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- “Policy” objectives – “policy” is not the appropriate term. Policy is made at national level, often through very specific and detailed formal process. Therefore, the international legal instrument should simply refer to “objectives”.
- The original objective of the IGC exercise was to stop biopiracy and misappropriation through the IP system.

There are two ways to understand this:

- 1) Erroneous grants of patents and other IP rights:
e.g. the turmeric patent – eventually invalidated on TK as prior art (Ayurveda) or “Rooibos” as trademark – invalidated because it was a common noun already in use.
- 2) Patentable innovation or valid claim for other IP rights but no right (i.e. no prior informed consent) to have used GR or TK in the first place, or at least not without benefit-sharing.

Questions: How to address these two types of situation? Whether both types should be addressed in legal instrument(s) under negotiation in IGC?

Type 1: “Normal” functioning of IP system does not require special measures, just fine-tuning of sources of information. The current database proposals do not need the IGC, such instruments have already been developed by e.g. India and South Africa and are being used by patent examiners searching for prior art. There is, however, the issue of how to handle secret and sacred knowledge.

Type 2: Valid IP claims but subject to ABS regulations under national law.

ABS rights derive from the UN Charter and principles of international law; they were confirmed in the CBD and re-affirmed in the Nagoya Protocol. In addition, IPLC rights derive from fundamental human rights, affirmed in UNDRIP, UNESCO instruments, national laws and customary laws.

ABS originates from outside of the IP system, and it is not the role of the IP system to enforce ABS rights.

However, the IP system is fundamentally based on knowledge and information management – this is built into its very structure and founding concepts, e.g. prior art, non-obvious inventive step, encouragement and reward for disclosing invention (i.e. knowledge), which is then made available for further innovation, in exchange for a time-limited monopoly on the use of the invention.

Question: What objectives for GRs instrument in IP system?

- 1) Enhance its fundamental role as information and knowledge sharing tool – make this more effective and the whole system more transparent, so that it serve as a tool for States interested in enforcing ABS rights; and by doing so,
- 2) Make this corner of the UN system (i.e. WIPO and the IP system) mutually supportive with other international instruments dealing with GRs and associated TK.

If WIPO cannot do this we will have to look for solutions outside WIPO.