

## **Special Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore**

**Geneva, September 4 to 8, 2023**

### **REPORT ON VIRTUAL ACTIVITIES DECIDED BY THE FORTY-THIRD SESSION OF THE COMMITTEE**

*Prepared by the Secretariat*

1. The Forty-Third Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) made the following decisions regarding virtual activities to expedite the work of the IGC:

“The Committee decided that the Secretariat should organize further *ad hoc* virtual meetings of experts on possible disclosure requirements, and a virtual Seminar and/or other virtual technical meetings on information systems, registers and databases of genetic resources, traditional knowledge and traditional cultural expressions before the Forty-Seventh Session of the Committee, and provide written reports on such meetings to the Committee. These meetings should include experts reflecting different interests and balanced geographical representation, and should not replace nor delay the text-based negotiations underway in the Committee.”

“On information systems, registers and databases of genetic resources, traditional knowledge and traditional cultural expressions, the Secretariat is invited to issue an online survey which Member States and accredited observers could respond to, if they so wish. Responses to the survey would be published by the Secretariat online and in an updated version of document WIPO/GRTKF/IC/43/6.”

2. Document WIPO/GRTKF/IC/47/13, annexed to this document, provides a factual report on the virtual activities mandated by IGC 43, which could be valuable for this Special Session of the IGC.

3. *The Committee is invited to take note of the Annex to this document.*

[Annex follows]

## **Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore**

**Forty-Seventh Session**  
**Geneva, June 5 to 9, 2023**

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2. Pursuant to these decisions, the Secretariat issued an online survey, and organized *ad hoc* virtual meetings of experts on possible disclosure requirements, and virtual technical meetings on information systems, registers and databases of genetic resources (GRs),

traditional knowledge (TK) and traditional cultural expressions (TCEs). This document provides a factual report on these three virtual activities.

### ONLINE SURVEY ON INFORMATION SYSTEMS, REGISTERS AND DATABASES OF GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

3. On December 20, 2022, the Secretariat issued an online survey on information systems, registers and databases of GRs, TK and TCEs, which Member States and accredited observers could respond to, if they so wished. Member States and accredited observers were invited to respond to the survey by replying to a series of questions by May 12, 2023. Responses to the survey were received from Association pour le Devenir des Autochtones et de leur Connaissance Originelle (ADACO), Brazil, Croatia, Czech Republic, Ecuador, France, Guatemala, International Association for the Protection of Intellectual Property (AIPPI), Japan, Kyrgyzstan, Lao, Lithuania, Niger, Oman, Peru, Poland, Russian Federation, Slovenia, Spain, Thailand, Türkiye, Uganda, United States of America and Zimbabwe. The responses to the survey are available online at <https://www.wipo.int/tk/en/igc/consultations.html>

### VIRTUAL TECHNICAL MEETINGS ON INFORMATION SYSTEMS, REGISTERS AND DATABASES OF GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

4. The Secretariat organized virtual technical meetings of experts on information systems, registers and databases (referred to in this document as “information systems” for brevity) of GRs, TK and TCEs.

5. The objectives of these expert meetings were to analyze and discuss the technical and practical issues relating to information systems of GRs, TK and TCEs, and to support the IGC’s negotiations on information systems by making suggestions for clarity on the language in the draft international legal instruments on GRs, TK and TCEs before the IGC.

- The first meeting, which took place from February 13 to 16, 2023, addressed the following issues:
  - On GRs and associated TK: Noting Article 7 of the Chair’s Text of a Draft International Legal Instrument relating to Intellectual Property, Genetic Resources and Traditional Knowledge associated with Genetic Resources (WIPO/GRTKF/IC/43/5) and Article 10 of the Consolidated Document Relating to Intellectual Property and Genetic Resources (WIPO/GRTKF/IC/43/4), what could be the contents of an article on information systems in an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources as referred to in the decision to convene a Diplomatic Conference?
  - On TK: Noting Articles 5BIS of the TK Draft Articles (WIPO/GRTKF/IC/46/4), what could be the contents of an article on databases in a future international legal instrument relating to IP and TK?
  - On TK and TCEs: Noting Article 11 of the TK Draft Articles (WIPO/GRTKF/IC/46/4) and Article 9 of the TCEs Draft Articles (WIPO/GRTKF/IC/46/5), at an international level, would general protection be conditional on registration of TK and TCEs in databases, registries or any other formalities?

- The second meeting, which took place from March 27 to 30, 2023, addressed some technical and practical issues relating to the establishment and maintenance of information systems, databases or registries on GRs/TK/TCEs, such as:
  - At the international level, what should be interoperability standards between the information systems in one Member State and the information systems in another Member State, such as standards on (i) data formats (e.g., XML, data fields, etc.); (ii) content data (e.g., characterization, function, technical use of GRs, TK or TCEs); (iii) rights metadata (e.g., right holder, subject matter, date of documentation, etc.); or (iv) structures of the information systems and services (e.g., APIs, etc.)?;
  - What should be the principles and modalities related to the sharing of relevant information related to GRs, TK and TCEs, especially periodicals, digital libraries and databases of information related to GRs, TK and TCEs, and how should WIPO Members cooperate in the sharing of such information?
  - How to structure data to be stored in databases (e.g. GRs and non-secret TK associated with GRs) with a view to conducting effective prior art searches?
  - What impact do national databases have on GRs and non-secret TK associated with GRs protected under tribal or IP laws (e.g. a third party unlawfully accesses a national database or WIPO portal)?

6. Mr. Felipe Carino, one of the IGC Vice-Chairs, chaired the meetings.

7. Member States and accredited observers were invited to nominate experts by submitting the name and full contact details of the nominee(s), as well as a curriculum vitae that demonstrated their area of expertise. The Secretariat selected experts based on their expertise and experience, taking into account regional and gender balance. In addition to the selected experts nominated by Member States and observers, the Secretariat invited Mr. Paul Oldham, Director, One World Analytics, to participate as an expert in the meetings. The list of experts of the meeting is contained in Annex I.

8. The experts participated in an individual capacity. The meetings followed Chatham House Rules, i.e., “participants are free to use the information received, but neither the identity nor the affiliation of the speakers, nor that of any other participant, may be revealed”. All experts were also requested to respect the informality of the meetings, and not to communicate to the public, whether “live” or at any future time, the content or nature of the discussions taking place in the meetings, whether in general terms or by way of quoting specific experts.

9. Each meeting took place over four days, for 2.5 hours per day.

10. The meetings were neither webcasted nor recorded.

11. Interpretation from and into English, French and Spanish was provided for the meetings.

12. The experts of the Virtual Technical Meetings on Information Systems, Registers and Databases of Genetic Resources (GRs), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs) had fruitful discussions and made the following recommendations to IGC 47 for the consideration by the Committee:

1. The suggested text for Article 7 of the Chair’s Text of a Draft International Legal Instrument relating to Intellectual Property, Genetic Resources and Traditional Knowledge associated with Genetic Resources (WIPO/GRTKF/IC/43/5) on Information Systems :

## Article 7

### DATABASES

Contracting Parties are encouraged to facilitate the establishment of databases of GRs and Associated TK, in consultation with relevant stakeholders, taking into account their national circumstances. With appropriate safeguards, such databases are encouraged to be accessible to Offices for the purposes of search and examination of patent applications.

[An online portal will be established by the International Bureau of WIPO, mainly from existing national databases, through which Offices [and authorized users] would be able to directly access and retrieve data from such databases, subject to appropriate safeguards.]<sup>1</sup>

2. The suggested text on databases of traditional knowledge in the first draft of the *Chair's Text of a Draft International Legal Instrument relating to IP and TK/TCEs* (WIPO/GRTKF/IC/46/CHAIRS TEXT) (without prejudging the nature of the text):

### DATABASES

Member States are encouraged to facilitate the establishment of databases of traditional knowledge, in consultation with relevant stakeholders, taking into account their national circumstances. With appropriate safeguards, such databases may be accessible to intellectual property offices for the purpose of preventing the erroneous grant of intellectual property rights.

[Such databases may also be used for the purpose of transparency, certainty, conservation, and/or transboundary cooperation, and may facilitate and encourage, as appropriate, the creation, exchange and dissemination of, and access to traditional knowledge.]

3. The suggested text on formalities in the first draft of the *Chair's Text of a Draft International Legal Instrument relating to IP and TK/TCEs* (WIPO/GRTKF/IC/46/CHAIRS TEXT) (without prejudging the nature of the text):

### FORMALITIES

Member States may require formalities for the protection of traditional knowledge/traditional cultural expressions, without prejudice to any existing rights of Indigenous Peoples and local communities.

4. In view of the complexity of the technical, legal and operational issues around the establishment and maintenance of information systems on GRs, TK and TCEs, the experts recommend to IGC 47 the establishment of a Subsidiary Technical Task Force by the IGC to further address the technical, legal and operational issues relating to information systems on GRs, TK and TCEs. Furthermore, the experts recommend that the 2024-2025 IGC mandate include a reference to the Subsidiary Technical Task Force. It is noted that the WIPO Secretariat would prepare a detailed proposal regarding the modalities of the Subsidiary Technical Task Force for consideration by IGC 48.
5. The experts endorse the format of the Virtual Expert Meetings and recommend that this tool be deployed by the IGC in the future on other topics.

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<sup>1</sup> Square brackets indicate sections of the text that were suggested by several experts but were not agreed upon by all the experts.

## VIRTUAL TECHNICAL MEETINGS ON POSSIBLE DISCLOSURE REQUIREMENTS

13. The Secretariat organized virtual technical meetings of experts on possible disclosure requirements.

14. The objectives of these expert meetings were to analyze and discuss substantive issues related to possible disclosure requirements with the aim of narrowing gaps and reaching a common understanding on core issues, in support the IGC's negotiations as per its mandate for 2022-2023. The experts were invited to make suggestions on the language in the draft international legal instruments on GRs and associated TK to the IGC, especially the Chair's Text of a Draft International Legal Instrument relating to Intellectual Property, Genetic Resources and Traditional Knowledge associated with Genetic Resources.

- The first meeting, which took place from March 13 to 16, 2023, addressed the following issues:
  - inclusion of associated TK
  - trigger of disclosure
  - content of disclosure
- The second meeting, which took place from May 1 to 3, 2023, addressed the following issues:
  - sanctions
  - relationship with information systems
  - relationship with other instruments.

15. Mr. Felipe Carino, one of the IGC Vice-Chairs, chaired the meetings.

16. Member States and accredited observers were invited to nominate experts by submitting the name and full contact details of the nominee(s), as well as a curriculum vitae that demonstrated their area of expertise. The Secretariat selected experts based on their expertise and experience, taking into account regional and gender balance. In addition to the selected experts from the nominations of Member States and observers, WIPO invited Ms. Margo Bagley, Emory University School of Law, United States of America; Mr. Nilce Ekandzi, Raymond Chabot Grant Thornton, Canada; and Mr. Frederic Perron-Welch, Grotius Centre for International Legal Studies, Leiden University, Netherlands, to participate in the meetings as experts. The list of experts of the meeting is contained in Annex II.

17. The experts participated in an individual capacity. The meetings followed Chatham House Rules, i.e., "participants are free to use the information received, but neither the identity nor the affiliation of the speakers, nor that of any other participant, may be revealed". All experts were also requested to respect the informality of the meetings, and not to communicate to the public, whether "live" or at any future time, the content or nature of the discussions taking place in the meetings, whether in general terms or by way of quoting specific experts.

18. Each meeting took place over four days, for 2.5 hours per day.

19. The meetings were neither webcasted nor recorded.

20. Interpretation from and into English and Spanish was provided for the meetings.

21. The experts focused their discussion on the Chair's Text of a Draft International Legal Instrument relating to Intellectual Property, Genetic Resources and Traditional Knowledge associated with Genetic Resources (WIPO/GRTKF/IC/43/5), and the summary of the discussion is as follows:

1. The experts agreed that “traditional knowledge associated with genetic resources” should be included in the Chair’s Text. [However, a clear definition of “traditional knowledge associated with genetic resources” needs to be included.](#)
2. Most of the experts agreed that disclosure requirements should not be extended to digital sequence information (DSI). The issue of DSI can be addressed in the review of the scope and contents of the instrument, as detailed in Article 9.
3. Suggested textual changes for Article 2 and Articles 3.1 and 3.2 of the Chair’s Text regarding the trigger and content of disclosure are as below:

### ARTICLE 3

#### DISCLOSURE REQUIREMENT

- 3.1 Where the claimed invention in a patent application is *materially* and *directly* based on GRs, each Contracting Party shall require applicants to disclose:
  - (a) the country of origin from which the GRs were obtained, or,
  - (b) in cases where the information in sub paragraph (a) is not known to the applicant, or where sub paragraph (a) does not apply, the source of the GRs.
- 3.2 Where the claimed invention in a patent application is *materially and directly* based on Associated TK, each Contracting Party shall require applicants to disclose:
  - (a) the indigenous peoples or local community that provided the Associated TK, or,
  - (b) in cases where the information in sub paragraph (a) is not known to the applicant, or where sub paragraph (a) does not apply, the source of the Associated TK.

In terms of relevant definitions in Article 2:

**“Country of origin”** means the country which possesses genetic resources in *in situ* conditions.

**“Materially and Directly based on”** means that the GRs and/or Associated TK must *have been necessary for and material to the claimed invention* and that *the claimed invention must depend on the specific properties of the GRs and/or insights from the Associated TK.*

**“Source of Genetic Resources”** refers to any source from which the applicant has obtained the GRs, such as indigenous peoples and local communities, a research centre, gene bank, the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), or any other *ex situ* collection or depository of GRs.



4. Regarding Article 6 of the Chair's Text (Sanctions and Remedies),
  - a) Some experts suggested adding to Article 6.2 the possibility to be able to correct erroneous information, in addition rectifying a failure to include the minimum information.
  - b) While most experts were not in favor of revocation, some experts supported revocation.
  - c) There was a general agreement that the order of Article 6.3 and 6.4 should be switched.
  - d) Some experts wondered whether it is necessary to include "solely" in Article 6.3.
  - e) The experts discussed the use of the term "fraudulent intent" in Article 6.4. Among the experts, there was not a common understanding of the term. Some experts suggested replacing it with "fraudulent or willful intent".
  - f) Some experts expressed their concerns about "post grant sanctions" in Article 6.4.
  - g) Some experts suggested deleting Article 6.5, as they believed it is not helpful in the context of a transparency measure. However, most experts believed that Article 6.5 is helpful as it encourages non-litigation dispute settlement. Some experts suggested replacing "shall" with "may", "adequate dispute mechanisms" with "alternative dispute resolutions", and "all parties concerned" with "the parties concerned".
5. Regarding Article 7 of the Chair's Text on Information Systems, the experts took note of the suggested text proposed by the experts that participated in the virtual technical meetings on information systems, registers and databases of GRs, TK and TCEs, and generally agreed with the suggestions. One additional suggestion was to emphasize the involvement of Indigenous Peoples and local communities by replacing "in consultation with relevant stakeholders" with "in consultation with Indigenous Peoples and local communities and other stakeholders". The experts also agreed that secret TK should not be included in databases.
6. Regarding Article 8 of the Chair's Text on Relationship with Other International Agreements, the experts agreed to delete the footnote to Article 8. Some experts suggested replacing "mutually supportive" with "coherent".

*22. The Committee is invited to take note of this document, consider the recommendation on the establishment of a Subsidiary Technical Task Force on information systems, and consider transmitting this document to the IGC Special Session.*

[Annexes follow]

ANNEX I

LIST OF EXPERTS

VIRTUAL TECHNICAL MEETINGS ON INFORMATION SYSTEMS, REGISTERS AND  
DATABASES OF GENETIC RESOURCES (GRS), TRADITIONAL KNOWLEDGE (TK) AND  
TRADITIONAL CULTURAL EXPRESSIONS (TCES)

Yassine Alla Ou Lhadj (Mr.), Moroccan Office of Intellectual and Commercial Property, Morocco

Jane Anderson (Ms.), International Science Council, United States

Andres Valladolid Cavero (Mr.), National Institute for the Defense of Free Competition and the  
Protection of Intellectual Property (INDECOPI), Peru

Kamal Eralp (Mr.), Turkish Patent and Trademark Office, Turkey

Dominic Keating (Mr.), United States Patent and Trademark Office, United States of America

Atsushi Kukuu (Mr.), Japan Patent Office, Ministry of Economy, Trade and Industry, Japan

Jianfeng Liu (Mr.), Institute for the History of Chinese Medicine and Medical Literature, China  
Academy of Chinese Medical Sciences, China

Wen Long (Mr.), Intellectual Property Publishing House, China

Aroha Mead (Ms.), International Science Council, New Zealand

Paul Oldham (Mr.), One World Analytics, United Kingdom

Shumi Pango (Ms.), Department of Science and Innovation, South Africa

Alejandro Peticari (Mr.), National Institute of Agricultural Technology (INTA), Argentina

Pwint Phyo Win (Ms.), Intellectual Property Department, Ministry of Commerce, Myanmar

Rekha Vijayam (Ms.), Office of the Controller General of Patents, Designs and Trademarks,  
India

Andreas Wieber (Mr.), German Association for the Protection of Intellectual Property, Germany

ANNEX II

LIST OF EXPERTS

VIRTUAL TECHNICAL MEETINGS ON POSSIBLE DISCLOSURE REQUIREMENTS

Margo Bagley (Ms.), Emory University School of Law, United States of America

Micaela Anabel Bonafina (Ms.), National Biodiversity Directorate, Ministry of Environment and Sustainable Development, Argentina

Axel Braun (Mr.), International Federation of Pharmaceutical Manufacturers & Associations (IFPMA), Switzerland

Marco D'Alessandro (Mr.), Swiss Federal Institute of Intellectual Property, Switzerland

Nilce Ekanzi (Mr.), Data Privacy, Raymond Chabot Grant Thornton, Canada

Kazuhide Fujita (Mr.), Japan Patent Office, Ministry of Economy, Trade and Industry, Japan

Zulay Poggy Gonzalez (Ms.), Service for Intellectual Property, Venezuela

Weiwei Han (Ms.), Patent Protection Association of China (PPAC), China

Preston Hardison (Mr.), Tebtebba Foundation, United States of America

Arais Fernandez Herrera (Mr.), Industrial Property Office, Cuba

Dominic Keating (Mr.), United States of America Patent and Trademark Office (USPTO), United States of America

Evgeniia Korobenkova (Ms.), Multilateral Cooperation Division, Federal Service for Intellectual Property (Rospatent), Russian Federation

Chidi Oguamanam (Mr.), Faculty of Law, University of Ottawa, Canada

Frederic Perron-Welch (Mr.), Grotius Centre for International Legal Studies, Leiden University, Netherlands

Thomas Reitingger (Mr.), German Patent and Trade Mark Office, Germany

Ann Ruth Reyes (Ms.), Intellectual Property Office of the Philippines (IPOPIL), the Philippines

Olivier Sauvageot (Mr.), International Seed Federation, Switzerland

Nadja Seibel Thomsen (Ms.), International Chamber of Commerce (ICC), France

Henry Kafunjo Twinomujuni (Mr.), Uganda Registration Services Bureau, Uganda

Rekha Vijayam (Ms.), Office of the Controller General of Patents, Designs and Trademarks, India

Lucie Zamykalová (Ms.), Industrial Property Office, Czech Republic

Fuwei Zhao (Mr.), Nanjing Institute of Environmental Sciences, Ministry of Ecology and Environment, China

[End of Annexes and of document]