

Measuring International Standards of fairness, morality and *order public* in terms of development objectives: Lessons from the WIPO IGC and beyond

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The World Intellectual Property Organization's (WIPO) Intergovernmental Committee (IGC) on Intellectual Property (IP) and Genetic Resources (GR), Traditional Knowledge (TK) and Folklore, had its mandate renewed in October 2017 for the next budgetary biennium 2018/2019. Established in 2000, the IGC, arguably, seeks to reach an agreement on an international legal instrument(s), without prejudging the nature of the outcomes(s), relating to IP, which will ensure a balanced and effective protection of GRs, TK and Traditional Cultural Expressions (TCEs). While the demanders in the IGC were originally developing countries, its establishment was not based on the demands of these countries but those of the then WIPO Director-General, not to address the development concerns of developing countries but to sustain the organization. More importantly, during the ongoing negotiations at the WIPO IGC, developed countries seem to be determining the direction of the negotiations.

The minimum international standards sought to be established by the IGC exclude issues that are complex or not clear. This does and will not address fairness, morality or *order public* issues.

This paper posits that when it comes to negotiating GRs, TK and TCEs, in the WIPO IGC, fairness, morality or *ordre public* is not to be measured according to whether a country is developed or not developed, much as on the face of it may seem the contrary. The *Maori* knowledge system in New Zealand, which is a developed country, is such an example. Indeed New Zealand falls under Group B (developed countries) for negotiation purposes at WIPO. The paper illustrates this view with examples from the IGC, the Convention on Biological Diversity (and its Nagoya Protocol) and other forums.