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### Permanent Forum on Indigenous Issues

#### Seventh session

New York, 21 April-2 May 2008

Item 4 of the provisional agenda\*

#### Implementation of recommendations on the six mandated areas of the Permanent Forum and on the Millennium Development Goals

### Information received from the United Nations system and other intergovernmental organizations

#### Secretariat of the Convention on Biological Diversity and World Intellectual Property Organization\*\*

#### *Summary*

The present report comprises two reports: one by the secretariat of the Convention on Biological Diversity and one by World Intellectual Property Organization (WIPO).

The report by the secretariat of the Convention on Biological Diversity focuses on actions taken on the recommendations addressed to the Convention on Biological Diversity arising from the sixth session of the Permanent Forum on Indigenous Issues and considered by the Working Group on Article 8(j) at its fifth meeting (15-19 October 2007), and to be considered by the Conference of the Parties at its ninth meeting (19-30 May 2008), as well as follow-up concerning recommendations arising from previous sessions.

The World Intellectual Property Organization (WIPO) report draws attention to:

(a) Draft instruments for the protection against misappropriation and misuse of traditional cultural expressions/expressions of folklore and traditional knowledge being discussed by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore;

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\* E/C.19/2008/1.

\*\* Submission of the present report was delayed in order to ensure the inclusion of the most recent information.



(b) The WIPO Voluntary Fund for Accredited Indigenous and Local Communities;

(c) WIPO consultations and studies on the relationship between customary law and intellectual property; and,

(d) Several practical capacity-building initiatives being undertaken by WIPO, as requested by, inter alia, the Permanent Forum, such as the development of tools to guard against the illegitimate patenting of traditional knowledge, and the elaboration of guidelines for communities on developing protocols on managing intellectual property issues when documenting, recording and digitizing intangible cultural heritage. This latter initiative includes an ongoing partnership between WIPO, the International Labour Organization and the Maasai Cultural Heritage Foundation relating to the protection, promotion and preservation of Maasai cultural heritage.

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## **I. Secretariat on the Convention on Biological Diversity**

### **A. Response to recommendations addressed exclusively to the Convention on Biological Diversity by the Permanent Forum on Indigenous Issues<sup>1</sup>**

#### **Paragraph 75 of the report of the Forum on its third session**

1. The secretariat recently developed a draft Convention on Biological Diversity Gender Plan of Action with the full and effective participation of indigenous women. It has been drafted on the basis of an analysis of the current performance of the Convention in the area of gender and biodiversity; a survey conducted among the Convention staff; and a workshop with staff from divisions within the Convention secretariat and with the participation of resource persons from United Nations Environment Programme (UNEP), Women in Environment and Development Organization, The Global Environment Facility Small Grants Programme, the United Nations Development Programme (UNDP) and representatives of indigenous women's networks and organizations. This workshop was held 16-18 January 2008 in Geneva.

2. It is also based on a review of the implementation of plans of action of similar institutions and international partners, including UNEP, the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization (ILO), the United Nations Development Fund for Women, UNDP, the World Conservation Union, the Norwegian Agency for Development Cooperation, the Swedish International Development Cooperation Agency and the Swiss Agency for Development and Cooperation.

3. This Plan of Action defines the role that the Convention on Biological Diversity secretariat will play in stimulating and facilitating efforts, both in-house and with partners at the national, regional and global levels, to overcome constraints and take advantage of opportunities to promote gender equality. The Plan is the continuing response of the secretariat and the Convention to global commitments of the last decades as well as to recommendations from international forums, and it is in compliance with major mandates within the United Nations system. It is also a reflection of the increasing awareness that gender equality and the empowerment of women are important prerequisites for environmental conservation and sustainable development. The final Convention on Biological Diversity Gender Plan of Action will be submitted to the ninth session of the Conference of the Parties as an information document in Bonn, in May 2008.

4. Finally, the secretariat continues to cooperate with the secretariat of the Permanent Forum on Indigenous Issues, among other relevant organizations, and with women representatives of indigenous and local communities, to ensure that the perspectives and strategies of indigenous women in biodiversity-related issues are taken into account within the work being done under the Convention with regard to traditional knowledge, and that capacity-building efforts target indigenous women. As a case in point, the secretariat has recently entered into a memorandum of understanding with la Fundación para la Promoción del Conocimiento Indígena to

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<sup>1</sup> E/2004/43.

provide capacity-building for indigenous women in April 2008 to assist their preparations for the ninth meeting of the Conference of the Parties to be held in Bonn, May 2008.

**Paragraph 77 of the report of the Forum on its third session**

5. The development of sui generis systems for the protection of traditional knowledge was again considered at the fifth meeting of the Working Group on Article 8(j), in October 2007. The draft decision emerging from the Working Group invites Parties and Governments to consider that the development, adoption or recognition of effective sui generis systems be local, national or regional in nature, taking into consideration the relevant customary laws of the indigenous and local communities concerned, and recognized or created with the full and effective participation of those communities, in order to protect, respect, preserve, maintain and promote their knowledge, innovations and practices, while ensuring fair and equitable benefit-sharing.

6. Furthermore, in the draft decision emerging from the fifth meeting of the Working Group which will be considered at the ninth meeting of the Conference of the Parties in May 2008, the Executive Secretary has been requested to update his note (UNEP/CBDF/WG8J/5/6) to take into account submissions, including concise case studies by Parties, Governments, indigenous and local community organizations and to make the updated note available for consideration at the sixth meeting of the Working Group.

7. Noting the ongoing work of the Special Rapporteur (Michael Dodson) appointed by the Permanent Forum at its fifth session, on sui generis systems, customary law and the protection of traditional knowledge, the secretariat continues to be in touch with the Special Rapporteur to ensure that our efforts are mutually supportive.

**Draft decision III contained in the report of the Forum on its sixth session**

8. In response to the theme of the seventh session, the secretariat of the Convention has contributed to, and collated an Inter-Agency Support Group on Indigenous Peoples' Issues paper on climate change and indigenous peoples for the consideration at the seventh session of the Permanent Forum.

**Paragraph 13 of the report of the Forum on its sixth session**

9. The secretariat continues to collaborate with members of the Permanent Forum on an informal level to share information and decisions relevant for their research into issues of mutual interest such as monocropping and biofuels.

**Paragraph 31 of the report of the Forum on its sixth session**

10. Advice and recommendations from the Permanent Forum have been considered by the Working Group on Article 8(j) at its fifth meeting under agenda item 6, on an international regime on access and benefit-sharing. However, the fifth meeting of the Working Group on Article 8(j) was unable to reach consensus on this issue and hence no views were referred to the sixth meeting of the Working Group on Access and Benefit-Sharing on this occasion. It should be noted that the report of the Permanent Forum international expert group meeting, held 17 to 19 January

2007, on the Convention on Biological Diversity's international regime on access and benefit-sharing and indigenous peoples' human rights, as well as other relevant documents, including recommendations of the Permanent Forum, were made available for the full consideration of both Working Groups (see UNEP/CBD/WG8J/5/INF.10 and 12).

**Paragraphs 49, 50 and 132 of the report of the Forum on its sixth session**

11. The secretariat of the Convention worked in partnership with the International Indigenous Forum on Biodiversity to present a side event during the fifth meeting of the Working Group on Article 8(j) drawing attention to the international expert meetings facilitated by the Permanent Forum (January 2007) and another relevant expert meeting facilitated by the secretariat of the Convention (September 2007), both of which considered indigenous peoples' issues relevant to the negotiation and elaboration of an international regime on Access and Benefit-Sharing. Furthermore, the reports of both meetings were made available as information documents to both the fifth meetings of the Working Group on Access and Benefit-Sharing and the Working Group on Article 8(j) for the consideration of Parties and participants.

**Paragraph 51 of the report of the Forum on its sixth session**

12. This recommendation has been addressed in paragraph 5 of this report, which provides an update on the issue of sui generis systems.

**Paragraph 59 of the report of the Forum on its sixth session**

13. The Executive Secretary has expressed his full commitment to a close partnership with both the Permanent Forum and indigenous and local communities in our mutual goals of promoting the International Year of Biodiversity and the special role of indigenous peoples as custodians of biological diversity. The secretariat has commenced fund-raising with donors to ensure the availability of resources and adequate time to prepare fully for the International Year.

**Paragraphs 119, 120 and 121 of the report of the Forum on its sixth session**

14. The fifth meeting of the Working Group on Article 8(j) considered the various regional reports on indicators and report of the international expert seminar on indicators relevant for indigenous peoples organized by the International Indigenous Forum on Biodiversity in Banaue on 5-9 March 2007 (see UNEP/CBD/WG8J/5/8). It welcomed the work carried out under the auspices of the ad hoc Open-ended Working Group on Article 8(j) and Related Provisions, and in particular the regional and international expert workshops organized by the Working Group on indicators of the International Indigenous Forum on Biodiversity. This meeting's aim was to identify a limited number of meaningful, practical and measurable indicators on the status of traditional knowledge, innovations and practices, to assess progress towards achieving the Convention's strategic plan and the 2010 biodiversity target.

15. Furthermore, the Working Group recommended that a maximum of two additional indicators on the status of traditional knowledge, innovations and practices be selected for inclusion in the framework by the Ad Hoc Working Group on Article 8(j) and Related Provisions at its sixth meeting. Further to this, Parties, Governments and relevant organizations, were invited, in consultation with indigenous and local communities, to submit to the Executive Secretary information

on experiences and lessons learned in designing and, as appropriate, testing, national indicators for status and trends of traditional knowledge, innovations and practices, in order to assess progress towards the 2010 biodiversity target, as well as to assess progress in the implementation of the strategic plan. Parties were also invited, in consultation with indigenous and local communities, to report thereon in the fourth national reports, and the Executive Secretary was asked to compile and assess data availability of the information received, and to transmit the compilation and analysis to the sixth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, as basis for further work.

**Paragraph 130 of the report of the Forum on its sixth session**

16. Thanks to a generous donation by the Governments of Finland and Spain, the secretariat of the Convention is organizing a series of expert meetings concerning climate change and indigenous and local communities. The first expert meeting, entitled International Expert Meeting on Responses to Climate Change for Indigenous and Local Communities and the impact on their Traditional Knowledge related to Biological Diversity, will be held in partnership with the Government of Finland in Helsinki 25-28 March 2008. This will be followed by a series of workshops aimed at small island developing States and shall include indigenous and local community participants. The secretariat has also committed to participate in the international expert meeting entitled Indigenous Peoples and Climate Change to be held in Darwin from 2-4 April 2008, which is being organized by the United Nations University-Institute of Advanced Studies, secretariat of the United Nations Permanent Forum on Indigenous Issues and the North Australian Indigenous Land and Sea Management Alliance.

**Paragraph 131 of the report of the Forum on its sixth session**

17. In response to this recommendation and requests by indigenous and local community representatives, and thanks to a generous donation by the Government of Spain, the secretariat facilitated an international expert meeting entitled the International Indigenous and Local Community Consultation on Access and Benefit-Sharing and the Development of an International Regime. The report was provided as an information document (see UNEP/CBD/WG-ABS/5/INF/9 and UNEP/CBD/WG8J/5/INF/13) to both the fifth meetings of the Working Group on Access and Benefit-Sharing and the Working Group on Article 8(j). The meeting and the report received high praise from both indigenous peoples and the participants in general, and was welcomed by the co-chairs of the Working Group on Access and Benefit-Sharing as a useful contribution to the ongoing work.

**Paragraph 133 of the report of the Forum on its sixth session**

18. In Decision VIII/5 C, the Parties reaffirmed Decision VII/19 D and adopted an enhanced participatory mechanism for indigenous and local communities, including the establishment of the Voluntary Funding Mechanism to support participation, as well as the provision of administrative support. Parties were invited to include indigenous and local community representatives in official delegations and invite donors to facilitate the participation of indigenous and local communities in preparatory processes for both the Working Group on Access and Benefit-Sharing and the Working Group on Article 8(j) (see <http://www.cbd.int/decisions/>).

19. Furthermore, to ensure the participation of indigenous and local communities through the Voluntary Funding Mechanism, the fifth meeting of the Working Group on Article 8(j) in draft decision 5/4, requested the secretariat to intensify efforts to promote the General Trust Fund for Voluntary Contributions to Facilitate the Participation of Indigenous and Local Communities in the Work of the Convention on Biological Diversity.

**Paragraph 135 of the report of the Forum on its sixth session**

20. The secretariat continues to maintain contact with donors and other agencies to provide opportunities for capacity-building for indigenous and local communities on matters of relevance to them under the Convention and, in particular, the elaboration and negotiation of an international regime on access and benefit-sharing. As mentioned previously, the secretariat has recently entered into a memorandum of understanding with la Fundación para la Promoción del Conocimiento Indígena to provide capacity-building for indigenous women in April 2008 to assist with their preparations for the ninth meeting of the Conference of the Parties to be held in Bonn, May 2008.

**Paragraph 145 of the report of the Forum on its sixth session**

21. The secretariat continues to collaborate informally with Permanent Forum member and Special Rapporteur Michael Dodson, as well as other relevant international organizations (such as WIPO) to ensure that our common work on sui generis systems, customary law and the protection of traditional knowledge are mutually supportive. The Report of the Special Rapporteur was made available as an information document (UNEP/CBD/WG8J/5/INF.12) for the fifth meeting of the Working Group on Article 8(j) to inform agenda item 8 entitled: Development of elements of sui generis systems for the protection of traditional knowledge, innovations and practices.

**B. Response to general themes and special emphasis of the Permanent Forum on Indigenous Issues**

22. Noting that under general themes and special emphasis the Permanent Forum on Indigenous Issues has included the issue of free, prior and informed consent, the secretariat wishes to report that in Article 8(j) of the Convention, Parties are requested to promote traditional knowledge, innovations and practices relevant to conservation and sustainable use with the approval and involvement of the holders of such knowledge, innovations and practices. This has been on some occasions interpreted by some Parties and in various Conference of the parties decisions as prior and informed consent, however, at this stage in the implementation of the Convention, there is no consensus on this issue.

**C. Obstacles to the implementation of recommendations of the Permanent Forum on Indigenous Issues**

23. Within the context of the Convention on Biological Diversity, the implementation of the programme of work for Article 8(j) and related provisions is the highest priority for indigenous and local communities. In assessing obstacles to

implementation, it is important to note that the secretariat itself is not an implementing body and that implementation rests with the Parties to the Convention. Nevertheless, the secretariat has firmly entered an implementation stage in our efforts to assist parties in their implementation of the Convention in our mutual efforts to achieve the 2010 Biodiversity Target.

24. Given this, the recommendations of the Permanent Forum must first be considered by the Working Group on Article 8(j) or another relevant body and then forwarded to the Conference of the Parties for their final decision. There are 190 Parties to the Convention, making it an almost universal environmental convention, and Parties are required to make decisions by consensus. The biennial work programme of the secretariat is hence based on the consensus decisions emerging from each Conference of the Parties. Hence, the work cycle of the Convention, which occupies a two-year time frame, can make it difficult to report on an annual basis to the Permanent Forum with any real sense of momentum.

#### **D. Facilitating factors for the implementation of recommendations of the Permanent Forum on Indigenous Issues**

25. There exists tremendous good will on behalf of the Parties to the Convention who have ensured that indigenous and local communities enjoy a high profile and enhanced participatory mechanisms in bodies under the Convention that are of importance to them. A number of donor Governments have ensured that the programme of work is well supported and able to carry out its biennial work programme with the full and effective participation of indigenous and local communities.

#### **E. Policy or similar tool on indigenous people's issues?**

26. As a treaty implementation body, the Parties to the Convention set policy through consensus decisions. The Parties have repeatedly emphasized in various decisions that the work of the Convention should be carried out with the full and effective participation of indigenous and local communities, and this remains the underlying principle of the Convention's engagement with indigenous and local communities.

#### **F. Other significant information**

27. The secretariat is in regular contact with donors to support the implementation of the work programme for Article 8(j), as decided by the Conference of the Parties at its biennial meetings. In particular, the voluntary fund for the participation of indigenous and local communities in meetings held under the Convention is now fully operational, and information about the fund, including application forms, can be found on the Convention on Biological Diversity website.<sup>2</sup>

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<sup>2</sup> <http://www.cbd.int/traditional/fund.shtml>.

### **G. Capacity-building programme/s, including for staff**

28. The secretariat carries out regular capacity-building for indigenous and local communities with a particular focus on indigenous and local community women. The secretariat also conducts regular staff training and capacity-building of staff based on needs analysis, and provides updates on matters of mutual interest, such as the effective participation of indigenous and local communities in the Convention processes, through regular staff meetings.

### **H. Information regarding activities on the goal, objectives and programme of action of the Second Decade of the World's Indigenous People**

29. All activities within the framework of the Convention on Biological Diversity related to indigenous and local communities directly contribute to the implementation of the objectives of the Second Decade of the World's Indigenous People. In particular, Article 8(j) and related provisions directly address matters of the utmost importance to indigenous and local communities by focusing on respect, preservation and maintenance of the knowledge, innovations and practices of indigenous and local communities, embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. Article 8(j) also requires that this knowledge and these innovations and practices are promoted with the approval and involvement of the knowledge holders and encourage the equitable sharing of benefits arising from their use.

30. In brief, the Convention on Biological Diversity has considerably advanced its preliminary work of the promotion and protection of traditional knowledge. In distilling its work into outcomes, the Convention has entered a period of enhanced implementation and actively seeks and encourages the involvement of indigenous and local communities in development and implementation of the work programme of Article 8(j) and related provisions, which contribute directly to the goals of the Second International Decade of the World's Indigenous People.

### **I. Information and suggestions regarding the special theme of the seventh session of the Permanent Forum on Indigenous Issues: Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges**

31. The secretariat has collated and contributed to an Inter-agency support group on indigenous peoples' issues paper on climate change and indigenous peoples, which has been submitted to the Permanent Forum for its consideration at its seventh session.

### **J. List of conferences and other meetings regarding indigenous issues in 2007-2008**

32. A list of meetings for 2007-2008 is updated regularly on the Convention on Biological Diversity website ([www.cbd.int/meetings/default.shtml](http://www.cbd.int/meetings/default.shtml)).

## II. World Intellectual Property Organization

### A. Draft instruments on the protection of traditional cultural expressions and traditional knowledge against misappropriation and misuse

33. The protection of traditional knowledge and traditional cultural expressions against misappropriation and misuse is the subject of active policy development, norm-building and capacity-building programmes 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.

34. 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.

35. More recent sessions of the Intergovernmental committee have examined draft principles and objectives<sup>3</sup> that could shape sui generis instruments on traditional knowledge and traditional cultural expressions. This approach to protection could recognize, among other things, collective interests in traditional knowledge 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.

36. These drafts include compliance with the free, prior and informed consent 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 traditional knowledge or traditional cultural expressions, but accommodate this option, should communities wish to take it up. Similarly, prior registration or documentation of traditional knowledge and traditional cultural expressions is not a precondition for protection.

37. The drafts have not been adopted or endorsed by the Intergovernmental committee 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 and other traditional and cultural communities, civil society organizations and a range of other interested parties. Successive drafts of the objectives and principles were the subject of open commentary processes established by the Intergovernmental committee. The drafts directly incorporate drafting proposals made by many participants in the commentary processes, including indigenous communities. The secretariat of the Permanent Forum has also contributed valuable comments as part of these commentary processes. Details of the background to these documents, and

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<sup>3</sup> Current drafts are published as WIPO Documents WIPO/GRTKF/IC/12/4(c) (TCEs) and WIPO/GRTKF/IC/12/5(c) (TK), both dated 6 December 2007. These are available at [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=14802](http://www.wipo.int/meetings/en/details.jsp?meeting_id=14802). Documents containing comments on those drafts are reviewed in documents WIPO/GRTKF/IC/12/4(a) and WIPO/GRTKF/IC/12/5(a) available on the same page.

the wide range of materials and perspectives that shaped them, can be found on the WIPO website <http://www.wipo.int/tk/en/index.html>.

38. These draft materials are being used as points of reference in a range of national, regional and international policy discussions and standard-setting processes. Their scope and content could be seen as an important contribution to implementation of Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007. Several processes in other policy areas are drawing directly from the draft WIPO provisions.

39. 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 traditional cultural expressions and traditional knowledge against misappropriation and misuse.

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

41. The objectives and principles contained in the draft instruments were discussed further by the Intergovernmental committee at its eleventh session, which took place 3-12 July 2007. At this session, certain key policy issues were also discussed, as decided by the Intergovernmental committee at its tenth session in November 2006, and Intergovernmental committee participants had submitted written comments on these issues before the session. These issues go to the core of what an international policy process must consider when creating new international norms for the protection of traditional knowledge and traditional cultural expressions against misuse and misappropriation. Full details of the decisions taken by the Intergovernmental committee at its eleventh session, and the issues mentioned, are available from the WIPO secretariat and on the WIPO website <http://www.wipo.int/tk/en/>. The next Intergovernmental committee meeting will take place 25-29 February 2008, based on a renewed mandate adopted by the WIPO General Assembly at its 2007 session (see WIPO document WO/GA/34/16, para. 293 available on [http://www.wipo.int/edocs/mdocs/govbody/en/wo\\_ga\\_34/wo\\_ga\\_34\\_16.doc](http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_34/wo_ga_34_16.doc)).

42. All working documents, comments, papers, studies, databases, questionnaires, and other materials prepared for consideration by the Intergovernmental committee, as well as comprehensive reports of its sessions, are publicly available in English, French and Spanish (see <http://www.wipo.int/meetings/en/topic.jsp?groupid=11>). Certain publications are also available in Arabic, Chinese and Russian.

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

43. The member States of WIPO have repeatedly stressed the priority attached to enhancing the participation of the Forum and indigenous representatives in Intergovernmental committee sessions. In active dialogue and cooperation with those community representatives, WIPO member States and the WIPO secretariat continue to explore how to enhance the participation of indigenous peoples in WIPO's work on these issues. The practical experience and guidance of the Permanent 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 (see WIPO/GRTKF/IC/4/15, para. 60).

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

(i) A fast-track accreditation procedure for all non-governmental and intergovernmental organizations has been in place since the first session of the Intergovernmental committee in April 2001. More than 150 organizations have received accreditation, the majority representing indigenous peoples. No applicant has been denied accreditation (<http://www.wipo.int/tk/en/igc/index.html#accreditation>);

(ii) The WIPO General Assembly has extended a formal invitation to the Permanent Forum to take part in sessions of the Intergovernmental committee and many participants have welcomed the active participation of the Permanent Forum;

(iii) A number of member States have adopted the practice of funding the participation of representatives of indigenous and local communities in Intergovernmental committee 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 forums aimed at developing focused input for the Intergovernmental committee have included representatives of the Permanent Forum and indigenous and local communities as speakers and participants;

(vi) The WIPO website provides for written contributions by accredited NGOs on the issues before the Intergovernmental committee (<http://www.wipo.int/tk/en/ngoparticipation>);

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

(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 Intergovernmental committee, 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. During

the open commentary processes described above, Intergovernmental committee draft materials, especially the draft provisions, directly incorporate textual proposals and extensive comments made by indigenous and local communities taking part in the process;

(ix) The WIPO General Assembly has established the WIPO Voluntary Fund for Accredited indigenous and local communities. This new Fund facilitates the participation in sessions of the Intergovernmental committee of representatives of indigenous and local communities, and other customary holders or custodians of traditional knowledge and traditional cultural expressions, which are already accredited to the Intergovernmental committee. Details of the Fund, its operations and the application procedure are fully set out on the WIPO website ([http://www.wipo.int/tk/en/ngoparticipation/voluntary\\_fund/index.html](http://www.wipo.int/tk/en/ngoparticipation/voluntary_fund/index.html)). This WIPO Fund has so far received voluntary contributions from the Swedish International Biodiversity Programme, the Christensen Fund and the Governments of Switzerland, South Africa and Norway. These generous donations enabled the Fund to finance the participation of 16 representatives of indigenous and local communities and other customary holders or custodians of traditional knowledge and traditional cultural expressions, in the tenth and eleventh sessions of the Intergovernmental committee which took place in November 2006 and July 2007. The WIPO Voluntary Fund will also fund the participation of a further nine such representatives in the twelfth session of the Intergovernmental committee taking place 25-29 February 2008. Full reports detailing the operation and management of this Fund, including recent information on the funds received, applications for funding received and decisions taken in this regard by the Advisory Board elected relative to the Rules of the Fund, are available in WIPO documents WIPO/GRTKF/IC/11/3 and WIPO/GRTKF/IC/11/INF/4 and INF/7 ([http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=12522](http://www.wipo.int/meetings/en/details.jsp?meeting_id=12522)). 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. WIPO warmly welcomes the statement made by the Permanent Forum at its fifth session that the Permanent Forum “notes with appreciation the establishment of a Voluntary Fund by WIPO to enable the participation of indigenous representatives in the work of the WIPO Intergovernmental committee on traditional knowledge and traditional cultural expressions, and encourages donors to contribute to the Trust Fund (E/2006/43, para. 171)”;

(x) The Intergovernmental committee 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 panels, with the theme Indigenous and Local Communities’ Concerns and Experiences in Promoting, Sustaining and Safeguarding their Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources, were held at the commencement of the eighth, ninth, tenth and eleventh sessions of the Intergovernmental committee (June 2005, April 2006, November 2006 and July 2007 respectively). The panels comprise seven participants from indigenous and local communities in the geo-cultural regions recognized by the Forum and their participation is funded by WIPO.

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

45. 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 traditional knowledge, genetic resources and traditional cultural expressions; and

(ii) The relationship of customary laws and protocols to the intellectual property system.

This work builds on an extensive past background of consultation and reflection on the role of customary laws and protocols, both within the Intergovernmental committee and in WIPO's broader dialogue with indigenous communities (such as the fact-finding consultations in the late 1990s that set directions for WIPO's work in this area). As noted above, the draft provisions for the protection of traditional knowledge and traditional cultural expressions 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. To supplement existing studies, WIPO is commissioning studies from recognized indigenous legal experts on these issues; the first such study, concentrating on indigenous customary laws in several Latin American countries, is now available in English and Spanish (see [http://www.wipo.int/tk/en/consultations/customary\\_law/index.html](http://www.wipo.int/tk/en/consultations/customary_law/index.html)).

46. 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 analyses dealing with the relationship between customary law and protocols and

(i) The protection of traditional cultural expressions and traditional knowledge against misuse and misappropriation; or

(ii) Intellectual property law in general and the administration and development of the intellectual property system.

These papers may respond to a draft background and issues paper that has been prepared but this is not compulsory. A set of suggested guidelines has been prepared to stimulate papers. The Permanent Forum's participation in this work and contributions to it are most welcome and discussions have been held with the Permanent Forum in this connection. For more information, see WIPO website ([http://www.wipo.int/tk/en/consultations/customary\\_law/index.html](http://www.wipo.int/tk/en/consultations/customary_law/index.html)).

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

47. With respect to genetic resources, the work of WIPO does not concern the protection of genetic resources as such. Genetic resources (such as microbes or plants) are physical resources, not intellectual properties, even though they are often integrally associated with traditional knowledge. WIPO does, however, deal with intellectual property issues related to genetic resources (such as a biotech invention derived from a genetic resource). Any work on intellectual property matters relating

to genetic resources must proceed within the understanding that there is a well-established international legal framework already regulating genetic resources issues, in the form of the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agricultural Organization. Because of the close association of genetic resources with some traditional knowledge, some national biodiversity laws protect both genetic resources and traditional knowledge. A “disclosure of origin” requirement in patent applications is regarded by many States and others as an instrument to ensure the traceability of genetic resources and associated traditional knowledge, and to support compliance with free prior and informed consent and fair and equitable benefit-sharing, in furtherance, inter alia, of the objectives of the Convention on Biological Diversity. Another perspective calls for alternative approaches to strengthening the link between equitable benefit-sharing and the intellectual property system. Discussions on these issues continue in WIPO and in other forums, with a revised paper scheduled to be reviewed at the next session of the Intergovernmental committee. WIPO cooperates closely with the secretariat of the Convention on Biological Diversity in relation to these questions, and has prepared technical studies at the request of the Convention on Biological Diversity.

#### **E. Practical initiatives and capacity-building**

48. The programme 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. For instance, cooperation continues with indigenous women in Panama on the use of intellectual property tools to protect, preserve and promote their creative arts.

49. Particular attention is being paid to the development of intellectual property tools to prevent the illegitimate patenting of traditional knowledge, and the elaboration of intellectual property guidelines and associated information technology services relating to the recording, digitization and dissemination of intangible cultural heritage for the economic and cultural benefit of indigenous peoples and local communities. This latter line of work, undertaken within the WIPO Creative Heritage Project, includes, for example, an ongoing partnership between WIPO, the ILO and the Maasai Cultural Heritage Foundation of Laikipia, Kenya for the enhanced protection, preservation and promotion of Maasai cultural heritage. A joint WIPO-ILO mission was undertaken to the Maasai community in October 2006 and the two organizations and the community continue to work closely together to develop and implement this partnership.

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

50. The Permanent Forum is represented at sessions of the Intergovernmental committee 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 Permanent Forum to take part in Intergovernmental committee sessions. The Permanent Forum has played a prominent role in Intergovernmental committee discussions on the enhancement of indigenous participation in the Intergovernmental committee, 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 Permanent Forum has taken part in two WIPO regional conferences on the protection of traditional knowledge and traditional cultural expressions.

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

51. 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 the recognition and protection of traditional cultural expressions and traditional knowledge is complementary to and supportive of their work. These include: the secretariat of the Convention on Biological Diversity, the Food and Agricultural Organization, the International Labour Organization, the International Trade Centre, the United Nations Educational, Scientific and Cultural Organization, the United Nations Environment Programme, the United Nations Conference on Trade and Development, the Office of the High Commissioner for Human Rights, the World Health Organization, the United Nations Development Programme and the United Nations Industrial Development Organization. WIPO has also coordinated with the World Bank and the World Trade Organization and with a range of regional bodies and NGOs.

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