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The WIPO Negotiations on the Protection of Traditional Knowledge and Traditional Cultural Expressions Move Towards Clearer Objectives for the International Instrument

By Dr. Viviana Munoz Tellez

The 53rd session of the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) in September 2026 moved past a long textual standstill by agreeing to changes to the draft texts on traditional knowledge and traditional cultural expressions, including a new proposed formulation of objectives. This progress reflects growing alignment among the African Group, the Asia-Pacific Group, the Group of Latin American and Caribbean Countries (GRULAC) and Indigenous Peoples and local communities, with the Like-Minded Countries playing an important role as a cross-regional group. Building greater convergence among them, in particular on the obligations the instrument will create, will be important ahead of the 2027 WIPO Assemblies.

La 53e session du Comité intergouvernemental de la propriété intellectuelle relative aux ressources génétiques, aux savoirs traditionnels et au folklore (IGC) de l'Organisation mondiale de la propriété intellectuelle (OMPI) qui s'est tenue en septembre 2026, a mis fin à une longue impasse sur le plan textuel en approuvant des modifications apportées aux projets de textes relatifs aux savoirs traditionnels et aux expressions culturelles traditionnelles, notamment une nouvelle formulation proposée pour les objectifs. Ces progrès reflètent une convergence croissante entre le Groupe africain, le Groupe Asie-Pacifique, le Groupe des pays d'Amérique latine et des Caraïbes (GRULAC) ainsi que les peuples autochtones et les communautés locales, le Groupe des pays partageant les mêmes vues jouant un rôle important en tant que groupe interrégional. Il sera essentiel de renforcer cette convergence entre ces différents acteurs, notamment en ce qui concerne les obligations que l'instrument créera, dans la perspective des Assemblées de l'OMPI de 2027.

La 53.ª sesión del Comité Intergubernamental sobre Propiedad Intelectual y Recursos Genéticos, Conocimientos Tradicionales y Folclore (CIG) de la Organización Mundial de la Propiedad Intelectual (OMPI), celebrada en septiembre de 2026, logró superar un prolongado periodo de estancamiento en las negociaciones sobre los textos, al acordarse modificaciones a los proyectos de texto relativos a los conocimientos tradicionales y las expresiones culturales tradicionales, incluida una nueva propuesta de formulación de los objetivos. Este avance refleja una creciente convergencia de posiciones entre el Grupo Africano, el Grupo de Asia y el Pacífico, el Grupo de Países de América Latina y el Caribe (GRULAC) y los pueblos indígenas y las comunidades locales, en un proceso en el que los Países de Ideas Afines han desempeñado un papel importante como grupo interregional. Será importante seguir promoviendo una mayor convergencia entre estos grupos, en particular respecto de las obligaciones que establecerá el instrumento, de cara a las Asambleas de la OMPI de 2027.

2026年9月举行的世界知识产权组织（WIPO）知识产权与遗传资源、传统知识和民间文学艺术政府间委员会（IGC）第53届会议，通过就传统知识和传统文化表现形式的草案文本达成修改共识——包括对目标提出新的表述方案——从而打破了长期以来的文本僵局。这一进展反映出非洲集团、亚太集团、拉丁美洲和加勒比国家集团（GRULAC）以及土著和当地社区之间的共识日益增强，其中“志同道合国家”作为跨区域集团发挥了重要作用。在2027年WIPO大会召开之前，进一步促进各方达成共识——特别是在该文书将产生的义务方面——将至关重要。

The South Centre participated as an observer in the [53rd session](#) of the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) held from 16 to 25 September 2026.

After two decades, the WIPO IGC continues to discuss how to effectively provide protection to traditional knowledge (TK) and traditional cultural expressions (TCEs), from an intellectual property (IP) perspective. Based on WIPO studies and multiple expert panels, experiences and discussions over the years on the gaps in existing forms of IP protection such as patents, copyright and trademarks for the protection of TK and TCEs, attention has focused on developing a sui generis system for protection. Crucially, as the discussion takes place in the context of WIPO, focusing on intellectual property questions, the sui generis system framework that is being discussed would be informed by existing forms of IP but seeks to adapt these to be suited to the characteristics of TK and TCEs, such as the fact that there may not be an individual author or creator, as TK and TCEs are often collectively held and passed on over generations.

For Indigenous Peoples and local communities that are key stakeholders in the IGC negotiations, the WIPO negotiation is also meant to advance the broader recognition and application of rights, including as framed in the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\) of 2007](#), which is non-binding and to which WIPO Member States give differing weight. The UNDRIP affirms that Indigenous peoples have the right to maintain, control, protect, and develop their cultural heritage, TK, and TCEs, and affirms their right to maintain, control, protect, and develop their intellectual property over that heritage, knowledge, and expressions. The WIPO IGC includes direct participation of Indigenous Peoples and local communities, presenting in a dedicated panel at the start of each IGC session and they can intervene and participate in plenary and informal discussions. However, the funding for their participation in the IGC is limited and therefore their participation is not fully representative of the vast number of Indigenous Peoples and local communities around the world with diverse traditions, customs, juridical systems and institutions. The IGC is also grappling with the question as to how the legal

instrument or instruments that will be developed can account for customary laws of Indigenous Peoples and local communities, in particular as customary law can determine the basis on which TK or TCEs may or may not be accessed by anyone outside the community, including requirements for their free, prior and informed consent and mutually agreed terms for access (which may provide for sharing benefits from the use of the TK or TCEs).

Some Member States do not want the possible IGC instrument(s) to recognize rights of Indigenous Peoples and local communities that would grant them the ability to condition access to their TK and TCEs. These Member States would rather the IGC focus on measures that can be taken within the IP system to prevent the erroneous grant of intellectual property rights (IPRs) over TK and TCEs or for inventions or creations that are based on TK or TCEs. However, it is a precedent that Member States were able in May 2024 to adopt a new treaty, the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (GRATK), that brings into the international IP system acknowledgement of the UNDRIP and the contributions of Indigenous Peoples and local communities. There is also longstanding opposition from some Member States to the IGC developing any legally binding treaty, and a preference for a non-binding outcome. The United States has stated its concern that the IGC should not create a new system that competes with the IP system. It also wants the IGC to agree to a survey exercise on how existing sui generis systems for TK and TCE protection function in practice.



During the [53rd session of the IGC](#), some progress was achieved as a result of the increasing alignment in the interests and positions of Indigenous Peoples and local communities as represented in the IGC, the Asia-Pacific Group, the African Group, the Group of Latin American and Caribbean Countries (GRULAC) and the broad cross-regional group of Like-Minded Countries (LMCs). One of the issues that is helping to bridge divergences is the flexibility shown by these groupings towards including other possible beneficiaries of the international instrument(s) in addition to Indigenous Peoples and local communities, as there is general agreement that the instrument/s should define broadly the eligibility criteria for protection. This, alongside with the flexibility for implementation in accordance with national law and customary laws and practices, as may be provided under national law, has been an important step in aligning positions of the majority of Member States and the Indigenous Peoples and local communities.

The 53rd IGC broke new ground as compared to previous sessions, even though it did not signal consensus on any core aspect of the negotiation process or draft texts. The IGC had been stuck in a dynamic whereby no changes were made to the draft texts on TK and TCEs, despite the significant discussions taking place during each previous meeting. Even Chair or Facilitator texts were not allowed to be forwarded to the next session as a basis for future negotiation, remaining only as side information documents. This methodology is in sharp contrast with other WIPO committees, such as the Standing Committee on Copyright and Related Rights (SCCR), where, in some processes such as that on a Broadcasting Treaty, the Chair has regularly been entrusted to present a new version of the text to the next session as a basis for negotiations.

In this context, it is an achievement worth noting that IGC53 was able to agree to changes to the draft texts. [The IGC decision](#) states: "The Committee worked, including text-based negotiations, on the basis of documents WIPO/GRTKF/IC/52/4 and WIPO/GRTKF/IC/52/5 and decided to continue this work at its next session on the basis of the texts, as modified at IGC/53."

The changes are few, but important. There is now growing convergence on what should be the objectives that the instrument/s for the protection of TK and TCEs are meant to achieve. The IGC deleted the alternative in the draft text that would have included reference to preserving and promoting innovation among the objectives. This reference left unclear whether it meant innovation by users of TK and TCEs or by their holders, and risked legitimizing use without the consent of TK and TCE holders, or to treating TK and TCEs as part of the public domain, free for anyone to use. As the objectives of an instrument guide how its other provisions are interpreted and implemented, this matters beyond the objectives themselves. The IGC agreed to include a new alternative proposing the objectives to include effective and adequate protection, and the appropriate use of TK and TCEs; prevention of the erroneous grant of IPRs over TK and TCEs; and recognition of Indigenous Peoples and local communities as holders of TK and TCEs. The reference to "appropriate use" signals that the instrument is not meant to prevent the use of TK and TCEs, but to clarify the conditions for use.

There are many outstanding issues in the negotiations; however, this small but significant development at IGC53 is a good step forward in methodology towards advancing the texts. The 54th session of the IGC, to be held in May 2027, will be the last session prior to the WIPO Assemblies in July, which will take stock of the progress by the IGC on its mandate to finalize an agreement on an international legal instrument(s) relating to IP which will ensure the balanced and effective protection of TK and TCEs. The mandate of the IGC ends with the WIPO Assemblies, and therefore the Assemblies will also have to decide on renewal and work plan. The South Centre will continue to support developing countries in this process. Building greater convergence among the regional groups, the LMCs and Indigenous Peoples and local communities, in particular on the obligations the instrument will create, will be important for the IGC to show it can deliver on its mandate. After two decades of negotiations, the aim should be to conclude the work, not merely to continue it.

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