

CALL OF THE EARTH LLAMADO DE LA TIERRA

ISSUES IN INTELLECTUAL PROPERTY POLICY 6

The Participation of Indigenous Peoples in International Intellectual Property Policy Making

The Issue:

While IP debates relevant to traditional knowledge, cultural expressions and human genetic resources are all about Indigenous Peoples and directly affect their cultural integrity and livelihoods, Indigenous Peoples have only limited participatory rights in the international policy making fora where decisions are made. In some processes, Indigenous Peoples have no rights of participation at all.

The Issue in Context:

Arrangements for participation of Indigenous Peoples vary widely among the relevant fora. For example:

Indigenous Participation within the World Trade Organization (WTO)

There is no provision for civil society participation in World Trade Organization decision making processes. The WTO conducts all of its negotiations and most of its other business privately. Observation by civil society is not allowed. Many documents are restricted for 6 months after their submission, making it difficult for civil society to put their opinions to governments in a timely manner. In response to criticism of lack of transparency, there have been some initiatives, such as NGO briefing sessions, that attempt to increase transparency. However, it is largely accepted that these initiatives are of limited value – they neither amount to observation nor meaningful participation of Indigenous Peoples nor of any other members of civil society. In the WTO dispute settlement mechanism, test cases have established that amicus briefs may be submitted.

Indigenous Participation within the Convention on Biological Diversity (CBD)

The CBD, particularly the work associated with the implementation of Article 8(j), is the most advanced of the fora in terms of facilitating Indigenous Participation. The CBD has recognized the value of Indigenous Participation (Decisions VI/10, V/16 of the Conference of the Parties). It has the most facilitative rules and processes and in numbers has attracted more indigenous participants than other relevant fora. International networks, national organizations and local indigenous groups have been participating in the working groups on Article 8(j) and related provisions, as well as the working group on Access and Benefit Sharing and the Conference of the Parties. Indigenous participants have organized an independent forum, the International Indigenous Forum on Biodiversity (IIFB), where they discuss, and where possible, coordinate positions.

Arrangements for Indigenous participation are most advanced in the 8(j) working group where Indigenous participants are appointed to chair the working group alongside

government representatives. Indigenous participants are in also permitted to make statements to the meeting.

Indigenous Participation within the World Intellectual Property Organization (WIPO)

Indigenous Peoples organizations' are able to apply to observe meetings of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), and to make statements after Government representatives. They have no role in decision making.

Due to the lack of any funding arrangements for their participation Indigenous Peoples have participated in only very small numbers. Proposals for greater participation and the development of funding arrangements were made at the previous IGC session and will be revisited at the Committee's Sixth session.

Indigenous Participation: the Permanent Forum and other UN processes

A Permanent Forum on Indigenous Issues within the UN system has been formed. The Forum is a subsidiary organ of the Economic and Social Council of the United Nations and consists of 16 members, 8 members nominated by governments and elected by the Council and 8 members elected by indigenous groups and appointed by the President of the Council following formal consultation with the bureau and the regional groups. States, United Nations bodies and organs, inter-governmental organizations and non-governmental organizations in consultative status with the Council can participate as observers. Organizations representative of Indigenous Peoples can also participate as observers in accordance with the procedures that have been applied in the Working Group on Indigenous Populations. The Forum serves as an advisory body to the Council with a mandate to discuss indigenous issues.

In addition, Indigenous Peoples continue to participate in the Working Group on indigenous populations as well as the discussions for the Draft Declaration on the Rights of Indigenous Peoples.

Indigenous Perspectives:

Indigenous Peoples have called for full and effective participation in all policy making processes where their interests are discussed. This is warranted in light of the obligations of a number of states under various international and national instruments and would reflect the right of self-determination asserted by Indigenous Peoples.

The Way Forward:

Full and effective participation of Indigenous Peoples in all policy making processes that affect them is a necessary pre-cursor to appropriate policy making. In a number of different fora Indigenous Peoples have called for participatory arrangements that reflect their status as rights holders.

Notes

Decisions VI/10, V/16 of the Conference of the Parties Convention on Biological Diversity

United Nations Permanent Forum on Indigenous Issues

www.un.org/esa/socdev/pfi/

The WTO and Civil Society, Comments by the Director General to US NGOs,
http://www.wto.org/english/forums_e/ngo_e/ngospe_e.htm