

Position Paper of the Cannabis Embassy on the negotiations of the future Treaty on Genetic Resources and Associated Traditional Knowledge

22 January 2024

We are pleased to see the [WIPO IGC](#) move to a Diplomatic Conference after two decades of discussions, but we have reservations and serious concerns about the contents of the [current text](#) and the decision-making methodologies used.

Present all over the planet, and used by humans since prehistory, *Cannabis* and other genetic resources with a psychoactive effect, and human communities associated with these plants and fungi, are subject to two-fold high risks:

- 1) The general lack of protection for [Indigenous Peoples & Local Communities](#) (IPLC) with regard to their genetic resources, traditions and rights to access and benefit sharing, and lack of conservation strategies for their ecosystems and cultures;
- 2) The outright ban of psychoactive plants and fungi, and criminalization of associated [Traditional Knowledge](#) (TK) by international and domestic prohibition laws (including an explicit treaty provision calling governments to eradicate indigenous medical uses of some controlled plants)¹

It's a long way to reparations for IPLC victims of this double edged sword against their cultural inheritance and traditions. **But that long way starts with an international legal environment that is fair and just**, not designed to maintain the current imbalance of power in favour of large companies and academic institutions over the rights and dignity of Indigenous peoples, local communities, and small farmers around the world.

The world wants this Treaty to bridge the gaps in international law, but for now, it looks more like a fragile, one-way rope bridge. We continue to regret the selection of the "[Chair's text](#)" in 2022 as basis for the negotiations, and lament the rigid methodology adopted during the 2023 sessions, that impede the incorporation of any of the [amendments proposed by India](#) which would have rebalanced the text with regards to the decade-long gained consensus. **Our recommendations are detailed on the next two pages.**

The Cannabis Embassy is an horizontal advocacy, knowledge, and support platform of grassroots non-profit organizations, relaying the concerns of communities with an interest in any of the genetic resources under international drug control. Composed of consultative status observers, the Cannabis Embassy has followed IGC discussions and will have a voice at the [GRATK Diplomatic Conference](#) and in future work of the WIPO on IPLC rights and GR/TK.

"Drug policy reforms" are happening. But they systematically omit the traditional, cultural, sometimes sacred aspects of these "drugs." On the other hand, new legislation on some previously-banned controlled plants or fungi can offer opportunities to advance innovative and enforceable access and benefit sharing mechanisms or other measures to favour a harmonious and human rights-compliant IP environment for regulated psychoactive GR/TK.

¹ Article 49 of the 1961 Single Convention on narcotic drugs requires total eradication within 15/25 years.

Specific Concerns ahead of the 2024 Diplomatic Conference

As a **general recommendation**, when there is a debate on a specific provision or language, the **Consolidated Text should be used as a benchmark to guide negotiations**. Consensus has been reached on that text after 20 years of debate: no need to restart from scratch.

In addition, we recommend:

Preamble	References to broader Intellectual Property (IP) systems beyond patents must be added (to avoid closing the door to future improvement of the instrument).
	Add a direct acknowledgement of the UN Declaration on the Rights of Peasants (UNDROP).
	Add § to acknowledge different approaches towards property and ownership (in particular related to Nature) within cultures and traditions across the world.
	Add § to acknowledge the Rights of Nature ² in the context of the proposed UN Earth Assembly. ³
	Include reference to the emerging multilateral ABS systems and ethos.
Article 1: objectives	Add an explicit acknowledgment of IPLC rights.
	Include reference to alignment with the ABS system and benefit-sharing ethos.
Article 2: list of terms	We support a wording based on language proposed by Brazil: <i>“patents that arise from the utilization of GRATK or patents materially based on GRATK”</i> .
	“Materially” should be defined in article 2 to include hereditary functions of GRs in a way that clearly includes DSI. ⁴
Article 3: disclosure requirement	<u>§ 3.1 (a)</u> must mention “the country of origin of the GRs and, if different, the country from which the GRs were obtained”
	<u>§ 3.2 (b)</u> should be deleted and replaced with the following: “the country of origin of the ATK and, if different, the country from which the ATK were obtained”
	Before <u>Art. 3.3</u> , insert a subparagraph reading: “Applicants are required to provide proof of Free Prior & Informed Consent from legitimate right holders in the cases referred to in paragraphs 3.1 and 3.2”

² Language can be inspired in: [UNGA resolution 77/169](#) (preamble § 7 §8); [UNDROP](#) (preamble § 18). Ideally it would include the principle that natural organisms and ecosystems have rights and own themselves. Humans can develop knowledge based on information derived from GR but must share benefits with the original owners including the ecosystems, organisms and Indigenous communities that protect and care for them.

³ [Concept Note on UN Earth Assembly](#), Interactive Dialogue of the United Nations General Assembly to Commemorate International Mother Earth Day, Monday, 24 April 2023

⁴ Disclosure for DSI under this instrument can be in harmony with other relevant instruments, including for example mechanisms provided for under [Article 8j of the UN CBD](#).

	<p><u>§ 3.4:</u> include a period that shall not exceed the final date of submission for complete specifications (complete application) under the regular procedures of each patent office.</p> <p><u>§ 3.3 and § 3.5</u> should be deleted</p>
Article 4: Exceptions & Limitations	There are risks of allowing for ‘special case’ exceptions, the provisions should be tight enough to ensure this is only used sparingly rather than being a loop-hole used to circumvent the instrument’s intent and purpose.
Article 5: Non-Retroactivity	Current wording is acceptable to us.
Article 6: sanctions and remedies	In principle, a strong sanctions regime with no maximum standard should be included, and include the possibility of revocation as a sanction.
Article 7: information systems [<i>in relation to disclosure requirements</i>]	<p><u>§ 7.1</u> before “in coordination with relevant stakeholders” add: “with the express authorization of IPLC and other legitimate right holders, and” [operate in a way that respects the rights of indigenous peoples and local communities over their genetic resources and associated traditional knowledge]</p>
	<p><u>§ 7.2</u> who has access? What conditions for foreign patent offices to access</p> <p>The information systems should use data governance guidelines that encourage the application of the findability, accessibility, interoperability and reusability (FAIR) principles and the collective benefits, authority to control, responsibility, ethics (CARE) principles in an integrated and balanced way.</p>
	<p><u>§ 7.3</u> delete entirely, or include IPLC representation within technical working group/s and fair geographical spread of participation and decision-making.</p>
Article 8: relationship with other international agreements	At the end, add: “and in coherence with the UNDRIP and UNDROP”
Article 9: Review	Keep article 9 as such; the review should be done only by Contracting Parties.

IP	Intellectual Property	GRATK	GR and Associated TK
CBD	Convention on Biological Diversity	GR	Genetic Resources
ABS	Access and Benefit-Sharing	TK	Traditional Knowledge
DSI	Digital Sequence Information	PIC	Prior Informed Consent
IPLC	Indigenous Peoples and Local Communities	MTA	Material Transfer Agreement