

## **Committee on Development and Intellectual Property (CDIP)**

### **Twentieth Session**

**Geneva, November 27 to December 1, 2017**

### **CONTRIBUTION OF THE RELEVANT WIPO BODIES TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS**

*Document prepared by the Secretariat*

1. The WIPO General Assembly at its forty-ninth session held in Geneva, from October 2 to 11, 2017, considered the document WO/GA/49/16 on “Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations”.
2. The WIPO General Assembly took note of the contents of the above-mentioned document and decided to forward to the Committee on Development and Intellectual Property (CDIP) the report referred in that document.
3. Accordingly, the contribution of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) to the implementation of the respective Development Agenda Recommendations is reproduced below from its report to the WIPO General Assemblies:

Report on the IGC, document WO/GA/49/11, paragraphs 13 and 14;

“13. Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, IGC 34 also discussed the contribution of the IGC to the implementation of the Development Agenda (DA) Recommendations.

“14. In this regard, the following statements were made at IGC 34. These will also appear in the initial draft report of IGC 34 (WIPO/GRTKF/IC/34/14 Prov.), which will be made available, as requested by the IGC, by August 31, 2017:

“The Delegation of Senegal, speaking on behalf of the African Group, reiterated the importance of the implementation of the DA recommendations. The IGC had an extremely important role to play, specifically with regard to Cluster A on capacity building and technical assistance. Recommendation 18 urged the IGC to accelerate the process on the protection of GRs, TK and TCEs, without prejudice to any outcome, including the possible development of an international instrument or instruments. The IGC should intensify its efforts in order to fulfill that task. The three texts should be accelerated in order to have better readability of the contribution of the IGC to the implementation of the DA.

“The Delegation of Indonesia, speaking on behalf of the LMCs, acknowledged the various activities undertaken by the Traditional Knowledge Division and WIPO in general to provide regulatory advice and other development-oriented assistance to developing and least developed countries. It urged WIPO to continue to contribute in that area.

“Recommendation 18, adopted in 2007, urged the IGC to accelerate the process on the protection of GRs, TK and TCEs, without prejudice to the outcome, including the possible development of an international instrument or instruments. One of the most important contributions of the IGC was the implementation of the DA recommendation for the conclusion of the three subjects under the negotiations with an outcome of an international legally binding instrument(s) that would enhance the transparency and the efficacy and would protect tradition-based knowledge in the modern IP framework.

“The Delegation of the Islamic Republic of Iran recalled the importance of an efficient and practical coordination mechanism to realize the contribution of all WIPO Committees towards the full and effective implementation of the DA recommendations. Regrettably, despite the decision of the 2010 WIPO General Assembly, the proper functioning of the system had turned out to be a challenge in the implementation of the DA recommendations, which should be addressed by Member States at the General Assembly and the Committee on Development and Intellectual Property. The fact that Recommendation 18 specifically referred to the IGC and called for the acceleration of its process was a clear demonstration of the importance of the IGC’s negotiations and its outcomes for development objectives. The IGC process was an obvious example of development-oriented IP norm-setting in WIPO. Success would send a message to developing countries that WIPO was a UN specialized agency promoting IP rights, taking into account development concerns. By contrast, the failure of the process would not only undermine all ongoing norm-setting in the IP system, but also send a wrong message that WIPO Member States were not determined to address the IP system in its entirety so as to enable developing countries to enjoy the necessary protection. It was a long pending aspiration of the right holders and beneficiaries in many countries to see that their TK, TCEs and GRs be protected against misappropriation and misuse. Doing so would move the IP system in a more balanced direction, i.e. increasing the interest of developing countries in the IP system, empowering an enabling environment for development and enhancing the contribution of developing countries to global knowledge and global cultural partnerships. To realize all of those objectives, the establishment of international legally binding instruments to protect TK, TCEs and GRs was essential. The IGC should devise a mechanism which would ultimately bring comfort to TK, TCEs and GRs to promote creativity and innovation. Acknowledging the progress undertaken in the IGC, the IGC could not continue open-ended negotiations. Accordingly, at the end of the current

mandate, it was time for the IGC to make a final decision and complete the work that had been ongoing for 16 years. The Delegation highlighted the importance of the Secretariat's technical assistance to countries in order to enable them to formulate national protection systems for TK, TCEs and GRs, as well as to explore methods for the commercialization of these subject matters for the benefit of their owners.

"The Delegation of Japan did not mean to debate, but it understood that the debate on the coordination mechanisms had been concluded.

"The Delegation of Nigeria supported the statements made by the Delegation of the Islamic Republic of Iran, the Delegation of Indonesia, on behalf of the LMCs, and the Delegation of Senegal, on behalf of the African Group. It joined all the delegations that had requested the IGC to accelerate its work towards adopting functional minimum standard instruments that would ensure the effective protection of GRs, TK and TCEs. That would be a bona fide way for the IGC and for Member States, especially developing countries, to feel ownership of the IGC's significant steps to protect all forms of knowledge and to equate them with the value, relevance and integrity that they should enjoy.

"The Delegation of Brazil associated itself with the statement made by the Delegation of Indonesia, on behalf of the LMCs. The DA was a major landmark in the history of WIPO. It had been adopted after three years of intense negotiations that aimed at putting broader societal interests at the core of WIPO's activities. That was a matter of legitimacy and the IGC had a major role in ensuring that important mission would be achieved. Recommendation 18 stated that Member States should accelerate the process on the protection of GRs, TK and TCEs. In spite of the clear command given by the General Assembly, it was a sign of magnitude of the task that after 10 years, the IGC was still a long way from agreeing on binding instruments on GRs, TK and TCEs. The Delegation urged all delegations to show constructive spirit and positively contribute to the discussions by presenting proposals consistent with the goal of narrowing existing gaps as the mandate stated. It pledged to show that same constructive spirit and listen in good faith to everyone's views to reach a mutually agreed and satisfactory solution.

"The Delegation of Uganda joined the comments made by the Delegation of Senegal, on behalf of the African Group, the Delegation of Indonesia, on behalf of the LMCs, and the Delegation of Nigeria, on supporting the need to set up a legally conducive environment for the protection of GRs, TCEs and TK. It appreciated the work of the African Bureau of WIPO in supporting the capacity-building initiatives in setting IP instruments in Africa. Many African countries were challenged in that area, and most of the GRs, TCEs and TK were misappropriated because of a lack of an acceptable international agreement. It asked that the IGC accelerate its work for an instrument(s) and that the African Bureau of WIPO continue to support awareness-raising and capacity-building initiatives so that African countries could be able to set up their own instruments to operationalize international IP instruments. Uganda was already working towards developing a legal framework to address the issue of IP in the country, and it was committed to ensuring that the issues of indigenous peoples were taken into consideration in the areas of GRs, TK and TCEs.

"The Delegation of Indonesia appreciated the contributions of the IGC and the Traditional Knowledge Division in the implementation of the DA, and aligned itself with its comments made on behalf of the LMCs and the comments made by the Delegation of Senegal, on behalf of the African Group, and the Delegations of Brazil, the Islamic Republic of Iran, Uganda and Nigeria. TK and TCEs reflected the diversified aspirations of all Member States, particularly developing and least developed countries. The IGC should be able to

continue its work to realize those aspirations. It recalled DA Recommendation 18. The discussion on the coordination mechanism was concluded but the IGC had at least one, if not more, DA recommendations that were very relevant. The IGC should be able to contribute to the DA recommendations in the three subject matters under negotiation.

“The Representative of Tupaj Amaru said that, since the establishment of the IGC in 2000, there was a lack of the political will of Member States. Over the course of time, indigenous peoples had not been recognized as peoples, as subjects under international law. He recalled the IGC’s mandate. After all those years of debate, the IGC should revise and change its working methodology and procedures. The General Assembly had invited the IGC to examine its procedures, its rules, in order to strengthen and acknowledge the substantive contributions of indigenous peoples to the negotiation process, in order to agree on a binding international instrument(s). And yet, the IGC had not strengthened the rules and procedures for the participation of indigenous peoples in the negotiation process.

“The Representative of ADJMOR, speaking on behalf of the Indigenous Caucus, was aware of the problems and urged all parties to show flexibility during the negotiations in order to move forward toward a just and equitable international instrument(s). He hoped that WIPO would consider the issues with regard to GRs, TK and TCEs, and would make that issue a cross-cutting issue. GRs, TK and TCEs were important issues for indigenous peoples and should be considered within the context of local development. It was also part of the SDGs. He hoped that indigenous peoples would be able to continue to participate fully in the process.”

*4. The Committee is invited to take note of the information contained in this document.*

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