

Inter Governmental Committee on Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions

Introduction

The Inter Governmental Committee on Traditional Knowledge, Genetic Resources, Traditional Cultural Expressions and Folklore (IGC) was established by the WIPO General Assembly in October 2000. It provides a forum for debate and development of legal mechanisms for protection of traditional knowledge (TK), Genetic Resource (GR) and traditional cultural expressions (TCEs) against misappropriation and misuse, and the intellectual property (IP) aspects of access to and benefit-sharing in genetic resources.

2 The IGC met for the first time in 2001 and has so far held 15 sessions. The 14th session of IGC held in June-July 2009 had ended in an impasse over the future work of the committee. It was decided that the mandate for continuation and the terms of reference for the committee would be decided by the member States of WIPO in the General Assembly in September- October 2009.

Mandate of IGC

- At the last session of the General Assembly in September-October 2009, member states adopted a clearly defined work plan and terms of reference to guide the IGC's work over the next two years.
- States agreed that the IGC would undertake negotiations with the objective of reaching agreement on a text of an international legal instrument (or instruments), which would ensure the effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs).
- The decision also provided for three inter-sessional meetings of working groups to take place in 2010/11, in addition to the four regular sessions of the IGC.
- Work over the next two years will build on the previous work of the IGC. The basis for text-based negotiations will be the existing WIPO working documents on GRs, TK, and TCEs.
- The IGC is to submit to the 2011 General Assembly the text (or texts) of an international legal instrument(s) which would ensure effective protection of GRs, TK and TCEs. The 2011 session of the General Assembly would then decide on convening a Diplomatic Conference.

Developments after the Mandate given in the last General Assembly

15th Session of IGC (December 7-11, 2009)

3 In the 15th session of the IGC held in December 2009 the Indian Delegation underscored the need to have a legally binding treaty on traditional knowledge, genetic resources and traditional cultural expressions. The interventions by the Indian delegation actually led to initiation of article wise text based negotiations.

4. However, the African Group along with countries of the Asian Group wanted to discuss the work plan for the proposed inter-sessions before embarking on any substantive discussions. They therefore insisted that the work plan for the inter-sessions be deliberated upon.

5. The 15th session of the IGC could not decide the work plan for the inter session working group (IWG), it was therefore agreed that the next session of IGC would be held at the earliest possible and this would decide the work plan for IWG.

16th session of IGC (May 3-7, 2010)

6. The 16th session of IGC will be held from May 3-7, 2010. Three major issues that will be under discussion in the meeting

- i) Work Plan of the Inter-sessions Working Group (IWG)
- ii) Draft Texts on protection of TK, GR and TCEs
- iii) Experience sharing by countries and groups regarding intellectual property and TK, GR and TCEs.

i) Work Plan of the Inter-sessions Working Group (IWG)

There are two proposals for consideration-one from the African Group and the other from the Group B countries.

I African Group Proposal

A. *IWG-Timetable and Issues*

- a) The First Intersession be held on Traditional Cultural Expressions, the second intersession be held in October 2010 on Traditional Knowledge and the third intersession be held in February/March 2011 on Genetic Resources.
- b) The issues to be discussed in IWG on TCE and TK would include: definitions and object of Protection; Exceptions and Limitations and Duration; Prior Informed Consent (PIC), Rights-Moral/Economic; Beneficiaries and Sui generis options for protection
- c) The issue to be discussed in IWG on GR would be on developing range of options for the IP related aspects of PIC and ABS; developing alternative proposal for dealing with the relationship between IP and genetic resources as requested by the Convention on Biodiversity.

B. Composition

- a) Regionally balanced with 27 representatives nominated by Member States and 10 experts from the Accredited Observers
- b) IGC would give the intersession working group its mandate.
- c) IWG would submit draft recommendations or text for consideration of the IGC.
- d) IWG will meet for 10 day at a stretch at Geneva.

II. Group B Proposal

A IMG Timetable and issues

- a) The first inter session working group be held on TK, GR and TCE and the issues should comprise definitions and objectives.
- b) The second and third intersession will consider further questions raised by the IGC in the course of its discussions.

B. Composition

- a) technical experts nominated by Member States.
- b) composition of the working group based on efficiency, transparency and inclusive representation.
- c) technical experts will not make opening statements
- d) provide legal and technical analysis, options and scenarios for consideration of the IGC.

e) Each IWG would be for 5 days.

Options for India

Option 1: Support African Proposal in totality.

The members to Convention on Biodiversity are already negotiating a legally binding treaty on the type of protection for Genetic Resources and associated Traditional Knowledge. The negotiations are to be completed by October 2010. We could await the outcome and complementary steps could then be taken in WIPO to enable effective implementation or to deliberate on any issue referred to it by the Conference of Parties to the CBD. Therefore, in WIPO we could begin negotiations on TCE and proceed to GR and TK at a later date as suggested by the African Group.

Option 2: Support African Group on issues and the time table of the IWG but suggest that broader representation of experts be allowed as restricting it to 27 may mean that technical experts from India may not be included in the IWG discussions.

ii) Draft negotiating text on protection for TK, GR and TCE

Draft documents exist, two of which (on Traditional Knowledge and Traditional Cultural Expressions) are in legal format. In so far as Traditional knowledge is concerned, issues of major concern for India are disclosure of source of genetic resources associated with TK in patent applications, and Prior Informed Consent (PIC) and Access & Benefit Sharing (ABS) in the case of use of TK. The Indian Patents Act and the Bio-diversity Act already provide for these. India has compiled a Traditional Knowledge Digital Library (TKDL) to provide to Patent Office an easily searchable database. The document of TCE is being negotiated by the Ministry of HRD. Similar requirements of disclosure, prior informed consent and access and benefit sharing are included in the text on TCE.

India's stand so far has been that WIPO should move towards negotiations for a substantive treaty or treaties for protection of Traditional Knowledge, Traditional Cultural Expressions including Folklore, and Genetic Resources. India had earlier taken a lead in the matter by organising an Asia Pacific Policy forum meet at Cochin in which the African Intellectual Property Office was also present and in facilitating a Cochin Declaration which contains draft treaty language proposals on the issues, passed. The present documents of WIPO which have been identified for further discussion derive from the Cochin Declaration.

India's stand at the negotiations

India wants a legally binding treaty which provides effective protection on TK, GR and TCEs. Protection provided should include disclosure of origin of genetic resources, prior informed consent and access and benefit sharing. We should

negotiate the text based on this stand. We have initiated the process of involving experts for negotiations. Prof N.S Gopalakrishnan, IPR Chair Cochin University will assist the negotiating team.

iii) Experience sharing by countries and groups regarding intellectual property and TK, GR and TCEs.

Information documents have been compiled by WIPO which reproduce the submissions of countries on the existing regimes on protection of Genetic Resources in their country. No action is required on this.

Action point

- 1) The Inter Ministerial Group could direct that Ministry of Environment and Forests prepare an information document on existing regime in India on Genetic Resources.

- 2) An information document on Traditional Knowledge Digital Library could also be prepared and placed for information of the member states.(TKDL Unit CSIR/AYUSH to prepare)