

# CALL OF THE EARTH

Ancient Wisdom for Sustainable Livelihoods

**An Indigenous Peoples Initiative on Intellectual Property Policy**

**WIPO/GRTKF/IC/5/11**

**'Participation of Indigenous and Local Communities'**

**A Primer**

Call of the Earth is designed as a forum in which indigenous peoples can meet to reframe the debate on intellectual property rights and traditional knowledge and resources through our own indigenous perspectives, from within our own cultures. In so doing, we aim to help develop responses at local, national, regional and international levels to all policy and legal developments that adversely impact on our tradition of preserving our cultural heritage for future generation. Call of the Earth is not, nor does it claim to be representative of the views of all indigenous people.

In a statement made by Call of the Earth to the WIPO Intergovernmental Committee on Traditional Knowledge on December 9, 2002, Call of the Earth called on member governments to join us in expressing concern about the minimal systematic participation of indigenous peoples in IGC meetings', recommending that WIPO better assist indigenous peoples to participate in the IGC process.. In particular, Call of the Earth hoped that WIPO and its member governments would follow the example of its sister UN agencies to consider the establishment of a Fund to support the systematic and effective participation of indigenous peoples in its work. Similar criticisms have been made by numerous indigenous organizations and other NGOs.

At the fourth session of the IGC, Member States requested that the WIPO Secretariat prepare a report outlining a range of options for facilitating more formalized participation of indigenous and local communities, and indications of modalities on how these options could be implemented by the IGC. As requested, the WIPO Secretariat has subsequently produced a document (Participation of Indigenous and Local Communities' (WIPO/GRTKF/IC/5/11)) which sets out a range of options.

This primer briefly outlines the options presented by the Secretariat and considers their potential impact on the likelihood for meaningful participation by indigenous peoples in IGC processes. This initial response attempts only to outline some considerations that could be used by indigenous

individuals to form their own opinion. It is not necessarily representative of all indigenous views on options for participation within the WIPO ICG.

The degree to which meaningful participation is possible will no doubt inform indigenous people's decisions on the extent to which it is a useful strategy for them to pursue participation and debate through WIPO processes vis-à-vis other fora.

### What is Meaningful Participation?

Meaningful participation is participation that would give indigenous people both: a) direct influence on the agenda setting and the decisions made within WIPO, and b) indirect influence on the agenda and decisions through enhanced capacity to influence decision-makers.

Some would suggest that the former is impossible to achieve in a WIPO context and the latter not good enough. Here, the extent to which these assumptions are borne out in the actual options presented will be examined.

Regardless of what is felt about the options presented, indigenous people should be aware that the Secretariat's proposals on formalized mechanisms for the enhanced involvement of indigenous and local communities are only tentative and suggestive. They 'will need to be tailored and adjusted to fit into the future nature, format, mandate and frequency' of IGC sessions. The IGC's recommendations will form part of a coherent set of recommendations on the future of the Committee and on budgetary matters, to be presented to the September 2003 General Assembly'. Thus, the options may change, and those interested should keep their eye out on developments both at the upcoming meeting in July and at the September General Assembly of WIPO.

### PROPOSALS AND OPTIONS

The proposals and options focus both on facilitating the involvement of indigenous and local communities generally and the provision of financial support to achieve this end.

#### The Status Quo

Participation by indigenous representatives at the IGC meeting has, thus far, been limited to observing proceedings, with the status of accredited or accredited 'ad hoc' organizations.

However, at previous IGC meetings, Member States have endorsed and encouraged<sup>1</sup> other measures to enhance this participation. At the fourth ICG meeting, for example, calls were made for progress on some of these measures to be reviewed and other suggested measures added.

Measures suggested or endorsed so far include measures that can be achieved only by Member States, those that can be achieved only through the Secretariat and others that are complemented by actions of both Member States and the Secretariat.

Those pertaining to Member States are:

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<sup>1</sup> WIPO/GRTFK/IC/4/12

- a. Involvement at National Level
  - The inclusion of representatives of indigenous and local communities in national delegations;
  - Greater participation of representatives of indigenous and local communities on national delegations;
  - Involvement of indigenous and local communities in regional and national consultations and workshops aimed at developing focused input for the Committee including funding or otherwise supporting their involvement in these meetings<sup>2</sup>. This could be a measure supported by Member States, or the Secretariat or both;
  - Greater involvement of indigenous and local communities in national processes, such as in the development of national policies and of statements to be made by States at Committee sessions; and
- b. Capacity Building At National And Local Levels
  - Capacity building at the national and local levels (which, the Secretariat notes, is also relevant to its work, particularly in relation to implementation).

Those achievable through the WIPO Secretariat are:

- a. Financial Support For & Greater Participation By Accredited Observers
  - Direct financial support for the participation of representatives of indigenous and local communities in the Committee, either on national delegations or representatives of ad hoc observers;
  - The participation of indigenous and local community representatives on expert panels;
  - The involvement of representatives of indigenous and local communities as co-chairs of working groups;
  - The participation of indigenous and local community experts in the analysis of papers and reports being produced for the Committee;
  - Consulting with interested representatives of indigenous and local communities on draft documents and other materials being developed for the Committee;
- b. An Indigenous Voice Within The Secretariat
  - The inclusion of an indigenous staff member in the unit dealing with the subjects covered by the Committee
- c. Increased Participation By The Permanent Forum
  - Increased and more regular cooperation with the Permanent Forum on Indigenous Issues, in view of its function of promoting “the integration and coordination of activities relating to indigenous issues within the UN system”;
  - Development of a working relationship with the United Nations Working Group on Indigenous Populations;

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<sup>2</sup> WIPO/GRTKF/IC/5/11 at paragraph 10

Building from these categories, the Secretariat has collected information from a number of different agencies and made a number of proposals to implement some of these goals.

### What Would Change?

If the Secretariat's proposals are accepted, the following changes would be made.

#### a. Participation By Accredited Representatives

The Secretariat suggests that a certain number of indigenous representatives could be funded to participate in ICG meetings as accredited observers. The Secretariat's document considers the number of representatives, the capacity in which they would participate, the selection process, some guiding principles for selection and the source of funding. In summary, the document proposes that the number of representatives funded should be restricted to up to 11, and that they should be "authorized" representatives of communities or organizations already accredited to WIPO. Selection should be transparent and, as much as possible, ensure broad geographical and gender equity. Of note, the selection should be made in close consultation with regional and local groups and 'some form of governmental role should be built into the selection process'. Representatives should have a significant breadth and depth of expertise. Representation should balance the need for equity with the need for continuity, and representatives should, ideally, be persons maintaining strong links with their community so that they can put forward the views of community members and report back to them.

It is suggested that funding either be sourced through indirect funding out of the WIPO regular budget or through the establishment of a special fund for this purpose. If a special fund (directly funded by governments or by WIPO or both?) was set up, selection would be by application either to a Board of Trustees that included representatives of local and indigenous communities, or through a regional coordination involving regional coordinators to select representatives 'with input from the relevant national governments'<sup>3</sup>.

The funding of participation aside, for already accredited indigenous observers the only substantive change resulting from the Secretariat's proposals would be the availability of a website page on which accredited observers could post comments, papers and national information etc. that could then be taken into account by ICG members who consult the site.

#### b. Participation By The UN Permanent Forum on Indigenous Issues

If the Secretariat's proposals are accepted, two members of the Permanent Forum on Indigenous Issues would be funded to attend each ICG session. An invitation and working documents would be sent in advance of each ICG session and at each meeting, a briefing session would be arranged to facilitate the interaction and exchange of information with other participants. In addition, Permanent Forum members could be invited to participate in national and regional consultations and meetings.

#### c. Issues To Consider

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<sup>3</sup> WIPO/GRTKF/IC/5/11 at paragraph 48

Overall, these proposals respond to the goal of making participation more systematic. 'Systematic' participation is, however, a separate issue to whether participation is meaningful, in the sense previously described.

These proposals, particularly those relevant to the Permanent Forum, increase the scope for indigenous perspectives to be highlighted within the ICG process, and for there to be a forum in which structured interaction between Member States and accredited indigenous /Permanent Forum representatives can occur.

This is not the same as direct control within the process, and indigenous organizations should keep this in mind when deciding whether engaging with the WIPO process is a useful expenditure of their energy.

Looking in detail at the proposals, there are a number of factors that could potentially detract from the likelihood of achieving participation on terms indigenous people may prefer. For example, if indigenous representation is selected through a process involving government scrutiny, some indigenous people may fear that only those representatives in line with government opinion will be selected. Thus, there may be a grounded fear that certain indigenous opinion could be excluded from the process, limiting the perspectives included in the ICG process. This feature of selection sits uneasily with the concept of self-determination, as it risks the tying of participation to government favour. Thus, it seems the option of selection through a Board of Trustees may be preferable to regional coordination.

In addition, the requirement that only those with certain expertise be selected, while on its face sensible, may also preclude from involvement voices that could add an important perspective to the debate, such as indigenous experts in customary law, elders, or others. This may not be a problem if the chosen representatives are able to relay diverse community opinion, but does mean that extra care should be placed into selecting participants who have sufficient community contact to be able to adequately convey the perspectives of diverse voices within their own and other communities.

Indigenous people interested in the WIPO process, to the extent they wish to actively engage in the process, would be well advised to scrutinise the detail in the WIPO proposal and to suggest suitable mechanisms for selection and participation during the July WIPO meeting, utilising the mechanisms that already exist to submit views to the Secretariat.

Importantly, the Secretariat's proposals refer to both indigenous peoples and local communities. Indigenous peoples may wish to consider whether indigenous people have any specific needs in the WIPO process that apply to them distinctly, in contrast to local communities. For example, some indigenous people may prioritise action toward the recognition of customary law as a priority whereas this may be less of a priority for some local communities. Indigenous peoples should seek clarification as to the numbers it is proposed represent indigenous communities vis-à-vis local communities, if any distinction is to be made, and to seek assurance that the distinct voices of indigenous peoples will be heard.