

WIPO General Assembly

Forty-Seventh (22nd Ordinary) Session
Geneva, October 5 to 14, 2015

CONVERSION OF WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC) INTO A STANDING COMMITTEE: PROPOSAL BY THE AFRICAN GROUP TO THE 2015 GENERAL ASSEMBLY

Document prepared by the Secretariat

1. In a communication dated July 17, 2015, a copy of which is set out in the Annex, the Delegation of Nigeria, on behalf of the African Group, requested that its submission entitled “Conversion of WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) into a Standing Committee: Proposal by the African Group to the General Assembly” be made available as a working document for discussion under Agenda Item 17 “Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)” of the Forty-Seventh (22nd Ordinary) Session of the WIPO General Assembly.

2. *The WIPO General Assembly is invited to consider the communication in the Annex to this document.*

[Annex follows]

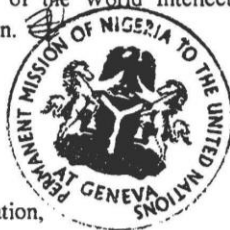


Note No.....142/2015

The Permanent Mission of the Federal Republic of Nigeria to the United Nations Office and other International Organizations in Geneva presents its compliments to the International Bureau of the World Intellectual Property Organization and has the honour to submit, on behalf of the African Group, the attached proposal for consideration at the 2015 WIPO General Assembly, under Agenda item 17 – *Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)*.

The African Group had, at the 15th Session of the Committee on Development and Intellectual Property (CDIP) and the 23rd Session of the Program and Budget Committee (PBC), formally informed Member States of the Group's proposal to convert the IGC into a Standing Committee of WIPO. The Group considers such a structural change an important step towards concluding negotiations in the IGC, and provides the rationale for the idea. The Permanent Mission would appreciate the assistance of the International Bureau in circulating the attached proposal as an official document to WIPO Member States.

The Permanent Mission of the Federal Republic of Nigeria to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the International Bureau of the World Intellectual Property Organization the assurances of its highest consideration.



Geneva, 17 July 2015

International Bureau,
World Intellectual Property Organization,
34 Chemin des Colombettes,
1211 Geneva 20,
Switzerland.

**CONVERSION OF WIPO INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL
PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND
FOLKLORE (IGC) INTO A STANDING COMMITTEE**

PROPOSAL BY THE AFRICAN GROUP TO THE 2015 GENERAL ASSEMBLY

Introduction

1. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was established in 2000 in recognition of the international Intellectual Property (IP) lacuna to meet the demand for effective protection of primordial intellectual and traditional assets of indigenous and local communities in the context of Genetic Resources (GRs), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs).

2. Although the economic, social and cultural value of GRs, TK and TCEs is well established, the protection of traditional innovation - the oldest form of knowledge, is yet to be integrated into the international IP system. The failure to recognize and establish an effective international regime requiring cross-border protection of GRs, TKs and TCEs has undermined the legitimacy of the 'formal' IP system, negatively impacted the moral, socio-cultural and economic rights of indigenous and local communities, and enabled continuous misappropriation of GRs, TK and TCEs.

3. Recognizing that the fifteen year span of the IGC has recorded some progress, but been unable to meaningfully advance its critical normative agenda - an international instrument directed at the protection of GRs, TK and TCEs - the African Group considers that a structural change in WIPO's formal working method offers an important step towards addressing the serious and disabling consequences of a failure to conclude the current negotiations related to GRs, TK and TCEs.

Rationale for the Structural Change

4. It is an unfortunate fact that the procedural challenge of renewing the IGC mandate every biennium has attained the level of focus and investment that should be accorded substantive discussions. Whereas the economic and moral imperative of this issue, the expressed political commitment of Member States, and the obligation to make recommendations to the General Assembly on the convening of a Diplomatic Conference within the biennial mandate structure should have served as adequate motivation to advance negotiations, Member States have rather been forced to spend immense time on negotiating a new mandate with an increasing number of divergent concerns and priorities.

5. The closely timed meetings of the IGC (usually held in February, April and July of each year) were presumably aimed at the goal of expeditiously concluding texts for the purpose of making a recommendation to the WIPO General Assembly. Instead, the process has facilitated a veritable number of competing visions and unwieldy working documents. In effect, the current resource intensive working method of the IGC may not have reflected the most efficient and effective use of time and resources.

6. While competing ideas about extending proprietary rights to new subject matter is not new to the multilateral IP system, in the absence of an institutional forum within which on-going serious consideration of the salient differences can be pursued or reconciled as necessary, negotiations within the IGC has become characterized by costly political, institutional and economic negotiations that appear increasingly farther from conclusion.

7. Time and policy space will be vital in achieving consensus or workable solutions to the divergent IGC issues. This is particularly relevant in the context of the impact of current negotiations and future international legal instrument(s) on national policies, strategies and laws of WIPO member states. Cognizant of this, a conversion of the IGC into a standing committee will provide the requisite time for reflection and consultation in between formal meetings of the new Committee.

8. This proposal by the African Group seeks to build on the accomplishments made within the IGC, and to institutionalize the notable gains made within a more conducive and sustainable working environment. It is the considered belief of the Africa Group that the proposed structural change will permit member states' focus to remain firmly geared towards finding solutions and forging new means of advancing negotiations.

9. Like the majority of WIPO's Member States, GRs, TK, and TCE's form an integral part of the legal, moral and economic objectives of countries in the African Group. The African Group considers that WIPO's work in this sphere should no longer be subject to a renewed mandate every biennium, while normative advancements are made in other international fora. The attendant risk of dislocating the role of IP (and thus WIPO) in the context of emerging national, regional and international legal regimes for the protection of GRs, TK and TCEs has material and far-reaching implications for the transnational innovation system, and for the growing thicket of international IP rules around which such innovation should flourish - both formal and informal.

10. The African Group therefore requests the 2015 General Assembly to approve the conversion of the IGC into a Standing WIPO Committee under the terms outlined in paragraphs I - IV below.

I. **Title of the New Committee**

Standing Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (SCTK)¹.

II. **Mandate**

Bearing in mind the importance of a harmonized international IP system for GRs, TKs and TCEs, the Development Agenda Recommendations, and the need to equitably promote and protect all forms of knowledge and asset bases, the WIPO General Assembly agrees that the mandate of the SCTK shall, without prejudice to the work pursued in other fora, be as follows:

- a. To focus on and expedite text-based negotiations with a view to narrowing existing gaps and reaching agreement on international legal instrument(s) that will ensure the effective protection of GRs, TK and TCEs;
- b. To proceed based on the existing work carried out by the IGC and use all WIPO working documents, including WIPO/GRTKF/IC/28/4, WIPO/GRTKF/IC/28/5 and WIPO/GRTKF/IC/28/6, as well as any other textual contributions by members. Prior to the first meeting of the SCTK, a mechanism to streamline the existing working texts should be undertaken by a decision of the Chair of the General Assembly in consultation with member states;
- c. To submit a recommendation to the 2017 General Assembly on the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs for consideration and decision on whether to convene a Diplomatic Conference(s);
- d. The formal sessions of the SCTK will be convened based on the standard ordinary sessions of WIPO Standing Committees. However, taking note of the utility served by the WIPO Seminars on IGC related subjects, provision shall be made for the Secretariat to organize inter-sessional fora for building regional and cross-regional knowledge and consensus on issues related to IP and GRs, TK and TCEs;
- e. Each session of the SCTK will commence with a panel on indigenous communities to continue to enrich and contextualize SCTK negotiations. The work programme will also make provision for the holding of Ambassadorial/Senior Capital-Based Officials meeting as determined by the SCTK;

¹ The acronym SCTK is premised on the common role of traditional knowledge within the three subject areas on which the SCTK will be focused (Genetic Resources, Traditional Knowledge and Folklore). Also, change of term from Folklore to Traditional Cultural Expressions will be more contemporary and reflective of the subjects.

- f. The General Assembly requests the International Bureau to continue to assist the Committee by providing member states with necessary expertise and funding, in the most efficient manner, of the participation of experts from developing countries and least developed countries, following the usual formula for the IGC. The Secretariat (the International Bureau) will also continue to provide secretarial support to the SCKT, with formal documents and interpretation provided in all six languages of the UN;
- g. The General Assembly takes note of the possibility for members of the IGC to request studies or to provide case methods to inform the work of the SCKT. However, such activities are not to delay progress or establish any preconditions to the text-based negotiations.

III. Membership and Observers of the SCKT

Membership of the SCKT will be open to all member states of WIPO, the Paris Union for the Protection of Industrial Property and the Berne Union for the Protection of Literary and Artistic Works. In addition, member states of the United Nations that are not members of WIPO or the Paris or Berne Unions, intergovernmental organizations, and non-governmental organizations accredited with observer status at WIPO may participate in the Committee in an observer capacity. Furthermore, special rules of procedure should extend membership without the right to vote to the European Union and representatives of indigenous and local communities.

IV. Organizational Rules of Procedure

The SCKT will follow the standard WIPO Rules of Procedure adopted for WIPO bodies, except for a departure to accommodate the proposals outlined in section III of this document.

- 11. Accordingly, the African Group invites the General Assembly to approve:
 - (i) *a conversion of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) into the Standing Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (SCKT) for the purposes outlined in this document and the terms contained therein;*
 - (ii) *the working arrangements proposed for the SCKT in this document.*