneously to two or more agencies and organizations.

B. System Wide Action Plan to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples

As requested in the Outcome Document of the World Conference on Indigenous Peoples (2014), a system-wide action plan (SWAP) to ensure a coherent approach to achieving the ends of the UN Declaration on the Rights of Indigenous Peoples was adopted in November 2015, and launched by the Secretary General at the UN Permanent Forum in May 2016. The Permanent Forum will follow up on progress made in the implementation of the system-wide action plan

during its 2018 session.² For ease of reference, the questions have been framed under the six key elements of the SWAP-Indigenous Peoples as follows:

1. Raising awareness of the UN Declaration

Please provide information on any activities that raise awareness of the UN Declaration on the Rights of Indigenous Peoples, including key messages, advocacy and other media and outreach initiatives. Please provide information on publications, films, audio material, maps, or other materials that feature or focus on the UN Declaration and on indigenous peoples. Please also provide links to the relevant websites and other sources.

In accordance with its mandate, WIPO is committed to shaping a balanced and effective international intellectual property system for the benefit of all, including Indigenous Peoples.

Indigenous Peoples create, maintain and develop their traditional knowledge (TK) and traditional cultural expressions (TCEs), as part of their core identities and as a rich foundation of their well-being and own development. Article 31 of the UNDRIP, which refers to the right of Indigenous Peoples to “maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions”, recognizes the legitimate sense that Indigenous Peoples have regarding ownership of, and the essential value inherent in, their own TK and TCEs.

Through norm-setting negotiations taking place within the WIPO IGC, the WIPO Secretariat facilitates intergovernmental negotiations aimed at the development, at the international level, of an intellectual property-related legal instrument or instruments that would ensure the balanced and effective protection of genetic resources (GRs), TK and TCEs.

Awareness of the UNDRIP within the IGC has contributed to UNDRIP’s resonance internationally. References to the UNDRIP are included within the working documentation of the IGC and it has been regularly advocated for in the IGC negotiations, particularly, but not exclusively by, Indigenous Peoples’ representatives. At the 34th session of the IGC held from June 12 to 16, 2017, Professor James Anaya, former Special Rapporteur on the Rights of Indigenous Peoples, spoke to the importance of the UNDRIP in the negotiations taking place in the IGC in his keynote speech during the Indigenous Panel. Professor Anaya’s technical review of the IGC texts in 2014 also extensively referred to the UNDRIP and the human rights based approach it endorses (see a copy of the technical review at: http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_26/wipo_grtkf_ic_26_inf_9.pdf).

² See Report of the 15th session of the UN Permanent Forum on Indigenous Issues (E/2016/43) at para. 73.

An explicit reference to the UNDRIP is included in the preamble of the draft text on the protection of TK as it stands as work-in-progress in December 2017.

The UNDRIP is one of the key resources mentioned on the Indigenous Portal of the WIPO website: see <http://www.wipo.int/tk/en/indigenous/>.

In addition, WIPO publications explicitly refer to the UNDRIP as it relates to the intellectual property rights of Indigenous Peoples. For example, WIPO's Promote and Protect Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities that was released in June 2017 refers to Article 31 of the UNDRIP (see: http://www.wipo.int/edocs/pubdocs/en/wipo_pub_1048.pdf).

2. Supporting the implementation of the UN Declaration, particularly at the country level

Please provide information on actions taken or planned by your agency, fund, programme, entity on the following:

- i.* Measures taken or planned to support national partners in reform and implementation of legal frameworks, policies, strategies and plans to implement the UN Declaration on the Rights of Indigenous Peoples, including any joint programming initiatives. Please also include information related to include indigenous women in your responses.
- ii.* Support provided to Member States to mainstream the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 on Indigenous and Tribal Peoples in national development plans and in the UN Development Assistance Frameworks and Common Country Assessments (CCA/UNDAFs).
- iii.* Promote the establishment or strengthening of consultative mechanisms and platforms of dialogue including under the leadership of the Resident Coordinators.

In response to sub-questions (i), (ii) and (iii):

In furtherance of Article 31 of the UNDRIP, WIPO's program of work in support of Indigenous Peoples includes training activities and information resources that aim to enable Indigenous Peoples to make more effective use of intellectual property principles and tools in order to prevent the misuse of TK and TCEs by third parties and protect them for their (Indigenous Peoples') own benefit, if they so wish.

Until now, WIPO has been focusing on the development of activities and tools that benefit Indigenous Peoples globally or that involve Indigenous persons from different countries, instead of focusing on projects that are developed within a particular country, although there are some exceptions. Those tools or activities are available on WIPO's website or provided

through practical training initiatives, either in Geneva or abroad (see WIPO's answers under B5 for more details). The WIPO Advanced Distance Learning Course on IP, TK and TCEs provides technical information on key concepts and international, regional and national experiences, policy options and legal mechanisms available or under consideration for the intellectual property-like protection of TK and TCEs. The WIPO Advanced Distance Learning Course is available for Indigenous Peoples at no cost.

The WIPO Secretariat provides intellectual property-related legal and policy information to Member States that wish to develop national strategies, legislation or other measures with a view to protecting TK and TCEs from an intellectual property perspective. The need to consult with, and receive the prior and informed consent of, Indigenous Peoples in the decision-making process is included within the principles that are suggested to be implemented by Member States receiving WIPO's support.

3. Supporting indigenous peoples' rights in the implementation and review of the 2030 Agenda for Sustainable Development

The Permanent Forum on Indigenous Issues will continue to address indigenous issues in the follow up and review of the 2030 Agenda for Sustainable Development.

- i.* Has your agency/organization taken any measures to incorporate indigenous issues into policy and programming to implement the 2030 Agenda in line with the UN Declaration on the Rights of Indigenous Peoples?
- ii.* Has your agency/organization/entity supported the participation of indigenous peoples in the implementation and review of the 2030 Agenda for Sustainable Development, including at the national level? Please also include information on indigenous women, persons with disabilities, older persons and children and youth in your responses.
- iii.* Please provide information on any reports or other documents in implementing the 2030 Agenda for indigenous peoples. Also include information on any measures taken or planned for the collection of statistical data on indigenous peoples, in particular as related to the SDG indicators for target 1.4 (secure tenure rights to land), target 2.3 (income of small-scale food producers), target 4.5 (parity in access to education) and target 10.3/16.b (experience of discrimination).

In response to sub-questions (i), (ii) and (iii):

The 2030 Agenda for Sustainable Development ("the SDGs") is being taken into account, from different angles, in the work of the WIPO Secretariat in support of Indigenous Peoples' needs and interests.

The empowerment of Indigenous Peoples, as vulnerable peoples, as referred to in paragraph 23 of the UN Declaration “Transforming our world: the 2030 Agenda for Sustainable Development”, is a key element of the commitment made by UN Member States vis-à-vis Indigenous Peoples within the SDGs framework.

Paragraph 25 of the 2030 Agenda reflects the further commitment of UN Member States to provide Indigenous Peoples with “access to life-long learning opportunities that help them acquire the knowledge and skills needed to exploit opportunities and to participate fully in society”.

Most of the practical tools and initiatives, as well as information resources available under the WIPO work program, to the extent that they relate to the protection of TK and TCEs, are in line with this commitment, as they may contribute to the practical empowerment of Indigenous Peoples.

The IGC draft texts for the protection of TK and TCEs that are presently under negotiation at the IGC clearly envisage Indigenous Peoples as beneficiaries of the provisions and/or measures that are being negotiated. A result from those negotiations could contribute to the empowerment of Indigenous Peoples as beneficiaries, should Member States so agree.

In response to sub-question (ii), insofar as it concerns persons with disabilities, it is worth mentioning that the 2013 WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, which came into effect on September 30, 2016, eases the production and transfer across national boundaries of books that are specially adapted for use by people with visual impairments, most of whom live in lower-income countries.

4. Mapping of existing standards and guidelines, capacities, training materials and resources for the effective implementation of the UNDRIP

- i.* Please provide information on any specific standards and guidelines on indigenous peoples adopted or planned by your agency/organization.
- ii.* Please provide information on any training materials prepared or planned related to the implementation of the UN Declaration.
- iii.* Please provide information on current resources and funds allocated to effectively implement the UN Declaration. Please also provide information on any joint initiatives with other UN agencies in the implementation of the UN Declaration.

In response to sub-questions (i), (ii) and (iii):

The WIPO TK Documentation Toolkit contains guidelines that have been designed in support of Indigenous Peoples' specific interests relating to the documentation of TK (see

<http://www.wipo.int/tk/en/resources/tkdocumentation.html>).

Most of our WIPO training materials relate to Article 31 of the UNDRIP as they address the protection of TK and TCEs. They are available on the following webpage:

<http://www.wipo.int/tk/en/resources/publications.html#1>.

Information regarding the resources that are allocated by WIPO for its work program in relation to TK, TCEs and GRs is available in the WIPO Program and Budget 2016-2017 (see Program 4 in particular)

(http://www.wipo.int/export/sites/www/about-wipo/en/budget/pdf/budget_2016_2017.pdf).

5. Developing the capacities of States, indigenous peoples, civil society and UN personnel

Please provide information on any capacity development initiatives that your organization is conducting for indigenous peoples, government officials and UN staff. Also include information on the participation of indigenous women, children and youth as well as indigenous persons with disabilities in your response.

One of the core principles of WIPO's capacity-building program for Indigenous Peoples is that the effective exercise of their rights partly depends on their ability to:

- grasp the issues that lack of protection raises;
- understand the nature and scope of the existing intellectual property-related tools that they may use in protecting their TK and TCEs; and
- define their approach as they best consider in line with their own objectives and for their own development.

WIPO's program of work in this field includes practical workshops, distance learning courses and trainings, as well as the dissemination of briefs, studies and toolkits. Those resources are accessible through a specific indigenous portal on the WIPO website. (<http://www.wipo.int/tk/en/indigenous/>)

The WIPO TK Documentation Toolkit (see above under B4) and the WIPO's publication *Promote and Protect Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities* (see above under B1), that was released in June 2017, are two examples of publications that have been designed in support of Indigenous Peoples' specific interests.

Regional multi-stakeholder practical workshops, involving invited Indigenous Peoples' representatives during their whole duration, were organized:

- in 2015 in Namibia (for English-speaking African representatives), Panama (for Central and South American representatives) and Samoa (for representatives from Pacific Islands);
- in Morocco in 2016 (for French-speaking African representatives); and
- the Philippines earlier this year (for Asian representatives).

Invited government officials have also participated in those workshops side-by-side with Indigenous Peoples' representatives, as a way to promote and facilitate dialogue, interaction and common understanding of the mechanisms and issues between both groups.

The WIPO Indigenous Fellowship Program allows for an Indigenous person to be part of the WIPO Traditional Knowledge Division (TKD) staff (<http://www.wipo.int/tk/en/indigenous/fellowship/>). It importantly contributes to make sure that Indigenous Peoples' sensitivities and interests are duly considered by WIPO staff, within and beyond the TKD.

Ms. Kiri Toki (Maori), from New Zealand, is the current WIPO Indigenous Fellow.

WIPO staff are briefed on the WIPO IGC negotiations on a regular basis.

The WIPO Secretariat also announced, during a meeting between the Secretariat and a high-level delegation of Indigenous representatives during IGC 34 in June 2017, that it would establish two new scholarships for Indigenous Peoples to attend the *WIPO Academy's Summer School* in 2018 and 2019. These two new scholarships supplement the Secretariat's commitment to capacity building and empowerment initiatives with and for Indigenous Peoples and build upon its existing programs that achieve these ends, such as the aforementioned admission of Indigenous Peoples to take the WIPO Advanced Distance Learning Course free of charge (see under B2, above).

6. Advancing the participation of indigenous peoples in UN processes

Please provide information on any support provided for the full and effective participation of indigenous peoples at relevant UN bodies, including at the country level. Please also provide information on any consultative mechanisms, tools and other measures to obtain free, prior and informed consent of indigenous peoples in processes that affect them.

Implementation of Article 18 of UNDRIP on participation is of particular relevance for the WIPO IGC.

The WIPO Secretariat, with WIPO Member States' express support, has taken measures ensuring and enhancing the participation of Indigenous Peoples in the IGC as observers.

Those measures include the following:

- **An *ad hoc* and fast-track accreditation procedure for observers at the IGC was established at the creation of the IGC;**
- **Indigenous participants in the IGC can take the floor on any agenda item and can have any of their drafting proposals reflected in the drafts, provided that at least one Member State extends its endorsement. This happens quite frequently;**
- **Further, the Chair of the IGC has systematically invited Indigenous caucus representatives, with Member States' support, to participate in informal consultations and drafting groups on the texts being negotiated at the IGC, with rights to speak and make proposals. Within this format, Indigenous Peoples do not need formal endorsement of Member States to have their proposals reflected in the draft texts;**
- **As a result and on several occasions, drafting proposals by Indigenous representatives have been taken up in the negotiating texts; several options included in the texts reflect their comments or proposals;**
- **An Indigenous Consultative Forum is organized on the day preceding IGC sessions at the WIPO premises and with the WIPO Secretariat's support, with the view to facilitating the preparation of IGC sessions by the Indigenous Caucus;**
- **The Chair of the IGC meets the Indigenous Caucus whenever requested or appropriate;**
- **WIPO has financed the logistical, secretarial, interpretation and translation support that is provided by the Indigenous Peoples' Center for Documentation, Research and Information (DoCip) during the daily meetings of the Indigenous Caucus;**
- **Each IGC session accommodates time for a panel presentation by Indigenous Peoples' and local communities' experts in the plenary room;**

- Indigenous persons have also been invited to make presentations at the Seminars that have been organized on issues relevant to the protection of GRs, TK and TCEs since 2015. (see <http://www.wipo.int/tk/en/>)
 - The WIPO General Assembly set up the WIPO Voluntary Fund for Accredited Indigenous and Local Communities in 2005 in order to facilitate the participation in sessions of the IGC of representatives of Indigenous Peoples and local communities. The government of Australia made a substantial contribution to the fund in 2017. However, that contribution is close to depletion. Best efforts are currently made to have the Fund replenished with new donations;
 - Two significant initiatives were also taken in the last three years, in close cooperation with the UN Permanent Forum on Indigenous Issues, in order to enhance the ability of Indigenous Peoples to analyze the issues at hand and formulate positions.
 - Following up on a decision by the IGC, the WIPO and the UNPFII Secretariats jointly organized an Indigenous Expert Workshop, in 2013, comprising seven invited indigenous experts. Its report (WIPO/GRTKF/IC/25/INF/9) was submitted by the Secretariat of the Permanent Forum, to the IGC. (see http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_26/wipo_grtkf_ic_26_inf_9.pdf)
 - Following up on a recommendation made by the Permanent Forum, the WIPO Secretariat commissioned a technical review of the IGC drafting texts by Professor James Anaya, from an indigenous rights and human rights framework in 2014. The technical review has been submitted by the Secretariat of the Permanent Forum to the IGC (WIPO/GRTKF/IC/29/INF/10). (see http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_29/wipo_grtkf_ic_29_inf_10.pdf)
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