

WIPO:

New Treaty on genetic resources and associated traditional knowledge

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

After more than 20 years of negotiations, the consensus reached on May 24 in Geneva (Switzerland) by the diplomatic conference of the **World Intellectual Property Organization has made it possible to sign a new International Treaty that regulates genetic resources and the traditional knowledge associated with them, and their protection against abuses by third parties through Intellectual Property rights.**

International law already protected genetic resources and traditional knowledge before the signing of this Treaty. In the face of "biopiracy", the 2010 **Nagoya Protocol** established certain rules, whereby "users" of genetic resources and associated traditional knowledge are obliged to obtain permission and enter into agreements with the "providers" of such resources and the holders of traditional knowledge, in order to share the results of their research and development activities. However, although this Protocol establishes general lines of good intentions, it does not cover Intellectual Property rights at any time.

This is the main point in which the present Treaty plays a relevant role. Specifically, it includes three key elements on genetic resources and associated traditional knowledge.

Requirement: Patent applicants will be required to disclose in their applications the origin of the genetic resources used in the development of the invention (biological elements such as plant parts, plant varieties, extracts...), as well as the traditional knowledge associated with these resources, acquired by local populations throughout their history; that is, the indigenous people and local communities that provided such knowledge must be revealed. If they are

unknown, the applicant must inform of the source of said knowledge; in other words, there is a need to disclose where they were obtained. And if it is completely unknown whether there are genetic resources or traditional knowledge linked to the development of the invention, the applicant must, at least, sign a declaration informing that he does not know this information (resource, knowledge and source).

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Sanctions and remedies: The Treaty imposes penalties for non-compliance with its rules, although it does not allow patents to be revoked if the applicant has not disclosed the source. However, it does allow for other sanctions, which may include fines, in cases where a patent holder has failed to provide, with "fraudulent intent," the required information.

Information systems: The Treaty invites states to establish information systems, such as databases, on genetic resources and associated traditional knowledge. These systems will be one more tool that local Patent Offices will have to consult to assess the patentability of an invention or whether it is, in fact,

already available to the public as a cultural tradition. This is the most controversial point, insofar as it establishes national control of these resources and knowledge, ignoring the fact that the true owners of these cultural assets are the indigenous populations themselves.

In this way, it is hoped that this Treaty will serve to support the cultural **integrity and economic potential** of indigenous knowledge within the system of Intellectual Property.