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The Farmers' Rights Project

Background Study 3

Farmers' Rights in Peru

A Case Study

By Manuel Ruiz Muller

gtz People, Food & Biodiversity

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The Farmers' Rights Project

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A Case Study

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Abstract

This case study provides an overview of the state of Farmers' Rights in Peru and of the perceptions of central stakeholders in this regard. As a centre of origin and diversity of important food crops and a country where traditional farming practices coexist with modern and intensive farming, the study offers an analysis of the various and complex issues and problems which arise with regard to understanding and, especially, implementing these rights at the national level. Various perceptions and limited awareness about the implications of Farmers' Rights pose an additional challenge. However, Peru has made some progress, particularly in the area of public policies and laws oriented towards the protection of traditional knowledge and seeking to ensure the fair and equitable sharing of benefits derived from the use of genetic resources. Most concerns at present focus on the impacts that a seed certification system and new plant breeders' rights may have on traditional saving and use of seeds and propagating material by *campesinos* and native communities. Farmers' Rights appear to be an important tool for *campesinos* and native communities to ensure the legitimacy of the traditional practices of saving, reusing and exchanging seeds.

Key Words

farmers' rights, plant genetic resources for food and agriculture, agrobiodiversity, biodiversity, Peru, FAO, ITPGRFA, access and benefit sharing, traditional knowledge, intellectual property rignts, plant breeders' rights

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Preface

This background study is part of *The Farmers' Rights Project,* which addresses farmers' rights related to plant genetic resources, as they are recognized in the International Treaty on Plant Genetic Resources for Food and Agriculture. The Farmers' Rights Project aims to provide an empirical basis for proposals to the Governing Body of the International Treaty on the realization of farmers' rights. The first phase of the project, March 2005 – June 2006, comprises a literature and document survey on the history of farmers' rights, an international questionnaire survey covering 30 countries in Asia, Africa, the Americas and Europe, four in-depth country case studies on the situation of farmers' rights in Peru, Ethiopia, India and Norway respectively, and a final synthesis report. The findings are to be presented at a side event at the first meeting of the Governing Body of the International Treaty in June 2006. Starting in March 2005, the project is being carried out by the Fridtjof Nansen Institute (FNI), supported by the Norwegian Ministry of Foreign Affairs. The GTZ Sector Project *People, Food and Biodiversity*, commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ), is contributing to the Farmers' Rights Project with two of the four country case studies, and is an important discussion partner in all phases of the project.

The present study is one of the four country case studies and provides an in-depth analysis of the situation of farmers' rights in Peru, the barriers and options to their further realization and an overview of stakeholder perceptions in the country on the issue of farmers' rights. As a member of the Andean Community, Peru has adopted extensive legislation affecting farmers' rights, which enables us to draw important lessons for the realization of these rights in Peru as well as in other countries with similar legislation. The study shows that the present legislation on access to genetic resources and the protection of traditional knowledge is not necessarily conducive to farmers' rights, but that it may pave the way for awareness of the importance of these rights and provide a good foundation for their specific realization. Moreover, the study shows how vital farmers' rights are to local and indigenous communities and to the maintenance of plant genetic diversity in agriculture.

The study has been written by Manuel Ruiz Muller, Director of the Peruvian Society for Environmental Law (SPDA), with support from the GTZ, and following the joint guidelines for the four case studies. We would like to thank the author for close and good co-operation throughout work with the study and for an interesting and highly valuable contribution to *The Farmers' Rights Project*.

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I would like to thank GTZ for its generous support of this study. I would also like to especially thank Annette von Lossau and Regine Andersen for their continued support, guidance and patience through the preparation of this report. My gratitude goes also to people and experts who I interviewed and with whom I discussed a series of issues. Finally, the content of the report is my sole responsibility.

Note by the author

In order to understand who are the main beneficiaries of Farmers' Rights in Peru, it is important to clarify beforehand some of the concepts which will be used in this study. Terms such as indigenous people, indigenous peoples, peasant communities, indigenous communities, local communities, farming communities, tribal groups, native communities and *campesinos* are often used randomly to refer to the same group of persons. In the case of Peru, the situation is as follows. There is a wide range of farmers, depending on their location (Andes, Coast or Amazon), the technologies they use, the type of crops they grow, the extension of land they cultivate, their access to markets and credit, etc. Within these types of farmers there are very small *campesino* and native communities which descend from indigenous people which were present in Peru before the establishment of the Spaniards and the formation of the modern Peruvian State. These *campesinos* and natives descend from Incas, Mochicas, Shipibo and other ancestral cultures that flourished during different periods in history and dedicate themselves primarly to farming and agriculture in the Andes and Amazon respectively. They are part of Peruvian indigenous people as defined by the ILO Convention 169. *Campesinos* and natives are also formally recognized as such by national legislation. There are also small *campesino* and native communities which appeared more recently in history and which do not necessarily descend from some of the major Peruvian cultures, but are nevertheless small farmers in terms of their land possessions, agricultural practices and engagement with local and national markets.

Executive Summary

This case study provides an overview of the state of Farmers' Rights in Peru in terms of public policies, legislation and specific projects. Stakeholder perceptions on the contents and prospects of the realization of Farmers' Rights are compiled as a basis for conclusions with regard to options for Peru. Finally, recommendations with regard to the role of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture are presented.

Chapter 1 describes the social and economic situation for agriculture in Peru. It offers factual data and information on the different types of agriculture (small, medium and large scale) and identifies some of the key features of each. As a centre of origin and diversification of potatoes and a range of other crops, Peru is in a situation where highly productive, high input-based, intensive, export-oriented agriculture coexists with small plot, subsistence, diversified and extensive farming practices, especially in the Andean region. The small *campesino* farmers and native farming communities in the Amazon and the Andes are the main conservers of genetic diversity, native crops and their wild relatives.

Following this description of the general situation for agriculture in Peru, Chapter 2 analyses the state of Farmers' Rights in the country. Peru has made considerable progress in some of these areas. A series of laws and regulations address the protection of traditional knowledge. Most importantly, Law 27811 for the Protection of Collective Knowledge of Indigenous People is a milestone in this regard. The right to participate in the fair and equitable sharing of benefits derived from access to and use of plant genetic resources for food and agriculture has been recognized in a series of laws and regulations. Most importantly, specific projects which involve accessing and using farmers' seeds and genetic resources and their related traditional knowledge, have incorporated benefit sharing conditions and commitments. These arrangements have, however, so far not resulted in any benefit sharing. Participation in decision-making processes has also progressed through the involvement of *campesinos* and small-scale farmers (represented through their organizations) in the drafting of and consultations on specific acts of legislation. Finally, the right to save and use seeds is also recognized by national law (Decision 345 on a Common Regime on the Protection of the Rights of Breeders). The recent commitment to adhere to UPOV 1991 (as part of the Peru–US Free Trade Agreement) may impact on the future recognition of this right.

Chapter 3 provides an overview of the perceptions of various stakeholders pertaining to Farmers' Rights. Individuals from the private sector, NGOs, public officials, etc. express their opinions regarding the actual content, relevance and implementation of Farmers' Rights in Peru. Clearly, there is still limited understanding regarding the scope and implications of these rights in the context of the FAO International Treaty. Most striking is the very wide range of perceptions about what exactly the term *Farmers' Rights* mean and imply.

As a general conclusion of the report, Farmers' Rights appear to be a very important tool for farmers (especially *campesinos* and native communi-

ties) to ensure the legitimacy of the traditional practices of saving, reusing and exchanging seeds. Though at present there seems to be little evidence regarding limitations to this right, promotion of the use of modern varieties, strengthening of the seed certification system and consolidating plant breeders rights could certainly affect traditional farming practices in the near future and, ultimately, impact on indigenous as well as *campesino* cultures and livelihoods, genetic diversity and conservation in general. Derived from the CBD, the protection of traditional knowledge and sharing of benefits from the use of genetic resources also appear to be key concerns of policy development and implementation in the country. This is the area where, arguably, most progress has been made over the years. However, it turns out that the implementation of these policies has not necessarily been conducive to the realization of Farmers' Rights, as they contain disincentives for the sharing of seeds and propagating material among farmers and have produced hurdles for the conservation of agrobiodiversity. Thus, an important challenge is to correct the direction of these policies to support the realization of Farmers' Rights and the implementation of the International Treaty.

Awareness raising regarding Farmers' Rights among a wide range of stakeholders and the implementation of the National Agrobiodiversity Program and Action Plan would be further points of departure for a national strategy to strengthen and consolidate efforts to implement Farmers' Rights. This should be complemented by the creation of incentives to promote the use and consumption of native and local crops, which would be particularly important for *campesinos* and native communities, as these have so far been excluded from the credit systems and thus options to strengthen their productive systems. Finally, potential conflicts between Constitutional provisions recognizing the right to a cultural identity – and the impacts a system such as UPOV 1991 may have on cultures – is a matter which will require further analysis and debate.

The Governing Body of the FAO International Treaty could play an instrumental role in instructing potential donors to support activities targeted at implementing Farmers' Rights. Furthermore, the Governing Body should define the specific scope of Farmers' Rights within which the respective provisions of the International Treaty are to be implemented at the national level. In this context, there is also a need to address the risks of implementing provisions of the CBD in ways that are detrimental to the protection and promotion of farmers' rights under the International Treaty, as shown in the case of Peru. Finally, the Governing Body should develop mechanisms which ensure that the benefits derived from access to and use of genetic resources are effectively shared with small scale farmers.

Acronyms and Abbreviations

AIDESEP	Interethnic Association for the Development of the Peruvian Amazon
CGIAR	Consultative Group on International Agricultural Research
CIP	International Potato Centre
CBD	Convention on Biological Diversity
CCTA	Coordinator for Science and Technology in the Andes
COICA	Indigenous Coordinator of the Amazon Basin
CONAIE	Confederation of Indigenous Nationalities of Ecuador
CONAP	Confederation of Amazonian Nationalities of Peru
COPPIP	National Coordinator of Indigenous People in Peru
FAO IT	FAO International Treaty on Plant Genetic Resources for Food and Agriculture
FTA	Free Trade Agreement
IDRC	International Development Research Centre
ILO Convention 169	International Labour Organization Convention 160 on Indigenous and Tribal People in Independent Countries
INDECOPI	National Institute for the Defence of Competition and Intellectual Property
INDEPA	National Institute for the Development of Andean, Amazonian and Afroamerican People
IIAP	Institute for Research of the Peruvian Amazon
INIEA	National Institute for Agricultural Research and Extension
PIC	Prior Informed Consent
PRATEC	Andean Project of Campesino Technologies
SENASA	National Service of Agricultural Sanitation
SPDA	Peruvian Society for Environmental Law
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights

UNU/IAS	United Nations University/Institute of Advanced Studies
UPOV	International Union for the Protection of New Varieties of Plants
WIPO IGC	World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
WTO	World Trade Organization

Introduction

Since its appearance in the context of the debates on the International Undertaking on Plant Genetic Resources of the United Nations Food and Agriculture Organisation (FAO) in 1986, the concept of Farmers' Rights has generated continued political, economic, social, cultural and legal discussions.

In 2001, the International Treaty on Plant Genetic Resources for Food and Agriculture (FAO International Treaty) was adopted by the FAO. It provides for the recognition and realisation of Farmers' Rights. The FAO International Treaty recognises past, present and future contributions of farmers in all regions of the world in conserving, improving and making available plant genetic resources for food and agriculture as the basis of Farmers' Rights. Its preamble highlights the necessity of promoting Farmers' Rights at the national as well as international levels.

The FAO International Treaty does not define the concept, but states explicitly that the responsibility for implementing its provision on Farmers' Rights rests with national governments. Governments are free to choose the measures they deem appropriate, according to their needs and priorities. Each country will determine the specific content and substance of Farmers' Rights, according to national needs. However, specific attention should be given to the protection of traditional knowledge, fair and equitable distribution of benefits derived from the use of plant genetic resources and participation in decision-making processes, when addressing development of the substantial contents of Farmers' Rights. Finally, the FAO International Treaty states that none of these provisions should be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seeds/propagating material, subject to national law and as appropriate.

Although a limited group of experts may be in a position – to a certain degree – to understand the content and scope of Farmers' Rights, it is a concept with multiple meanings and dimensions to the wider public, which may include rights to land, plant breeder's rights, exemptions to plant breeders' rights, property rights over crops and seeds, and intellectual property rights, among others. All of these are related to farmers and farming activities in general.

As part of The Farmers' Rights Project, the objective of this study is to provide a 'picture' of how Farmers' Rights are perceived in Peru and identify gaps and areas of controversy which require clarification in relation to the material content of these rights and, most importantly, the possibilities for an effective implementation of Farmers' Rights at the national level.

Peru is no exception to the situation of confusion described above. At all levels there is very limited understanding about what Farmers' Rights really are, as well as their implications, even though to a certain extent public policies and laws *are* responding to and developing their specific content.

This situation is particularly serious and problematic in a country like Peru, where a combination of factors coexist. On one hand, geographical

features make Peru a centre of origin and diversity of a number of important food crops and, on the other hand, Peru is also home to numerous small farming (*campesino* or peasant) communities, in many cases of indigenous Inca or pre-Inca descent, who for years have maintained and developed these crops, and many of whom continue to do so today. Indigenous communities in the Amazon, through totally different agricultural practices than in the Andean region, also maintain a wide diversity of crops and their wild relatives. Many genes from these crops and cultivars have contributed over time to plant breeding activities and to the generation of new, modern varieties (*In situ* Conservation Project, Annual Report 2001; Hobhouse 1992).

This study is divided into three chapters. Chapter 1 provides an overview and background of agriculture and the situation of farmers in Peru. Chapter 2 analyses the implementation of Farmers' Rights in Peru with regard to policy and legal developments addressing the protection of traditional knowledge; the participation of communities (and small farmers) in the benefits derived from access to and use of plant genetic resources for food and agriculture; and participation in decision-making processes on issues linked to these rights. Chapter 3 provides an overview of stakeholder perceptions with regard to Farmers' Rights in Peru. Finally, conclusions and some general suggestions are proposed.

The case study has been undertaken by compiling information and analysing existing literature on Farmers' Rights; analysing national legislation and policy initiatives oriented at implementing Farmers' Rights; interviewing experts of different interest groups, and carrying out a questionnaire survey which was submitted to stakeholders between October and November 2005 (Chapter 3 below).

Chapter 1: Agrobiodiversity and farming in Peru

Peru is one of the ten megadiverse countries of the world. Given its geographic location, natural and environmental features, it boasts 84 of the 117 existing life zones in the planet. Approximately 13% of the world's tropical forests are in Peru. It is among the countries with the highest diversity of mammal, bird and butterfly species. For example, there are 500 species of mammals and 2,500 species of butterflies. The country holds between 25,000 and 30,000 species of vascular plants and has 350 species of amphibians, 50 species of frogs and 35 species of primates, among others. Peru's sea and continental waters are considered to hold the largest number of fish species in the world (almost 2000). Peru possesses many species with food value. However, the case study will focus on plant genetic diversity for food and agriculture.

1.1 Agrobiodiversity in Peru

Peru is the centre of origin/diversity of a series of important food crops including: potatoes (*Solanum*), mashua (*Tropaeolum tuberosum*), oca (*Oxalis tuberosus*), olluco (*Ullucus tuberosus*), sweet potato (*Ipomea batata*), maize (*Zea mays*), and arracacha (*Arracachia xanthoriza*). All of these are important for food security, especially among small Andean and Amazonian indigenous and local communities (dedicated mostly to farming and agriculture). Potatoes, oca, olluco and mashua are Andean tubers which are critical as a source of carbohydrate intake. Mashua is also

known for its anti-inflammatory qualities and as a remedy for urinary problems. More recent studies have shown potatoes and sweet potatoes to be a source of important secondary metabolites with considerable medicinal potential.

Recent research has also demonstrated that Peru is the main centre of origin and diversity of potatoes in the world (University of Wisconsin, 2005). The country is home to 9 species of domesticated potatoes with thousands of different varieties. One of these species (*Solanum tuberosum*) is cultivated extensively world-wide and is one of the five most important food crops in the world.

In addition, Peru is home to 182 species of native domesticated plants. Of these, 85 are of Amazonian origin (e.g *Annona muricata, Fittonia albivenis*, *Carica papaya, Bixa orellana, Bertholletia excelsa*, among others), 81 of Andean origin (e.g *Smallanthus sonchifolius, Tagetes minuta, Chinchilla laniger*, *Lepidium meyenii, Chenipodium quinoa, etc.*) and the remaining 8 are from the coastal area (e.g *Erythroxylon coca*, *Cucurbita cicifolia*, etc.). These species include fruits, spices, medicinal plants, woody plants, oil palms, etc. which are used widely and especially by indigenous and local communities (and society at large) for multiple purposes (Brack, 2005).

Peru is also a center of domestication of at least 6 animal species, *including Lama guanicoe f. glama* (llama), *Lama vicugna f. pacos* (alpaca) *Cavia tschudi* (cuy), *Cairina moschata* (creole duck), and *Dactylopius cocus* (cochinilla), which have been used for centuries by farmers, especially in the Andes.

1.2 Agriculture in Peru

Only between 2.7% and 5.9% of land in Peru is suitable for agriculture. Of this land, only 30% has some kind of operational irrigation system (Framework of Agriculture Policy, Ministry of Agriculture, 2003). More than 70% of agrarian units (plots) have an area of less than 5 hectares (the average size is 3.1 hectares) and cover less than 6% of the total agricultural land. Property and land rights are very weak in these cases (Third Agrarian Survey, 1994). These numbers are explained by the growth of large agriculture complexes along the Peruvian Coast. These complexes focus their production on export and industrial crops. Some analysts consider the size of most agrarian units (especially in the Andes) and their disconnection with markets as one of the main problems in the development of more productive and competitive agriculture.

In the Andean region of Peru, only between 15% and 23% of agricultural production enters the market. The remaining percentage is used for self consumption, exchange and local use mainly (Framework of Agriculture Policy, Ministry of Agriculture, 2003). A poll taken among Andean communities (in Yunguyo and Copacabana) indicates that: 20% of production is consumed; 30% is used directly as seeds; 30% of seeds are processed; 5% are used as a barter tool; 5% as gifts and 10% is sold.

Only 0.01% of Peru's GDP is used for research and technological development in general. Although there is no reliable figure on agricultural research, most agree this is a small fraction of this percentage. This

explains almost non existent progress particularly in public agricultural research, in terms of *ex situ* and *in situ* conservation activities, improvement of crops, generation of new or adapted technologies, etc.

Box No. 1 Donors in the area of conservation and sustainable use of plant genetic resources for food and agriculture in Peru

It is difficult to determine donors' contribution to *in situ* conservation activities. Therefore, the following list of donors in this area is not exhaustive:

Global Environmental Facility (GEF) – *In Situ* Conservation of Native Crops and Wild Relatives (2000 – 2005) – US $ 5,049,000.

Swiss Agency for Development and Cooperation (SDC) – INCOPA Project – Promotion of Competitiveness of Peruvian Potatoes (2006–2007) US $ 730,000

Swiss Agency for Development and Cooperation (SDC) – PYMAGROS Project – Testing Strategies to Articulate Markets and Andean Farmers (2003–2006) US $ 2,267,000.

Italian Cooperation – Matching funds for project on *In Situ* Conservation of Native Crops and Wild Relatives – US $ 796,000

BMZ/GTZ – Germany – Project on the Geographical Information System (2001–2003) US $3,000,000.

McKnight Foundation (USA) – Project on *In situ* Conservation of Andean Tubers (2002–2005) US $870,000.

The 2006 Public Budget assigned to INIEA is only US $60,000 for activities linked to *in situ* conservation of plant genetic resources.

Source: Various Internet web pages.

Only 10% of the agriculture sector – in terms of land coverage – can be considered modern. This is the 'big' agriculture which is oriented towards export and foreign markets (asparagus, mangoes, avocado, coffee, cacao, among others). This agriculture is concentrated mostly on the Coast. More than 75% of the agriculture in Peru uses manual tools and animals (plows, mules). This is mostly 'small' and mid size agriculture which is oriented towards local and regional markets (potatoes, maize, rice, barley).

Approximately 3% of the agriculture land is used for the purpose of export (asparagus, mangoes, paprika, olives, marigold). About 31% of the land is dedicated to national markets (onions, rice, yellow maize, bananas, corn, alfalfa, manioc), whereas between 15% and 20% of land is dedicated to subsistence farming (barley, oca, olluco, wheat, potatoes). This is mostly varied extensions of lands of small *campesino* and native communities.

1.3 Farmers in Peru: native and *campesino* communities

The population of Peru is 28 million, and 35% live in rural areas. It has been estimated that 64% of the rural homes depend on agriculture for their livelihoods. Less income increases dependency on agriculture activities. Approximately 4.5 million rural inhabitants live in poverty, and of these 2.5 million live in extreme poverty. Over 30% of the farmers have no formal education at all. About 60% have primary education, whereas 4% have secondary education (Framework of Agriculture Policy, Ministry of Agriculture, 2003).

There are approximately 6000 indigenous communities in Peru. Of these, 5000 are Andean *campesino* communities and 1000 Amazonian native communities. Indigenous communities constitute almost 30%–40% of the total population of Peru, comprising 72 ethnic indigenous groups. Of these, seven are located in the Andes and 65 in the Amazon region.

Article 2(19) of the Peruvian Constitution of 1993 recognises that all persons have the right to their ethnic and cultural identity. The State recognises and protects the plural ethnic composition of the Nation. Article 89 establishes that the State will respect the cultural identity of *campesino* and native communities.

The Constitution of 1993 provided *campesino* and native communities with the possibility of incorporating their lands into the market, i.e. they were allowed to sell their lands which had previously – based on the Constitution of 1979 – been inalienable. The previous Constitution (1979) prohibited community lands from being sold or transferred to third parties.

Finally, it should be stressed that for Andean *campesino* communities and Amazon native communities, farming/agriculture is the central activity. Thus, when this study refers to indigenous communities in general (or *campesinos* or native communities in particular) these are really small *farming* communities which combine agricultural practices (of different forms depending on whether these are in the Andes or Amazon respectively) with livestock activities, and hunting in the case of Amazonian communities.

Chapter 2: The state of Farmers' Rights in Peru

As it will become clear (see Chapter 3), Farmers' Rights are not equivalent to the 'rights of farmers' in a broader sense. For a country like Peru, with a high percentage of *campesino* and indigenous communities, the rights of farmers include among others the right to maintain their communal land, organise themselves, use natural resources for subsistence purposes, their cultural identity and be recognised as communities.

Farmers' Rights with regard to plant genetic resources for food and agriculture on the other hand, have a more limited scope. Nevertheless, they are not less complicated to understand and implement in practice. In this chapter, the situation of Farmers' Rights in Peru will be explored with regard to the four main components emphasized in the FAO International Treaty: protection of traditional knowledge, the right to save, reuse and exchange seeds, participation in benefit sharing and participation in policy processes.

2.1 The protection of traditional knowledge of indigenous and local communities (related to plant genetic resources for food and agriculture)

There is no clear nor universally accepted definition of 'indigenous and local communities'. The CBD for example, refers to indigenous and local communities embodying traditional lifestyles. ILO Convention 169 on the other hand, refers to 'indigenous and tribal people' where tradition, culture and occupation of land prior to formation of States, among other elements, define who is indigenous. However, it is broadly accepted that indigenous communities in Peru count as indigenous peoples and basically include Andean *campesinos* and Amazon natives.

Their main common feature is that they descend from indigenous groups which inhabited Peru before the Conquest and maintain a series of traditional cultural, social, economic and political practices. Local communities are much more recent in their formation and are mostly small farming communities which have been part of a process to expand the agriculture frontier, especially in the Amazon region. Finally, it should be noted that there are also a few very small *campesino* communities in certain coastal areas and in the Andes and Amazon, but which are not indigenous in terms of the proposed definition or concept.

In Peru, there has been considerable progress in relation to public policies, awareness raising processes and legislation regarding the protection of traditional knowledge of local and indigenous communities with regard to biodiversity in general and plant genetic resources for food and agriculture in particular. It is in the area of protection of traditional knowledge where most policy and regulatory progress has been made.

There is also no exact definition of 'traditional knowledge'. However, most of this progress is related to implementation of the Convention on Biological Diversity (CBD), which refers to 'knowledge, innovations and practices of indigenous and local communities' of particular relevance for the conservation and sustainable use of biodiversity in general (article 8(j) of the CBD). Some – especially among indigenous groups – argue for the need to broaden the scope of traditional knowledge to all the creative manifestations of indigenous communities, including expressions such as dance, writings, paintings, artefacts, textiles, designs and folklore in general (De la Cruz, Guinand, Lopez, Szauer, 2005).

Traditional knowledge is addressed and discussed in a series of international instruments and forums. Over the past fifteen years, considerable efforts have been made to promote the legal protection of traditional knowledge. Whether the CDB and its Ad Hoc Open Ended Working Group on Article 8(j), or the World Intellectual Property Organisation Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), or the FAO International Treaty or, more recently, the United Nations Educational, Scientific and Cultural Organisation Convention for the Safeguarding of the Intangible Cultural Heritage, all have invested time, resources and efforts to generate policy and legal processes towards the protection of traditional knowledge.

At the regional level (in the Andean Community – Bolivia, Colombia, Ecuador, Peru and Venezuela), efforts to protect traditional knowledge can be traced back to 1993. Decision 345 on a Common Regime for the Protection of New Varieties of Plants (Annex 11) incorporated a provision which called for the development of an Andean framework on access to genetic resources. Andean Decisions are binding legislation applicable in all five Member States.

As a result, a process was initiated in 1994, and in 1996 Decision 391 on a Common Regime on Access to Genetic Resources was approved (Annex 12). Decision 391 makes specific references to traditional knowledge. In this regard, Member States '*... recognise and value the rights and the authority of indigenous, afro-american and local communities to decide about their knowledge, innovations and traditional practices associated to genetic resources and their derived products'* (article 7).

Furthermore, the Second Complementary Disposition of Decision 391 establishes that Member States '... shall not recognise rights, including intellectual property rights, over genetic resources, derived or synthesised products and associated intangible components [traditional knowledge] that were obtained or developed through an access activity that does not comply with the provisions of this Decision. Furthermore, the Member Country affected may request nullification and bring such actions as are appropriate in countries that have conferred rights'.

This provision actually originated as a proposal by Peru and was promoted first at the national level and then internationally. Basically, it sets out that intellectual property authorities demand, prior to granting intellectual property rights (mainly patents), that applicants demonstrate the geographical and legal origin of genetic resources and traditional knowledge which may be part of an invention.

This type of approach seeks to prevent the granting of 'bad' intellectual property rights and prevent biopiracy (Correa, 2005; Comisión Nacional contra la Biopiratería, 2005; IP/C/W/447, 2005; Ruiz, Ferro, 2005). This idea emerged from a Peruvian proposal during the initial phase of the negotiation of Decision 391 on access to genetic resources in 1994. INDECOPI, SPDA and, most recently the Ministry of Foreign Relations and the Ministry of Commerce and Tourism, have been the main advocates of this conceptual and political proposal at the national and international levels. Various countries (among these India, Brazil and Members of the Group of Like Minded Megadiverse Countries) have contributed towards reinforcing and making this proposal (also known as 'defensive protection') more visible and widely disseminated.

More concretely, Andean Community Decision 486 (on industrial property) requires compliance with provisions on conservation and sustainable use of biological diversity as a condition for the granting of intellectual property rights (Article 3). Likewise, the idea of disclosure of origin linked to the intellectual property system (as mentioned above) has materialised in Decision 486 as follows: before processing a patent application (in relation to an invention including traditional knowledge or genetic resources from countries of the Andean region), the applicant must demonstrate that traditional knowledge or genetic resources were obtained legally. 'Legally' in this case means complying with obligations

of Decision 391 on access to genetic resources and, in the case of Peru, complying with Law 27811 on the protection of traditional knowledge of indigenous peoples. The sanction for not presenting this evidence – once the right has been granted – is the nullification of the patent granted (Article 75).

The Andean Regional Biodiversity Strategy (Decision 523, 2002) and the Working Group on the Rights of Indigenous People (Decision 524, 2002) also include specific references – strategies, actions and activities – to traditional knowledge and its protection.

A series on laws and regulations in Peru establish obligations and rights regarding traditional knowledge. The Biodiversity Law (Law 26839) and its implementing rules and regulations and the National Biodiversity Strategy (Supreme Decree 102-2002-PCM) also include provisions regarding traditional knowledge as it relates to biodiversity.

Of particular importance are the Law for the Protection of Collective Knowledge of Indigenous People (Law, 27811, 2002) and the Law for the Protection of Access to Peruvian Biodiversity (Law 28216, 2004). The former establishes a specific legal framework for protecting the intellectual efforts of indigenous communities through the use of licences, registers, trade secrets and unfair competition principles (Law 26122 on Unfair Competition, 2000). In regard to unfair competition rules, if for example there is a breach in the use of a trade secret, an action based on unfair competition can be presented to INDECOPI. INDECOPI may decide to prevent further commercialization of a product, impose a monetary sanction, etc.

Law 28216 on the other hand, creates a National Commission for the Prevention of Biopiracy responsible for ensuring that genetic resources of Peruvian origin and traditional knowledge of Peruvian communities are not illegally or irregularly utilised.

Finally, in the case of the recently approved Free Trade Agreement (FTA between Peru and United States (December 2005), an Understanding Regarding Biodiversity and Traditional Knowledge has been included (also known as the 'Side Letter'). It acknowledges the importance of obtaining prior informed consent (PIC) to access genetic resources and guaranteeing the fair and equitable sharing of benefits arising from the access to genetic resources and use of traditional knowledge. It also foresees the improvement of the processes for the examination of patent applications to avoid cases of biopiracy and establishes means to generate and facilitate information for examinations, among others. This type of inclusion in a FTA with the United States is important due to the possibilities it offers to establish clear rules of conduct among both countries on this issue. The FTA Side Letter incorporates a series of CBD principles. Though expressed in very general terms, the content of the Side Letter does provide some guidance as to possible areas where positive synergies may be explored between the FTA and the CBD (Annex 14).

Chapter 18 of the FTA (Environment) also includes a series of provisions which make reference to biodiversity and traditional knowledge. Most importantly, the Agreement for Environmental Cooperation, which is part of the FTA, will support Peru in its efforts towards developing specific projects oriented at implementing these basic principles.

Implementation of laws and regulations

Since 1996, the National Institute for the Defence of Competition and Intellectual Property (INDECOPI), as the competent national authority for the promotion and protection of intellectual property in general, has taken a leading role, coordinating and promoting a series of activities to ensure the recognition and legal protection of intellectual efforts of indigenous communities in Peru. These activities include:

a) INDECOPI and the Peruvian Society for Environmental Law (SPDA) have elaborated an Explanatory Manual of Law 27811 for the Protection of Collective Knowledge of Indigenous People, especially oriented towards indigenous communities leaders. With the support of the National Confederation of Amazonian Nationalities (CONAP), this Explanatory Manual has been translated and published in two indigenous languages: Yanesha and Shipibo. A more brief explanatory text of Law 27811 (for a quicker understanding of its basic objectives) has also been published. This has been possible with the support of the Genetic Resources Policy Initiative (GRPI) implemented by IPGRI and sponsored by several donors such as IDRC, BMZ/GTZ and the MacArthur Foundation. These manuals and documents are part of the broader project 'Rescue, Defence and Protection of Traditional Knowledge of Indigenous Communities of the Amazon' which is supported by the GEF Small Grants Program.

b) In order to consolidate dissemination and awareness-raising efforts regarding traditional knowledge protection, INDECOPI has launched a traditional knowledge web site (www.indecopi.gob.pe). This web site includes information on documents regarding TK issues; important national, regional and international events and meetings; relevant legislation and links of interest. It will also soon include a link to the National Public Register for Traditional Knowledge (established and created based on Law 27811). This Register will incorporate all traditional knowledge in the public domain and serve to inform intellectual property offices on existing *prior art* related to traditional knowledge. Access and use protocols are being developed jointly by the SPDA, INDECOPI and CONAP, to ensure appropriate and informed access to data and information in this Register. This initiative is supported by the Andean Amazon Biopiracy Prevention Initiative which is sponsored by IDRC and by the GEF Small Grants Program.

c) The National Commission for the Prevention of Biopiracy, was established by Law 28216 in the year 2004. The Commission was created to prevent and address biopiracy related to genetic resources of Peruvian origin and of traditional knowledge of its indigenous communities. It is composed of institutions of the public and private sector and has met regularly since late 2004. The Commission has also continued to work on activities initiated by the National Maca (*Lepidium meyenii*) Working Group (2002 – 2004) and has started to analyse new cases of biopiracy (patents with very questionable novelty and inventiveness) related to camu – camu (*Myrciaria dubia*), another native domesticated plant.A report on camu camu was presented to the Council of the Trade Related Aspects of Intellectual Property (TRIPS) in October 2005. The Commission started its activ-

ities with support of the Andean Amazon Biopiracy Prevention Initiative (IDRC) and now has complementary public funds (Public Treasury) provided by INDECOPI to continue its work and activities (see Annex 15 for a report on potential biopiracy cases related to plant genetic resources for food and agriculture – not on the International Treaty list but very important in terms of agriculture and food security in Peru.

d) In June 2004, the Peruvian Congress and SPDA organised a Forum with the title 'How to Prevent Biopiracy in Peru?'. As a result, a book was published with the same title which was widely disseminated among different actors and interest groups. It is the first publication of its type in the country. In November 2005, INDECOPI and the National Commission for the Prevention of Biopiracy organised a seminar on new challenges for Peru regarding the issue of biopiracy. This served to disseminate advances in the work of the Commission and make the public in general more aware of the problems that biopiracy generate.

e) Over the past few years, different institutions, sometimes in coordination and sometimes independently, have been undertaking different types of work with regard to awareness raising and capacity building of indigenous people with regard to the implementation of Law 27811 for the protection of TK. INDECOPI, SPDA, UNU/IAS, the Institute of Amazonian Research (IIAP) and the Peruvian Congress, among others, have organised meetings, workshops and a series of activities on traditional knowledge and related issues. Organisations such as the Coordinator for Indigenous Peoples in Peru (COPPIP), CONAP and the Interethnic Association for Development of the Peruvian Amazon (AIDESEP), among others, have benefited from (and contributed to) these efforts.

f) During the last few years, Peru has maintained a firm and coherent position in different international forums (mainly the WTO (TRIPS), CBD and WIPO IGC) in relation to demanding the protection of traditional knowledge. It has been especially active in promoting 'defensive' protection of traditional knowledge through disclosure of origin mechanisms as part of the procedures for granting intellectual property rights. Peru has presented different documents at these forums; the most recent, Document IP/C/W/447 distributed during a meeting of the TRIPS Council and titled Disclosure of Geographical Origin (June 2005). The idea of linking access to genetic resources with the intellectual property regime was in fact proposed by Peru in 1994 during the development and negotiation of Decision 391 of the Andean Community.

Protection of traditional knowledge is a very complicated policy, legal and technical matter. It has proved to be a complex challenge to balance the legitimate demand by *campesinos* and indigenous communities of having their intellectual efforts for the conservation and development of genetic resources over centuries recognised and compensated without compromising the necessary flows and exchanges of knowledge within and among communities and with researchers. Although in perspective, ten or fifteen years back, legal and policy (and even economic) considera-

tions surrounding traditional knowledge were quite distant to communities, there has been a gradual process of information sharing, participation in workshops and awareness raising, among others, that have permeated communities and which at present allows them to promote their own interests and agendas regarding the protection of their knowledge.

The initial reaction by communities in certain areas of Peru and in the Amazon region in particular has been to question the motives of research and even impede collecting of specimens and research activities on their lands and territories. In numerous workshops over the years, there seems to be a general feeling that benefits derived from the use of biodiversity components and traditional knowledge collected and obtained from these communities have not been adequately shared and distributed. In a way, communities feel 'cheated' and therefore demand a new approach for research on their lands which is based on prior informed consent, mutually agreed terms and the fair and equitable sharing of benefits, especially but not exclusively monetary benefits. This situation presents a risky 'anti commons' context which translated into seed exchange and a Farmers Rights context, may in the future seriously undermine traditional exchange practices.

2.2 The right to participate in the fair and equitable sharing of the benefits arising from the use of plant genetic resources for food and agriculture

This right has been explicitly recognised by Law 27811 (for the protection of collective knowledge), although as previously mentioned, this law refers not only to the use of plant genetic resources for food and agriculture, but to genetic resources in general.

There are many ways communities can participate in the benefits arising from access to and use of plant genetic resources for food and agriculture and associated traditional knowledge. In some cases, participation is 'unconscious' in the sense that it is not provided expressly in a specific regulation or project. This occurs, for example, when some projects incorporate communal breeding programs with regard to certain varieties, or when scientists work together with farming communities on matters related to the prevention of certain illnesses or pests, using modern techniques. It may also occur when farmers are provided with seeds of an improved quality or certain resistance, among others. These are all benefits in which communities can participate. Traditionally, this has been the regular and practical way through which the State (Ministry of Agriculture and public research institutes) and private institutions have linked up with farmers. Sometimes these benefits express themselves in co-participation in intellectual property applications or even in co-authorship of scientific publication.

However, since the CBD entered into force and even since the FAO IT process, there has been a trend to make monetary and non monetary benefit sharing mechanisms much more explicit in projects and activities which involve access to and use of genetic resources and traditional knowledge. Over the past few years, different agreements with regard to access to, and use of, biodiversity components (including plant genetic resources for food and agriculture and related traditional knowledge) have been entered into which include very specific provisions regarding the sharing of a wide range of benefits with communities. Whether these

benefits are 'fair and equitable' is an issue which largely escapes the scope of this research paper but which is at present an important element in international debates on this issue. A general impression is that there are two types of benefit sharing projects:

- One type is aimed at the commercial utilisation of genetic resources, where agreements are entered into between providers and receivers of genetic resources and traditional knowledge which include provisions on benefit sharing and where the providers receive monetary benefits and other benefits.
- The ultimate aim of the second type of projects is benefit sharing as such (not only in direct financial terms), i.e. to ensure benefits for farmers and farming communities in Peru. Here institutions from the 'North' and from Peru co-operate for example for the purpose of conservation or participatory plant breeding – for the benefit of people in the project areas.

Generally, the first category of projects is often related to pharmaceutical products, whereas the last category is related to plant genetic resources for food and agriculture. In the following, we will have a closer look at some of the examples of benefit sharing from Peru. We will first look at one pharmaceutical project, which is interesting because it highlights some core difficulties arising when seeking to share benefits. Next, we will turn to a project on the conservation and sustainable use of specified crops and related traditional knowledge, which is aimed at benefit sharing, but where concerns about the protection of traditional knowledge have been voiced. Finally we will have a look at a conservation project where the findings are freely shared and disseminated.

ICBG Project – Peru

The International Cooperative Biodiversity Group Program (sponsored by National Institutes of Health of the United States) started a project in 1994 in Peru to search, investigate and develop medicinal plants used by Aguaruna indigenous communities in the Amazon of Peru. This project combined efforts of the Natural History Museum of Peru, Peruvian University Cayetano Heredia, Washington University, Searle Pharmaceuticals and the National Confederation of Amazonian Nationalities of Peru (CONAP). Prior informed consent (PIC) was obtained from communities and this materialised into a cooperation agreement where certain conditions to access and use of medicinal plants and traditional knowledge were established. These included initial monetary compensations and payments according to the advances and milestones in the research and development process and possible payments (royalties) in the event of obtaining a product with commercial and industrial potential. The project has been subject to controversies because the Aguaruna communities (participating in the project) are not the *only* communities possessing traditional knowledge related to the respective plants, and furthermore, not all Aguaruna communities participated in the negotiation process. This is a continued problem in a series of projects: who are the legitimate holders of genetic resources and traditional knowledge to be entitled to enter into negotiations and agreements with potential receivers? How are legitimate PIC processes to be organized in and among communities who share common resources and knowledge. (Source: SPDA internal documents).

Project on In Situ Conservation of Native Crops and Wild Relatives

The objective of this project is to guarantee *in situ* conservation of native crops and their wild relatives in 'small centres of genetic diversity'. These are areas where Amazon and Andean communities have conserved, maintained and developed these crops for centuries. The Project has allowed the registering of agricultural information on eight prioritized crops (potatoes, corn, beans, sweet potatoes, quinua, kañiwa, maca, arracacha, granadilla, yuca, camu camu) of regions with a high concentration of genetic diversity. Maps and hydrographical and physiographical information of the use of land was also generated. The work of public institutions and NGOs (Institute for Amazonian Research (IIAP), National Agriculture Research Institution (INIEA), ARARIWA Association, Center for Agricultural Services (CESA), Andean Project of Campesino Technologies (PRATEC), and the Coordinator for Science and Technology in the Andes (CCTA)) has meant interaction with *campesino* and indigenous communities and compilation of data and information (including PIC) on knowledge and ancestral beliefs regarding agrobiodiversity. This information is being systematized in agro-socio economic files. The use of this information has not yet been defined, but the Project acknowledges that communities have rights over their traditional knowledge and access to and use of these shall be conditioned to the duly informed decisions of communities (on the basis of their customary rights). The project also provides for the establishment of mechanisms and formulas guaranteeing the fair and equitable distribution of benefits arising from the access to and use of agrobiodiversity components and associated traditional knowledge. (Source: Cultivos Nativos y su Parientes Silvestres. Proyecto Conservación *In Situ* de Cultivos Nativos y sus Parientes Silvestres. IIAP, PNUD, FMAM, Cooperazione Italiana. Lima, 2002).

McKnight Project

The McKnight Project is a collaborative program between the International Potato Centre (CIP), University of California-Davis, Universidad San Antonio de Abad – Cusco and McKnight Foundation with the participation of Andean *campesino* communities aimed at researching Andean tubers. As part of the agreement, results of the project will be used and applied by less privileged communities in developing countries. The research supported by McKnight Foundation will be used for the transfer of technology, production of improved seeds and other materials, and enhancement and consolidation of the know-how of farmers. No intellectual property rights will be derived from the research. Parties to the agreement will maintain the property generated for research purposes only and for the benefit of the public sector. Some of the specific benefits derived from this project include:

- Workshops for farmers: A total of eight workshops were undertaken. 497 farmers of six communities participating in the project as well as farmers of 12 neighbouring communities.
- Schools: At the request of teachers and with parents' approval, a total of 266 children from elementary schools in the communities were trained to identify the main pests (weevils) in Andean tubers, their biology, behaviour and means to control and identify them.

- Field schools for farmers: A total of 184 farmers from three communities were trained through field schools. Nearly 50% of the farmers who attended the schools passed the examination on integrated management of crops and decided to form the Asociación de Productores Ecológicos de Tubérculos with the aim to improve market prices.
- Workshops for technicians and professionals: A workshop took place in Cuzco where 76 people took part, among them agronomists, anthropologists, rural sociologists, agricultural economists and technicians from more than half a dozen NGOs as well as representatives from PRONAMACHS, three municipal governments and six peasant communities.
- Radio program: Since the end of 2003, the results of the project have been disseminated from Cuzco through Radio Inti Raymi 830 AM every Saturday from 4:00 to 5:00 PM in Quechua and Spanish. The impact has led farmers from other communities to request the project to expand its range of work to their communities.
- Training: Two teachers from Universidad de Cuzco and one entomologist from the International Potato Centre were trained at the University of California-Davis on issues of taxonomy and integrated management of weevils. Eight agronomy/biology students from the Universidad del Cuzco prepared their thesis in the communities. The Project has supported two Master's Degrees (one in Peru and another at Davis) on issues related to the communities.
- Participation at meetings: A total of 18 technicians, students and professionals participated in national meetings.
- Seminars: Six seminars took place at the Universidad del Cuzco.
- Publications: At present there are 18 posters and dissemination sheets.
- Support for farmers: About a dozen tents or greenhouses have been constructed in each community to ensure the production of tuber sprouts free of weevils. (Source: Personal communication with Carlos Arbizu, CIP, September, 2005).

What these three examples show, is that benefit sharing can be viewed in several ways. It can be a right confined exclusively to those who can be identified as legitimate holders of traditional knowledge and/or as custodians of particular crops – or some groups of these. On the other hand, the benefits can be shared freely among all people who need these resources in the areas in question, and as long as none of these people claim intellectual property rights over them.

Two policies are also relevant in the context of benefit sharing in Peru. The first is Law 27811 for the protection of collective knowledge. The second is the Implementing Rules and Regulations for Law 27839 on the conservation and sustainable use of biodiversity.

Law 27811 for the protection of collective knowledge provides for the establishment of a Fund for the Development of Indigenous Peoples. This Fund should be used to support integral development of indigenous peoples through projects and other activities. Indigenous people have the

right to access resources from this Fund through their representative organisations. All indigenous organisations are entitled to participate in benefits of the Fund regardless of their participation and contribution to a *specific* project which generates financial resources.

The Administrative Committee of the Fund (composed entirely of indigenous representatives) will resort to indigenous traditional decision-making processes to ensure a just and equitable sharing of monetary benefits among communities. Resources for the Fund will be provided by the Public Treasury, international technical cooperation, donations and economic percentages established by the Law and for the use of traditional knowledge. To date, this Fund has yet to become operational.

The Implementing Rules and Regulations for Law 27839 on the conservation and sustainable use of biodiversity and the National Biodiversity Strategy have recognised 'agrobiodiversity zones' as a special mechanism for the conservation and sustainable use of native crops and their wild relatives and for the preservation of traditional indigenous cultures related to these crops as a means to provide alternative development and benefit-sharing options for indigenous and local communities. These agrobiodiversity zones are not part of the National System of Natural Protected Areas (SINANPE). An assessment is currently being carried out to determine whether these areas should be regulated as an independent category at the national, regional or local level. Some are proposing that these areas could be created as private conservation areas (under community domain and administration) whereby they could become parts of the System (SINANPE). Agrobiodiversity zones were created to identify geographical areas where genetic diversity (of native crops) and culture (including knowledge, innovations and practices of indigenous communities) interact. These areas are subject to a special legal status and incentives which ensure that indigenous communities conserve their culture and maintain (and develop) native genetic diversity. A good example of these zones is the Potato Park in Pisac, Cuzco (based on Association ANDES, 2003):

The Potato Park (25,000 hectares) is a model of local conservation of agrobiodiversity. It is located in the Valley of Pisac in Cuzco, Peru. In 2000, the Andean *campesino* communities of Sacaca, Paru Paru, Amaru, Cuyo Grande, Chawaytiri and Pampallacta, joined efforts to create and develop this *special area for the conservation of agrobiodiversity* with the technical support and guidance from Association ANDES. The area includes more than 400 varieties of potatoes; traditional culture and spiritual practices; use of ancestral farming and agriculture technologies; widespread use of traditional knowledge for the conservation of crops, medicinal plants; existence of an archaeological pre-Inca and Inca site nearby. This area has not been affected (or has been affected very modestly) by market forces and thus, traditional livelihoods have not been altered over the years.

The governance body of the Potato Park is the Association of Communities of the Potato Park. This is an example of how indigenous communities can organise themselves to achieve a more balanced (if any) relation with strong and sometimes very perverse market influences. It has enabled the consolidation of, and confidence in, traditional lifestyles, culture

and local knowledge in general. To support the Association, groups of *campesino* women have been trained in the use of video cameras to film and document traditional practices and application of knowledge in the area of agricultural practices, medicinal practices and maintenance of cultural activities within communities. These videos are in practice a registry which can be seen as an implementation of Law 27811 (with regard to the recognition of Local Registers), as one of the mechanisms to document and maintain traditional knowledge. It has not yet been defined nor agreed how these registries will be used and under what conditions non-community members may access the information. Special Protocols are being developed in this regard.

The Potato Park is part of the Condor Route, a network of indigenous peoples living in protected agrobiodiversity sites which a) interconnects areas which are important in agrobiodiversity and cultural terms, b) promotes conservation and sustainable use at these sites, c) seeks to secure cultures and biodiversity located within this Route, and d) ensures that benefits derived from the use of, and visits to, the Condor Route are equitably shared with the communities.

As we have seen in this section, there are some, but not many, benefit sharing projects in Peru. However, they provide different lessons. Normally, projects related to plant genetic resources for food and agriculture have to do with conservation and sustainable use, and are aimed at benefits for farming communities as an ultimate goal. Nevertheless, discussions are arising in different projects as to how the benefits should be shared among and between local communities: Should benefits derived along the research and development chain accrue to communities as well? Should benefit sharing be exclusive rights for those involved in particular agreements? Or should the benefits be shared as an open source among all farmers who need access to them, and their allies in the efforts to save the remaining crop genetic heritage? Peru is currently at a crossroads in this regard.

2.3 The right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture

During the past few years in Peru, many policy/normative processes – on a wide range of issues – have relied on the active participation of indigenous representatives. These processes have been far from satisfactory or perfect. Representation of Andean *campesinos* and Amazon indigenous communities in these processes has been particularly problematic given the weak institutional structures which support representation. As an example, there is no single, fully legitimized and recognized national representative organisation for all Andean *campesinos* and Amazonian indigenous communities alike.

Not even efforts like the National Coordinator for Indigenous Peoples (COPPIP, 2001) which originally sought to represent coastal, Andean and Amazonian communities has been fully recognised nor has the influence to effectively impact the policy process. Efforts by the State, including the creation of the National Commission for Andean, Amazonian and Afroamerican Peoples (CONAPA), later replaced by the National Institute for the Development of Andean, Amazonian and Afroamerican Peo-

ples, have also been subject to wide criticism, precisely due to the lack of effective representation of indigenous groups and the mechanisms by which Government selected members of these institutions.

Small farmers on the Coast are much better represented. Either they are members of cooperatives or, if they are producing for large agroindustrial complexes, they are often organised in organisations such as the National Agriculture Convention (CONVEAGRO). Thus, they have a more organised, well respected, vocal and influential presence in decision making processes. CONVEGRO is closer to small farmers at the Coast than in very remote and distant communities in the Andes and the Amazon. Therefore it is easier to interact with, and represent, these farmers from the Coast.

In contrast with the situation in Ecuador and Bolivia for example, indigenous communities organisation and representation in Peru is not as strong, organised and active. However, even under these circumstances, there have been important advances in the participation of Andean and Amazonian communities, especially in certain policy processes, particularly in the area of access to genetic resources and protection of traditional knowledge. These communities were also especially active during a process to reform the 1993 Constitution of Peru, where a chapter on indigenous peoples and communities was proposed. This reform of the Constitution is still pending.

In this context, the process for the development of Law 27811 (for the protection of collective knowledge) initiated in 1996 – is a milestone in the commitment by INDECOPI as the State representative institution, to the issue of traditional knowledge. During this particular period, there was a multisectorial and multidisciplinary participation of organisations such as the National Environmental Council (CONAM), the Council for Andean, Amazonian and Afroamerican Populations (CONAPA), the Peruvian Society for Environmental Law (SPDA) and different indigenous organisations such as the National Confederation of Amazonian Nationalities (CONAP), the Interethnic Association for the Development of the Peruvian Amazon (AIDESEP) and the National Agriculture Confederation (CNA) (Special Edition of El Peruano (the official gazette), 1999; Working Document INDECOPI, 2000). Activities were carried out to disseminate information though regional and national workshops, with a special emphasis in convoking indigenous communities representatives at the national, regional and local levels.

More recently, at the subregional level (within the Andean Community), a process has been initiated towards establishing a *sui generis* regime to protect indigenous peoples' traditional knowledge. This effort is the result of a mandate in the Eighth Transitory Disposition of Decision 391 (on a Common Regime on Access to Genetic Resources). The mandate provides that countries of the Andean Community (Bolivia, Colombia, Ecuador, Peru and Venezuela) are obliged to develop an Andean regime to protect traditional knowledge. As means to monitor this policy and legal mandate, a Working Group on the Rights of Indigenous Peoples was established through Decision 524 (2002).

Through active work and involvement of indigenous peoples themselves (through their experts and professionals), workshops in Santa Cruz, Lima

and Caracas have resulted in a proposal on elements to protect traditional knowledge. The indigenous experts and professionals represented indigenous people of the Kichwa Peoples (Ecuador), Inga Peoples (Colombia), Kiwicha (Ecuador), Guaraní Peoples (Bolivia), Kurripaco Peoples (Venezuela) and Shipibo Peoples (Peru). Most of the professionals are members of indigenous organisations such as the Indigenous Coordinator of Amazon Basin (COICA), National Confederation of Indigenous Nationalities (CONAIE – Ecuador), Interethnic Association for the Development of the Peruvian Amazon (AIDESEP – Peru), the Organisation of Indigenous Peoples of Amazonia – Venezuela, among others. What should be highlighted in this case is that, in contrast with other processes, the main inputs are being provided by indigenous people. They are not provided by consultants or non-indigenous organisations or NGOs. However these organisations provide technical input and advice when requested.

The proposal will be subject to extensive consultations among indigenous peoples of the region during the first months of 2006 (De la Cruz, 2005). Validation and consultation processes among indigenous communities are extremely complex – in the Andes, Amazon and in any other region of the world. Indeed, it should be accepted *a priori* that there is no possibility of undertaking a fully comprehensive information/consultation/validation process. Criticism is inevitable regarding the selection of those to be consulted, including the identification of legitimate representative of indigenous communities, and timing for such processes. At best, a process can be undertaken where the widest possible group of communities (or their representatives) are informed, given time to process this information and provide their inputs to the process. However, it is also fairly easy to corroborate (in indigenous Declarations over the past few years and documents) that issues such as access to genetic resources, traditional knowledge protection and benefit sharing (all related to Farmers Rights) are more widely known and understood than sometimes thought – at least within certain indigenous groups in the Andes and Amazon regions.

Elements in this subregional proposal for the protection of traditional knowledge include obligations to guarantee prior informed consent for the use of traditional knowledge; the need to share in a fair and equitable manner the benefits derived from the use of traditional knowledge; the need to prevent granting of illegal/irregular rights (IP rights) over inventions based on this knowledge, among others. This initial approach proposes that traditional knowledge, specifically related to agricultural know how and technologies and to the conservation and use of seeds, be included within the scope of protection.

It is important to highlight the creation through Law 28495 of April 2005, of the National Institute for the Development of Andean, Amazon and Afroamerican Peoples (INDEPA). INDEPA is a decentralised, public organisation whose mission is to promote the integral development of indigenous peoples in Peru. Although specifically monitoring Farmers' Rights is not within its legal mandate, insofar as Farmers' Rights are related to indigenous peoples (and small farmers in particular), INDEPA is a relevant institution for this study. INDEPA is an important experience in terms of an institutional, Governmental entity with the mandate of supporting indigenous issues.

As mentioned previously, criteria for selecting members to the INDEPA Board, the actual selection process, representation of certain indigenous groups and even tensions between indigenous representative organisations (for example between the National Confederation of Amazon Nationalities (CONAP) and the Interethnic Association for the Development of the Peruvian Amazon (AIDESEP)), etc. contribute towards debilitating the legitimacy of this institution. Issues regarding transparency in the management of funds of INDEPA (which mostly derive from International Technical Cooperation) are also a factor affecting the consolidation of this organisation. In any case, INDEPA is a fairly new organisation and time is required to ensure a fair evaluation of its performance.

It is also important to mention the activities of the Commission of Amazonia, Indigenous and Afroamerican Issues of the Peruvian Congress. This Commission streamlined and processed the concerns and proposals of indigenous peoples during the (frustrating) reform effort of the Constitution of 1993 in 2002. This specific process included the active participation of representatives of Andean, Amazonian and Afro-American communities through CONAPA, then INDEPA and individual indigenous representative organisations.

Finally, it is worth reiterating that when referring to *campesino* and native communities, this is an explicit reference to groups which practice farming and agriculture as their main economic and subsistence activity.

As we have seen, there are several approaches to participation of farmers in relevant Peruvian decision making, and their representation seems to increase. However, farmers in Peru are a highly heterogeneous group, and it is difficult to develop a system of representation which truly reflects this diversity. This is probably among the core challenges to increased participation of farmers' in decision making in the country.

2.4 The right that farmers have to save, exchange and sell seeds

This right is addressed by the FAO International Treaty and is directly related to two legal regimes in force in the country: The regime for the protection of plant breeders' rights, derived from the International Union for the Protection of New Varieties of Plants, and the legal framework related to the commercialisation and certification of seeds, as defined in the General Seed Law (Law 27262, 2000) and its implementing rules and regulations (Supreme Decree 040-2001-AG, 2001).

Decision 345 of the Andean Community on a Common Regime on the Protection of the Rights of Breeders of New Plant Varieties' (October 1993), established a system to protect the rights of breeders of new plant varieties based on the principles in the Union for the Protection of New Varieties of Plants, UPOV, Acts of 1978 and 1991.

Decision 345 was regulated by Supreme Decree 008 – 96 – ITINCI and Law 28126 (November, 2003) which established a new regime on plant breeders' rights. During the Fifth Sub-regional Committee Meeting on the Protection of New Plant Varieties (July 1996) it was agreed to extend plant variety protection to essentially derived varieties. This provides the breeder with an extension of his right to varieties that are essentially derived from protected variety. Therefore, considerable improvements of a protected variety are required if a person is to obtain a new plant breeders' right.

The Peruvian regime for the protection of plant breeders' rights expressly recognises the so called 'farmers privilege or exemption' which allows farmers to save, use, exchange or sell propagating or reproductive material obtained from the protected variety. What Decision 345 refers to as exemptions and privileges, are coined rights in the FAO International Treaty. Article 26 of Decision 345 establishes that '*…the right of the breeder is not affected when a person reserves and cultivates for his own use, or sells as raw material or feed the products obtained from the cultivation of the protected variety'*. Thus this is an *exception* to the prevailing protection regime. Article 9.3 of the International Treaty on the other hand, refers to the ' *… rights that farmers have to save, use, exchange, and sell farm saved seeds/propagating material, subject to national law and as appropriate*'.

Decision 345 recognises a historical practice among farmers – particularly, but not exclusively, among *campesino* and native communities – by which seeds are conserved and exchanged as part of their cultural and social heritage. This type of exception is coherent with more comprehensive policies and laws which promote the conservation of agrobiodiversity and its components.

It is important to recognize the emphasis placed by the Peruvian regime on the issue of sanctions in case of infringement of the rights granted to breeders. Regulatory provisions in Law 28126 (2003) which establishes sanctions as part of the plant breeders regime, have focused on the identification of possible infringements and the corresponding administrative, civil and penal sanctions.

However, in practice since 1996, only one case of infringement has been documented (Agricola Barranca S.A. v. PIVEG – accused of illegally using and cultivating a variety of marigold protected by plant breeders' rights and registered in Peru. In a second case, in 2004, Agrokasa S.A, an agroindustrial company with activities in the southern, coastal Department of Ica, received a formal communication from a European company claiming irregular use of protected varieties of grapes (protected by breeders' rights) which were being used for export from Peru to China. Although these are cases that involve companies, they simply demonstrate limited use of infringement and sanction tools in Peru.

One argument put forward by some analysts – regarding enforceability of a plant breeders' regime – is that it is simply impossible to establish a strong, enforceable plant breeders' rights regime throughout a country like Peru. Its geographical features and the type of agriculture practised in the Andes and Amazon at least makes this very complicated. Even if under UPOV 1991, which limits the Farmers' Exemption, controlling and monitoring what small *campesino* and indigenous communities may be doing in terms of exchange of materials – if they were using protected varieties – seems an extremely improbable option in terms of costs, personnel required and institutional capacities in general. As mentioned, the situation is different on the Coast where agriculture is intensive, based on uniformity, and where agricultural land is concentrated in fewer hands, not to mention easy access to these lands by supervising authorities. In contrast, supervising what is happening in very distant, almost inaccessible fields in the Andes and Amazon region is a real, practical problem.

Another element worth reviewing is the relation between the protection regime of Decision 345 (and its national regulation) and some Constitutional provisions. Fundamental Rights included in the 1993 Constitution acknowledge peoples (intellectual) property rights over their intellectual creations (Article 2(8)). The generation of new plant varieties would fall under the framework of this Constitutional provision. However, within these Fundamental Rights every person has the right to an ethnic and cultural identity and the State should protect the Nations' ethnic and cultural plurality (Article 2(1)). The State should respect the cultural identity of *campesino* and indigenous communities in general (Article 89).

The question arising is whether, when implementing a regime which could restrict access, utilization and exchange and reutilization of reproductive material (mainly seeds), the cultural identity of *campesino* and indigenous communities may be affected. This could happen if, for example, the plant breeders' regime impacts and curtails traditional practices of exchange and reutilization of seeds. Although, as mentioned, Decision 345 acknowledges the 'farmers privilege', tendencies to strengthen intellectual property regimes (in the case of the Free Trade Agreement with the US, Peru is now obliged to adhere to UPOV 1991) might have consequences over these practices and present demanding questions regarding the compatibility of this regime with the Constitutional mandates with regard to cultural identity in the case of *campesinos,* farmers and indigenous communities. At the core of these issues is the question of whether there actually is Constitutional ground for strengthening the 'farmers privilege' and preventing weakening of this principle through new intellectual property instruments. What type of legal action could be taken if this was the case? To what extent does the Constitution protect the Nations ethnic and cultural plurality *vis a vis* the recognition of intellectual property?

Although detailed studies have not been undertaken regarding the reasons for the very limited use of the regime for the protection of plant breeders' rights in Peru (see Annex 1 – Number of applications and rights granted by INDECOPI), it can be argued and speculated that this may be basically due to the number and variety of agricultural practices in the coastal, Andean and Amazonian regions. Intensive farming takes place basically at the Coast. This would be a typically receptive environment for new varieties, oriented to export markets. Protecting varieties in the Andes and Amazon, in the context of subsistence practices is a totally foreign notion and prospect for *campesinos* and indigenous communities.

There are practical difficulties in controlling irregular and illegal uses of potentially protected varieties in such a varied and uneven country like Peru. Even supervising use of certified seeds is a daunting task. This relates to institutional weaknesses regarding research and enforcement budgets, trained personnel and capacities, institutional priorities, etc.

Even though INDECOPI has made considerable efforts to train and capacitate potential users of the system – especially breeders and Coastal farmers – there is still very limited understanding of the potential benefits (and limitations) of the protection regime.

Only over the past ten years have export crops become an important component of the national agriculture system. Grapes, artichoke and aspara-

gus, among others, have become key crops in an expanding agroindustrial effort – mostly located on the Coast. However, research in these crops is almost non-existent, as are breeding efforts.

Finally, it is worth reiterating that in the recently signed Free Trade Agreement between Peru and the United States, Peru is obligated to signing and ratifying a series of international agreements on intellectual property, including the UPOV Convention in its 1991 version. Decision 345 is an 'hybrid version of UPOV 91' in regard to its substantial content. For example, under Decision 345 there are already obligations to extend protection to essentially derived varieties – a 'new' feature in UPOV 91. As in UPOV 91, Decision 345 grants the breeder the right to impede a person from doing the following acts regarding the protected variety without his consent: production, reproduction, multiplication, propagation; preparation for production, reproduction or propagation; sale and sale offer; exportation; importation; possession, among others. Decision 345 also includes national treatment and most favoured nation clauses and principles as does UPOV 91. However, in the case of the UPOV system these would extend to a much larger list of countries (not only Member States of the Andean Community).

On the other hand and complimentary to the Decision 345 framework, national legislation on seeds – through the Seed Law (Law 27262) and its regulation – could also have implications with regard to the possibilities farmers have to use and sell (and exchange) seeds.

Article 12 of the Law provides that its objective is:

> 'the promotion, supervision and regulation of activities related to research, production, certification, preparation and commercialisation of good quality seeds, in order to ensure their permanent dissemination and optimum use in the country'.

The framework established under the Seed Law and its regulation (and specific regulations for cotton, rice, barley, sugar cane, corn, potato and wheat), based on a certification scheme, seeks to guarantee the commercialization of quality seeds, free of impurities and contamination, and with optimum levels of germination under technical parameters determined in the regulation of each specie. The National Service for Agriculture Sanitation (SENASA) is the competent authority responsible for overseeing compliance with these norms as part of the National System of Seeds.

As to the percentage of certified seeds used, these can be reviewed in Annex 2 of this report. This Annex reflects the amount of seeds produced (certified) and percentage of the total of hectares covered. It is in typically intensive agriculture crops (cotton, rice and corn to some extent) where the highest percentage of certified seeds is used. In the case of potato, wheat, barley and legumes the percentages are very low. It is important to highlight that in the case of important crops – mainly linked to agroindustry – such as grapes, sugarcane and asparagus in many cases, seeds imported directly are used which do not necessarily pass through a certification process and of which there are no reliable statistics. In practical terms, this means that the informal seed system is the dominant in the National Agricultural System and that farmers (including *campesino* and

to a lesser extent native communities) have to utilize seeds which may not respond in agronomic and production terms (according to overall national formal standards) but which are available and accessible in local and regional markets, including through 'over the fence' exchange. These seeds may be extremely important though in terms of food security, demand by local and niche markets.

Protection of native crops

Law 28477 (2005) declares Natural patrimony of the Nation over a list of native crops, breeds and wild species. In accordance with Article 3 of this Law, the Ministry of Agriculture in coordination with Local and Regional Governments and other public and private entities are responsible for the

> 'registration, dissemination, conservation and promotion of genetic material, production, industrialisation, and commercialisation activities and the internal and external consumption of productive crops, native crops and breeds and wild species detailed in the Annex, focusing on sustainability ...'.

This norm reflects a public policy to promote native crops, some of which are also part of the list established under the FAO International Treaty. This is the case for sweet potato (*Ipomoea*), beans (*Phaseolus*), potato (*Solanum*), corn (*Zea*) and yucca (*Manihot*), among other species of Peruvian/Andean origin or which have diversified in this region. This Law does not intend to grant legal protection in terms of exclusive property rights. The Law establishes that these crops are part of the Natural Patrimony of the Nation. It means in essence that the State exercises a protective (conservation) role in relation to these crops and should verify that the benefits derived from their use are shared with communities which have conserved them over time. It also seems to imply references to the geographical origin of these native crops. An issue for debate is how to make this legal *status* compatible with potential intellectual property rights over improved varieties of these species.

The situation of INIEA and seed production

During the last few years coordination between the National Institute for Agricultural Research and Extension – INIEA – and the private sector to generate and produce good quality seeds, has been limited. The central role of INIEA to produce basic seeds and promote the production of other types of seeds (in alliance with the private sector) has not been possible due to a series of reasons: unfavourable agreements between INIEA and seed producers (which have been annulled and revised), poor management of the seed fields, not registering cultivars in the Cultivar Registry (as provided for in the Seed Law), limited institutional strengths to guarantee intellectual property rights as an incentive to produce new varieties, limitations in systematising information, among others.

To overcome these difficulties, INIEA should, among other things establish more effective agreements with seed producers in order to produce improved quality seeds, promote the use of intellectual property instruments to protect innovation and establish mechanisms to limit the informal sale of protected and/or certified genetic material. However, limiting informal sale of genetic material and seed, which is in fact considered a priority by INIEA, could generate considerable impacts on the customary

practices of small farmers to exchange, save and use seeds – which are informal and non regulated by nature (INIEA, 2003). In other words, it could affect farmers' rights negatively.

What do all of these law and regulations mean for the actual *campesino* farmer and indigenous people? They mean different things for each community – or even among people within the communities, depending on how the extent to which – and the ways in which – they are linked up with modern agriculture and the market. An isolated, Andean *campesino* may feel absolutely detached from all these laws and regulations. They have no impact whatsoever in their regular agricultural practices. The case may be different for an association or cooperative of Coastal farmers who are producing in an agroindustrial context. They may become more affected by the requirements to use certified seeds, and to produce under extreme quality standards imposed by export markets, etc. National agricultural policies, including mechanisms for the implementation of Farmers' Rights, should be responsive to these different features of agriculture in Peru.

Chapter 3. Perceptions about Farmers' Rights among key stakeholders

Between October 1 and October 30, 2005, surveys on Farmers' Rights were submitted to, and a series of interviews were held with, a set of experts and stakeholders. These included members of research centres, farmers' associations, non-governmental organisations, public entities, and indigenous peoples' organisations. Three broad questions were:

- What do you understand by Farmers' Rights?
- How are Farmers' Rights being implemented in Peru?
- What do you suggest should be done to implement Farmers' Rights?

The idea of these questions was to assess the level of awareness, familiarity, understanding and recognition of the concept of Farmers' Rights among a group of persons who work either directly or indirectly with farmers, breeders and in the agricultural sector, and to generate input on how Farmers' Rights can be realised in Peru.

3.1 Stakeholder perceptions regarding the concept of Farmers' Rights

Few responses referred to Farmers' Rights in the context of the FAO International Treaty. Most respondents had widely differing perspectives on Farmers' Rights and their specific contents. All used the concept repeatedly but rarely under the conceptual framework provided by the Treaty. Only two of those consulted (from IIAP and Asociación Civil Pro Uso Diversitas) referred to Farmers' Rights specifically under the framework of the FAO, though only one of these referred to the FAO International Treaty in particular. This implies that although, as mentioned in the introductory paragraph, the concept of Farmers' Rights is used and continuously addressed, there is very limited awareness of the technical implications and scope of the concept as incorporated in the FAO International Treaty. The concept is deemed important, but there is a wide range of interpretations of its actual meaning and what it actually implies.

Seven of those consulted (two respondents from IIAP; one from Asociación Civil Pro Uso Diversitas; one from Proyecto INCAGRO; one from CIP; a member from SPDA and a respondent from the Technical Secretariat of the CGIAR) clearly described the justification and basis for Farmers' Rights (recognition of the contribution, efforts and customary practices of farmers in the conservation, maintenance and development of plant genetic resources for food and agriculture), but not the content and specific scope of the concept.

The respondent of Finca Bioagricultura Casa Blanca identified a relationship between rights related to management practices of land, water, crops and agricultural residues and – recent technological innovations and traditions. This basically seems to mean that Farmers' Rights relate to a much broader set of issues and are not rights per se, but a comprehensive principle which is linked to a wide range of aspects of agriculture and farming.

One of the survey respondents (representing the INCAGRO Project) referred to the necessity to compensate farmers for their traditional contributions in terms of genetic resources (he associated the issue to compensated access to genetic resources). The respondent of the National Confederation of Amazon Nationalities (CONAP), in representation of indigenous communities, identified Farmers` Rights as clearly related to the issue of access to genetic resources and the protection of related traditional knowledge.

Another respondent (representing INRENA) related Farmers' Rights to the right to sow and improve seeds, similar to plant breeders' rights.

One respondent (from Centro Regional de Investigación de Biodiversidad Andina – CRIBA) referred to Farmers' Rights as a kind of property rights to genetic resources farmers possess, manage, conserve and use. These rights would include the rights to knowledge and experience accumulated by farmers during the years.

One respondent (from Grupo Yanapai) addressed the right that farmers' have to sell, use and reuse seeds at local and traditional markets.

Another respondent (from CIP) referred to rights related to access to production factors (water, technology, seeds, markets) in order to guarantee food security and a family income.

Three respondents told that they did not know the exact meaning of 'Farmers' Rights', which is an interesting result, as two of them were officials of public institutions and one of an important farmers union.

Finally, one of the respondents (representing CCTA) made a very interesting distinction between 'peasants' and 'farmers', identifying the former with a more integral relation to land with its seeds and where the cultural element has a preponderant role. In the case of 'farmers', these are producers largely oriented towards meeting market demand – locally, regionally, nationally, and especially internationally (in this last case, the reference is to agroindustrial centres established at the coast and in some Andean valleys). The respondent emphasized that *campesino* and indigenous communities are the custodians of genetic diversity, and should

subsequently be entitled to Farmers' Rights, rather than farmers acting exclusively as producers *and providers* for the market.

The respondent of the National Institute for the Defence of Competition and Intellectual Property (INDECOPI) made the distinction between Farmers' Rights (as they relate to the protection of traditional knowledge in particular) and more broad rights that support farmers in the areas of land, resource utilisation, etc.

Quite clearly, there seems to be a trend in the sense that there is limited understanding of what Farmers' Rights actually are. In contrast, all respondents recognise farmers to have a series of rights but which sometimes have little to do with, or are only marginally related to Farmers' Rights *per se*, in the context of the FAO International Treaty. The concept generates immediate reactions and most respondents seem very confident as to the importance of Farmers' Rights.

3.2 Stakeholder perceptions on the implementation of Farmers' Rights in Peru

Reflecting the findings on the concept of farmers' rights, also the views on the implementation of these rights differed widely. Three of the respondents (from Pro Uso Diversitas, Grupo Yanapai and Technical Secretariat of the CGIAR) answered that the implementation of Farmers' Rights would only take place once the new national seed system came into effect and became operational. Farmers' Rights became an issue, *only* if a seed system was in practice and was effective. This is, as a reaction and response to the seed system. One pointed out that more than 80% of the farmers in the country (large, medium and small) maintain traditional methods of exchanging seeds. This respondent highlighted the considerable difficulties in trying to implement a seed production and certification system, equal or similar to systems operating in countries where intensive and high input agriculture prevails. In this sense, he explained that local varieties do not have a place in such a system, and it would gradually displace traditional farming practices and genetic diversity.

The second respondent (from Grupo Yanapai) pointed out that the seed system, including its certification regime – even in its limited implementation – limits the possibilities to use, commercialize and cultivate seeds which are not officially recognised by the authority – SENASA. This would seriously erode rights of farmers pertaining to plant genetic resources for food and agriculture – and affect their food security as well. The system seeks to promote the use and commercialization of seeds which are formally recognised and certified by a national authority, a certification system which furthermore looks at a series of requirements based on the quality and purity of seeds. Most of the seeds produced, sold and exchanged by *campesino* and indigenous communities would rarely meet these requirements, a fact that explains why this seed system may impact their rights to freely save, use and sell seeds of their local and native varieties.

Furthermore, in terms of certifying and registering native potatoes for example, the system may impact farming activities in terms of reducing diversity. This is because to commercialize seeds, these must be registered according to criteria rarely met by local and native varieties. The

pressure exerted by the system towards establishing uniformity and standardising the type and quality of seeds used, could determine that *campesinos* start to prefer certain varieties of potatoes (those intended for market sale) and relegate the use of native and local varieties traditionally used for barter, in seed fairs, auto consumption, etc.

A third respondent (from Feria Bioagricultura Casa Blanca) identified the implementation of Farmers' Rights with activities by the patent office – INDECOPI. This respondent recalled a norm being proposed and discussed (possibly what at present is Law 27811 on the protection of collective knowledge of indigenous peoples related to biological resources). In this particular case, a correct correlation was being made between protection of traditional knowledge and the competent authority responsible for this. The respondent of INDECOPI also highlighted the efforts being made in the area (policy and legal developments) of protecting traditional knowledge related to biodiversity.

The fourth respondent (from CIP) identified advances in the implementation of Farmers' Rights at the level of land entitlement (efforts to recognise property rights over land of *campesinos* and indigenous communities), legislation on seeds (efforts by the sanitary authority – SENASA – to implement the national seed system), norms on education and a nascent regulatory framework to promote technology and free trade (for example through the Free Trade Agreement between the US and Peru). This response seemed to relate Farmers' Rights with a more comprehensive view of the right of farmers.

The majority of respondents and interviewees (eleven of them) coincided in pointing out that there are actually *not* many concrete, tangible advances at the national level in terms of implementing Farmers' Rights. However, a few of them recognised some efforts, including the promulgation of some laws and regulations in this regard. These include Law 28216 establishing a National Commission for the Prevention of Biopiracy, Law 27811 establishing a national regime for the protection of traditional knowledge, and the execution of specific projects tending to protect (directly or indirectly) the rights of farmers. These projects include activities such as the ANDES Potato Park Project in Cusco and the GEF project for the *In situ* Conservation of Native Crops and their Wild Relatives.

This view is interesting in the context of this study, which has revealed important efforts to apply Farmer' Rights more concretely. Sometimes these efforts are not expressly or specifically referred to as Farmers' Rights *per se*, but in effect, they *are* giving substance to these rights. Law 27811 for the protection of traditional knowledge is an example of this. So is the active involvement of the National Agrarian Convention – CONVEAGRO – and its representation of small *campesinos* and farmers, in the process of discussing and debating the possible ratification of the Free Trade Agreement with the US. Individual projects such as the Potato Park and the GEF *In Situ* Conservation of Native Crops and their Wild Relatives are also examples of this.

Two respondents (from CRIBA and IIAP) emphasized the fact that Farmers' Rights are mostly identified with access to genetic resources and protection of traditional knowledge. These are issues for which regional and national legislation has been developed.

The respondent from INRENA pointed out the low level of implementation of Farmers' Rights as set out in the FAO International Treaty, and the very limited awareness about the contents and even existence of this international treaty among key stakeholders.

Finally, the respondent of CONAP (representing indigenous Amazonian communities) stressed that implementation would only be meaningful as long as land rights were previously recognised to indigenous communities and they would be safeguarded from free market forces.

It seems fairly obvious that there are a wide range of views regarding implementation of Farmers` Rights. Most respondents and interviewees recognise efforts at different levels: through legislation, specific projects and participation in policy processes. However, there are still very different views on how to implement them in practice – which can be explained by the different understandings about what exactly Farmers' Rights are.

3.3 Stakeholder perceptions on prospects for the implementation of Farmers' Rights

One of the respondents (from CRIBA) pointed out the need for technicians – especially farmers (who carry out *in situ* conservation) – to participate more actively in the implementation process of Farmers' Rights at the national level. In a similar vein, another respondent suggested guaranteeing minimum levels of participation of small farmers in the decision-making processes.

Another respondent (from PROBIONADES) proposed to make the agrobiodiversity fairs official (awarding them with tools and material); make an inventory of farmers who participate in these fairs, and compile and systematize information on areas with *in situ* farming. With the information from the fairs and supporting information from data bases, it would be possible to identify agrobiodiversity centres. He also proposed the creation of a network of communal seed producers from different agrobiodiversity centres and recognition of seed producers as potential beneficiaries for Farmers' Rights (in this case, a conservationist in essence). Finally, he proposed that the international community recognise and support the environmental services these centres and communities offer for the scientific community and commercial breeders.

One respondent (from CIP) pointed to the importance of developing clear and simple mechanisms to guarantee that benefits arising from the access and use of plant genetic resources (and associated traditional knowledge) are adequately shared among farmers. In this sense he mentioned that science and technology may contribute to value these resources and knowledge, and ultimately, help determine the type of benefits that could be shared.

The respondent (from Yanapai) suggested considering how during centuries more than 3000 varieties of potatoes have been maintained and conserved and how the national seed system (oriented mainly towards commercialization) may erode and seriously destroy this wealth. She pointed out that INIEA and SENASA have adopted a 'model International Potato Centre' approach for thermotherapy and *in vitro* tubers and

that this approximation for the 'cleanup' of native seeds will not solve the problem of seeds deteriorating. She commented that the warming of the Andes could better explain deterioration of seeds. She also indicated that artificial borders (for example between Peru and Bolivia) begin to seriously affect the flow and traditional exchange of seeds with consequent damages for the farmers. Finally, she proposed that the national seed system (under the competence of SENASA) recognise and consider traditional seeds and that they be susceptible to be certified as vendible seeds within the seed system.

Two of the respondents (from CIP and IIAP) made a reference to the link between intellectual property – access to genetic resources – s*ui generis* protection systems and protection of native crops ('local patents') and also to the risks of agreements or bilateral agreements negatively affecting Farmers' Rights. They pointed out that to effectively implement Farmers' Rights there was a need to a) establish an effective system of access to genetic resources (including access to materials conserved and maintained by *campesinos* and native communities), b) to develop a system to protect native crops, possibly, but not necessarily, through a patent-like (or intellectual property based) mechanism or a *sui generis* mechanism – which may combine property right approaches, with registries and licensing agreements, c) evaluate how bilateral contracts may affect rights of communities who share common resources and traditional knowledge related to local and native varieties. This latter point refers to the fact that *campesino* and native owners (in legal terms) of seeds and traditional knowledge are difficult to identify in a context where these are often shared among a wider group of communities. This also relates to prior informed consent and who can rightfully provide it.

On this subject, three persons (from Pro Uso Diversitas, IIAP and Finca Bioagricultura) proposed the creation of a register: one of local varieties and *users* of local varieties and the second of traditional knowledge. Through this system, small farmers *(campesinos* in particular) may be exempted from obligations derived from the formal seed certification system which calls for standardising the type of seeds used and commercialized. The register would legitimize and formalize traditional practices and exchanges within certain groups of farmers *(campesinos* and indigenous communities).

The need for awareness about Farmers' Rights at the level of communities, officials of the public sector and managers of genetic resources themselves was also highlighted by three of those consulted.

One respondent (from CCTA) focused on the recognition of *campesinos*, and that any discussion on Farmers' Rights should start by recognizing and internalizing the intercultural phenomenon. The latter is especially important in the context of public policy frameworks and norms. Finally, this respondent argued that a level of racism towards, and social exclusion of, *campesinos* (by urban society in particular) are important aspects which in many cases dominate (mostly unconsciously) debates related to agriculture, especially in the Andes and Amazon regions and more clearly when referring to *campesinos* and indigenous communities.

Both the respondents from INDECOPI and CONAP coincided in highlighting that there was a good policy 'environment' to continue efforts in the area of protecting traditional knowledge related to biodiversity.

Finally, one respondent from IIAP referred to the necessity of establishing adequate incentives (through public policies and norms) to promote traditional agriculture and to encourage the use of Farmers' Rights.

Chapter 4. Conclusions

What are Farmers' Rights in Peru?

Clearly, there is very diverse understanding and knowledge regarding the *exact* meaning and scope of Farmers' Rights among different groups. As a general conclusion, most persons consulted seem to refer to the rights of farmers rather than Farmers' Rights *per se*, in the context of the FAO International Treaty. For *campesinos* and indigenous communities these rights include rights related to land and territories, customary practices, traditional knowledge, seed exchange, conservation of native crops and ways of participation in policy making processes, among others. For experts in the public and private sector alike, Farmers' Rights have more to do with legal protection of traditional knowledge, access to genetic resources, the national seed system, etc. However, the fact that Farmers' Rights are not equivalent to the rights of farmers, is not necessarily a negative feature. On the contrary, this seems to indicate that there is a considerable level of awareness about a wide set of rights of farmers (*campesinos* and indigenous communities), but that it is necessary to relate these to more specific rights recognised and assigned under the FAO International Treaty. There are common grounds in perceptions among the groups. For example, protection of traditional knowledge, maintenance of traditional seed exchange systems, and to a lesser degree participation, are common issues mentioned as part of this broader view of the rights of farmers but which are in fact key components of Farmers' Rights under the FAO International Treaty.

How relevant are Farmers' Rights?

Farmers' Rights are very important, especially for *campesino* and indigenous communities in Peru, who rely on traditional exchange and use of seeds as a matter of culture and livelihood maintenance. S*mall* scale farmers are often emphasized as the primary rights holders of Farmers' Rights, although the definition of 'small' varies. In the case of Peru, Farmers' rights are important for *campesinos* and indigenous people who have effectively invested time and efforts to conserve and develop crop diversity based on traditional and ancestral cultural practices. Farmers' Rights offer an internationally recognised safeguard against negative impacts that may be generated from the globalisation of agriculture and the tendencies towards privatization through intellectual property rights and other instruments, including bilateral contractual practices.

Restrictions on use and exchange of seeds

At the moment, there are no patterns nor evident tendencies of problems and restrictions as to the rights of farmers to conserve, use, sell and reutilize seeds, especially among small *campesinos* and indigenous communities. However, there are some concerns among experts on the impacts of the planned strengthening of intellectual property rights and the development of the seed certification and commercialization system on the livelihoods and traditional practices of small *campesinos* and indigenous com-

munities. Some isolated cases have been identified regarding efforts to enforce plant breeders' rights within the agroindustrial sector. In the case of plant breeders' rights, their application has been very limited since 1994 when Decision 345 was adopted (see Annex 1 for number of applications and rights granted). Only varieties of marigold, cotton, lemons and rice have been protected. In this sense, the plant varieties protection regime has not affected Farmers' Rights so far.

Protection of traditional knowledge as a key concern

In the case of Peru, the development of mechanisms to protect traditional knowledge have been the main policies implemented which relate to Farmers' Rights. These mechanisms are, however, not only associated with plant genetic resources for food and agriculture but also with biodiversity in general. The legal protection of traditional knowledge (through Law 27811 and Law 28216) has been a response to the biopiracy phenomenon, which broadly means illegal or irregular access to and use of genetic resources of Peruvian origin and related traditional knowledge. However, legal protection of traditional knowledge presents an additional challenge: It is vital to ensure that this knowledge is made available, maintained and enhanced for conservation and sustainable use of genetic resources. On the other hand the increasing trends to restrict access to this knowledge, due to the protection of traditional knowledge, or to adopt much more cautious attitudes with regard to sharing such knowledge, represent a danger for conservation and maintenance efforts – and for the very livelihoods of farmers. If sharing within and between communities and researchers, who may be in a position to actively support conservation, is impeded, it may seriously affect access to genetic resources and related knowledge, and therefore farmers' rights *per se*. In this context the issue of Prior Informed Consent is, arguably, the most challenging and problematic of all, given the fact that traditional knowledge is – in most cases – widely shared among communities. The question of how to identify those who have rights over traditional knowledge remains the most pressing challenge to address from a policy, legal and practical perspective in particular.

Participation of campesinos and indigenous communities in Farmers' Rights related processes

On the other hand, for the past ten years the participation of *campesinos* and indigenous communities in various processes directly and indirectly related to Farmers' Rights has improved. However, this participation is still less than appropriate in terms of quantity and quality of involvement. This has to do with legitimacy of representation at the national level, serious budget limitations of representative organisations, limited awareness and understanding of international policy processes and certain issues, among others. Capacity building especially among *campesinos* and indigenous communities is therefore a continued necessity.

Farmers Rights and benefit sharing

Quite strikingly, respondents and interviewees did not refer explicitly to benefit sharing in the context of Farmers Rights. This is a key component of the concept and there are several examples of its implementation in practice in Peru. Some of these were mentioned in Section 2.2 and

provide initial evidence of efforts being made to ensure Prior Informed Consent and the fair and equitable participation of *campesinos* and indigenous communities in the benefits derived from access to their resources and traditional knowledge. Benefit sharing usually takes place as part of specific projects in which *campesinos* and indigenous communities participate related to improvement of seeds, extension and capacity building, strengthening of traditional knowledge systems, enhancement and strengthening of local technologies, taxonomic research over local and native varieties, etc. However, one of the dangers surrounding efforts to develop benefit sharing schemes is that no policy nor regulatory differences are made between activities and projects which involve, for example, collecting of plants for medicinal or pharmaceutical purposes and collecting which is oriented at taxonomic description of new varieties, agronomic analysis, or crop improvement. Paradoxically, this may have the perverse effect of impacting traditional practices and customs of free exchange and sharing between communities and with third parties as the notion of 'property', exclusivity and exclusion start to become incorporated into *campesino* and native communities' ways of thinking. In short, bilateral benefit sharing with a specific *campesino* or native community may erode the spirit and nature of Farmers Rights as a whole.

Chapter 5. Comments and suggestions

Awareness raising

Various respondents have expressed the necessity of undertaking awareness-raising activities with regard to Farmers' Rights. These activities could include courses, media campaigns, decentralised workshops oriented towards different target audiences (public officials, indigenous/ farmers groups, NGOs, etc.) and disseminating informative materials (manuals, guidelines, etc.), among others. The understanding of the exact content/scope of Farmers' Rights and its differences with regard to the rights of farmers in a broader sense will provide a necessary basis for the development of a more realistic and focused implementation process. During 2006, and as part of the Genetic Resources Policy Initiative (GRPI) project, a national seminar or workshop is being planned to build capacities among a wide range of actors with regard to the FAO International Treaty. Farmers' Rights could, for example, become a key focus in this seminar.

Farmers' Rights and traditional knowledge

In the case of Peru, there have been important advances related to the implementation of Farmers' Rights. To build on these, the following activities should be undertaken:

- supporting the application of Law 27811 for the protection of traditional knowledge by implementing the National Register for Traditional Knowledge, developing a draft model protocol on Prior Informed Consent, and establishing the National Fund for the Development of Indigenous Peoples – while at the same time ensuring that these measure do not run counter to the principles of access to plant genetic resources for food and agriculture and related traditional knowledge for farmers and institutions engaged in the conservation and maintenance of these resources.

- supporting effective (informed) participation of indigenous (farmers) representatives in the preparation of the Common Andean Regime on the Protection of Traditional Knowledge (and facilitating consultations at the national level) and distributing information for this purpose;
- creating and formalizing a national register of native crops and local seeds.

Diversity: an option for development

It is quite striking to note that where genetic diversity is richest, exclusion, marginalisation and low income are common features of the livelihoods among its custodians. Human and social development in these areas seem to be at odds or are at least far from the advantages that markets, education, health facilities, internet, etc. could bring. A project to evaluate how diversity (of seeds) could be used towards development and how national policies and laws may contribute to and promote development, could serve to shed some light and information and offer interesting alternatives to *campesino* and native farming communities. What should be stressed is that diversity, rather than being a problem – which some consider it is – is an extremely important and valuable option for development. Food security, health insurance, environmental services, genetic diversity for crop improvement, etc. are just a few of the reasons why diversity is critical for *campesinos* and native communities. The key is to provide viable options for development (which integrate diversity) and ensuring that *campesino* and indigenous communities have the possibility of engaging in a deliberative and fully informed process as to what path to take with regard to their development options.

The National Agrobiodiversity Program and Action Plan

The National Biodiversity Program and Action Plan offers a policy and regulatory platform on which to build and strengthen the concept and idea of Farmers' Rights in Peru. Both these instruments make specific references to participatory mechanisms for development and strengthening of technologies to conserve/use agrobiodiversity and its components; developing national registries for agrobiodiversity and its different elements; and incorporating agrobiodiversity related issues (including Farmers' Rights) in regional, local and sector development agendas, among others. These instruments appear as appropriate components of a strategy to raise awareness about what Farmers' Rights may entail and who its beneficiaries should be.

Incentives for promotion of traditional practices and expansion of native and local crops into national markets

No specific research has been undertaken to evaluate the impacts of how the credit/banking system (and eventually even insurance systems) create incentives for certain agricultural practices, including conditions for the use of certified seeds or seeds under the coverage of the National Seed System. However, the type of farming that *is* financed, subject to credit and protected through insurance, does have a bearing on the direction agriculture may take in the future. For example, if only certain crops are entitled to credit or insurance, if only certain geographical areas are

covered by the banking / credit system, if only export-oriented agriculture can receive credit and State support, etc. all of these are situations which will create incentives or disincentives regarding the *type* of agricultural activities to be undertaken.

Adoption of UPOV 91 protection system

As part of the Free Trade Agreement with the US, Peru is obligated to adopt the UPOV 91 system for the protection of breeders rights. At present, initial discussions have commenced regarding the potential impacts UPOV 91 may have on rights to save and reuse seeds by farmers – given the strengthening of breeders' rights under the UPOV 91 regime. Arguments in favour of safeguarding the rights of farmers are derived from Constitutional provisions, other national legislation, and international agreements (on human rights, the FAO International Treaty, etc.).

The Governing Body of the FAO International Treaty

In terms of supporting national efforts to realise Farmers' Rights, the FAO IT Governing Body could at this early stage of the implementation process:

a) recommend donors (including GEF) to support projects focused on the implementation of Farmers' Rights

b) make an effort to better define what Farmers' Rights are or, more specifically, what they are not (this would include reaching some consensus on who the actual beneficiaries of Farmers' Rights are); and

c) discuss practical ways in which the benefits derived from access to and use of plant genetic resources under the FAO IT can be distributed between beneficiary farmers and communities (through the Multilateral System).

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Summary of Key Annexes

Annex 5 – National Program for Agrobiodiversity

The National Program for Agrobiodiversity was approved in July 2003. This Program is the result of work undertaken by a Technical Working Group on Agrobiodiversity convened by the National Environmental Council (CONAM).

This Program establishes a series of medium and long-term objectives related to the conservation and sustainable use of agrobiodiversity and its components. Closely related to Farmers Rights, the Program includes a specific objective (5.3.3) oriented at rescuing local knowledge of *campesino* and native communities on agrobiodiversity and providing incentives to conservation activities (especially of local genetic diversity). Objective 5.6.6 also calls for strengthening and promoting effective participation of *campesino* communities and other farmers in the development of markets for their products and appropriate policies regarding conservation and sustainable use of agrobiodiversity. Objective 5.7.2.5 also determines the need to develop a national fund to support conservation and sustainable use of agrobiodiversity.

Annex 6 – National Agrobiodiversity Action Plan

The National Agrobiodiversity Action Plan (February, 2004) was developed by the Technical Working Group on Agrobiodiversity to identify specific activities and actions to implement the National Program for Agrobiodiversity.

Some of the specific actions proposed include: creating a national registry for agrobiodiversity (1.2), making an inventory of traditional technologies used by *campesino* and native communities in the conservation and use of agrobiodiversity (2.1), participatory generation of sustainable technologies (2.2), development of local and regional policies for agrobiodiversity conservation (4.7), etc.

Annex 7 – Biodiversity Law

The Peruvian Biodiversity Law (Law 26839, 1997) includes specific references to in situ conservation of biodiversity and the need to protect traditional knowledge of *campesino* and native communities and ensure their participation in the benefits generated from its utilization.

Annex 8 – Implementing rules and regulations pertaining to the biodiversity law

Supreme Decree 068-2001- PCM (2001), the implementing regulation of the Biodiversity Law, recognizes the need to protect agrobiodiversity zones and ensure the conservation and sustainable use of cultivated, local species and their wild relatives. These areas may serve to promote ecotourism, seed fairs and other mechanisms which support *in situ* conservation and strengthen the participation of communities in these activities. It also prioritizes activities related to creating incentives for in situ conservation (such as tax exemptions), supporting sustainable tourism (for example in agrobiodiversity zones), incorporating protected areas and agrobiodiversity in the clean development mechanism (under the Climate Change Convention process), etc.

Annex 15 – Informe de Análisis de Potenciales Casos de Biopiratería en el Perú (Analysis of Potential Biopiracy Cases in Peru)

This report identifies six Peruvian species (hercampuri, yacon, camu camu, sangre de grado, sacha inchi, chanca piedra and caigua) used traditionally by *campesino* and native communities – mostly for food purposes – which have been subject to intellectual property rights in Europe, the US and Japan. These include dozens of patents for inventions related to these plants. The report presents a detailed description of the claims included in a series of patents.

Annex 1 Plant breeders' rights granted in Peru

Current Status	Date Istate	Date Due	Title Holder	Name of variety	File	Specie	Presentation date	Applicant	Requesting Country
Granted	2001-03-23	2017-06-26	AGRICOLA BARRANCA S.A.	APV No l BELLA FLOR	000397-1996	Marigold	1996-06-03	AGRÍCOLA BARRANCA S.A.	PE
Granted	2001-03-23	2017-06-26	AGRÍCOLA BARRANCA S.A.	A.P.B No II PRIMAVERA	000396-1996	Marigold	1996- 06-03	AGRÍCOLA BARRANCA S.A.	PE
Revoked	2002-11-12		TERESINA SILVA VDA DE MASSARO ALBERTO MASARO SILVA, MARTHA MASSARO SILVA	LMG –1-72	000613-1996	Cotton	1996-08-13	TERESINA SILVA VDA DE MASSARO ALBERTO MASARO SILVA, MARTHA MASSARO SILVA	PE, PE ,PE
Revoked	2004-12-10		COMPAÑIA ARROCERA DEL PERU S.A.C.	NIR-1	000057-1999	Rice	1999-01-26	COMPAÑIA ARROCERA DEL SUR S.A.C.	PE
Granted	2002-08-29	2022-08-29	COMPAÑIA ARROCERA DEL PERU S.A.C.	GALAN	001094-1999	Rice	1999-11-03	COMPAÑIA ARROCERA DEL SUR S.A.C.	PE
Granted	2002-08-29	2022-08-29	COMPAÑIA ARROCERA DEL SUR S.A.C.	MAMBRE	001096-1999	Rice	1999-11-03	COMPAÑIA ARROCERA DEL SUR S.A.C.	PE
Granted	2002-09-30	2022-09-30	COMPAÑIA ARROCERA DEL PERU S.A.C.	POMPEYO	001095-1999	Rice	1999-11-03	COMPAÑIA ARROCERA DEL SUR S.A.C.	PE
Granted	2004-01-30	2024-01-30	COMPAÑIA ARROCERA DEL PERU S.A.C	COLAN	000056-1999	Rice	1999-01-26	COMPAÑIA ARROCERA DEL PERU S.A.C	PE
Granted	2004-06-30	2024-04-25	NEW ZELAND INSTITUTE FOR CROP AND FOOD RESEARCH LTD	CHORUS MAGENTA	000385-2000	Limonium	2000-04-25	NEW ZELAND INSTITUTE FOR CROP AND FOOD RESEARCH LTD	NZ
Granted	2005-07-20	2025-07-20	DANZIGER DAN FLOWER FARM;	DANGYPMINI	000748-2001	Gypsophila	2001-07-25	DANZIGER DAN FLOWER FARM	IL
Granted	2005-07-20	2025-07-20	DANZIGER DAN FLOWER FARM	DANGYPFIRM	001151-2001	Gypsophila	2001-11-19	DANZIGER DAN FLOWER FARM	IL

Annex 2 Use of certified seeds in Peru

Rice covered shell (has)	246 889	210 186	213 824	240 040	277 105	320 385	282 613	300 832	319 698	316 562	272 813
Rice - produced seed (t)	3 644,00	4 212,00	2 915,00	4 411,00	4 696,15	4 736,03	2 103,33	4 623,54	4 676,56	3 665,14	3 968,28
Percentage Used (%)	18,45 %	25,05 %	17,04 %	22,97 %	21,18 %	18,48 %	9,30 %	19,21 %	18,29 %	14,47 %	18,44 %
yellow hard corn (MAD) sown fiel (has)	178 449	172 951	188 098	218 912	243 008	245 691	278 099	303 529	278 151	292 569	239 946
MAD - produced seed (t)	1 897,00	713,00	849,00	1 101,00	718,95	511,80	662,78	693,58	743,28	923,72	881,41
Percentage Used (%)	42,52 %	16,49 %	18,05 %	20,12 %	11,83 %	8,33 %	9,53 %	9,14 %	10,69 %	12,63 %	15,93 %
Seed potato (has)	229 178	246 046	234 869	259 443	285 123	277 778	282 275	247 810	272 908	263 720	259 915
Potato - produce seed (t)	1 402,00	8 323,00	5 298,00	7 084,00	460,99	2 588,00	610,50	759,20	675,48	795,33	2 799,65
Percentage Used (%)	0,31 %	1,69 %	1,13 %	1,37 %	0,08 %	0,47 %	0,11 %	0,15 %	0,12 %	0,15 %	0,56 %
Cereal (*) sow field (has)	226 041	222 478	247 114	249 777	280 954	275 796	301 911	303 118	294 997	291 532	269 372
Cereal - produced seed(t)	188,00	106,00	135,00	629,00	159,25	99,00	45,00	0,00	0,00	30,69	139,19
Percentage Used (%)	1,04 %	0,60 %	0,68 %	3,15 %	0,71 %	0,45 %	0,19 %	0,00 %	0,00 %	0,13 %	0,69 %
Leguminous of sow field grain (has)	160 599	166 553	192 011	200 009	229 886	219 163	238 412	227 933	230 844	225 016	209 043
Leguminous of grain - produced seed (t)	253,00	171,00	128,00	158,00	8,50	141,87	0,00	0,00	0,00	27,80	88,82
Use average (%)	3,15 %	2,05 %	1,33 %	1,58 %	0,07 %	1,29 %	0,00 %	0,00 %	0,00 %	0,25 %	0,97 %

(*) Wheat and barley

Elaborte by: DIA-DGSV (SENASA); Fuentes: – DGIA (MINAG) – Sow field areas; – Departamental Committees and Regional seed – Quantity registered seed

Annex 3 Prioritization of activities related to conservation of crops in the Andean Amazon region

Cultivo	**Especie**	**Conservación ex situ**						**Conservación in situ**	
		Prioridad Regional	Bol**	Col	Ecu	**Per**	Ven	Prioridad nacional	Sustentación de prioridad para la conservación in situ en Bolivia.
Papa	*Solanum sp.*	1	1	1	1	**1**	1	1	Originario de la región, alta diversidad de variedades tradicionales y existencia de parientes silvestres, microcentros identificados.
Oca	*Oxalis tuberosa*	2	1	2	2	**1**	2	1	Centro de origen alta variabilidad
Papalisa/ulluco	*Ullucus tuberosus*	2	1	2	2	**1**	2	1	Centro de origen alta variabilidad. Colección única en el mundo
Isaño	*Tropaeolum tuberosum*		1					1	
Yacón	*Smallanthus sonchyfolia*	2	1	2	2	**1**	2	1	Centro de origen.
Arracacha	*Arracacia xanthorrhyza*	1	1	1	2	**1**	1	1	Centro de origen.
Achira	*Canna edulis*		1					1	Centro de origen, en peligro de erosión
Ajipa	*Pachyrrhizus sp*		1					1	Centro de origen y alta variablidad
Walusa	*Xanthosoma sp.*		2					2	Centro de origen.
Yuca	*Manihot esculenta*	1	1	1	1	**1**	1	1	Alta diversidad, parientes silvestres
Maíz, (Sara).	*Zea mays (*		1					1	Alta variabilidad de variedades tradiconales.
Tarwi (Chocho)	*Lupinus mutabilis*	2	2	2	1	**1**	2	1	Centro de origen, alta variabilidad
Amaranto, kiwicha, coimi	*Amaranthus caudatus (*		1					1	Centro de origen alta variabilidad

Cultivo	**Especie**	**Conservación ex situ**						**Conservación in situ**	
		Prioridad Regional	Bol**	Col	Ecu	**Per**	Ven	Prioridad nacional	Sustentación de prioridad para la conservación in situ en Bolivia.
Quinua y cañahua	*Chenopodium sp*	1	1	2	1	**1**	2	1	Centro de origen alta variabilidad, colección única
Frijoles	*Phaseolus sp*	1	1	1	1	**1**	1	1	alta diversidad, parientes silvestres
Maní	*Arachis sp*	1	1	2	1	**1**	2	1	Centro de origen alta variabilidad
Tomate	*Lycopersicum sculenta*	2	2	2	2	**2**	2	3	Alta variabilidad
Aji	*Capsicum sp*	1	1	1	1	**1**	1	1	Centro de origen alta variabilidad
Calabaza/ zapallo	*Cucúrbita sp.*	2	2	1	2	**1**	2	2	Centro de origen alta variabilidad
Granadilla/tumbo/maracuyá	*Pasiflora sp.*	1	1	1	1	**1**	1	1	Centro de origen alta variabilidad
Tomatillo/capuli/uchuva	*Physalis p.*	1	2	1	1	**1**	2	2	Centro de origen alta variabilidad
Chirimoya/guanabana	*Annona sp*	1	1	2	1	**1**	2	1	Centro de origen alta variabilidad
Cacao	*Theobroma cacao*	1	1	1	1	**1**	1	1	Centro de origen alta variabilidad
Papayuela, papaya lechosa, papaya de altura.	*Carica spp.*		2					1	Centro de origen alta variabilidad
Palta, aguacate	*Persea americana*		2					2	Centro de origen alta variabilidad
Sacha tomate, tomate de árbol	*Cyphomandra betacea*		1					1	Centro de origen alta variabilidad
Forrajeras Alto andinas			2					2	Alta variabilidad

1= prioridad alta; 2= prioridad media; 3 = prioridad baja.

** Los países andinos tienen la predisposición de asumir responsabilidades regionales en aquellas especies con prioridad 1.

Fuente : REDARFIT (2004)

Annex 4 Gene banks in Peru

BANCOS DE GERMOPLASMA DEL PERU

Fuente: H. Knudsen, **Directorio de Colecciones de Germoplasma en America Latina y el Caribe**. (Italia, 2000)

	INSTITUCION	ESPECIES	ACCESIONES
1	Estacion Exprimental Agropecuaria La Molina, INIA, PRONARGEB Av. La Universidad s/n, Casilla #2791, Lima 1. PERU Tel: (51) 14351979 / 13495646 Fax: (51)14351979 / 13495646 Email: inia@amauta.rcp.net.pe	31	5626
2	Estacion Experimental Andenes, INIA Av. Micaela Bastidas No. 310 - 314, Wanchaq Cusco. PERU Tel: (51) 84227351 / 84222031 Fax: (51)84232871	8	1602
3	Estacion experimental Baños del Inca, INIA Km 7 carr. Cajamarca - Celendin, A.P. 169, Cajamarca Tel: (51) 44923648 / 44821386 Fax: (51) 44923048 / 44823648	9	2178
4	Estacion Experimental Canaan - Huamanga, INIA Av. Abancay s/n Canaan Bajo Ayacucho, Ayacucho Huamanga. PERU Tel: (51) 64813041 / 64812271 Fax: (51) 64812271 Email: inia.ayacucho@chankas.com	19	1275
5	Estacion Experimental Illpa - Puno, INIA Km. 22, Carretera Puno Juliaca, Puno. PERU Tel: (51) 54622779 / 54351943 Fax: (51) 54325663 / 54351943 Email: illpa@lanet.com.pe illpa@mail.cosapidata.com.pe	11	3238
6	Estacion Experimental "El Porvenir", INIA Km 14.5 via Tarapoto - Juanjui, Apartado 9 Tarapoto, San Martin. PERU Tel: (51) 94522291 Fax: (51) 94522291 Email: eepor@telematic.com.pe	45	5403
7	Estacion Experimental Pucallpa, INIA Av. Centenario Km. 4, Apartado 203 Pucallpa, Coronel Portillo. PERU Tel: (51) 64575009 Fax: (51) 64575009	27	6202
8	Estacion Experimental Santa Ana, INIA Carr. Huancayo - Hualaoyo, Apartado 411 El Tambo, Huancayo. PERU Tel: (51) 64246206 Fax: (51) 64247096	18	2658
9	Fundacion Para el Desarrollo Agrario del altoMayo Fundaam Av. Grau s/n Casilla Postal 125, Moyobamba. PERU Tel: (51) 94562719 Fax: (51) 94562719 Email: fundaam@correo.dnet.com.pe	5	17
10	Fundo "El Paraiso" Carr. Capzada - Soritor Habana, Rioja	32	41
11	Inst. de Invest. de la Amazonia Peruana, Centro Regional de Invest. San Martin Casilla Postal 37 Tarapoto, San Martin. PERU Tel: (51) 94524748 Fax:(51) 94524748 Email: iiapsm@rail.org.pe	1	19
12	Instituto de Desarrollo del Medio Ambiente Jr. Junin 459 Huanuco. PERU Tel: (51) 64512156 Fax: (51) 64512156 Email: ldmahua@net.cosapidata.com.pe	19	132

	INSTITUCION	ESPECIES	ACCESIONES
13	Universidad Nacional Agraria de La Selva (UNAS) Facultad de agronomia, Av. Universitaria s/n Apdo. 156, Tingo Maria. PERU Tel: (51) 64561092 Fax: (51) 64561092 Email: UNAS@UNAS.edu.pe	3	320
14	Universidad Nacional Agraria La Molina Av. La Universidad, Aprartado 346, La Molina, Lima. PERU Tel: (51) 13495647 / 13495799 Fax: (51) 13480747 / 13495800	20	16471
15	Universidad Nacional de Cajamarca, Facultad de Agronomia Carr. Baños del Inca s/n, Casilla Postal 16, Cajamarca. PERU Tel: (51) 44822796 / 44922796 Fax: (51) 44822796 / 44922796	6	1606
16	Universidad Nacional de la Amazonia Peruana (UNAP) Samanez campo No 185, Maynas Iquitos.PERU Tel: (51) 94234153 Fax: (51) 94238951	1	3
17	Universidad Nacional de San Martin, Facultad de Ciencias Agrarias Ciudad Universitaria - Morales Tarapoto, San Martin.PERU Tel : (51) 94524074 Fax: (51) 94524074	7	71
18	Universidad Nacional de Ucayali Carr. Federico Basadre Km 6, apdo. 90 Pucallpa, Coronel Portillo. PERU Tel: (51) 64575305 / 64579691 Fax: (51) 64571044	31	149
19	Universidad Nacional del Altiplano (UNAP) Av. Ejercito No 329, casilla 291, Puno. PERU Tel: (51) 54356081 Fax: (51) 54352992 / 54353471	8	2340
20	Universidad Nacional del Centro del Peru, Facultad de Agronomia Huancayo, Junin. PERU Fax: (51) 64235531 - 211	10	1300
21	Universidad Nacional Hermilio Valdizan (UNHEVAL) Jiron 2 de Mayo # 680, Apdo. 278, Huanuco.PERU Tel : (51) 64511241 Fax: (51) 64512342	14	1542
22	Universidad Nacional San Antonio Abad del Cuzco (UNSAAC) Centro Agronomico K'Ayra, Apdo. 295, Cusco.PERU Tel: (51) 84277246 Fax: (51) 84221632	3	330
22a	Universidad Nacional San Antonio Abad del Cuzco (UNSAAC/CICA) Granja K'Ayra, Casilla Postal 973, Cusco. PERU Tel: (51) 84277352 / 84277254 / 84277353 Fax:(51) 84277353 / 84277254 Email: Postmaster@cica.edu.pe	17	6160
23	Univerisdad Nacional San Cristobal de Huamanga, Fac. Ciencias Agrar. Av. Universitario s/n Apdo. 220, Ayacucho. PERU Tel: (51) 649916024 / 649912510 email: picaunsch@amauta.rcp.net.pe	5	189
	TOTAL		58875

Annex 5 National Program for Agrobiodiversity

Please refer to:

Grupo Técnico Nacional de Agrobiodiversidad (2003), *Documento Base del Programma Nacional de Agrobiodiversidad*, Lima (156 pages).

Summary:

The National Program for Agrobiodiversity was approved in July 2003. This Program is the result of work undertaken by a Technical Working Group on Agrobiodiversity convened by the National Environmental Council (CONAM).

This Program establishes a series of medium and long-term objectives related to the conservation and sustainable use of agrobiodiversity and its components. Closely related to Farmers Rights, the Program includes a specific objective (5.3.3) oriented at rescuing local knowledge of *campesino* and native communities on agrobiodiversity and providing incentives to conservation activities (especially of local genetic diversity). Objective 5.6.6 also calls for strengthening and promoting effective participation of *campesino* communities and other farmers in the development of markets for their products and appropriate policies regarding conservation and sustainable use of agrobiodiversity. Objective 5.7.2.5 also determines the need to develop a national fund to support conservation and sustainable use of agrobiodiversity.

Annex 6 National Agrobiodiversity Action Plan

Nº 8.2147-2005, y el Procedimiento Nº 12 del Texto Único de Procedimientos Administrativos aprobado mediante Resolución SBS Nº 131-2002; y en virtud de la facultad delegada por Resolución SBS Nº 1096-05 del 25 de julio de 2005;

RESUELVE:

Artículo Único.- Autorizar a MIBANCO, BANCO DE LA MICRO EMPRESA S.A., el traslado de la Agencia ubicada en el Jr. Cusco, Nº 434, distrito, provincia y departamento de Lima, al local ubicado en el Jr. Carabaya Nº 400 y 402, distrito, provincia y departamento de Lima.

Regístrese, comuníquese y publíquese.

PEDRO LUIS GRADOS SMITH
Superintendente Adjunto de
Banca y Microfinanzas

14447

ORGANISMOS DESCENTRALIZADOS

CONSEJO NACIONAL DEL AMBIENTE

Aprueban Programa Nacional de Agrobiodiversidad

(Se publica el presente Decreto a solicitud del Consejo Nacional del Ambiente, mediante Carta Nº 243-2005-CONAM/CDAF recibida el 18 de agosto de 2005)

DECRETO DEL CONSEJO DIRECTIVO
Nº 022-2004-CONAM/CD

Lima, 26 de noviembre de 2004

CONSIDERANDO:

Que, el artículo 2º de la Ley Nº 26410 establece que el CONAM es el organismo rector de la política nacional ambiental y tiene por finalidad planificar, promover, coordinar, controlar y velar por el ambiente y el patrimonio natural de la Nación;

Que, la región geográfica donde se ubica el Perú (Andes) es considerada uno de los centros mundiales con mayor diversidad de recursos genéticos para la agricultura y la alimentación, siendo centro de origen de varias de las principales especies cultivadas del mundo, además posee una gran reserva en parientes silvestres de especies domesticadas y se han desarrollado conocimientos asociados al manejo tradicional de los agroecosistemas;

Que, sin embargo, viene ocurriendo una pérdida de la diversidad biológica, así como el conocimiento tradicional asociado a su conservación, por todo ello, se ha elaborado un Programa Nacional y un Plan para la implementación del Sistema Nacional de Agrobiodiversidad, como instrumentos que contribuyan a la conservación de la agrobiodiversidad, siendo que la implementación de ambos será clave para que los grupos objetivos se beneficien de su aplicación;

Que, es objetivo del Programa Nacional de Agrobiodiversidad, contribuir a la conservación, el aprovechamiento sostenible y la gestión participativa de la agrobiodiversidad, partiendo de su identificación, caracterización y valoración, con respeto a la cultura local; en un marco legal y político favorable, en un contexto de equidad para las comunidades usuarias y conservacionistas; por lo que, resulta necesario la aprobación de la citada propuesta;

Estando a lo acordado en la sesión del Consejo Directivo Nº 83, de fecha 26 de noviembre de 2004;

Con la visación del Secretario Ejecutivo;

SE RESUELVE:

Artículo Único.- Aprobar el Programa Nacional de Agrobiodiversidad, por los fundamentos expuestos en la parte considerativa del presente Decreto de Consejo Directivo.

Regístrese y comuníquese.

CARLOS LORET DE MOLA
Presidente del Consejo Directivo

14477

Disponen que la Secretaría Técnica del Programa de Agrobiodiversidad estará a cargo de la Unidad de Biodiversidad y Bioseguridad del Consejo Nacional del Ambiente - CONAM

RESOLUCIÓN DE SECRETARÍA EJECUTIVA
Nº 004-2005-CONAM/SE

Lima, 12 de agosto de 2005

CONSIDERANDO:

Que, mediante Decreto del Consejo Directivo Nº 022-2004-CONAM/CD, de fecha 26 de noviembre de 2004, se aprobó el documento base del Programa Nacional de Agrobiodiversidad, diseñado para que se desarrolle de manera interinstitucional y descentralizada con enfoque de sistema y bajo la coordinación de una Secretaría Técnica, que inicie y apoye el proceso de organización de sus miembros;

Que, uno de los elementos necesarios para iniciar el trabajo del Programa Nacional de Agrobiodiversidad es la designación de una Secretaría Técnica, que estará encargada de llevar a cabo acciones para la aplicación del citado Programa a nivel regional como sectorial;

Que, la Unidad de Bioseguridad y Biodiversidad del Consejo Nacional del Ambiente - CONAM ha impulsado la elaboración y aprobación del Programa Nacional de Agrobiodiversidad como resultado de un trabajo participativo y descentralizado, por tanto, resulta necesario designar a la citada Unidad Especializada como Secretaría Técnica del Programa en mención;

Con la visación de la Oficina de Asesoría Jurídica;

De conformidad con lo dispuesto por la Ley Nº 26410, Ley de creación del CONAM, Resolución Legislativa Nº 26181, sobre ratificación del Convenio sobre Diversidad Biológica por parte del Perú; y Decreto Supremo Nº 022-2001-PCM, Reglamento de Organización y Funciones;

SE RESUELVE:

Artículo 1º.- Disponer que la Secretaría Técnica del Programa de Agrobiodiversidad estará a cargo de la Unidad de Biodiversidad y Bioseguridad del Consejo Nacional del Ambiente - CONAM.

Artículo 2º.- Transcribir la presente resolución a la Unidad de Biodiversidad y Bioseguridad del CONAM para su conocimiento y fines.

Regístrese, comuníquese y publíquese.

MARIANO CASTRO SÁNCHEZ-MORENO
Secretario Ejecutivo

14476

CONSUCODE

Modifican Art. 23º del Reglamento de la Modalidad de Selección por Subasta Inversa Presencial aprobado por Res. Nº 200-2005-CONSUCODE/PRE

CONSEJO SUPERIOR DE CONTRATACIONES Y ADQUISICIONES DEL ESTADO

RESOLUCIÓN Nº 299-2005-CONSUCODE/PRE

Jesús María, 15 de agosto de 2005

Annex 7 Biodiversity Law (LEY N° 26839)

Ley sobre la conservación y aprovechamiento sostenible de la diversidad biológica

CONCORDANCIAS: D.S. Nº 068-2001-PCM (REGLAMENTO)
D.S. Nº 026-2001-PE
D.S. Nº 102-2001-PCM
R.J. N° 090-2005-INRENA (Apertura del Registro de acceso de recursos genéticos)

EL PRESIDENTE DE LA REPUBLICA

POR CUANTO:

El Congreso de la República ha dado la Ley siguiente:

EL CONGRESO DE LA REPUBLICA HA DADO LA LEY SIGUIENTE:

LEY SOBRE LA CONSERVACION Y APROVECHAMIENTO SOSTENIBLE DE LA DIVERSIDAD BIOLOGICA

TITULO I: DISPOSICIONES GENERALES

Artículo 1.- La presente ley norma la conservación de la diversidad biológica y la utilización sostenible de sus competentes en concordancia con los Artículos 66 y 68 de la Constitución Política del Perú. Los principios y definiciones del Convenio sobre Diversidad Biológica rigen para los efectos de aplicación de la presente ley.

Artículo 2.- Cualquier referencia hecha en la presente Ley a "Convenio" debe entenderse referida al Convenio sobre la Diversidad Biológica, aprobado por Resolución Legislativa N° 26181.

Artículo 3.- En el marco del desarrollo sostenible, la conservación y utilización sostenible de la diversidad biológica implica:

a) Conservar la diversidad de ecosistemas, especies y genes, así como mantener los procesos ecológicos esenciales de los que dependen la supervivencia de las especies.

b) Promover la participación justa y equitativa en los beneficios que se deriven de la utilización de la diversidad biológica.

c) Incentivar la educación, el intercambio de información, el desarrollo de la capacidad de los recursos humanos, la investigación científica y la transferencia tecnológica, referidos a la diversidad biológica y a la utilización sostenible de sus componentes.

d) Fomentar el desarrollo económico del país en base a la utilización sostenible de los componentes de la diversidad biológica, promoviendo la participación del sector privado para estos fines.

Artículo 4.- El Estado es soberano en la adopción de medidas para la conservación y utilización sostenible de la diversidad biológica.

En ejercicio de dicha soberanía el Estado norma y regula el aprovechamiento sostenible de los componentes de la diversidad biológica.

Artículo 5.- En cumplimiento de la obligación contenida en el Artículo 68 de la Constitución Política del Perú, el Estado promueve:

a) La priorización de acciones de conservación de ecosistemas, especies y genes, privilegiando aquellos de alto valor ecológico, económico, social y cultural identificados en la Estrategia Nacional sobre Diversidad Biológica a que se refiere el Artículo 7 de la presente ley.

b) La adopción de un enfoque integrado para el manejo de tierras y agua, utilizando la cuenca hidrográfica como unidad de manejo y planificación ambiental.

c) La conservación de los ecosistemas naturales así como las tierras de cultivo, promoviendo el uso de técnicas adecuadas de manejo sostenible.

d) La prevención de la contaminación y degradación de los ecosistemas terrestres y acuáticos, mediante prácticas de conservación y manejo.

e) La rehabilitación y restauración de los ecosistemas degradados.

f) La generación de condiciones, incluyendo los mecanismos financieros, y disposición de los recursos necesarios para una adecuada gestión de la diversidad biológica.

g) La adopción de tecnologías limpias que permitan mejorar la productividad de los ecosistemas, así como el manejo integral de los recursos naturales.

h) La incorporación de criterios ecológicos para la conservación de la diversidad biológica en los procesos de ordenamiento ambiental y territorial.

i) Esfuerzos cooperativos e iniciativas conjuntas entre el sector público y privado para la conservación de la diversidad biológica y la utilización sostenible de sus componentes.

Artículo 6.- El Estado adoptará medidas, tales como instrumentos económicos y otros, para incentivar la conservación y utilización sostenible de la diversidad biológica.

TITULO II: DE LA PLANIFICACION

Artículo 7.- La Estrategia Nacional de la Diversidad Biológica constituye el principal instrumento de planificación para el cumplimiento de los objetivos de la presente ley y el Convenio. En ella se establecerán los programas y planes de acción orientados a la conservación de la diversidad biológica, la utilización sostenible de sus componentes y la participación justa y equitativa en los beneficios derivados de su utilización.

Artículo 8.- La Estrategia, programas y planes de acción para la conservación y utilización sostenible de la diversidad biológica se formularán a través de procesos participativos y sus resultados se incorporarán en los planes y políticas nacionales siendo de cumplimiento prioritario.

Artículo 9.- Corresponde a la instancia de coordinación intersectorial, a que se refiere el Artículo 32 de la presente ley, convocar el proceso participativo y conducir la elaboración de la Estrategia Nacional de la Diversidad Biológica.

TITULO III: INVENTARIO Y SEGUIMIENTO

Artículo 10.- La instancia a la que se refiere el Artículo 32 de la presente ley coordina la elaboración de un reporte anual de la situación de la diversidad biológica del país. Cada Sector en forma coordinada elabora y actualiza periódicamente el inventario y valorización de los componentes de la diversidad biológica de su competencia.

Artículo 11.- Las autoridades sectoriales con competencia en el aprovechamiento de componentes de la diversidad biológica, dispondrán la realización de evaluaciones periódicas del manejo y/o aprovechamiento de los mismos a fin de que se adopten las medidas necesarias para su mantenimiento y conservación.

Artículo 12.- La instancia a la que se refiere el Artículo 32 de la presente ley, promueve la integración, sistematización y difusión de la información relativa al estado de los componentes de la diversidad biológica.

TITULO IV: DE LOS MECANISMOS DE CONSERVACION

Artículo 13.- El Estado promueve el establecimiento e implementación de mecanismos de conservación in situ de la diversidad biológica, tales como la declaración de Areas Naturales Protegidas y el manejo regulado de otros ecosistemas naturales, para garantizar la conservación de ecosistemas, especies y genes en su lugar de origen y promover su utilización sostenible.

Artículo 14.- El Estado promueve el establecimiento de centros de conservación ex situ tales como herbarios, jardines botánicos, bancos de genes, entre otros, para complementar las medidas de conservación in situ.

Dichos centros priorizarán el mantenimiento y el manejo de especies nativas y sus parientes silvestres.

Artículo 15.- Las actividades de los centros de conservación ex situ deberán adecuarse a la normativa sobre acceso a los recursos genéticos y los principios generales establecidos en la presente Ley.

TITULO V: AREAS NATURALES PROTEGIDAS

Artículo 16.- Son Areas Naturales Protegidas, aquellos espacios continentales y/o marinos del territorio nacional, reconocidos, establecidos y protegidos legalmente por el Estado, debido a su importancia para conservar la diversidad biológica y otros valores asociados. Estas áreas se establecen con carácter definitivo y la modificación de su norma sólo podrá ser autorizada por Ley.

Artículo 17.- Las Areas Naturales Protegidas del país conforman en su conjunto el Sistema Nacional de Areas Naturales Protegidas por el Estado (SINANPE), al cual se integran las instituciones públicas del Gobierno Central, Gobiernos Regionales, Municipalidades, instituciones privadas y las poblaciones locales que actúan, intervienen o participan, directa o indirectamente en la gestión y desarrollo de las Areas Naturales Protegidas.

Artículo 18.- Las Areas Naturales Protegidas establecidas por el Estado son de dominio público y, por lo tanto, no podrán ser adjudicadas en propiedad a los particulares. El ejercicio de la propiedad y de los demás derechos reales adquiridos con anterioridad al establecimiento de las Areas Naturales Protegidas, debe hacerse en armonía con los objetivos y fines para los cuales éstas fueron creadas.

Artículo 19.- Las Areas Naturales Protegidas cumplen sus objetivos a través de distintas categorías de manejo, las mismas que contemplan una gradualidad de opciones que incluyen Areas de uso indirecto y Areas de uso directo.

Artículo 20.- Los sectores y los distintos niveles de gobierno velarán porque las actividades que se realicen en las zonas adyacentes o Zonas de Amortiguamiento de las Areas Naturales Protegidas, no pongan en riesgo el cumplimiento de los fines de aquellas.

Artículo 21.- El Estado promueve la participación privada en la gestión de las áreas del SINANPE. El otorgamiento de derechos a particulares obliga a éstos a cumplir con las políticas, planes y normas que se determinen para las Areas Naturales Protegidas.

Artículo 22.- El aprovechamiento de recursos naturales en Areas Naturales Protegidas, y cualquier otra actividad que se realice dentro de las mismas, sólo podrá ser autorizado si resulta compatible con la categoría y la zonificación asignada, así como con los planes de manejo del área. Estas actividades no deben poner en riesgo el cumplimiento de los fines y objetivos primarios para los cuales se estableció el área.

TITULO VI: DE LAS COMUNIDADES CAMPESINAS Y NATIVAS

Artículo 23.- Se reconoce la importancia y el valor de los conocimientos, innovaciones y prácticas de las comunidades campesinas y nativas, para la conservación y utilización sostenible de la diversidad biológica.

Asimismo, se reconoce la necesidad de proteger estos conocimientos y establecer mecanismos para promover su utilización con el consentimiento informado de dichas comunidades, garantizando la distribución justa y equitativa de los beneficios derivados de su utilización.

Artículo 24.- Los conocimientos, innovaciones y prácticas de las comunidades campesinas, nativas y locales asociados a la diversidad biológica, constituyen patrimonio cultural de las mismas, por ello, tienen derecho sobre ellos y la facultad de decidir respecto a su utilización.

TITULO VII: DE LA INVESTIGACION CIENTIFICA Y TECNOLOGICA

Artículo 25.- El Estado con participación del sector privado, promueve:

a) El desarrollo de la investigación científica, el acceso, generación y transferencia de tecnologías apropiadas, incluida la biotecnología.

b) El intercambio de información y de personal técnico de las entidades dedicadas a la conservación y/o investigación de la diversidad biológica.

c) La elaboración y ejecución de un plan de acción de investigación científica sobre la diversidad biológica como parte de la Estrategia Nacional de Diversidad Biológica.

d) La investigación aplicada a la solución de problemas referidos a la pérdida, degradación o disminución de los componentes de la diversidad biológica.

Artículo 26.- Se declara de prioridad e interés nacional la investigación científica sobre:

a) Conocimiento de las especies de flora, fauna, microorganismos y ecosistemas mediante la realización de inventarios, estudios biológicos y de seguimiento ambiental.

b) Manejo y conservación de los ecosistemas y especies silvestres de importancia económica, científica, social o cultural.

c) Conocimiento, conservación y aplicación industrial y medicinal de los recursos genéticos mediante biotecnología tradicional y moderna.

d) Utilización diversificada de los recursos de la diversidad biológica más abundantes y sustitución de los más escasos.

e) Conservación y manejo sostenible de los ecosistemas, en particular de los bosques, las tierras frágiles, tierras áridas y semiáridas y los humedales.

f) Restauración de las zonas degradadas.

g) Desarrollo de tecnología apropiada y el uso complementario de tecnologías tradicionales con tecnologías modernas.

TITULO VIII: DE LOS RECURSOS GENETICOS

Artículo 27.- Los derechos otorgados sobre recursos biológicos no otorgan derechos sobre los recursos genéticos contenidos en los mismos.

Artículo 28.- El Estado es parte y participa en el procedimiento de acceso a los recursos genéticos.

CONCORDANCIA: R.J. N° 090-2005-INRENA (Apertura del Registro de acceso de recursos genéticos)

Artículo 29.- Mediante norma legal expresa, se establece el procedimiento de acceso a los recursos genéticos o sus productos derivados. Podrán establecerse limitaciones parciales o totales a dicho acceso, en los casos siguientes:

a) Endemismo, rareza o peligro de extinción de las especies subespecies, variedades o razas;

b) Condiciones de vulnerabilidad o fragilidad en la estructura o función de los ecosistemas que pudieran agravarse por actividades de acceso;

c) Efectos adversos de la actividad de acceso, sobre la salud humana o sobre elementos esenciales de la identidad cultural de los pueblos;

d) Impactos ambientales indeseables o difícilmente controlables de las actividades de acceso, sobre las especies y los ecosistemas;

e) Peligro de erosión genética ocasionado por actividades de acceso;

f) Regulaciones sobre bioseguridad; o,

g) Recursos genéticos o áreas geográficas calificados como estratégicos.

Artículo 30.- La investigación, desarrollo, producción, liberación, introducción y transporte en todo el territorio nacional de organismos genéticamente modificados, deben contar con mecanismos de seguridad destinados a evitar los daños al ambiente y la salud humana.

TITULO IX: AUTORIDAD COMPETENTE

Artículo 31.- El Estado realiza la gestión de la diversidad biológica a través de las autoridades competentes que, para los efectos de la presente ley, son los Ministerios, organismos públicos descentralizados y otros órganos de acuerdo a las atribuciones establecidas en sus respectivas normas de creación.

Artículo 32.- El Poder Ejecutivo determina por Decreto Supremo la instancia de coordinación intersectorial en materia de diversidad biológica y realiza el seguimiento de los compromisos asumidos en el Convenio y la presente Ley.(*)(**)

(*) De conformidad con el Artículo 1 del Decreto Supremo Nº 038-98-PCM, publicado el 19-08-98, se determina que el Consejo Nacional del Ambiente (CONAM), es la instancia de coordinación intersectorial sobre la Conservación y Aprovechamiento Sostenible de la Diversidad Biológica, a que hace referencia este Artículo.

(**) Artículo derogado por la Tercera Disposición Final de la Ley Nº 27104, publicada el 12-05-99.

DISPOSICIONES TRANSITORIAS Y FINALES

Primera.- Declárase de interés y necesidad nacional la elaboración, publicación y difusión del Inventario Nacional de la Diversidad Biológica.

Segunda.- El Poder Ejecutivo dictará las medidas necesarias para el cumplimiento de la presente ley. El Reglamento de la misma deberá publicarse en el Diario Oficial El Peruano , en un plazo de 90 días.

Comuníquese al señor Presidente de la República para su promulgación.

En Lima, a los diecisiete días del mes de junio de mil novecientos noventa y siete.

VICTOR JOY WAY ROJAS

Presidente del Congreso de la República

CARLOS TORRES Y TORRES LARA

Primer Vicepresidente del Congreso de la República

AL SEÑOR PRESIDENTE CONSTITUCIONAL DE LA REPUBLICA

POR TANTO:

Mando se publique y cumpla.

Dado en la Casa de Gobierno, en Lima, a los ocho días del mes de julio de mil novecientos noventa y siete.

ALBERTO FUJIMORI FUJIMORI

Presidente Constitucional de la República

ALBERTO PANDOLFI ARBULU

Presidente del Consejo de Ministros

RODOLFO MUÑANTE SANGUINETI

Ministro de Agricultura

Annex 8 Implementing Rules and Regulations Pertaining to the Biodiversity Law

Aprueban el Reglamento de la Ley sobre Conservación y Aprovechamiento Sostenible de la Diversidad Biológica

DECRETO SUPREMO Nº 068-2001-PCM

CONCORDANCIA: D.S. Nº 102-2001-PCM

EL PRESIDENTE DE LA REPÚBLICA

CONSIDERANDO:

Que, la Ley Nº 26839 - Ley sobre la Conservación y Aprovechamiento Sostenible de la Diversidad Biológica, regula lo relativo a la conservación de la diversidad biológica y la utilización sostenible de sus componentes, en concordancia con los Artículos 66 y 68 de la Constitución Política del Perú;

Que, la Ley Nº 26839, promueve la conservación de la diversidad de ecosistemas, especies y genes, el mantenimiento de los procesos ecológicos esenciales, la participación justa y equitativa de los beneficios que se deriven de la utilización de la diversidad biológica y el desarrollo económico del país basado en el uso sostenible de sus componentes, en concordancia con el Convenio de las Naciones Unidas sobre Diversidad Biológica, aprobado por Resolución Legislativa Nº 26181;

Que, de conformidad con lo dispuesto por la Ley Nº 26821 - Ley para el Aprovechamiento Sostenible de los Recursos Naturales, es prioritario promover y regular el aprovechamiento sostenible de dichos recursos y dentro de ellos los recursos biológicos, estableciendo un marco adecuado para el fomento a la inversión y procurando un equilibrio dinámico entre el crecimiento económico y la conservación de los mismos y de la diversidad biológica en su conjunto;

Que, en cumplimiento de la Segunda Disposición Transitoria y Final de la Ley Nº 26839 el Consejo Nacional del Ambiente - CONAM, a través de Resolución Presidencial Nº 914-99-CONAM-PCD estableció un Grupo Técnico encargado de elaborar el Reglamento de la Ley Nº 26839;

En uso de las facultades conferidas por el numeral 8) del Artículo 118 de la Constitución Política del Perú;

DECRETA:

Artículo 1.- Apruébase el Reglamento de la Ley Nº 26839 - Ley sobre Conservación y Aprovechamiento Sostenible de la Diversidad Biológica, el mismo que consta de nueve (9) Títulos, ochenta y siete (87) Artículos, tres (3) Disposiciones Transitorias y dos (2) Disposiciones Finales.

Artículo 2.- El presente Decreto Supremo será refrendado por el Presidente del Consejo de Ministros.

Dado en la Casa de Gobierno, en Lima, a los veinte días del mes de junio del año dos mil uno.

VALENTIN PANIAGUA CORAZAO
Presidente Constitucional de la República

JAVIER PÉREZ DE CUÉLLAR
Presidente del Consejo de Ministros

REGLAMENTO DE LA LEY SOBRE LA CONSERVACIÓN Y APROVECHAMIENTO SOSTENIBLE DE LA DIVERSIDAD BIOLOGICA

TITULO I: CONTENIDO Y ALCANCES

Artículo 1.- El presente Reglamento regula la conservación de la diversidad biológica y la utilización sostenible de sus componentes en concordancia con las normas y principios establecidos por la Ley Nº 26839 sobre la Conservación y Aprovechamiento Sostenible de la Diversidad Biológica.

Artículo 2.- Cualquier mención hecha en el presente Reglamento a la Ley, se entiende referida a la Ley Nº 26839, al Código, se entiende referida al Decreto Legislativo Nº 613, Código del Medio Ambiente y los Recursos Naturales y sus modificatorias; a la Ley de Recursos Naturales, se entiende referida a la Ley Nº 26821, Ley Orgánica para el Aprovechamiento Sostenible de los Recursos Naturales; al Convenio se entiende referida al Convenio de las Naciones Unidas sobre la Diversidad Biológica, aprobado por Resolución Legislativa Nº 26181 y al Reglamento se entiende referida al presente Decreto Supremo.

Artículo 3.- La diversidad biológica y sus componentes constituyen recursos estratégicos para el desarrollo del país y deben utilizarse equilibrando las necesidades de conservación con consideraciones sobre inversión y promoción de la actividad privada. El Estado debe velar por que la diversidad biológica y sus componentes sean efectivamente conservados y utilizados sosteniblemente.

TITULO II: DE LA PLANIFICACION

CAPITULO I: DE LOS INSTRUMENTOS DE PLANIFICACION

Artículo 4.- La planificación a la que se refiere el Título II de la Ley, tiene por objeto fijar prioridades nacionales y acciones en materia de conservación de la diversidad biológica y el uso sostenible de sus componentes, que dichas prioridades y acciones de conservación y uso sostenible se integren en los planes, programas y políticas sectoriales, intersectoriales y transectoriales formuladas por el sector público y orienten las acciones y actividades del sector privado.

Artículo 5.- La Estrategia Nacional de Diversidad Biológica - (ENDB), es el principal instrumento de planificación para el cumplimiento de los objetivos del Convenio y la Ley.

Artículo 6.- Constituyen también instrumentos de planificación para la conservación de la diversidad biológica y la utilización sostenible de sus componentes:

a) Los planes de ordenamiento ambiental y de recursos naturales.
b) Los planes de manejo de cuenca hidrográfica y los de zonas marino costeras.
c) Los planes de manejo forestal.
d) El Plan Director “Estrategia Nacional para las Areas Naturales Protegidas”.
e) Los Planes maestros, Operativos, de Uso Público o Turístico y de Manejo de Recursos Naturales Renovables de las Áreas Naturales Protegidas.
f) Los planes de desarrollo regionales y locales.
g) Los planes sectoriales.
h) Los planes de manejo de componentes de la diversidad biológica.
i) Aquellos que respondan al objetivo contenido en el Artículo 4.

CAPITULO II: LA ESTRATEGIA NACIONAL DE DIVERSIDAD BIOLOGICA - ENDB

Artículo 7.- La ENDB constituye el instrumento nacional de planificación de la conservación y aprovechamiento sostenible de la diversidad biológica y establece las prioridades nacionales, acciones y medidas para la gestión de la misma para un período mínimo de cinco años. Se diseña y desarrolla en el marco de un proceso de planificación participativo, multidisciplinario y dinámico. La ENDB utiliza información y articula resultados de otros procesos de planificación a nivel nacional, regional y local.

Artículo 8.- El instrumento de planificación y de aplicación nacional del Convenio sobre la Diversidad Biológica en el país es la ENDB. La estrategia tiene un enfoque ecosistémico, es decir está basada en un proceso integrado para garantizar el mantenimiento de la diversidad biológica y sus procesos ecológicos, considerando la dimensión social, cultural y económica.

La ENDB definirá ecosistemas y procesos ecológicos prioritarios con fines de determinar acciones concretas para su mantenimiento, incluyendo entre otros, estrategias de recuperación de ecosistemas degradados.

Artículo 9.- La estructura de la ENDB deberá tomar en cuenta los artículos del Convenio sus programas temáticos y regionales, así como los planes nacionales de desarrollo, que se plasmarán en planes de acción en los diferentes ámbitos geográficos.

Artículo 10.- Las dependencias del Sector Público con competencias ambientales y en materia de diversidad biológica incorporarán a sus planes de trabajo y desarrollo, las acciones y medidas de conservación y utilización sostenible establecidas en la ENDB. Estas dependencias promoverán y verificarán su implementación y cumplimiento efectivo, tanto a nivel del Sector Público como del Sector Privado, de acuerdo al Plan de Monitoreo y Evaluación que se establezca en la ENDB.

Artículo 11.- La ENDB establece las medidas y acciones prioritarias de orden político, legal, económico y técnico destinadas a orientar las actividades de conservación de la diversidad biológica, la utilización sostenible de sus componentes y la distribución equitativa de los beneficios derivados de su utilización. Estas medidas y acciones serán parte de los planes y programas que acompañan la ENDB.

Artículo 12.- La elaboración y actualización de la ENDB se sustentará en el diagnóstico nacional (a actualizarse cada 5 años) o el estado situacional de la diversidad biológica. El diagnóstico nacional se fundamenta en los trabajos específicos realizados por instituciones públicas y privadas.

La compilación y actualización de la información para el diagnóstico estará a cargo del Instituto Nacional de Recursos Naturales (INRENA), quien convocará y coordinará este proceso con instituciones públicas y privadas con reconocida experiencia en materia de análisis y evaluación de la diversidad biológica. La información obtenida en este proceso y el diagnóstico como tal serán hechos públicos.

Artículo 13.- La coordinación intersectorial para la elaboración de la ENDB y su actualización es responsabilidad del Consejo Nacional del Ambiente (CONAM) quien contará con el apoyo de la Comisión Nacional de Diversidad Biológica (CONADIB) a que se refiere la Resolución Suprema Nº 227-93/RE, modificatorias y complementarias. La ENDB será aprobada por previa opinión favorable de la CONADIB, por el CONAM y remitida a la Presidencia del Consejo de Ministros, para su promulgación mediante Decreto Supremo.

Artículo 14.- La CONADIB es la instancia de asesoramiento y consulta para el monitoreo y evaluación de la implementación de la ENDB. Junto a las Comisiones Ambientales Regionales y otras instancias nacionales y regionales en materia de gestión ambiental efectúan el monitoreo y evaluación de su implementación así como el diseño de las medidas correctivas que fueren necesarias.

Artículo 15.- Para el proceso de diseño, elaboración y actualización de la ENDB, el CONAM establecerá mecanismos de participación y consulta con instituciones del sector público y privado de nivel nacional, regional y local. En particular se promoverá la participación directa de la sociedad civil en el proceso, especialmente de los pueblos indígenas y de las poblaciones locales empleando metodologías especiales para las consultas.

Artículo 16.- Se promoverá la participación y consulta con instituciones especializadas en materia de conservación y utilización sostenible de la diversidad biológica, mediante reuniones, talleres, seminarios regionales y nacionales, redes informáticas, la preparación y remisión de propuestas regionales y nacionales, la distribución de documentos, entre otros mecanismos participativos.

Artículo 17.- Los insumos y aportes recibidos durante el proceso de consulta serán tomados en consideración y evaluados por la CONADIB para efectos de su incorporación a la ENDB. La ENDB incluirá mecanismos de revisión y actualización basada en los resultados del monitoreo y evaluación de su implementación.

Artículo 18.- La ENDB será difundida públicamente a través del Mecanismo de Facilitación para el Intercambio de Información en Diversidad Biológica (CHM por sus siglas en inglés: Clearing House Mechanism) y otros medios apropiados para cumplir con tal fin particularmente a nivel regional y local. Para la difusión en el ámbito regional y local, se coordinará con instituciones del sector público y privado.

Artículo 19.- Para la evaluación del proceso de implementación de la ENDB, el CONAM convocará a la CONADIB una vez al año a fin de coordinar y recoger las sugerencias sobre las medidas que sean necesarias para promover su implementación de manera más efectiva, de acuerdo a las metas de gestión programadas y resultados esperados.

Artículo 20.- Para facilitar el proceso de evaluación del grado de cumplimiento de la ENDB, el CONAM, en consulta con la CONADIB desarrollará y propondrá indicadores de gestión en materia de implementación de la ENDB, así como indicadores de impacto de las medidas adoptadas y derivadas de la ENDB para conservar y utilizar en forma sostenible la diversidad biológica.

Para apoyar el proceso de evaluación, la CONADIB propondrá un formulario estandarizado para que los sectores e instituciones reporten anualmente sobre sus avances y desempeño en el proceso de implementación y cumplimiento de la ENDB. Asimismo se utilizaran otros mecanismos que la complementen tales como comisiones de veedores, comisiones multisectoriales, entre otros.

Artículo 21.- El CONAM, en coordinación con las autoridades sectoriales competentes, remitirá los formularios indicados en el artículo precedente, a los diferentes sectores e instituciones, en función a indicadores específicos, a fin de determinar sus avances en materia de implementación de medidas tendentes a cumplir con el Convenio y otras normas sobre conservación y uso sostenible de la diversidad biológica.

CAPITULO III: DEL ORDENAMIENTO AMBIENTAL Y DE RECURSOS NATURALES

Artículo 22.- El ordenamiento ambiental tiene por objeto establecer las condiciones de uso y de ocupación del territorio y de sus componentes, de manera que dicho uso se realice de acuerdo con las características ecológicas, económicas, culturales y sociales de estos espacios, teniendo en cuenta la fragilidad, vulnerabilidad y endemismo de los ecosistemas y las especies, así como la erosión genética, con el fin de obtener el máximo aprovechamiento sin comprometer su calidad y sostenibilidad.

Artículo 23.- Para efectos de la conservación y utilización sostenible de la diversidad biológica, las autoridades competentes de ámbito nacional, regional y local, al realizar el ordenamiento ambiental deberán tomar en cuenta los criterios establecidos en el Artículo 7 del Código y aquellos referidos al manejo integrado de zonas marino costeras y aguas continentales, los planes de ordenamiento pesquero, la Ley Forestal y de Fauna Silvestre y su Reglamento, la zonificación territorial de las áreas de capacidad de uso mayor de suelos, la zonificación de las áreas naturales protegidas tal como las define la Ley de Áreas Naturales Protegidas y su Plan Director, así como las áreas prioritarias de conservación identificadas en este último, entre otros.

Artículo 24.- El ordenamiento ambiental a que se refiere el Artículo 6 de este Reglamento se basará asimismo en la Zonificación Ecológica y Económica (ZEE).

La ZEE deberá tomar en cuenta, entre otras, las prioridades de conservación identificadas en la ENDB, el Plan Director de las Áreas Naturales Protegidas, la zonificación territorial de las áreas forestales del país aprobada por el INRENA, conciliando los intereses de conservación del patrimonio natural y el aprovechamiento sostenible de los recursos naturales.

Artículo 25.- En el proceso de ordenamiento ambiental, el enfoque ecosistémico constituye la herramienta básica orientada a promover el mantenimiento de los procesos ecológicos esenciales en forma integral para revertir los procesos de degradación ambiental y afectación de la diversidad biológica.

CAPITULO IV: DE LA CUENCA HIDROGRAFICA

Artículo 26.- La cuenca hidrográfica constituye la unidad física básica y general de planificación y ordenamiento en materia de conservación y uso de suelos, aguas continentales y diversidad biológica.

Artículo 27.- El planeamiento y ordenamiento de la cuenca hidrográfica se llevará a cabo con la participación tanto del Sector Público como del Sector Privado y de conformidad con lo establecido en el Artículo 55 y siguientes del Decreto Legislativo Nº 653, Ley de Promoción de las Inversiones en el Sector Agrario. Dicho planeamiento y ordenamiento se sustentará principalmente en el enfoque ecosistémico para la conservación de la diversidad biológica en su aproximación metodológica.

Artículo 28.- Las autoridades autónomas de cuenca hidrográfica aplicarán la zonificación ecológica y económica como herramienta de apoyo técnico para complementar sus actividades de ordenamiento y manejo de la cuenca. Las actividades que se realicen deberán ser acordes con la Estrategia Nacional de Diversidad Biológica.

CAPITULO V: DE LOS PLANES REGIONALES, LOCALES Y SECTORIALES DE DESARROLLO Y LOS PLANES DE MANEJO

Artículo 29.- Todo plan específico de desarrollo a nivel regional, local o sectorial deberá incorporar medidas para promover la conservación y el uso sostenible de la diversidad biológica. Dichos planes tomarán en consideración la ENDB y los mandatos normativos sobre la conservación de la diversidad biológica y el uso sostenible de sus componentes contenidos en el Convenio, la Ley y el presente Reglamento.

Artículo 30.- Los planes de manejo de los componentes de la diversidad biológica deberán incorporar medidas para prevenir, mitigar o manejar los impactos directos o indirectos sobre la diversidad biológica con miras a su conservación y uso sostenible.

TITULO III: DE LA CONSERVACION DE LA DIVERSIDAD BIOLOGICA Y EL APROVECHAMIENTO SOSTENIBLE DE SUS COMPONENTES

CAPITULO I: DE LA CONSERVACION DE LA DIVERSIDAD BIOLOGICA

Artículo 31.- El Estado adoptará medidas orientadas a la conservación de la diversidad biológica en condiciones in situ y ex situ y para cautelar el uso sostenible de sus componentes, de conformidad con los principios del Convenio, la Constitución, la Ley y demás normas sobre la materia.

Artículo 32.- Las medidas a las que hace referencia el artículo anterior incluirán el establecimiento de incentivos para la conservación y el uso sostenible, la realización de procesos de Evaluación de Impacto Ambiental y Planes de Manejo que prevean los posibles impactos sobre la diversidad biológica y que incorporen medidas específicas para conservar y minimizar los impactos sobre ésta respectivamente, el desarrollo de un proceso nacional de ordenamiento ambiental y la aplicación de la ENDB.

Artículo 33.- El Estado prioriza la conservación de las especies y el mantenimiento de los ecosistemas en función a los servicios ecológicos que brindan, y a su valor ambiental, económico y socio-cultural.

CAPITULO II: DE LA CONSERVACION IN SITU

Artículo 34.- El Estado prioriza la conservación de la diversidad biológica en condiciones in situ. Uno de los mecanismos para ello lo constituye el Sistema Nacional de Áreas Naturales Protegidas por el Estado (SINANPE), la Ley de Áreas Naturales Protegidas y el Plan Director de Áreas Naturales Protegidas y la Ley Forestal y de Fauna Silvestre.

Artículo 35.- Las áreas naturales protegidas por el Estado se rigen por la Ley de Áreas Naturales Protegidas, su Reglamento, el Plan Director de Áreas Naturales Protegidas y las normas específicas sobre la materia.

Artículo 36.- Sin perjuicio de lo indicado en los Artículos 35 y 36, el Estado deberá promover la conservación de la diversidad biológica y el uso sostenible de sus componentes en áreas que no forman parte del SINANPE. Para ello implementará medidas de orden político, administrativo, tributario y jurídico para efectivizar los incentivos a los que hace referencia el Título IV del presente Reglamento.

Artículo 37.- Las Evaluaciones de impacto ambiental - EIAS, Programas de Manejo y Adecuación Ambiental - PAMAS así como los Planes de manejo forestal exigidos por las autoridades sectoriales competentes incorporarán una evaluación de los riesgos o posible afectación a la diversidad biológica y sus componentes así como las medidas necesarias para mitigar posibles impactos de estas actividades.

Artículo 38.- Las zonas de agrobiodiversidad orientadas a la conservación y uso sostenible de especies nativas cultivadas por parte de pueblos indígenas no podrán destinarse para fines distintos a los de conservación de dichas especies y el mantenimiento de las culturas indígenas.

Podrán destinarse a actividades turísticas orientadas a conocer y promover la agrobiodiversidad nativa y las prácticas y costumbres tradicionales de los pueblos indígenas, tales como ferias de semillas y otros mecanismos. Corresponde al Ministerio de Agricultura formalizar el reconocimiento de dichas zonas.

Artículo 39.- Los pueblos indígenas podrán constituir zonas de agrobiodiversidad como áreas privadas de conservación descritas en la Ley Nº 26834.

CAPITULO III: DE LA CONSERVACION EX SITU

Artículo 40.- Los centros de conservación ex situ tienen como objetivo el mantenimiento de muestras representativas de los componentes diversidad biológica nacional para fines de su evaluación, investigación, reproducción, propagación y utilización.

Artículo 41.- Son centros de conservación ex situ en materia de fauna:
* Museos de Ciencias Naturales.
* Zoocriaderos, con fines comerciales.
* Piscigranjas.
* Zoológicos, con fines de difusión e investigación.
* Centros de cría, de especies amenazadas.
* Centros de rescate de fauna, provenientes de decomisos.

* Bancos de genes.
* Colecciones científicas.
* Bioterios.

Artículo 42.- Son centros de conservación ex situ en materia de flora:
* Jardines botánicos.
* Bancos de germoplasma y de genes.
* Herbarios.
* Arboretos.
* Museos de ciencias naturales.
* Viveros.

Artículo 43.- También son centros de conservación ex situ, los centros para el mantenimiento de protista, monera, fungi; así como las instalaciones para acuicultura.

Artículo 44.- Las autoridades sectoriales competentes implementarán un registro de centros de conservación ex situ en el país incluidos los centros internacionales. Dicho registro incluirá la siguiente información:
1) Denominación del centro
2) Ubicación
3) Tiempo de operaciones
4) Responsables
5) Objetivo
6) Actividades que realiza: colecta, investigación, exportación, importación
7) Actividades realizadas con indicación de colaboraciones con instituciones nacionales o extranjeras

El registro tendrá como objetivo mantener una base de datos sobre el número de estos centros y sus actividades así como para apoyar las actividades de la autoridad competente en materia de acceso a los recursos genéticos y asegurar el cumplimiento de las normas sobre la materia.

Artículo 45.- Las autoridades sectoriales competentes, en función a los componentes de la diversidad biológica sobre los cuales tienen competencias y las normas vigentes en la materia, facilitarán la creación y establecimiento de centros de conservación ex situ, particularmente para la investigación de componentes de la diversidad biológica con importancia económica y social.

En ningún caso, la colecta o caza y mantenimiento ex situ de individuos y especímenes, deberá afectar la viabilidad de las especies en condiciones in situ.

Artículo 46.- Créase la Red Nacional de Centros de Conservación ex Situ para coordinar acciones en materia de investigación conservación, mantenimiento y uso de componentes de la diversidad biológica.

La Red está conformada por los centros de conservación ex situ a que se refieren los Artículos 41, 42 y, 43 que se encuentren situados en el territorio nacional.

Artículo 47.- La red promoverá la coordinación interinstitucional en materia de investigación y colecta de muestras representativas de la diversidad biológica del país y, en particular, el intercambio de información y de experiencias entre sus miembros.

Asimismo, buscará su integración con redes similares de carácter regional e internacional a fin de promover actividades conjuntas y cooperación en la investigación.

Artículo 48.- El CONAM, INRENA, INIA y el IMARPE, establecerán un grupo técnico para diseñar la estrategia de constitución y funcionamiento de la Red, en la cual se considerarán mecanismos de incentivos y beneficios para las instituciones que participarán en ella. El grupo técnico contará con el apoyo del Museo de Historia Natural de la UNMSM, entre otros.

Artículo 49.- La Red diseñará una estrategia nacional para actividades de repatriación de información biológica de conformidad con lo establecido en el Convenio y con miras a fortalecer las capacidades institucionales nacionales y mejorar la calidad de sus colecciones.

Para ello, identificará instituciones que mantienen material de origen peruano o información originada a partir del estudio de materiales nacionales y solicitará su repatriación.

Artículo 50.- La Red establecerá mecanismos para la difusión efectiva de la información científica a través del Mecanismo Nacional de Facilitación e Intercambio de Información en Diversidad Biológica - CHM y de centros de información especializados tales como, centros de datos de instituciones públicas y privadas, universidades y otros.

Dicha información debe utilizarse por las autoridades sectoriales como insumo para los procesos de adopción de decisiones que tuvieran incidencia sobre la conservación y uso sostenible de la diversidad biológica.

La información generada por la Red se mantendrá disponible a todo interesado, salvo en el caso de investigaciones aún no concluidas cuyos responsables así lo deseen.

CAPITULO IV: DEL APROVECHAMIENTO SOSTENIBLE DE LA DIVERSIDAD BIOLOGICA

Artículo 51.- La Ley Nº 26821 y otras normas específicas relacionadas regulan la forma, modalidades y condiciones de aprovechamiento de los recursos naturales, incluidos los componentes de la diversidad biológica.

Artículo 52.- Las Evaluaciones de Impacto Ambiental, Programas de Adecuación y Manejo Ambiental y cualquier otro instrumento técnico elaborado para desarrollar actividades productivas o de aprovechamiento de recursos, incluyendo el acceso a los recursos genéticos, incluirán medidas requeridas para la conservación de la diversidad biológica y el mantenimiento de la integridad de los ecosistemas.

Artículo 53.- Las actividades económicas empresariales que realicen los pueblos indígenas en la micro y pequeña empresa que desarrollen estilos de vida y producción coherentes con la conservación de la diversidad biológica y que impliquen su aprovechamiento sostenible en condiciones in situ, estarán sujetas a un procedimiento simplificado para su autorización por parte de la autoridad competente, siempre que no existan derechos exclusivos o excluyentes de terceros o reserva del Estado.

El párrafo precedente es aplicable a las poblaciones locales que desarrollan actividades de biocomercio interno o externo de los recursos de la biodiversidad con valor agregado.

Artículo 54.- El Ministerio de Agricultura a través del INIA y en coordinación con la CONADIB diseñarán una estrategia para el desarrollo agrícola basada en la conservación y uso sostenible de la diversidad biológica, particularmente en relación a cultivos de especies nativas y la investigación sobre sus aplicaciones, usos y potencial comercial.

Artículo 55.- La estrategia a la que hace referencia el artículo precedente, analizará las necesidades particulares de las comuniades conservacionistas de la agrobiodiversidad, especialmente en la zona andina y de selva, y las posibilidades de potenciar su desarrollo mediante la incorporación de sus cultivos a los mercados nacionales e internacionales.

Artículo 56.- El Ministerio de Pesquería, en coordinación con la CONADIB, elaborará una estrategia para el desarrollo y promoción de la actividad de acuicultura, para la conservación y desarrollo de especies nativas.

Artículo 57.- Previamente a la concesión de las autorizaciones para la realización de actividades económicas y de aprovechamiento de la diversidad biológica que pudieran afectar directa e indirectamente procesos ecológicos esenciales, las autoridades sectoriales evaluarán los beneficios inmediatos y mediatos de dichas actividades frente al valor y la importancia de los procesos ecológicos esenciales, como sustento de las poblaciones que se benefician directa o indirectamente de los ecosistemas a ser afectados.

TITULO IV: DE LOS INCENTIVOS PARA PROMOVER LA CONSERVACION

Artículo 58.- Las Autoridades Sectoriales con competencia en asuntos de conservación y aprovechamiento de la diversidad biológica con el apoyo del CONAM, diseñarán un programa nacional para la determinación e implementación de incentivos para promover la conservación y el uso sostenible de la diversidad biológica. Este programa será desarrollado con la participación directa del Ministerio de Economía y Finanzas y el sector privado.

Artículo 59.- Para promover la conservación de la diversidad biológica, se podrán considerar alternativas y mecanismos tales como eliminación de incentivos que promuevan la pérdida y uso no sostenible de la diversidad biológica, sistemas de eco-etiquetado y certificaciones sobre manejo sostenible de los recursos naturales, mecanismos de canjes de deuda por naturaleza con el sector privado, aprobación de beneficios tributarios a actividades de conservación, negociación de certificados transables de reducción de gases de efecto invernadero, entre otros.

Artículo 60.- Las autoridades sectoriales competentes, en coordinación con el Ministerio de Economía y Finanzas, determinarán el tipo de actividades específicas para las que serán aplicables los incentivos.

Algunas de estas actividades podrán referirse a: establecimiento de áreas de conservación privadas, actividades de recuperación de ecosistemas degradados, actividades de reforestación, restauración del paisaje, reintroducción de especies nativas, acciones de repoblamiento, actividades de mantenimiento de fuentes de agua, actividades orientadas a la captura de carbono, actividades tendentes a la conservación de especies y recursos genéticos, conservación de agrobiodiversidad, entre otras.

TITULO V: DEL INFORME NACIONAL Y LOS MECANISMOS DE INVENTARIO Y EVALUACION

CAPITULO I: DEL INFORME NACIONAL SOBRE DIVERSIDAD BIOLOGICA

Artículo 61.- El informe nacional sobre diversidad biológica incorpora información sobre el estado de la diversidad biológica, avances científicos a escala nacional, proyectos específicos en materia de conservación y uso sostenible de la diversidad biológica.

Se incluirá a instituciones que realizan trabajos en la materia, políticas y avances normativos en materia de conservación, niveles de implementación de la normativa y amenazas directas e inmediatas a la diversidad biológica.

Artículo 62.- El informe nacional sobre diversidad biológica será preparado por el CONAM con la participación de la CONADIB y en coordinación con las diferentes autoridades sectoriales competentes.

El CONAM, en coordinación con las autoridades sectoriales competentes elaborará y remitirá formularios estandarizados a los diferentes gremios de los sectores productivos, en función a indicadores específicos, a fin de determinar sus avances en materia de implementación de medidas tendentes a cumplir con el Convenio y otras normas sobre conservación y uso sostenible de la diversidad biológica.

El CONAM preparará un informe anual sobre avances en la implementación del Convenio que será hecho público y remitido a la Presidencia del Consejo de Ministros para ser tomado en cuenta en el mensaje presidencial de cada año.

Artículo 63.- El CONAM actualizará el informe nacional sobre la implementación del Convenio en el país en el período de tiempo que determine la Conferencia de las Partes del Convenio y lo remitirá según corresponda y a otras instancias internacionales cuando éstas lo requieran. Este informe comprende el desarrollo de las actividades que cada institución, en el marco del Convenio y la Ley tiene responsabilidad de implementar.

CAPITULO II: DEL INVENTARIO DE DIVERSIDAD BIOLOGICA

Artículo 64.- El Instituto Nacional de Recursos Naturales - INRENA, el Instituto .e Investigación de la Amazonía Peruana - IIAP, el Instituto Nacional de Investigación Agraria - INIA, el Instituto del Mar del Perú - IMARPE, el Consejo Nacional de Ciencia y Tecnología - CONCYTEC y el Museo de Historia Natural de la UNMSM - MHN, conformarán un grupo de trabajo al interior de la CONADIB, con el objetivo de recopilar información para inventariar la diversidad biológica y establecer una metodología para organizar dicho inventario.

Establecerán la situación y acciones futuras necesarias respecto al conocimiento de la diversidad biológica existente en el país. Tal información formará parte de la línea base para la elaboración de un inventario nacional sobre la diversidad biológica terrestre y acuática del país.

Según se trate de diversidad biológica de flora y fauna silvestre y forestal, agrícola, marina o de la región amazónica específicamente, el inventario será coordinado por el INRENA, INIA, IMARPE e IIAP respectivamente. El INMETRA de conformidad con el Artículo 3 de la Ley Nº 27300 elaborará un inventario nacional de plantas medicinales.

Dicho inventario será publicado y difundido de conformidad con el mandato establecido en la Disposición Transitoria y Final Primera de la Ley.

Artículo 65.- Las fuentes de información y trabajo para el inventario incluirán las universidades públicas y privadas, instituciones públicas y privadas e investigadores reconocidos que realicen actividades relativas a inventariar la diversidad biológica a quienes se invitará a participar del proceso de recolección de información.

Los inventarios serán organizados en bases de datos y serán usados además, como base para el otorgamiento de permisos y autorizaciones de uso de recursos genéticos de la diversidad biológica.

Los resultados de los inventarios y su actualización estarán disponibles, y serán difundidos a través de los diferentes mecanismos de intercambio de información.

Se promoverá la participación del sector privado en programas de inventario y evaluación rápida de la biodiversidad.

Artículo 66.- Las instituciones a la que hace referencia el Artículo 64 coordinarán entre ellas y con otras instituciones para la elaboración de los inventarios, formatos, metodologías, documentos, listados u otros, estandarizados para la sistematización de la información y los listados que sean presentados.

Artículo 67.- Las cuentas nacionales incorporarán los resultados de la evaluación y valorización de la diversidad biológica del país. En el ejercicio de sus actividades las instituciones públicas y privadas realizarán la valorización ecológica y económica de la diversidad biológica.

CAPITULO III: DE LA EVALUACION DE LA DIVERSIDAD BIOLOGICA

Artículo 68.- Corresponde al INRENA, INIA, IIAP, CONCYTEC e IMARPE coordinar y/o realizar evaluaciones permanentes sobre el estado de conservación de la diversidad biológica respecto de la cual tienen competencia. Para ello coordinarán con las universidades que realizan actividades en la materia.

a) Para el caso de especies silvestres continentales y recursos genéticos o sus derivados procedentes de especies silvestres continentales, la competencia técnica recae en el INRENA;

b) Para el caso de especies cultivadas y recursos genéticos o sus derivados provenientes de especies domésticas continentales, la competencia técnica recae en el INIA;

c) Para el caso de especies hidrobiológicas, recursos genéticos o sus derivados provenientes de especies hidrobiológicas, la competencia técnica recae en el Ministerio de Pesquería;

d) Para el caso de evaluaciones de la diversidad biológica amazónica el IIAP, en coordinación con el INRENA y el IMARPE, realizará las evaluaciones.

El CONCYTEC, en coordinación con las instituciones técnicas responsables de las evaluaciones, promoverá el desarrollo de las investigaciones sobre diversidad biológica a nivel nacional.

Artículo 69.- Los informes o reportes que se deriven de estas evaluaciones serán remitidos a la CONADIB para su conocimiento y a los sectores como insumo para la programación y realización de sus actividades.

TITULO VI: DE LA EDUCACION Y CAPACITACION

Artículo 70.- El CONAM y la CONADIB diseñarán un programa de difusión y capacitación sobre el Convenio que será implementado al nivel de instituciones del sector público y privado. Este programa incluirá campañas de prensa, difusión de información sobre el Convenio, cursos y talleres, entre otros.

La ejecución del programa se coordinará con las autoridades sectoriales y con los gremios correspondientes del sector privado, promoviendo una capacitación por competencias.

Asimismo, promoverán el desarrollo de un programa orientado a capacitar a los pueblos indígenas respecto a sus derechos referidos a la conservación y uso sostenible de la diversidad biológica en coordinación con la SETAI del PROMUDEH.

Artículo 71.- El Ministerio de Educación incluirá en los currículos escolares de primaria, secundaria y el bachillerato, cursos en los cuales se aborden específicamente aspectos referidos a la conservación y el uso sostenible de la diversidad biológica y al Convenio en función a sus aspectos relevantes para el Perú y a las necesidades y particularidades de las diferentes regiones y la diversidad cultural del país.

Artículo 72.- El Ministerio de Educación con apoyo de los sectores público y privado, establecerá un programa especial de capacitación en materia de las obligaciones sobre conservación y uso sostenible de la diversidad biológica nacional.

Artículo 73.- Con miras a un efectivo cumplimiento del mandato referido en el artículo precedente las universidades del país, públicas y privadas, desarrollarán dentro de la currícula educativa los temas y objetivos del Convenio y colaborarán con el proceso de implementación de la ENDB.

De manera particular se enfocará el desarrollo de la investigación y tecnología necesaria para la conservación y el aprovechamiento sostenible de la diversidad biológica, tomando en consideración el conocimiento tradicional existente en estas materias y promoviendo su aplicación más efectiva.

Artículo 74.- El CONAM, mantiene y administra el Mecanismo Nacional de Facilitación e Intercambio de Información en Diversidad Biológica; promoverá la formación de nodos regionales y temáticos a fin que pueda cumplir mejor sus funciones.

Mediante dicho mecanismo, autoridades, instituciones públicas y privadas, personas naturales, entre otras, accederán libremente a información relevante para la toma de decisiones respecto a la diversidad biológica nacional, la ENDB así como sobre los diferentes planes y programas públicos y privados relacionados a la diversidad biológica del país.

Asimismo, incluirá información relativa al Convenio, sus objetivos y Decisiones de las Conferencias de las Partes y Recomendaciones del Órgano Subsidiario de Asesoramiento Científico, Técnico y Tecnológico y otro órganos ad hoc.

TITULO VII: DE LA PROMOCION A LA INVESTIGACION CIENTIFICA Y TECNOLOGICA

Artículo 75.- El Estado fomentará la investigación científica y tecnológica en materia de conservación y uso sostenible de la diversidad biológica a través de instituciones especializadas. Para ello, las instituciones públicas y privadas priorizarán actividades y programas de investigación básica y aplicada sobre componentes de la diversidad biológica.

Artículo 76.- El Consejo Nacional de Ciencia y Tecríología (CONCYTEC) en coordinación con la CONADIB desarrollará una estrategia nacional para el desarrollo científico y tecnológico en temas relacionados con la diversidad biológica.

La estrategia referida incorporará planes de acción en materia de investigación sobre diversidad biológica, de conformidad con las prioridades identificadas en la ENDB y de acuerdo con las líneas prioritarias contenidas en el Artículo 26 de la Ley; así como las medidas para la promoción de tecnologías nativas orientadas a la conservación y el uso sostenible de la diversidad biológica.

Artículo 77.- El Estado, de ser el caso, establecerá incentivos para promover la consolidación y el fortalecimiento de actividades, programas o proyectos de investigación científica y tecnológica orientados a la conservación y uso sostenible de la diversidad biológica.

Artículo 78.- El CONCYTEC coordinará con universidades y centros de investigación, el establecimiento de un programa de becas para estudiantes universitarios de pie y post-grado para ejecución de proyectos de investigación en materia de diversidad biológica.

Artículo 79.- El CONCYTEC promoverá el Fondo Nacional para Investigación Básica para apoyar económicamente los programas de investigación básica en diversidad biológica en universidades y centros de investigación del sector público especialmente en el ámbito regional.

TITULO VIII: DEL MECANISMO DE COORDINACION INTERSECTORIAL

Artículo 80.- El CONAM es la entidad responsable de la coordinación intersectorial en materia de conservación y uso sostenible de la diversidad biológica, preside la CONADIB y como tal coordinará las medidas y acciones necesarias orientadas a la conservación y aprovechamiento sostenible de la diversidad biológica con las autoridades sectoriales con competencias específicas en la materia.

Asimismo, coordina con autoridades e instituciones cuyas competencias, sin ser específicas en la materia, tienen impactos sobre la conservación y aprovechamiento sostenible de la diversidad biológica.

Artículo 81.- La CONADIB es la instancia consultiva de asesoramiento y concertación sobre diversidad biológica. Tiene carácter multisectorial e interdisciplinario y en el cual representantes de los Ministerios, de organismos públicos descentralizados, del sector privado, del sector académico, de organismos no-gubernamentales y de pueblos indígenas proponen, recomiendan y concertan acciones y medidas para dar efectivo cumplimiento a lo dispuesto en el Convenio, la Ley, el presente Reglamento y otras medidas y acciones como la propia ENDB.

Artículo 82.- La CONADIB tendrá como funciones:

1) Apoyar en los procesos de planificación para la conservación de la diversidad biológica y el uso sostenible de sus componentes,

2) Definir las posiciones nacionales en materia de diversidad biológica para las negociaciones correspondientes al Convenio de Diversidad Biológica y otros acuerdos y procesos internacionales en la materia,

3) Organizar y promover procesos de concertación entre los sectores público y privado en materia de conservación de la diversidad biológica,

4) Coordinar y proponer orientaciones de carácter político y técnico en relación con la efectiva implementación de las normas referidas al Convenio, la Ley y otras normas en la materia, incluyendo la ENDB,

5) Apoyar en la definición de políticas nacionales en materia de conservación y uso sostenible de la diversidad biológica,

6) Brindar asesoramiento a instituciones del sector público, cuando sea requerido por éstas,

7) Otras funciones que se deriven de la implementación del CBD.

La CONADIB establecerá un plan de trabajo anual para el cumplimiento de sus funciones.

Artículo 83.- La CONADIB en sesión plenaria establece grupos de trabajo temáticos por tiempo determinado y bajo un mandato específico de trabajo con el fin de elaborar documentos y asesorarla en asuntos relacionados a la diversidad biológica.

Los grupos de trabajo temático son de carácter intersectorial de composición abierta y voluntaria y están constituidos por especialistas provenientes del sector público y privado.

Artículo 84.- Son miembros de la CONADIB las siguientes instituciones:

CONAM - Consejo Nacional del Ambiente
Ministerio de Agricultura
Ministerio de Pesquería
Ministerio de la Presidencia
Ministerio de Relaciones Exteriores
Ministerio de Economía y Finanzas
INRENA - Instituto Nacional de Recursos Naturales
INIA - Instituto Nacional de Investigación Agraria
SENASA - Servicio Nacional de Sanidad Agraria.
IIAP - Instituto de Investigaciones de la Amazonía Peruana
IMARPE - Instituto del Mar del Perú
INDECOPI - Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual
CONCYTEC - Consejo Nacional de Ciencia y Tecnología.
INMETRA - Instituto Nacional de Medicina Tradicional
DIGESA - Dirección General de Salud Ambiental
Secretaría Técnica de Asuntos Indígenas del PROMUDEH
CONAP - Confederación de Nacionalidades Amazónicas del Perú
AIDESEP - Asociación Interétnica de Desarrollo de la Selva Peruana
APECO - Asociación para la Conservación de la Naturaleza
PRONATURALEZA - Fundación para la Conservación de la Naturaleza
SPDA - Sociedad Peruana de Derecho Ambiental

Dos representantes de las Universidades nominados por la Asamblea Nacional de Rectores.

El CONAM podrá convocar a participar y a formar parte de la CONADIB a personas y otras instituciones que considere pertinentes para una mejor realización de sus labores.

Artículo 85.- Las instituciones anteriormente mencionadas designarán oficialmente a sus representantes. En el caso de las instituciones del sector público que conforman la CONADIB serán representadas por sus máximas instancias de decisión (o a quien éstas hubieran formalmente designado).

Artículo 86.- La CONADIB prioriza para su trabajo:

* La definición de posiciones nacionales en foros internacionales relativos a diversidad biológica.
* El apoyo a la elaboración del informe nacional a la conferencia de las Partes.
* El diseño de programas de difusión del Convenio obre la Diversidad Biológica.
* La Coordinación con otras comisiones nacionales que trabajan a nivel de acuerdos multilaterales sobre ambiente, con el objetivo de elaborar planes de trabajo conjuntos, buscar sinergias, hacer uso eficiente de los recursos humanos y financieros, visualizar posibles acciones conjuntas y buscar coherencia en las posiciones nacionales.

TITULO IX: CAPITULO I

GLOSARIO DE TERMINOS

Artículo 87.- Para efectos del presente Reglamento se entenderá por:

Agrobiodiversidad: Variabilidad de cultivos, animales de cría, organismos asociados con ellos dentro de los complejos ecológicos de los que forman parte, esto incluye la diversidad entre especies y entre ecosistemas.

Biocomercio: Actividad que a través del uso sostenible de los recursos nativos de la biodiversidad, promueve la inversión y el comercio en línea con los objetivos del Convenio de Diversidad Biológica; apoyando al desarrollo de la actividad económica a nivel local, mediante alianzas estratégicas y la generación de valor agregado de productos de la biodiversidad competitivos para el mercado nacional e internacional, con criterios de equidad social y rentabilidad económica.

Capacidad productiva del ecosistema: Posibilidades y opciones de oferta de bienes y servicios que ofrecen los ecosistemas para ser utilizados y aprovechados de manera sostenible con miras a la satisfacción de las necesidades de la población.

Criterios para el ordenamiento ambiental del Artículo 7 del Código del Medio Ambiente y los Recursos Naturales:
- La naturaleza y característica de cada ecosistema
- La aptitud de cada zona en función de sus recursos naturales, la distribución de la población y las actividades económicas predominantes.
- Los desequilibrios existentes en los ecosistemas por efecto de los asentamientos humanos, de las actividades económicas o de otras actividades humanas o fenómenos naturales.
- El equilibrio indispensable de los asentamientos humanos y sus condiciones ambientales.
- El impacto ambiental de nuevos asentamientos humanos, obras o actividades.
- La capacidad asimilativa del área.
- Los hábitos y costumbres de la región.

Cuenca hidrográfica: Es un área o espacio geográfico delineados por la cima de los cerros y la divisoria de aguas por el cual escurre el agua proveniente principalmente de las precipitaciones a un río, lago o mar; constituyéndose en un sistema en el que interactúan factores naturales, socioeconómicos y culturales.

Enfoque ecosistémico: es una estrategia para la gestión integrada de tierras aguas y recursos vivos que promueve la conservación y utilización sostenible de modo equitativo. Se basa en la aplicación de metodologías científicas apropiadas que se concentran en niveles de organización biológica que abarcan los procesos, funciones e interacciones entre organismos esenciales y su medio ambiente. Se reconoce que el hombre, así como su diversidad cultural son un componente integrante de los ecosistemas.

Ocupación del territorio: Es el proceso de posesión del espacio físico con carácter permanente, por parte de la sociedad. Tiene relación con dos aspectos:
- Que la población ocupa el territorio por medio de sus organizaciones económicas, culturales, etc., es decir como sociedad.
- Que la ocupación tiene sentido económico y residencial, que se sustenta en el valor de uso que la sociedad asigna a los recursos naturales con fines de producción o residencia.

Procesos ecológicamente sostenibles: Son aquellos involucrados en el reciclaje del material orgánico en el bosque (u otro ecosistema), que consisten en diversas transformaciones geoquímica llevadas a cabo por microorganismos (bacterias y hongos) y algunos animales invertebrados, los cuales se encuentran principalmente en el suelo.

Protista, monera y fungi (hongo): Tres categorías de clasificación de seres vivos la mayoría microscópicos, de amplia distribución y diversas formas y que son importantes porque forman parte de procesos y ciclos claves en el ecosistema. Corresponden a estos organismos los hongos, levaduras, bacterias, entre los más conocidos.

Pueblos indígenas: Son aquellos que descienden de poblaciones que habitaban en el país o en una región geográfica a la que pertenece el país en la época de la conquista o la colonia o del establecimiento de las actuales fronteras estatales y que, cualquiera que sea su situación jurídica conservan todas sus propias instituciones sociales, económicas, culturales y políticas o parte de ellas. Estos incluyen los grupos no contactados y aquellos que estando integrados no han sido aún reconocidos legalmente como comunidades nativas o campesinas:

Comunidades nativas: tienen su origen en los grupos tribales de la selva y ceja de selva y están constituidas por grupos de familias vinculados por los siguientes elementos principales: idioma o dialecto, caracteres culturales o sociales, tenencia y usufructo común y permanente de un mismo territorio con asentamiento nucleado o disperso.

Comunidades campesinas: Son organizaciones de interés público con existencia legal y personería jurídica, integradas por familias que habitan y controlan determinados territorios, ligados por vínculos ancestrales, sociales, económicos y culturales, expresados en la propiedad comunal de la tierra, el trabajo comunal, la ayuda mutua, el gobierno democrático, el desarrollo de actividades multisectoriales cuyos fines se orientan a la satisfacción de sus miembros y el país. Para efectos de este Reglamento toda referencia a "pueblos indígenas" se entenderá referida a comunidades campesinas, nativas y demás pueblos indígenas.

Manejo integrado de zonas marino y costeras: Proceso dinámico en el cual se desarrolla una estrategia coordinada para asignar recursos ambientales, socioculturales e institucionales, con el fin de alcanzar la conservación y el uso múltiple sostenible de la zona costera.

Es el proceso social y político con base técnica y científica mediante el cual se crea las condiciones para el mantenimiento o restauración del equilibrio entre la conservación del ambiente y la ocupación del uso del territorio y de sus recursos naturales con el fin de alcanzar una calidad de vida compatible con la dignidad humana.

Territorio: espacio geográfico vinculado a un grupo social, que resulta a partir de los espacios proyectados por los grupos sociales a través de las redes, circuitos u flujos.

Uso del territorio: Es el proceso mediante el cual la sociedad "emplea el territorio", es decir emplea sus recursos naturales y disfruta de ésta.

DISPOSICIONES TRANSITORIAS

Primera.- En el plazo de 60 días luego de la aprobación del presente Reglamento, la CONADIB propondrá al CONAM, los criterios ecológicos para la conservación de la diversidad biológica que deberán ser empleados en los procesos de ordenamiento ambiental.

Segunda.- El Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI) coordina el proceso para el desarrollo de normas en materia de derechos de protección de los conocimientos, innovaciones y prácticas tradicionales de los pueblos indígenas relacionados con la diversidad biológica.

Los conocimientos colectivos de los pueblos indígenas no podrán ser utilizados con fines científicos, comerciales o industriales sin el consentimiento informado previo de una o más comunidades o pueblos indígenas que posean el conocimiento colectivo en cuestión.

Tercera.- En un plazo no mayor de 30 días contados a partir de la publicación del presente reglamento, la Presidencia del Consejo de Ministros, el Ministerio de Agricultura y el de Pesquería aprobarán el reglamento sobre acceso a los recursos genéticos.

DISPOSICIONES FINALES

Primera.- Los aspectos referidos al acceso a los recursos genéticos, áreas protegidas, aprovechamiento sostenible de la diversidad biológica y bioseguridad se encuentran regulados en la Decisión 391 de la Comunidad Andina de Naciones, la Ley Nº 26834 Áreas Naturales Protegidas, la Ley Nº 26821 Aprovechamiento Sostenible de los Recursos Naturales, la Ley Nº 27104 De Prevención de Riesgos Derivados del Uso de la Biotecnología, Ley Nº 27308 Forestal y de Fauna Silvestre, Ley Nº 27300 Aprovechamiento Sostenible de Plantas Medicinales respectivamente y la legislación específica complementaria.

Segunda.- En un plazo de 30 días la CONADIB establecerá su manual interno de funcionamiento que le permita el cumplimiento de las funciones asignadas.

Annex 9 Law for the Protection of Traditional Knowledge (LEY Nº 27811)

Ley que establece el régimen de protección de los conocimientos colectivos de los Pueblos Indígenas vinculados a los Recursos Biológicos

CONCORDANCIAS: LEY N° 28296, 2da. Disp. Final

EL PRESIDENTE DE LA REPÚBLICA

POR CUANTO:

La Comisión Permanente del Congreso de la República ha dado la Ley siguiente:

LA COMISIÓN PERMANENTE DEL CONGRESO DE LA REPÚBLICA;

Ha dado la Ley siguiente:

LEY QUE ESTABLECE EL RÉGIMEN DE PROTECCIÓN DE LOS CONOCIMIENTOS COLECTIVOS DE LOS PUEBLOS INDÍGENAS VINCULADOS A LOS RECURSOS BIOLÓGICOS

TÍTULO I: DEL RECONOCIMIENTO DE DERECHOS DE LOS PUEBLOS INDÍGENAS SOBRE SUS CONOCIMIENTOS COLECTIVOS

Artículo 1.- Reconocimiento de derechos

El Estado peruano reconoce el derecho y la facultad de los pueblos y comunidades indígenas de decidir sobre sus conocimientos colectivos.

TÍTULO II: DE LAS DEFINICIONES

Artículo 2.- Definiciones

Para los efectos del presente dispositivo se entenderá por:

a) Pueblos indígenas.- Son pueblos originarios que tienen derechos anteriores a la formación del Estado peruano, mantienen una cultura propia, un espacio territorial y se autorreconocen como tales. En éstos se incluye a los pueblos en aislamiento voluntario o no contactados, así como a las comunidades campesinas y nativas.

La denominación “indígenas” comprende y puede emplearse como sinónimo de “originarios”, “tradicionales”, “étnicos”, “ancestrales”, “nativos” u otros vocablos.

b) Conocimiento colectivo.- Conocimiento acumulado y transgeneracional desarrollado por los pueblos y comunidades indígenas respecto a las propiedades, usos y características de la diversidad biológica.

El componente intangible contemplado en la Decisión 391 de la Comisión del Acuerdo de Cartagena incluye este tipo de conocimiento colectivo.

c) Consentimiento informado previo.- Autorización otorgada, dentro del marco del presente régimen de protección, por la organización representativa de los pueblos indígenas poseedores de un conocimiento colectivo, de conformidad con las normas por ellos reconocidas, para la realización de determinada actividad que implique acceder y utilizar dicho conocimiento colectivo, previo suministro de suficiente información relativa a los propósitos, riesgos o implicancias de dicha actividad, incluyendo los eventuales usos del conocimiento y, de ser el caso, el valor del mismo.

d) Contrato de licencia de uso de conocimientos colectivos.- Acuerdo expreso celebrado entre la organización representativa de los pueblos indígenas poseedores de un conocimiento colectivo y un tercero que incorpora términos y condiciones sobre el uso de dicho conocimiento colectivo.

Estos contratos pueden constituir un anexo al contrato mencionado en el Artículo 34 de la Decisión 391 de la Comisión del Acuerdo de Cartagena que establece un Régimen Común sobre acceso a los recursos genéticos.

e) Recursos biológicos.- Recursos genéticos, organismos o partes de ellos, poblaciones, o cualquier otro tipo del componente biótico de los ecosistemas de valor o utilidad real o potencial para la humanidad.

TÍTULO III: DEL ÁMBITO DE PROTECCIÓN

Artículo 3.- Ámbito de protección de la norma

El presente dispositivo establece un régimen especial de protección de los conocimientos colectivos de los pueblos indígenas vinculados a los recursos biológicos.

Artículo 4.- Excepciones al régimen

El presente régimen no afectará el intercambio tradicional entre pueblos indígenas de los conocimientos colectivos protegidos bajo este régimen.

TÍTULO IV: DE LOS OBJETIVOS

Artículo 5.- Objetivos del régimen

Son objetivos del presente régimen:

a) Promover el respeto, la protección, la preservación, la aplicación más amplia y el desarrollo de los conocimientos colectivos de los pueblos indígenas.

b) Promover la distribución justa y equitativa de los beneficios derivados de la utilización de estos conocimientos colectivos.

c) Promover el uso de estos conocimientos en beneficio de los pueblos indígenas y de la humanidad.

d) Garantizar que el uso de los conocimientos colectivos se realice con el consentimiento informado previo de los pueblos indígenas.

e) Promover el fortalecimiento y el desarrollo de las capacidades de los pueblos indígenas y de los mecanismos tradicionalmente empleados por ellos para compartir y distribuir beneficios generados colectivamente, en el marco del presente régimen.

f) Evitar que se concedan patentes a invenciones obtenidas o desarrolladas a partir de conocimientos colectivos de los pueblos indígenas del Perú, sin que se tomen en cuenta estos conocimientos como antecedentes en el examen de novedad y nivel inventivo de dichas invenciones.

TÍTULO V: DE LOS PRINCIPIOS GENERALES

Artículo 6.- Condiciones para el acceso a los conocimientos colectivos

Los interesados en acceder a los conocimientos colectivos con fines de aplicación científica, comercial e industrial deberán solicitar el consentimiento informado previo de las organizaciones representativas de los pueblos indígenas que posean un conocimiento colectivo.

La organización representativa de los pueblos indígenas, cuyo consentimiento informado previo haya sido solicitado, deberá informar que está entrando en una negociación al mayor número posible de pueblos indígenas poseedores del conocimiento y tomar en cuenta sus intereses e inquietudes, en particular aquellas vinculadas con sus valores espirituales o creencias religiosas.

La información que proporcione se limitará al recurso biológico sobre el cual versa el conocimiento colectivo objeto de la negociación en curso, en salvaguarda de los intereses de la contraparte en mantener secretos los detalles de la negociación.

Artículo 7.- Acceso con fines de aplicación comercial o industrial

En caso de acceso con fines de aplicación comercial o industrial, se deberá suscribir una licencia donde se prevean condiciones para una adecuada retribución por dicho acceso y se garantice una distribución equitativa de los beneficios derivados del mismo.

Artículo 8.- Porcentaje destinado al Fondo para el Desarrollo de los Pueblos Indígenas

Se destinará un porcentaje no menor al 10% del valor de las ventas brutas, antes de impuestos, resultantes de la comercialización de los productos desarrollados a partir de un conocimiento colectivo al Fondo para el Desarrollo de los Pueblos Indígenas a que se refieren los Artículos 37 y siguientes.

Las partes podrán acordar un porcentaje mayor, en función del grado de utilización o incorporación directa de dichos conocimientos en el producto final resultante, el grado de aporte de dichos conocimientos a la reducción de los costos de investigación y desarrollo de los productos derivados, entre otros.

Artículo 9.- Rol de las generaciones presentes

Las generaciones presentes de los pueblos indígenas preservan, desarrollan y administran sus conocimientos colectivos en beneficio propio y de las generaciones futuras.

Artículo 10.- Naturaleza colectiva de los conocimientos

Los conocimientos colectivos protegidos bajo este régimen son aquellos que pertenecen a un pueblo indígena y no a individuos determinados que formen parte de dicho pueblo. Pueden pertenecer a varios pueblos indígenas.

Estos derechos son independientes de aquellos que puedan generarse al interior de los pueblos indígenas y para cuyo efecto de distribución de beneficios podrán apelar a sus sistemas tradicionales.

Artículo 11.- Conocimientos colectivos y patrimonio cultural

Los conocimientos colectivos forman parte del patrimonio cultural de los pueblos indígenas.

Artículo 12.- Inalienabilidad e imprescriptibilidad de los derechos

Por ser parte de su patrimonio cultural, los derechos de los pueblos indígenas sobre sus conocimientos colectivos son inalienables e imprescriptibles.

Artículo 13.- Conocimientos colectivos que están en el dominio público

A efectos del presente régimen, se entenderá que un conocimiento colectivo se encuentra en el dominio público cuando haya sido accesible a personas ajenas a los pueblos indígenas, a través de medios de comunicación masiva, tales como publicaciones, o cuando se refiera a propiedades, usos o características de un recurso biológico que sean conocidos masivamente fuera del ámbito de los pueblos y comunidades indígenas.

En los casos en que estos conocimientos hayan entrado en el dominio público en los últimos 20 años, se destinará un porcentaje del valor de las ventas brutas, antes de impuestos, resultantes de la comercialización de los productos desarrollados a partir de estos conocimientos colectivos, al Fondo para el Desarrollo de los Pueblos Indígenas a que se refieren los Artículos 37 y siguientes.

Artículo 14.- Representantes de los pueblos indígenas

Para efectos de este régimen, los pueblos indígenas deberán ser representados a través de sus organizaciones representativas, respetando las formas tradicionales de organización de los pueblos indígenas.

TÍTULO VI: DE LOS REGISTROS DE CONOCIMIENTOS COLECTIVOS DE LOS PUEBLOS INDÍGENAS

Artículo 15.- Registros de Conocimientos Colectivos de los Pueblos Indígenas

Los conocimientos colectivos de los pueblos indígenas podrán ser inscritos en tres tipos de registros:

a) Registro Nacional Público de Conocimientos Colectivos de los Pueblos Indígenas.

b) Registro Nacional Confidencial de Conocimientos Colectivos de los Pueblos Indígenas.

c) Registros Locales de Conocimientos Colectivos de los Pueblos indígenas.

El Registro Nacional Público de Conocimientos Colectivos de los Pueblos Indígenas y el Registro Nacional Confidencial de Conocimientos Colectivos de los Pueblos Indígenas estarán a cargo del Indecopi.

Artículo 16.- Objeto de los Registros de Conocimientos Colectivos

Los Registros de Conocimientos Colectivos de los Pueblos Indígenas tienen por objeto, según sea el caso:

a) Preservar y salvaguardar los conocimientos colectivos de los pueblos indígenas y sus derechos sobre ellos; y

b) Proveer al Indecopi de información que le permita la defensa de los intereses de los pueblos indígenas, con relación a sus conocimientos colectivos.

Artículo 17.- Carácter del Registro Nacional Público de Conocimientos Colectivos de los Pueblos Indígenas

El Registro Nacional Público de Conocimientos Colectivos de los Pueblos Indígenas contendrá los conocimientos colectivos que se encuentran en el dominio público.

El Indecopi deberá registrar los conocimientos colectivos que están en el dominio público en el Registro Nacional Público de Conocimientos Colectivos de los Pueblos Indígenas.

Artículo 18.- Carácter del Registro Nacional Confidencial de Conocimientos Colectivos de los Pueblos Indígenas

El Registro Nacional Confidencial de Conocimientos Colectivos de los Pueblos Indígenas no podrá ser consultado por terceros.

Artículo 19.- Registro a solicitud de los pueblos indígenas

Cada pueblo, a través de su organización representativa, podrá inscribir ante el Indecopi, en el Registro Nacional Público o en el Registro Nacional Confidencial, los conocimientos colectivos que posea.

Artículo 20.- Solicitudes de registro de conocimientos colectivos

Las solicitudes de registro de conocimientos colectivos de los pueblos indígenas se presentarán ante el Indecopi, a través de sus organizaciones representativas, y deberán contener:

a) Identificación del pueblo indígena que solicita el registro de sus conocimientos;

b) Identificación del representante;

c) Indicación del recurso biológico sobre el cual versa el conocimiento colectivo, pudiendo utilizarse el nombre indígena;

d) Indicación del uso o usos que se dan al recurso biológico en cuestión;

e) Descripción clara y completa del conocimiento colectivo objeto de registro; y

f) Acta en la que figura el acuerdo de registrar el conocimiento por parte del pueblo indígena.

La solicitud deberá ser acompañada de una muestra del recurso biológico sobre el cual versa el conocimiento colectivo objeto de registro. En aquellos casos en que la muestra sea de difícil transporte o manipulación, el pueblo indígena que solicita el registro podrá requerir al Indecopi que le exima de la presentación de dicha muestra y le permita presentar, en su lugar, fotografías en las que se puedan apreciar las características del recurso biológico sobre el cual versa el conocimiento colectivo. Dicha muestra, o en su caso, dichas fotografías, deberán permitir al Indecopi identificar de manera fehaciente el recurso biológico en cuestión y hacer constar en el expediente el nombre científico del mismo.

Artículo 21.- Trámite de la solicitud

El Indecopi verificará, en el plazo de diez (10) días de presentada la solicitud, que la misma consigne todos los datos especificados en el artículo anterior.

En caso de que se haya producido alguna omisión, notificará al pueblo indígena que solicita el registro a efectos de que complete la solicitud, dentro del plazo de seis (6) meses, prorrogables a su solicitud, bajo apercibimiento de declarar el abandono de la solicitud.

Una vez que el Indecopi haya verificado que la solicitud consigne todos los datos especificados en el artículo anterior, procederá a registrar el conocimiento colectivo en cuestión.

Artículo 22.- Envío de representantes del Indecopi

Para facilitar el registro de conocimientos colectivos de los pueblos indígenas, el Indecopi podrá enviar representantes debidamente acreditados a los diferentes pueblos indígenas con el fin de recabar la información necesaria para dar trámite a las solicitudes de registro que deseen presentar.

Artículo 23.- Obligación del Indecopi de enviar la información contenida en el Registro Nacional Público a las principales Oficinas de Patentes del mundo

Con el fin de objetar solicitudes de patente en trámite, cuestionar patentes concedidas o influir en general en el otorgamiento de patentes relacionadas con productos o procesos obtenidos o desarrollados a partir de un conocimiento colectivo, el Indecopi deberá enviar la información contenida en el Registro Nacional Público, a las principales Oficinas de Patentes del mundo, a efectos de que sea tomada en cuenta como antecedente en el examen de novedad y nivel inventivo de las solicitudes de patente.

Artículo 24.- Registros Locales de Conocimientos Colectivos de los Pueblos Indígenas

Los pueblos indígenas podrán organizar Registros Locales de Conocimientos Colectivos, de conformidad con sus usos y costumbres. El Indecopi prestará asistencia técnica para la organización de estos registros, a solicitud de los pueblos indígenas.

TÍTULO VII: DE LAS LICENCIAS

Artículo 25.- Inscripción obligatoria de contratos de licencia

Los contratos de licencia deberán inscribirse en un registro que para estos efectos llevará el Indecopi.

Artículo 26.- Obligatoriedad de forma escrita de los contratos de licencia

La organización representativa de los pueblos indígenas que poseen un conocimiento colectivo podrá otorgar a terceras personas licencias de uso de dicho conocimiento colectivo sólo mediante contrato escrito, en idioma nativo y castellano, y por un plazo renovable no menor de un año ni mayor de 3 años.

Artículo 27.- Contenido del contrato de licencia

A efectos del presente régimen, los contratos deberán contener por lo menos las siguientes cláusulas:

a) Identificación de las partes.

b) Descripción del conocimiento colectivo objeto del contrato.

c) El establecimiento de las compensaciones que recibirán los pueblos indígenas por el uso de su conocimiento colectivo. Estas compensaciones incluirán un pago inicial monetario u otro equivalente dirigido a su desarrollo sostenible; y un porcentaje no menor del 5% del valor de las ventas brutas, antes de impuestos, resultantes de la comercialización de los productos desarrollados directa e indirectamente a partir de dicho conocimiento colectivo, de ser el caso.

d) El suministro de suficiente información relativa a los propósitos, riesgos o implicancias de dicha actividad, incluyendo los eventuales usos del conocimiento colectivo y, de ser el caso, el valor del mismo.

e) La obligación del licenciatario de informar periódicamente, en términos generales, al licenciante acerca de los avances en la investigación, industrialización y comercialización de los productos desarrollados a partir de los conocimientos colectivos objeto de la licencia.

f) La obligación del licenciatario de contribuir al fortalecimiento de las capacidades de los pueblos indígenas en relación con sus conocimientos colectivos vinculados a los recursos biológicos.

En caso de que en el contrato se pacte un deber de reserva, el mismo deberá constar expresamente.

El Indecopi no registrará los contratos que no se ajusten a lo establecido en este artículo.

Artículo 28.- Solicitudes de registro de contrato de licencia. Confidencialidad del contrato

Las solicitudes de registro de un contrato de licencia que se presenten ante el Indecopi deberán contener:

a) Identificación de los pueblos indígenas que son parte en el contrato y de sus representantes;

b) Identificación de las demás partes en el contrato y de sus representantes.

c) Copia del contrato; y

d) Acta en la que figura el acuerdo de celebrar el contrato de licencia por parte de los pueblos indígenas que son parte en el contrato.

El contrato no podrá ser consultado por terceros, salvo con autorización expresa de ambas partes.

Artículo 29.- Trámite de la solicitud

El Indecopi verificará, en el plazo de diez (10) días de presentada la solicitud, que la solicitud consigne todos los datos especificados en el artículo anterior.

En caso de que se haya producido alguna omisión, notificará a quien solicita el registro a efectos de que complete la solicitud, dentro del plazo de seis (6) meses, prorrogables a su solicitud, bajo apercibimiento de declarar el abandono de la solicitud.

Artículo 30.- Verificación del contenido del contrato

A efectos de inscribir una licencia, el Indecopi, dentro del plazo de treinta (30) días de presentada la solicitud, verificará si se cumplen las cláusulas mencionadas en el Artículo 27.

Artículo 31.- Información adicional acerca del impacto ambiental

El Indecopi, a solicitud de parte, o de oficio, solicitará información adicional, en aquellos casos en que considere que exista el riesgo de afectar el equilibrio ambiental en los territorios que habitan los pueblos indígenas como consecuencia del contrato cuyo registro se solicita. El registro del contrato será denegado de verificarse dicho riesgo y en caso de que las partes no se comprometan a tomar las medidas necesarias para evitarlo, a satisfacción de la Autoridad Nacional Competente en materia de medio ambiente.

Artículo 32.- Alcance de las licencias de uso

La licencia de uso de conocimiento colectivo de un pueblo indígena no impedirá a otros utilizarlo ni otorgar licencias sobre este mismo conocimiento. Esta licencia tampoco afectará el derecho de las generaciones presentes y futuras de seguir utilizando y desarrollando conocimientos colectivos.

Artículo 33.- Prohibición de conceder sublicencias

Sólo se podrán conceder sublicencias con autorización expresa de la organización representativa de los pueblos indígenas que otorga la licencia.

TÍTULO VIII: DE LA CANCELACIÓN DE REGISTRO

Artículo 34.- Causales de cancelación de registro

El Indecopi podrá cancelar, de oficio o a solicitud de parte, un registro de conocimiento colectivo o de licencia de uso, previa audiencia de las partes interesadas, siempre que:

a) Haya sido concedido en contravención de cualquiera de las disposiciones del presente régimen.

b) Se compruebe que los datos esenciales contenidos en la solicitud son falsos o inexactos.

Las acciones de cancelación que se deriven del presente artículo podrán iniciarse en cualquier momento.

Artículo 35.- Solicitud de cancelación de registro

La solicitud de cancelación de registro deberá consignar o adjuntar, según el caso, lo siguiente:

a) Identificación de quien solicita la cancelación;
b) Identificación del representante o apoderado, de ser el caso;
c) Registro materia de la cancelación;
d) Indicación del fundamento legal de la acción;
e) Pruebas que acrediten las causales de cancelación invocadas;
f) Domicilio donde se notificará al titular del registro cuya cancelación se solicita;
g) En su caso, copia de los poderes que fueren necesarios; y,
h) Copias de la solicitud y sus recaudos para el titular del registro.

Artículo 36.- Trámite de la solicitud

La solicitud de cancelación se trasladará al titular del registro, a quien se le concederá un plazo de treinta (30) días para hacer su descargo. Luego de este plazo, el Indecopi resolverá con o sin la contestación respectiva.

TÍTULO IX: DEL FONDO PARA EL DESARROLLO DE LAS PUEBLOS INDÍGENAS

Artículo 37.- Objeto del Fondo para el Desarrollo de los Pueblos Indígenas

Créase el Fondo para el Desarrollo de los Pueblos indígenas con el objeto de contribuir al desarrollo integral de los pueblos indígenas a través del financiamiento de proyectos y otras actividades. Este Fondo gozará de autonomía técnica, económica, administrativa y financiera.

Artículo 38.- Acceso a los recursos del Fondo para el Desarrollo de los Pueblos y Comunidades Indígenas

Los pueblos indígenas tienen derecho a acceder a los cursos del Fondo para el Desarrollo de los Pueblos Indígenas a través de sus organizaciones representativas y por medio de proyectos de desarrollo, previa evaluación y aprobación del Comité Administrador.

Artículo 39.- Administración del Fondo para el Desarrollo de los Pueblos Indígenas

El Fondo para el Desarrollo de los Pueblos Indígenas será administrado por 5 representantes de organizaciones representativas de los pueblos indígenas, y 2 representantes de la Comisión Nacional de los Pueblos Andinos, Amazónicos y Afroperuanos, los mismos que conformarán el Comité Administrador.

Este Comité deberá utilizar, en la medida de lo posible, los mecanismos tradicionalmente empleados -por los pueblos indígenas- para compartir y distribuir beneficios generados colectivamente.

El Comité Administrador deberá informar trimestralmente a las organizaciones representativas de los pueblos indígenas sobre los recursos recibidos.

Artículo 40.- Obligación de presentar declaraciones juradas de los miembros del Comité Administrador

Los miembros del Comité Administrador, al momento de asumir sus cargos y anualmente, deberán presentar a la Comisión Nacional de los Pueblos Andinos, Amazónicos y Afroperuanos, una declaración jurada de bienes y rentas.

Artículo 41.- Recursos del Fondo para el Desarrollo de los Pueblos Indígenas

Los recursos del Fondo para el Desarrollo de los Pueblos Indígenas se obtendrán del Presupuesto Público, de la cooperación técnica internacional, de donaciones, del porcentaje de los beneficios económicos a que se refieren los Artículos 8 y 13, de las multas a que se refiere el Artículo 62, así como de otros aportes.

TÍTULO X: DE LA PROTECCIÓN QUE CONFIERE ESTE RÉGIMEN

Artículo 42.- Derechos de los pueblos indígenas que poseen conocimientos colectivos

El pueblo indígena que posea un conocimiento colectivo estará protegido contra la revelación, adquisición o uso de tal conocimiento colectivo sin su consentimiento y de manera desleal, en la medida en que este conocimiento colectivo no se encuentre en el dominio público.

Asimismo, estará protegido contra la divulgación sin autorización en caso de que un tercero haya tenido acceso legítimamente al conocimiento colectivo pero con deber de reserva.

Artículo 43.- Acciones por infracción de derechos de los pueblos indígenas

Los pueblos indígenas que poseen conocimientos colectivos pueden interponer acción por infracción contra quien infrinja los derechos que se precisan en el artículo anterior. También procede la acción por infracción cuando exista peligro inminente de que estos derechos puedan ser infringidos.

Las acciones por infracción podrán iniciarse de oficio por decisión del Indecopi.

Artículo 44.- Inversión de la carga de la prueba

En los casos en que se alegue una infracción a los derechos de un pueblo indígena poseedor de determinado conocimiento colectivo, la carga de la prueba recaerá en el denunciado.

Artículo 45.- Acciones reivindicatorias e indemnizatorias

Las organizaciones representativas de los pueblos indígenas que poseen conocimientos colectivos podrán iniciar las acciones reivindicatorias e indemnizatorias que les confiera la legislación vigente contra el tercero que, de manera contraria a lo establecido en este régimen, hubiere utilizado, directa o indirectamente, dichos conocimientos colectivos.

Artículo 46.- Solución de discrepancias entre pueblos indígenas

Para solucionar las discrepancias que pudieran generarse entre los pueblos indígenas en el marco de aplicación de este régimen, tales como aquéllas relacionadas con el cumplimiento por parte del pueblo indígena que ha negociado un contrato de licencia de uso de sus conocimientos colectivos de lo dispuesto en el segundo párrafo del Artículo 6 de la presente Ley, éstos podrán recurrir al derecho consuetudinario y a sus formas tradicionales de solución de conflictos, pudiendo contar con la mediación de una organización indígena superior.

TÍTULO XI: E LAS ACCIONES POR INFRACCION

Artículo 47.- Contenido de la denuncia

Los pueblos indígenas que deseen interponer una acción por infracción deberán presentar, a través de su organización representativa y ante la Oficina de Invenciones y Nuevas Tecnologías, una solicitud que deberá contener:

a) La identificación de la organización representativa de los pueblos indígenas que interponen la acción y de sus representantes;

b) La identificación y domicilio de la persona que estuviere ejecutando la infracción;

c) La indicación del número de registro que ampara el derecho del pueblo indígena denunciante o, en su defecto, la descripción del conocimiento colectivo e indicación del recurso biológico sobre el cual versa el conocimiento colectivo materia de la acción;

d) La descripción de los hechos constitutivos de la infracción, con indicación del lugar y de los medios utilizados o presumiblemente utilizados, y cualquier otra información relevante;

e) La presentación u ofrecimiento de pruebas; y

f) La indicación expresa de la medida cautelar que se solicita.

Artículo 48.- Trámite de la denuncia

Una vez admitida a trámite la denuncia, se trasladará la misma al denunciado, a fin de que éste presente su descargo. El plazo para la presentación del descargo será de cinco (5) días contados desde la notificación, vencido el cual la autoridad administrativa del Indecopi declarará en rebeldía al denunciado que no lo hubiera presentado.

En el caso de los procedimientos de oficio, el plazo para la presentación de descargos correrá a partir de la fecha en la que la autoridad administrativa notifica al denunciado los hechos materia de investigación, así como la tipificación y descripción de la presunta infracción. La autoridad administrativa del Indecopi podrá realizar las inspecciones e investigaciones que considere necesarias, antes de enviar dicha comunicación. La notificación de la denuncia podrá efectuarse simultáneamente con la realización de una inspección, ya sea a pedido del denunciante o de oficio, en caso de que la autoridad administrativa del Indecopi considere que su actuación sea pertinente.

Artículo 49.- Medidas cautelares

En cualquier etapa del procedimiento, de oficio o a pedido de parte, la autoridad administrativa del Indecopi podrá, dentro del ámbito de su correspondiente competencia, dictar una o varias de las siguientes medidas cautelares destinadas a asegurar el cumplimiento de la decisión definitiva:

a) La cesación de los actos materia de la acción;

b) El decomiso, el depósito o la inmovilización de los productos desarrollados a partir del conocimiento colectivo materia de la acción;

c) La adopción de las medidas necesarias para que las autoridades aduaneras impidan el ingreso al país y la salida del país de los productos desarrollados a partir del conocimiento colectivo materia de la acción;

d) El cierre temporal del establecimiento del denunciado; y

e) Cualquier otra medida que tenga por objeto evitar que se produzca algún perjuicio derivado del acto materia de la acción o que tenga como finalidad la cesación de éste.

La autoridad administrativa del Indecopi podrá, de considerarlo pertinente, ordenar una medida cautelar distinta a la solicitada por la parte interesada.

El afectado por una medida cautelar podrá solicitar ante el Indecopi su modificación o levantamiento, si aporta nuevos elementos de juicio que lo justifiquen.

Artículo 50.- Incumplimiento de la medida cautelar

Si el obligado a cumplir con una medida cautelar ordenada por la autoridad administrativa del Indecopi no lo hiciera, se le impondrá automáticamente una sanción de hasta el máximo de la multa permitida, para cuya graduación se tomará en cuenta los criterios que emplea la autoridad administrativa del Indecopi al emitir resoluciones finales. Dicha multa deberá ser pagada dentro del plazo de cinco (5) días de notificada, vencidos los cuales se ordenará su cobranza coactiva. Si el obligado persiste en el incumplimiento, se podrá imponer una nueva multa duplicando sucesiva e ilimitadamente el monto de la última multa impuesta hasta que se cumpla la medida cautelar ordenada y sin perjuicio de poder denunciar al responsable ante el Ministerio Público para que éste inicie el proceso penal que corresponda. Las multas impuestas no impiden a la autoridad administrativa del Indecopi imponer una multa o sanción distinta al final del procedimiento.

Artículo 51.- Conciliación

En cualquier estado del procedimiento, e incluso antes de admitirse a trámite la denuncia, la autoridad administrativa competente del Indecopi podrá citar a las partes a audiencia de conciliación. Si ambas partes arribaran a un acuerdo respecto de la denuncia, se levantará un acta donde conste el acuerdo respectivo, el mismo que tendrá efectos de transacción extrajudicial. En cualquier caso, la autoridad administrativa del Indecopi podrá continuar de oficio el procedimiento, si del análisis de los hechos denunciados considera que podría estarse afectando intereses de terceros.

Artículo 52.- Mecanismos alternativos de solución de conflictos

En cualquier estado del procedimiento, e incluso antes de admitirse a trámite la denuncia, las partes podrán someterse a arbitraje, mediación, conciliación o mecanismos mixtos de resolución de disputas a cargo de terceros. Si las partes decidieran someterse a arbitraje, podrán suscribir inmediatamente el convenio arbitral correspondiente, de conformidad con el reglamento que para dicho efecto aprobará el Directorio del Indecopi. En cualquier caso, la autoridad administrativa del Indecopi podrá continuar de oficio con el procedimiento, si del análisis de los hechos denunciados considera que podría estarse afectando intereses de terceros.

Artículo 53.- Medios probatorios

Las partes podrán ofrecer los siguientes medios probatorios:

a) Pericia;

b) Documentos, incluyendo todo tipo de escritos, impresos, fotocopias, planos, cuadros, dibujos, radiografías, cintas cinematográficas y otras reproducciones de audio y vídeo, la telemática en general y demás objetos y bienes que recojan, contengan o representen algún hecho, una actividad humana o su resultado; y,

c) Inspección.

Excepcionalmente podrán actuarse pruebas distintas a las mencionadas, sólo si a criterio de la autoridad administrativa competente, éstas revisten especial importancia para la resolución del caso.

Artículo 54.- Inspección

En caso de que fuera necesaria la realización de una inspección, ésta será efectuada por la autoridad administrativa competente del Indecopi. Siempre que se realice una inspección deberá levantarse un acta que será firmada por quien estuviera a cargo de la misma, así como por los interesados, quienes ejerzan su representación o por el encargado del establecimiento correspondiente. En caso de que el denunciado, su representante o el encargado del establecimiento se negara a hacerlo, se dejará constancia de tal hecho.

Artículo 55.- Auxilio de la Policía Nacional

Tanto para la actuación de las pruebas como para la realización de las diligencias, la autoridad administrativa del Indecopi podrá requerir la intervención de la Policía Nacional, sin necesidad de notificación previa, a fin de garantizar el cumplimiento de sus funciones.

Artículo 56.- Actuación de medios probatorios. Insuficiencia de pruebas

Si de la revisión de la información presentada, la autoridad administrativa del Indecopi considera necesario contar con mayores elementos de juicio, notificará a las partes a fin de que éstas absuelvan las observaciones que se establezcan en el plazo que aquélla determine, o actuará las pruebas de oficio que considere necesarias. Las partes deberán absolver las observaciones por escrito, acompañando los medios probatorios que consideren convenientes.

Artículo 57.- Informe oral

La autoridad administrativa del Indecopi pondrá en conocimiento de las partes que lo actuado se encuentra expedito para resolver. Las partes podrán solicitar la realización de un informe oral ante ésta, dentro del plazo de cinco (5) días. La actuación o denegación de

dicha solicitud quedará a criterio de la autoridad administrativa del Indecopi, según la importancia y trascendencia del caso.

Artículo 58.- Base de cálculo para las multas

El monto de las multas que aplique la autoridad administrativa del Indecopi será calculado en base a la UIT vigente en el día del pago voluntario, o en la fecha en que se haga efectiva la cobranza coactiva.

Artículo 59.- Reducción de la multa

La sanción de multa aplicable será rebajada en un veinticinco por ciento (25%) cuando el infractor cancele el monto de la misma con anterioridad a la culminación del término para impugnar la resolución que puso fin a la instancia, en tanto no interponga recurso impugnativo alguno contra dicha resolución.

Artículo 60.- Gastos por actuación de medios probatorios

Los gastos por los peritajes realizados, actuación de pruebas, inspecciones y otros derivados de la tramitación del proceso serán asumidos inicialmente por el Indecopi. En todos los casos, la resolución final determinará sí los gastos deben ser asumidos por alguna de las partes, y reembolsados al Indecopi, de manera adicional a la sanción que haya podido imponerse.

Artículo 61.- Registro de sanciones

El Indecopi llevará un registro de las sanciones aplicadas, con la finalidad de informar al público, así como para detectar casos de reincidencia.

Artículo 62.- Sanciones

Las infracciones a los derechos de los pueblos indígenas que poseen conocimientos colectivos darán lugar a la aplicación de una sanción de multa, sin perjuicio de las medidas que se dicten para la cesación de los actos de infracción o para evitar que éstos se produzcan.

Las multas que podrán establecerse serán de hasta ciento cincuenta (150) UIT. La imposición y graduación de las multas será determinada, teniendo en consideración el beneficio económico obtenido por el infractor, el perjuicio económico ocasionado a los pueblos y comunidades indígenas y la conducta del infractor a lo largo del procedimiento. La reincidencia se considerará circunstancia agravante, por lo que la sanción aplicable no deberá ser menor que la sanción precedente.

Si el obligado no cumple en un plazo de tres (3) días con lo ordenado en la resolución que pone fin a un procedimiento, se le impondrá una sanción de hasta el máximo de la multa permitida, según los criterios a los que hace referencia el artículo precedente, y se ordenará su cobranza coactiva. Si el obligado persiste en el incumplimiento, se podrá duplicar sucesiva e ilimitadamente la multa impuesta hasta que se cumpla la resolución, sin perjuicio de poder denunciar al responsable ante el Ministerio Público para que este inicie el proceso penal que corresponda.

TÍTULO XII: DE LA AUTORIDAD NACIONAL COMPETENTE Y DEL CONSEJO ESPECIALIZADO EN LA PROTECCIÓN DE CONOCIMIENTOS INDÍGENAS

Artículo 63.- Autoridad Nacional Competente

La Oficina de Invenciones y Nuevas Tecnologías del Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (Indecopi) es competente para conocer y resolver en primera instancia todo lo relativo a la protección de los conocimientos colectivos de los pueblos indígenas.

La Sala de Propiedad Intelectual del Tribunal de Defensa de la Competencia y de la Propiedad Intelectual del Indecopi conocerá y resolverá los recursos de apelación en segunda y última instancia administrativa.

Artículo 64.- Funciones de la Oficina de Invenciones y Nuevas Tecnologías

Serán funciones de la Oficina de Invenciones y Nuevas Tecnologías del Indecopi:

a) Llevar y mantener el Registro de Conocimientos Colectivos de los Pueblos Indígenas.

b) Llevar y mantener el Registro de Licencias de Uso de Conocimientos Colectivos.

c) Evaluar la validez de los contratos de licencias sobre conocimientos colectivos de los pueblos indígenas, tomando en cuenta la opinión del Consejo especializado en la protección de conocimientos indígenas.

d) Ejercer las demás funciones que se le encargan mediante el presente dispositivo.

Artículo 65.- Consejo especializado en la protección de conocimientos indígenas

El Consejo especializado en la protección de conocimientos indígenas estará integrado por 5 (cinco) personas especializadas en el tema, 3 (tres) designadas por las organizaciones representativas de los pueblos indígenas, y 2 (dos) designadas por la Comisión Nacional de los Pueblos Andinos, Amazónicos y Afroperuanos, quienes asumirán el cargo de miembros de este Consejo de manera ad honórem.

Artículo 66.- Funciones del Consejo especializado en la protección de conocimientos indígenas

Serán funciones del Consejo especializado en la protección de conocimientos indígenas:

a) Monitorear y hacer seguimiento de la aplicación de este régimen de protección;

b) Apoyar al Comité Administrador del Fondo para el Desarrollo de los Pueblos Indígenas, y a la Oficina de Invenciones y Nuevas Tecnologías del Indecopi, en el desempeño de sus funciones;

c) Emitir opinión en cuanto a la validez de los contratos de licencias sobre conocimientos colectivos de los pueblos indígenas;

d) Brindar asesoría a los representantes de los pueblos indígenas que así lo soliciten en asuntos vinculados con este régimen, en particular, en la elaboración y ejecución de proyectos, en el marco de este régimen; y

e) Supervisar al Comité Administrador del Fondo para el Desarrollo de los Pueblos Indígenas en el ejercicio de sus funciones.

Para estos efectos, podrá exigir al Comité Administrador cualquier tipo de información relacionada con la administración del Fondo, ordenar inspecciones o auditorías, examinar sus libros, documentos y designar un representante que asista con voz pero sin voto a sus reuniones. La resolución que ordene la práctica de una auditoría deberá ser motivada. Estará facultada para imponerles sanciones, tales como la amonestación, la suspensión temporal en el ejercicio de sus funciones o la separación definitiva de sus cargos, en caso de que infrinjan las disposiciones del presente régimen o su reglamento, o que incurran en hechos que afecten los intereses de los pueblos y comunidades indígenas, sin perjuicio de las sanciones penales o de las acciones civiles que correspondan.

TÍTULO XIII: RECURSOS ADMINISTRATIVOS

Artículo 67.- Recurso de reconsideración

Contra las resoluciones expedidas por la Oficina de Invenciones y Nuevas Tecnologías puede interponerse recurso de reconsideración, dentro de los quince (15) días siguientes a su notificación, el mismo que deberá ser acompañado con nueva prueba.

Artículo 68.- Recurso de apelación

Procede interponer recurso de apelación únicamente contra la resolución que ponga fin a la instancia, expedida por la Oficina de Invenciones y Nuevas Tecnologías, dentro de los quince (15) días siguientes a su notificación. No procede interponer recurso de apelación contra las resoluciones de primera instancia que imponen medidas cautelares o preventivas.

Artículo 69.- Sustento de recurso de apelación

Los recursos de apelación se interpondrán cuando la impugnación se sustente en diferente interpretación de las pruebas producidas o cuando se trate de cuestiones de puro derecho, debiendo ser sustentados por ante la Oficina de Invenciones y Nuevas Tecnologías. Verificados los requisitos establecidos en el presente artículo y en el Texto Único de Procedimientos Administrativos (TUPA) del Indecopi, la Oficina deberá conceder la apelación y elevar los actuados a la segunda instancia administrativa.

TÍTULO XIV: PROCEDIMIENTO ANTE EL TRIBUNAL

Artículo 70.- Trámite en segunda instancia

Recibidos los actuados por la Sala de la Propiedad Intelectual del Tribunal de Defensa de la Competencia y de la Propiedad Intelectual del Indecopi, se correrá traslado de la apelación a la otra parte para que cumpla con presentar sus argumentos, dentro del plazo de quince (15) días.

Artículo 71.- Medios probatorios e informe oral

No se admitirán medios probatorios, salvo documentos. Sin perjuicio de ello, cualquiera de las partes podrá solicitar el uso de la palabra, debiendo especificar si éste se referirá a cuestiones de hecho o de derecho. La actuación o denegación de dicha solicitud quedará a criterio de la Sala del Tribunal. Citadas las partes a informe oral, éste se llevará a cabo con quienes asistan a la audiencia.

DISPOSICIONES COMPLEMENTARIAS

PRIMERA.- Independencia de la legislación vigente en materia de propiedad intelectual

Este régimen especial de protección es independiente de lo previsto en las Decisiones 345 de la Comisión del Acuerdo de Cartagena y 486 de la Comisión de la Comunidad Andina, en los Decretos Legislativos Núms. 822 y 823 y en el Decreto Supremo Nº 008-96-ITINCI.

SEGUNDA.- Presentación del contrato de licencia como requisito para obtener una patente de invención

En caso de que se solicite una patente de invención relacionada con productos o procesos obtenidos o desarrollados a partir de un conocimiento colectivo, el solicitante estará obligado a presentar una copia del contrato de licencia, como requisito previo para la concesión del respectivo derecho, a menos de que se trate de un conocimiento colectivo que se encuentra en el dominio público. El incumplimiento de esta obligación será causal de denegación o, en su caso, de nulidad de la patente en cuestión.

DISPOSICIÓN TRANSITORIA

ÚNICA.- Conformación del Comité Administrador del Fondo para el Desarrollo de los Pueblos Indígenas

La designación de los miembros del Comité Administrador del Fondo para el Desarrollo de los Pueblos Indígenas estará a cargo de la Comisión Nacional de los Pueblos Andinos, Amazónicos y Afroperuanos, en coordinación con las organizaciones representativas de los pueblos indígenas.

DISPOSICIÓN FINAL

ÚNICA.- Reglamento del Fondo para el Desarrollo de los Pueblos Indígenas

Dentro del plazo de noventa (90) días contados a partir de la entrada en vigencia de la presente Ley, las organizaciones representativas de los pueblos indígenas alcanzarán un proyecto de Reglamento al Comité de Administración del Fondo para el Desarrollo de los Pueblos Indígenas a que se contrae el Artículo 39 de la presente Ley, para su aprobación. Dicho Reglamento deberá regular la organización y funcionamiento del Fondo para el Desarrollo de los Pueblos Indígenas, en el cual se determinará el monto o porcentaje

máximo de los recursos del fondo que se podrá destinar a sufragar los gastos que irrogue su administración.

Comuníquese al señor Presidente de la República para su promulgación.

En Lima, a los veinticuatro días del mes de julio de dos mil dos.

CARLOS FERRERO
Presidente del Congreso de la República

HENRY PEASE GARCÍA
Primer Vicepresidente del Congreso de la República

AL SEÑOR PRESIDENTE CONSTITUCIONAL DE LA REPÚBLICA

POR TANTO:

Mando se publique y cumpla.

Dado en la Casa de Gobierno, en Lima, a los ocho días del mes de agosto del año dos mil dos.

ALEJANDO TOLEDO
Presidente Constitucional de la República

LUIS SOLARI DE LA FUENTE
Presidente del Consejo de Ministros

Annex 10 Law which Sets a List of Protected Native Crops (LEY Nº 28477)

Ley que declara a los cultivos, crianzas nativas y especies silvestres usufructuadas Patrimonio Natural de la Nación

EL PRESIDENTE DEL CONGRESO DE LA REPÚBLICA
POR CUANTO:
EL CONGRESO DE LA REPÚBLICA;
Ha dado la Ley siguiente:

LEY QUE DECLARA A LOS CULTIVOS, CRIANZAS NATIVAS Y ESPECIES SILVESTRES USUFRUCTUADAS PATRIMONIO NATURAL DE LA NACIÓN

Artículo 1.- De los objetivos de la Ley
Declárense a los cultivos, crianzas nativas y especies silvestres usufructuadas Patrimonio Natural de la Nación.

Artículo 2.- De los cultivos, crianzas nativas y especies silvestres usufructuadas Patrimonio Natural de la Nación
Considéranse cultivos, crianzas nativas y especies silvestres usufructuadas Patrimonio Natural de la Nación, a los que se indican en la presente Ley y los que posteriormente apruebe el Ministerio de Agricultura por resolución ministerial.

Artículo 3.- De la difusión, conservación y promoción
Encárgase al Ministerio de Agricultura, en coordinación con los Gobiernos Regionales y Gobiernos Locales y otras entidades públicas y privadas, la responsabilidad del registro, la difusión, conservación y promoción del material genético, el fomento de las actividades de producción, industrialización, comercialización y consumo interno y externo de los cultivos, crianzas nativas y especies silvestres usufructuadas detalladas en el Anexo de la presente Ley, dentro de un enfoque de sostenibilidad y sustentabilidad. El Ministerio de Agricultura lo ejecutará con cargo a su Presupuesto del ejercicio fiscal que corresponda.

DISPOSICIONES FINALES
PRIMERA.- Deróganse las disposiciones legales que se contrapongan a la presente Ley.

SEGUNDA.- La presente Ley entrará en vigor al día siguiente de su publicación en el Diario Oficial El Peruano.

POR TANTO:
Habiendo sido reconsiderada la Ley por el Congreso de la República, aceptándose las observaciones formuladas por el señor Presidente de la República, de conformidad con lo dispuesto por el artículo 108 de la Constitución Política del Estado, ordeno que se publique y cumpla.

En Lima, a los veintidós días del mes de marzo de dos mil cinco.

ÁNTERO FLORES-ARAOZ E.
Presidente del Congreso de la República

NATALE AMPRIMO PLÁ
Primer Vicepresidente del Congreso de la República

ANEXO

CULTIVOS, CRIANZAS NATIVAS Y ESPECIES SILVESTRES USUFRUCTUADAS QUE SE CONSTITUYEN PATRIMONIO NATURAL DE LA NACIÓN

a) CULTIVOS NATIVOS
NOMBRE COMÚN - NOMBRE CIENTÍFICO
1. Achiote: Bixa orellana
2. Achira: Canna indica
3. Aguaymanto: Physalis peruviana
4. Ají amarillo: Capsicum baccatum
5. Ají pimentón: Capsicum annuum
6. Caigua: Cyclanthera pedata

7. Camote: Ipomoea batatas
8. Camu camu: Myrciaria dubia
9. Cañihua: Chenopodium pallidicaule
10. Cascarilla o quinua: Cinchona officinalis (distribución: Amazonía alta hasta los 3500 m); Cinchona pubescens (distribución: Amazonía baja y alta hasta los 3500 m); Cinchona spp.
11. Faique o Huarango: Acacia huarango
12. Frijol ñuña: Phaseolus vulgaris
13. Gatupa: Passiflora pinnatistipula
14. Huacatay: Tagetes minuta
15. Kiwicha: Amaranthus Caudatus
16. Llacón: Smallanthus sochifolius
17. Loche: Cucurbita moschata
18. Maca: Lepidium meyenü
19. Maíz Blanco Gigante: Zea mays
20. Maíz Morado: Zea mays
21. Mashua: Tropaeolum tuberosum
22. Mauca: Mirabilis expanda
23. Oca: Oxalis tuberosa
24. Olluco: Ullucus tuberosus
25. Paico: Chenopodium ambrosioides
26. Papa común: Solanum tuberosum
27. Papa amarga: Solanum juczepczukü
28. Papa amarilla: Solanum goniocalyx
29. Papa ayanhuiri: Solanum ajanhuiri
30. Papa fureja: Solanum phureja
31. Papa Huayro: Solanum x chaucha
32. Papa patiquiña: Solanum stenotomum
33. Papa rucki: Solanum curtilobum
34. Papa tropical: Solanum hygrothermicum
35. Quinua: Chenopodium quinoa
36. Rocoto: Capsicum pubescens
37. Sacha inchi: Plukenetia volúbilis
38. Sacha mango: Grias peruviana
39. Sacha oca: Maranta arundinacea
40. Sachapapa: Dioscorea trifida
41. Saúco peruano: Sambucus peruviana
42. Tuna: Opuntia ficus-indica
43. Uña de gato: Uncaria tomentosa, Uncaria guianensis
44. Yuca: Manihot esculenta
45. Zinnia: Zinnia peruviana

b) CRIANZAS NATIVAS
NOMBRE COMÚN - NOMBRE CIENTÍFICO
1. Cuy: Cavia porcellus
2. Alpaca: Lama pacos
3. Llama: Lama glama

c) ESPECIES DE FAUNA SILVESTRE USUFRUCTUADAS
NOMBRE COMÚN - NOMBRE CIENTÍFICO
1. Chinchilla: Chinchilla lanigera
2. Guanaco: Lama guanicoe
3. Huangana: Tayassu pecari
4. Majáz: Agouti paca
5. Oso de anteojos: Tremarctos omatus
6. Pecarí: Pecarí tajacu
7. Venado Rojo: Mazama americana
8. Vicuña: Vicugna vicugna
9. Viscacha: Lagidium peruanum
10. Zorro de Sierra: Pseudalopex culpaeus
11. Taruca: Hippocamelus antisensis

Annex 11 Decision 345 of the Andean Community: Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties

CHAPTER I: SUBJECT MATTER AND SCOPE

Article 1.- The purpose of this Decision is:

(a) to recognize and ensure the protection of the rights of breeders of new plant varieties by the grant of breeders' certificates;

(b) to promote research activities in the Andean area;

(c) to promote technology transfer activities within and outside the subregion.

Article 2.- The scope of this Decision shall encompass all botanical genera and species insofar as the growing, possession or use thereof are not prohibited for reasons of human, animal or plant health.

CHAPTER II: DEFINITIONS

Article 3.- For the purposes of this Decision, the following definitions are adopted:

Competent national authority: Body appointed by each Member Country to apply the provisions on plant variety protection.

Live sample: A sample of the variety supplied by the applicant for a breeder's certificate, which sample shall be used for the testing of novelty, distinctness, uniformity and stability.

Variety: Set of cultivated botanical individuals that are distinguished by specific morphological, physiological, cytological and chemical characteristics and can be perpetuated by reproduction, multiplication or propagation.

Essentially derived variety: A variety shall be deemed to be essentially derived from an initial variety when it originated therefrom or from a variety itself essentially derived from the initial variety and retains the expression of the essential characteristics that result from the genotype or combination of genotypes of the original variety, and which although distinguishable from the initial variety, nevertheless conforms to it in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except with respect to differences resulting from the derivation process.

Material: Reproductive or vegetative multiplication material in any form; harvested material, including whole plants and parts of plants; any product made directly from harvested material.

CHAPTER III: RECOGNITION OF BREEDERS' RIGHTS

Article 4.- The Member Countries shall grant breeders' certificates to persons who have created plant varieties, insofar as the varieties are new, uniform, distinct and stable, and if they have been given a denomination that constitutes their generic designation.

For the purposes of this Decision, "created" shall be understood to denote the production of a new variety by the application of scientific skills to the genetic improvement of plants.

Article 5.- Without prejudice to the provisions of Article 37, the Government of each Member Country shall appoint its competent national authority and shall establish the functions thereof, and shall also establish the national procedure for the implementation of this Decision.

Article 6.- There shall be established in each Member Country a National Register of Protected Plant Varieties, in which all varieties conforming to the conditions laid down in this Decision shall be registered. The Board shall be responsible for keeping a subregional register of protected plant varieties.

Article 7.- To be entered in the Register referred to in the foregoing Article, varieties shall fulfill the conditions of novelty, distinctness, uniformity and stability and in addition shall have an appropriate generic denomination.

Article 8.- A variety shall be deemed to be new if reproductive or multiplication material or harvested material thereof has not been lawfully sold or disposed of to others in another manner by or with the consent of the breeder or his successor in title for purposes of commercial exploitation of the variety.

Novelty shall be lost where:

(a) exploitation has begun more than one year prior to the filing date of the application for the grant of a breeder's certificate or the date of any priority claimed, if sale or disposal to others has taken place within the territory of any Member Country;

(b) exploitation has begun more than four years or, in the case of trees and grapevines, more than six years prior to the filing date of the application for the grant of a breeder's certificate or the date of any priority claimed, if the sale or disposal to others has taken place in a territory other than that of any Member Country.

Article 9.- Novelty shall not be lost through sale or disposal of the variety to others, *inter alia*, when those acts:

(a) are the result of an abuse to the detriment of the breeder or his successor in title;

(b) form part of an agreement to transfer the rights in the variety, provided that the variety has not been physically disposed of to a third party;

(c) form part of an agreement under which a third party has, on behalf of the breeder, increased supplies of reproductive or multiplication material;

(d) form part of an agreement under which a third party has carried out field or laboratory tests or small-scale processing tests with a view to the evaluation of the variety;

(e) involve harvested material that has been obtained as a by-product or surplus product of the variety or from the activities mentioned in this Article under (c) and (d);

(f) are performed in any unlawful manner.

Article 10.- A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the filing date of the application or the date of any priority claimed.

The filing in any country of an application for the grant of a breeder's certificate or for the entry of the variety in an official register of cultivars shall make the said variety a matter of common knowledge as from that date, insofar as the act concerned leads to the grant of the certificate or the entry of the variety, as the case may be.

Article 11.- A variety shall be deemed to be uniform if it is sufficiently uniform in its essential characteristics, due account being taken of the variations that may be expected from the manner of its reproduction, multiplication or propagation.

Article 12.- A variety shall be deemed to be stable if its essential characteristics remain unchanged from generation to generation and at the end of each particular cycle of reproduction, multiplication or propagation.

Article 13.- Each Member Country shall ensure that no rights in the designation registered as the denomination of the variety hamper the free use thereof, even after the breeder's certificate has expired.

The designation adopted may not be registered as a mark and shall be sufficiently distinctive in relation to other denominations registered previously.

Where one variety is the subject of applications for the grant of breeders' certificates in two or more Member Countries, the same denomination shall be used in all cases.

Article 14.- The owners of breeders' certificates may be natural persons or legal entities. The certificate shall belong to the breeder of the variety or the party to whom it has been lawfully transferred.

The breeder may claim his rights before the competent national authority if the certificate has been granted to a person not entitled thereto.

Article 15.- The State employer, whatever its form and nature, may transfer part of the profits from plant breeding to its breeder employees in order to stimulate research activity.

CHAPTER IV: REGISTRATION

Article 16.- The application for the grant of a breeder's certificate for a new variety shall comply with the conditions set forth in Article 7 and shall be accompanied by a detailed description of the relevant breeding process. In addition, should the competent national authority consider this necessary, the application shall likewise be accompanied by a live sample of the variety or the document evidencing the deposit thereof with the competent national authority of another Member Country.

The Member Countries shall regulate the manner in which samples are to be deposited, including, among other matters, the necessity and desirability of effecting such a deposit, the duration thereof and the replacement or supply of samples.

Article 17.- The breeder shall enjoy provisional protection during the period between the filing of the application and the grant of the certificate.

No action for damages may be brought until the breeder's certificate has been granted, but such an action may cover damages caused by the defendant as from the publication of the application.

Article 18.- The owner of an application for the grant of a breeder's certificate filed in a country that accords reciprocal treatment to the Member Country in which registration of the variety is being sought shall enjoy a right of priority for a period of 12 months for the purpose of seeking protection for the same variety in any of the other Member Countries. This period shall be calculated from the filing date of the first application.

In order to benefit from the right of priority, the breeder shall, in the subsequent application, claim the priority of the first application. The competent national authority of the Member Country in which the subsequent application has been filed may require the applicant to supply, within a period of not less than three months from the date of the said filing, a copy of the documents which constitute the first application, which copy shall be certified true by the authority with which that application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

Article 19.- The competent national authority of each Member Country shall issue a technical report on novelty, distinctness, uniformity and stability.

Article 20.- On the issue of a favorable technical report and after compliance with the prescribed procedure, the competent national authority shall grant the breeder's certificate.

The grant of the certificate shall be notified to the Board of the Cartagena Agreement, which in turn shall bring it to the notice of the other Member Countries for the purposes of the recognition thereof.

Article 21.- The term of the breeder's certificate shall be from 20 to 25 years in the case of vines, forest trees and fruit trees, including their rootstocks, and from 15 to 20 years for other species, calculated in both cases from the date of grant, as determined by the competent national authority.

CHAPTER V: OBLIGATIONS AND RIGHTS OF THE BREEDER

Article 22.- The owner of a variety entered in the Register of Protected Plant Varieties shall be under the obligation to maintain it and reconstitute it as necessary throughout the term of the breeder's certificate.

Article 23.- A breeder's certificate shall give the owner thereof the right to bring administrative or judicial actions under his national legislation with a view to preventing or restraining any acts that constitute infringement or violation of his right, and securing the appropriate forms of compensation or indemnification.

Article 24.- The grant of a breeder's certificate shall confer on the owner thereof the right to prevent third parties from engaging without his consent in the following acts in respect of reproductive, propagating or multiplication material of the protected variety:

(a) production, reproduction, multiplication or propagation;

(b) preparation for the purposes of reproduction, multiplication or propagation;

(c) offering for sale;

(d) sale or any other act that entails placing reproductive, propagating or multiplication material on the market for commercial purposes;

(e) exportation;

(f) importation;

(g) possession for any of the purposes mentioned in the foregoing subparagraphs;

(h) commercial use of ornamental plants or parts of plants as multiplication material for the production of ornamental and fruit plants, or parts thereof or cut flowers;

(i) the performance of the acts mentioned in the foregoing subparagraphs in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of reproductive or multiplication material of the protected variety, unless the owner has had reasonable opportunity to exercise his exclusive right in relation to the said reproductive or multiplication material.

The breeder's certificate shall likewise entitle the owner thereof to exercise the rights specified in the foregoing subparagraphs in respect of varieties that are not clearly distinguishable from the protected variety, within the meaning of Article 10 of this Decision, and in respect of varieties whose production calls for repeated use of the protected variety.

The competent national authority may confer on the owner the right to prevent third parties from engaging, without his consent, in the acts specified in the foregoing subparagraphs in respect of varieties essentially derived from the protected variety, except where the latter variety is itself an essentially derived variety.

Article 25.- The breeder's certificate shall not confer on the owner thereof the right to prevent third parties from using the protected variety where such use is made:

(a) in a private circle, for non-commercial purposes;

(b) for experimental purposes;

(c) for the breeding and exploitation of a new variety, except in the case of a variety essentially derived from a protected variety. The said new variety may be registered in the name of the breeder thereof.

Article 26.- Anyone who stores and sows for his own use, or sells as a raw material or food, the product of his cultivation of the protected variety shall not be thereby infringing the breeder's right. This Article shall not apply to the commercial use of multiplication, reproductive or propagating material, including whole plants and parts of plants of fruit, ornamental and forest species.

Article 27.- Breeders' rights may not be invoked against the acts mentioned in Article 24 of this Decision where the material of the protected variety has been sold or otherwise marketed by the owner of the said right, or with his consent, except where those acts involve:

(a) further reproduction, multiplication or propagation of the protected variety, subject to the limitation specified in Article 30 of this Decision;

(b) exportation of the material of the protected variety, such as would permit reproduction thereof, to a country that does not grant protection to the varieties of the plant species to which the exported variety belongs, except where the said material is for human, animal or industrial consumption purposes.

Article 28.- Where necessary, the Member Countries may adopt measures for the regulation or control, on their territory, of the production or marketing, importation or exportation of reproductive or multiplication material of a variety, provided that such measures do not imply disregard for the breeders' rights recognized by this Decision, or hamper the exercise thereof.

CHAPTER VI: LICENSING

Article 29.- The owner of a breeder's certificate may grant licenses for the exploitation of the variety.

Article 30.- With a view to ensuring adequate exploitation of the protected variety, in exceptional circumstances affecting national security or the public interest, national governments may declare the said variety freely available subject to equitable compensation of the breeder.

The competent national authority shall decide on the amount of compensation, after having heard the parties and taken expert advice, on the basis of the scale of exploitation of the variety so licensed.

Article 31.- During the period of validity of the declaration of free availability, the competent national authority shall allow exploitation of the variety by interested persons who offer sufficient technical guarantees and apply to it to that end.

Article 32.- The declaration of free availability shall remain in force for as long as the circumstances that brought it about continue to obtain and up to a maximum of two years, which period may be renewed once for the same amount of time, provided that the circumstances under which the declaration was made have not disappeared with the lapse of the first such period.

CHAPTER VII: NULLITY AND CANCELLATION

Article 33.- The competent national authority shall, either ex officio or at the request of a party, declare the breeder's certificate null and void when it is established that:

(a) the variety did not fulfill the requirements of novelty and distinctness when the certificate was granted;

(b) the variety did not fulfill the conditions laid down in Articles 11 and 12 of this Decision when the certificate was granted;

(c) the certificate has been granted to a person who has no right to it.

Article 34.- In order to keep the breeder's certificate in force, the appropriate fees shall be paid in accordance with the provisions laid down in the domestic legislation of the Member Countries.

The owner shall be allowed a period of grace of six months following the expiration of the prescribed period within which to effect payment of the fee due, together with the appropriate surcharge. The breeder's certificate shall remain fully valid throughout the period of grace.

Article 35.- The competent national authority shall declare the certificate canceled in the following cases:

(a) where it is established that the protected variety has ceased to meet the conditions of uniformity and stability;

(b) where the breeder does not provide the information, documents or material necessary for testing the maintenance or reconstitution of the variety;

(c) where the breeder does not, after the denomination of the variety has been rejected, propose another suitable denomination within the prescribed period;

(d) where payment of the fee has not taken place by the expiration of the period of grace.

Article 36.- Any nullity, lapse, cancellation, cessation or loss of breeders' rights shall be notified to the Board, by the competent national authority, within 24 hours of the making of the corresponding pronouncement, which shall in addition be duly published in the Member Country, whereupon the variety shall become public property.

CHAPTER VIII: COMPLEMENTARY PROVISIONS

Article 37.- The Subregional Committee for the Protection of Plant Varieties, composed of two representatives of each of the Member Countries, is hereby created. The Board shall provide the Technical Secretariat of the Committee.

Article 38.- The Committee referred to in the foregoing Article shall have the following functions:

(a) to consider the compilation of an up-to-date inventory of the present biodiversity of the Andean subregion and, in particular, of the plant varieties susceptible of registration;

(b) to draw up guidelines for the standardization of procedures, examinations, laboratory tests and the deposit or growing of such samples as may be necessary for the registration of the variety;

(c) to devise technical criteria for distinctness in relation to the state of the art, with a view to determining the minimum number of characteristics that have to vary for one variety to be considered different from another;

(d) to analyze matters relating to the scope of protection of essentially derived varieties, and to propose common provisions thereon.

Article 39.- The recommendations of the Committee shall be submitted through the Board for consideration by the Commission.

TRANSITIONAL PROVISIONS

ONE.- A variety that is not new on the date on which a Member Country's Register is opened for the filing of applications may be registered, notwithstanding the provisions of Article 4 of this Decision, if the following conditions are met:

(a) the application is filed within the year following the opening date of the Register for the genus or species to which the variety belongs;

(b) the variety has been entered in a register of cultivars in any of the Member Countries, or in a register of protected varieties in any country having special legislation on the protection of plant varieties which grants reciprocal treatment to the Member Country in which the application is filed.

The term of the breeder's certificate granted under this provision shall be proportional to the period already elapsed since the date of entry or registration in the country referred to in subparagraph (b) above. Where the variety has been entered in two or more countries, the relevant entry or registration shall be the one with the earliest date.

TWO.- The competent national authority in each Member Country shall implement this Decision within 90 days following the date of the publication thereof in the Official Gazette of the Cartagena Agreement.

THREE.- The Member Countries shall, before December 31, 1994, approve common provisions governing access to biogenetic resources and guaranteeing the biosecurity of the subregion, pursuant to the provisions of the Convention on Biodiversity adopted in Rio de Janeiro on June 5, 1992.

Annex 12 Decision 391 of the Andean Community: Common Regime on Access to Genetic Resources

THE COMMISSION OF THE CARTAGENA AGREEMENT,

HAVING SEEN: The Third Temporary Provision of Commission Decision 345 and Board Proposal 284/Rev. 1;

WHEREAS:

The Member Countries have sovereignty over the use and development of their resources, a principle that has also been ratified by the Agreement on Biological Diversity, signed in Rio de Janeiro in June 1992 and legalized by the five Member Countries;

The Member Countries possess a sizeable biological and genetic heritage that should be preserved and developed on a sustainable basis;

The Andean countries are characterized by their multi-ethnic and pluricultural nature;

The biological diversity, the genetic resources, their endemism and rarity, as well as the know-how, innovations and practices of the native, Afro-American and local communities associated with them, have a strategic value in the international context;

It is necessary to recognize the historic contribution made by the native, Afro-American, and local communities to the biological diversity, its conservation and development and the sustained use of its components, as well as to the benefits generated by that contribution;

A close interdependence exists between the native, Afro-American and local communities and the biological resources that should be reinforced, in keeping with the conservation of the biological diversity and the economic and social development of those communities and of the Member Countries;

It is necessary to strengthen integration and scientific, technical and cultural cooperation, while moving ahead with the harmonious and comprehensive development of the Member Countries;

Genetic resources have an enormous economic value as a primary source of products and processes for industry;

DECIDES: To approve the following:

COMMON REGIME ON ACCESS TO GENETIC RESOURCES

TITLE I: ON THE DEFINITIONS

Article 1.- The following definitions shall apply for purposes of this Decision:

ACCESS: the obtaining and use of genetic resources conserved in situ and ex situ, of their by-products and, if applicable, of their intangible components, for purposes of research, biological prospecting, conservation, industrial application and commercial use, among other things.

ACCESS CONTRACT: agreement between the Competent National Authority in representation of the State, and a person that establishes the terms and conditions for access to genetic resources, their by-products and, if applicable, the associated intangible component.

ACCESS RESOLUTION: an administrative order issued by the Competent National Authority that executes the access to genetic resources or their by-products, after having fulfilled all requirements or conditions stipulated in the access procedure.

BIOLOGICAL DIVERSITY: the variability of living organisms of any source whatsoever, including, among others, land and ocean ecosystems and other aquatic ecosystems, as

well as the ecological complexes of which they are a part. Covers the diversity that exists within each species and between species and within ecosystems as a result of natural and cultural processes.

BIOLOGICAL RESOURCES: individuals, organisms or parts of them, populations or any biotic component of value or of real or potential use that contains a genetic resource or its by-products.

BIOTECHNOLOGY: any technological application that utilizes biological systems or live organisms, parts of them or their by-products, to create or modify products or processes for specific uses.

BY-PRODUCT: a molecule, a combination or mixture of natural molecules, including crude extracts of live or dead organisms of biological origin that come from the metabolism of living beings.

COMPETENT NATIONAL AUTHORITY: State entity or public institution appointed by each Member Country, authorized to supply the genetic resource or its by-products and therefore to sign or supervise the access contracts, to take the actions provided for in this common regime and to ensure their performance.

COUNTRY OF ORIGIN OF THE GENETIC RESOURCE: country that possesses genetic resources in in situ conditions, including those which, having been in in situ conditions, are now in ex situ conditions.

ECOSYSTEM: a dynamic complex of communities of human beings, plants, animals and micro-organisms and their non-living medium that interact as a functional unit.

EX SITU CONDITIONS: those in which the genetic resources are not found in in situ conditions.

EX SITU CONSERVATION CENTER: a person or institution recognized by the Competent National Authority that conserves and collects genetic resources or their by-products outside their in situ conditions.

GENETIC DIVERSITY: variation of genes and genotypes between and within species. Sum total of the genetic information contained in biological organisms.

GENETIC EROSION: the loss of or decrease in genetic diversity.

GENETIC RESOURCES: all biological material that contains genetic information of value or of real or potential use.

IN SITU CONDITIONS: those in which the genetic resources are found in their ecosystems and natural environments; in the case of domesticated or cultivated species or those having escaped domestication, in the environments where they developed their specific properties.

INTANGIBLE COMPONENT: all know-how, innovation or individual or collective practice, with a real or potential value, that is associated with the genetic resource, its by-products or the biological resource that contains them, whether or not protected by intellectual property regimes.

NATIONAL SUPPORT INSTITUTION: national institution devoted to biological research of a scientific or technical nature, that accompanies the applicant and participates jointly with it in the access activities.

NATIVE, AFRO-AMERICAN OR LOCAL COMMUNITY: a human group whose social, cultural and economic conditions distinguish it from other sectors of the national community, that is governed totally or partially by its own customs or traditions or by special legislation and that, irrespective of its legal status, conserves its own social, economic, cultural and political institutions or a part of them.

PROGRAM FOR THE LIBERALIZATION OF GOODS AND SERVICES: a program whose purpose is to eliminate levies and restrictions of all kinds on the importation of goods originating in the territory of any Member Country, pursuant to the provisions of

the pertinent chapter of the Cartagena Agreement and all other applicable rules and regulations of its body of law.

SUPPLIER OF THE BIOLOGICAL RESOURCE: a person empowered by this Decision and complementary national legislation to supply the biological resource that contains the genetic resource or its by-products.

SUPPLIER OF THE INTANGIBLE COMPONENT: a person that, through an access contract and pursuant to this Decision and to complementary national legislation, is empowered to supply the intangible component associated with the genetic resource or its by-products.

SUSTAINABLE USE: use of the components of biological diversity in a way and at a rate that does not cause their reduction in the long term and that enables them to maintain their possibilities for satisfying the needs and the aspirations of existing and future generations.

SYNTHESIZED PRODUCT: a substance obtained through the artificial processing of genetic information or of information from other biological molecules. Includes semi-processed extracts and substances obtained by converting a by-product through an artificial process (hemisynthesis).

TITLE II: ON THE PURPOSE AND AIMS

Article 2.- The purpose of this Decision is to regulate access to the genetic resources of the Member Countries and their by-products, in order to:

a) Establish the conditions for just and equitable participation in the benefits of the access;

b) Lay the foundations for the recognition and valuation of the genetic resources and their by-products and of their associated intangible components, especially when native, Afro-American or local communities are involved;

c) Promote conservation of the biological diversity and the sustainable use of the biological resources that contain genetic resources;

d) Promote the consolidation and development of scientific, technological and technical capacities at the local, national and subregional levels; and

e) Strengthen the negotiating capacity of the Member Countries.

TITLE III: ON THE SCOPE

Article 3.- This Decision is applicable to genetic resources for which is the Member Countries are the countries of origin, to their by-products, to their intangible components and to the genetic resources of the migratory species that for natural reasons are found in the territories of the Member Countries.

Article 4.- The following are excluded from the scope of this Decision:

a) Human genetic resources and their by-products; and

b) The exchange of genetic resources, their by-products, the biological resources containing them, or their associated intangible components among native, Afro-American and local communities of the Member Countries for their own consumption, based on their customary practices.

TITLE IV: ON THE PRINCIPLES

CHAPTER I: ON THE SOVEREIGNY OVER GENETIC RESOURCES AND THEIR BY-PRODUCTS

Article 5.- The Member Countries exercise sovereignty over their genetic resources and their by-products and consequently determine the conditions for access to them, pursuant to the provisions of this Decision.

The conservation and sustainable use of the genetic resources and their by-products are regulated by each Member Country in keeping with the principles and provisions of the Biological Diversity Agreement and of this Decision.

Article 6.- The genetic resources and their by-products which originated in the Member Countries are goods belonging to or the heritage of the Nation or of the State in each Member Country, as stipulated in their respective national legislation.

Those resources are inalienable, not subject to prescription and not subject to seizure or similar measures, without detriment to the property regimes applicable to the biological resources that contain those genetic resources, the land on which they are located or the associated intangible component.

CHAPTER II: ON THE RECOGNITION OF KNOW-HOW, INNOVATIONS AND TRADITIONAL PRACTICES

Article 7.- The Member Countries, in keeping with this Decision and their complementary national legislation, recognize and value the rights and the authority of the native, Afro-American and local communities to decide about their know-how, innovations and traditional practices associated with genetic resources and their by-products.

CHAPTER III: ON TRAINING, RESEARCH, DEVELOPMENT ANDTHE TRANSFER OF TECHNOLOGY

Article 8.- The Member Countries favor the establishment of scientific and technical training programs, as well as the execution of research projects that promote the identification, registration, characterization, conservation and sustainable use of the biological diversity and of the by-products of genetic resources that help to satisfy local and Subregional needs.

Article 9.- The Member Countries, recognizing that technology, including biotechnology, and both the access to it and its transfer are essential to the attainment of the objectives of this Decision, shall ensure and facilitate, through the corresponding contracts, the access to technologies that utilize genetic resources and their by-products, that are appropriate for the conservation and sustainable use of the biological diversity and that do not cause damage to the environment.

CHAPTER IV: ON SUBREGIONAL COOPERATION

Article 10.- The Member Countries shall define mechanisms for cooperation on matters of common interest concerning the conservation and sustainable use of genetic resources and their by-products and the associated intangible components.

They shall also establish Subregional technical and scientific training programs on the information, follow-up, control and evaluation of activities connected with those genetic resources and their by-products and for the performance of joint research.

CHAPTER V: ON NATIONAL TREATMENT AND RECIPROCITY

Article 11.- The Member Countries grant each other national, and not discriminatory, treatment in matters relating to access to genetic resources.

Article 12.- The Member Countries may grant national and non-discriminatory treatment to third countries that give them equal treatment.

CHAPTER VI: ON PRECAUTION

Article 13.- The Member Countries may adopt measures aimed to impeding genetic erosion or the degradation of the environment and of the natural resources. If the danger of serious and irreversible damage exists, the lack of scientific certainty should not be seized upon as a reason for postponing the adoption of effective measures.

The principle of precaution should be applied in keeping with the provisions in the Chapter on the Liberalization Program of the Cartagena Agreement and the other applicable rules and regulations of the body of law of this Agreement.

CHAPTER VII: ON FREE SUBREGIONAL TRAFFIC IN BIOLOGICAL RESOURCES

Article 14.- Provided that there is no access to the genetic resources contained in the biological resources referred to in this Decision, the provisions of this regime shall not hinder the use of and free movement of in those biological resources, nor the fulfillment of the provisions of the CITES Convention on health, food security, biosecurity and the obligations stemming from the Program of Liberalization of goods and services among Member Countries.

CHAPTER VIII: ON THE JURIDICAL SECURITY AND TRANSPARENCY

Article 15.- Provisions, procedures and acts of government authorities of the Member Countries with regard to access, shall be clear, effective, well-grounded and lawful.

The actions performed and information provided by individuals shall likewise be lawful, complete and truthful.

TITLE V: ON THE ACCESS PROCEDURE

CHAPTER I: ON THE GENERAL ASPECTS

Article 16.- All access procedures shall require the presentation, admittance, publication and approval of an application, the signing of a contract, the issuing and publication of the corresponding Resolution and the declarative registration of the acts connected with that access.

Article 17.- The applications for access and access contracts and, if appropriate, accessory contracts shall include conditions like the following:

a) The participation of Subregional nationals in the research on genetic resources and their by-products and on the associated intangible component;

b) Support for research within the jurisdiction of the Member Country of origin of the genetic resource or in any other Subregional Member Country that contributes to the conservation and sustainable use of the biological diversity;

c) The strengthening of mechanisms for the transfer of know-how and technology, including biotechnology, that is culturally, socially and environmentally healthy and safe;

d) The supply of information about the background and status of the science and about other matters that would contribute to a better knowledge of the situation regarding the genetic resource that originated in the Member Country, its by-product or synthesized product and its associated intangible component;

e) The strengthening and development of the institutional capacity of the country or the Subregion in regard to genetic resources and their by-products;

f) The strengthening and development of the capacities of the native, Afro-American and local communities with relation to the associated intangible components, the genetic resources and their by-products;

g) The compulsory deposit of duplicates of all material collected, at institutions designated by the Competent National Authority;

h) The obligation to inform the Competent National Authority about the results of the research carried out; and

i) The terms for the transfer of the material to which third parties are given access.

Article 18.- The documents connected with the access procedure shall appear in a public file that the Competent National Authority shall keep.

That file shall consist of the following, at least: the application; the identification of the applicant, the resource supplier, and the national support person or institution; the site or area to which the access applies; the access methodology; the project proposal; the parts of the access contract that are not subject to confidentiality; the opinion about and

registry of visits; and, if applicable, the evaluation studies of the economic, social and environmental impact or of the environmental permits.

Also included in the file are the Resolution executing the access, the reports supplied by the national support person or institution, and the follow-up and supervisory reports provided by the Competent National Authority or the entity delegated to perform that task. That file is open to consultation by any person.

Article 19.- The Competent National Authority may give confidential treatment to data and information supplied to it in the course of the access procedure or the contract performance, and not previously disclosed, which could be put to unfair commercial use by third parties, unless the knowledge of this data and information by the public is necessary to protect the social interest or the environment.

Accordingly, the applicant should state the grounds for its petition, accompanied by a non-confidential summary that will become a part of the public file.

The information or documents referred to in the second paragraph of Article 18 of this Decision cannot be made confidential.

The confidential aspects shall be covered in a separate file, in the custody of the Competent National Authority, and may not be disclosed to third parties, unless that is judicially ordered.

Article 20.- If the petition for confidential treatment fails to comply with the requirements established in the previous article, the Competent National Authority shall deny it as a matter of right.

Article 21.- The Competent National Authority shall keep a public registry where the following information shall be entered, among other data: the Resolution that may possibly deny the petition, the access contract signing, amendment, suspension and termination dates, the date and number of the Resolution executing or canceling it, the date and number of the Resolution, award or sentence determining the nullity or imposing penalties, with an indication of their kind and the parties, and accessory contract signing, amendment, suspension, termination and nullification dates.

That registry shall be of a declaratory nature.

Article 22.- As stipulated in Article 15, the execution of the access is dependent upon the provision of full and reliable information by the applicant, as called for by law.

In this connection, the applicant should present the Competent National Authority with all of the information about the genetic resource and its by-products that it knows or is in a position to know at the moment the application is presented. That information shall include the present and potential uses of the resource, by-product or intangible component, their sustainability and the risks that could result from the access.

The statements made by the applicant in the application and in the contract, including their respective annexes, shall be in the nature of a sworn statement.

Article 23.- The permits, authorizations and other documents that support the investigation, obtaining, provision, transfer, etc., of biological resources, shall not determine, qualify or presume the authorization of the access.

Article 24.- It is forbidden to use genetic resources and their by-products in biological weapons or for practices that are harmful to the environment or to human health.

Article 25.- The transfer of technology shall be carried out in accordance with the provisions contained in the body of law of the Cartagena Agreement, complementary national provisions and such rules and regulations on biosecurity and the environment as the Member Countries may approve.

Article 26.- The access to and transfer of technology subject to patents or other intellectual property rights, shall be accomplished in keeping with the Subregional and complementary national provisions regulating that area.

CHAPTER II: ON THE APPLICATION FOR ACCESS

Article 26.- The procedure starts with the presentation to the Competent National Authority of an application for access which should contain:

a) Identification of the applicant and, if pertinent, documents that accredit its legal capacity to make a contract;

b) Identification of the supplier of the genetic and biological resources and their by-products or of the associated intangible component;

c) Identification of the national support person or institution;

d) Identification and curriculum vitae of the person responsible for the project and of his working group;

e) The access activity applied for; and

f) The location or area where the access is to be carried out, with an indication of its geographical coordinates.

The application shall be accompanied by the project proposal, considering the referential model the Board approves through a Resolution.

Article 27.- If the application with its accompanying project proposal is complete, the Competent National Authority shall accept it, assign it a presentation or filing date, record it in the report and enter it with a declarative intent in the public registry it shall keep for that purpose and open the corresponding file.

Were the application to be incomplete, the Competent National Authority would return it without delay, indicating the information that is missing, so that it might be completed.

Article 28.- Within five working days following the date of entry of the application in the public registry referred to in the previous article, an extract of that application shall be published in a newspaper with broad national circulation and in another medium of the place where the access is to be effected, so that those that wish to might supply information to the Competent National Authority.

Article 29.- Within thirty working days after its registration, the Competent National Authority shall evaluate the application, make the visits it deems necessary and issue a technical and legal opinion about its propriety or invalidity. That period may be extended to up to sixty working days if the Competent National Authority considers it desirable.

Article 30.- When the time limit stipulated in the previous article expires, or before that, if appropriate, the Competent National Authority shall accept or deny the application, based on the results of the opinion, the records of visits, the information supplied by third parties, and the fulfillment of the conditions established in this Decision.

The applicant shall be advised about the acceptance of the application and project proposal within five working days after this occurs. The access contract shall then be immediately drawn up and negotiated.

In the event that the application and project proposal are denied, this shall be communicated through a justified Resolution and the matter shall be considered finished. This does not, however, preclude the filing of such objections as are in order, according to the procedures established in the national legislation of Member Countries.

Article 31.- If required by the national law of the Member Country or if the Competent National Authority deems it necessary, the applicant shall comply with environmental provisions in effect.

The procedures that should be followed in that event shall be independent from those stipulated in this Decision and may be started beforehand. Nonetheless, they must be concluded before the expiration of the time limit stipulated in Article 29 and must be considered by the Competent National Authority in making its evaluation.

Were the Competent National Authority to require such studies, it could grant the applicant a supplementary period set exclusively in accordance with the time needed to complete and submit them for its consideration.

CHAPTER III: ON THE ACCESS CONTRACT

Article 32.- The parties to the access contract are:

a) The State, represented by the Competent National Authority; and
b) The applicant requesting the access.

The applicant must be legally empowered to make a contract in the Member Country in which it requests the access.

Article 33.- The terms of the access contract must be in keeping with the provisions of this Decision and Member Country national legislation.

Article 34.- The access contract shall bear in mind the rights and interests of the suppliers of genetic resources and their by-products, the biological resources that contain them and the intangible component as applicable, in accordance with the corresponding contracts.

Article 35.- When access is requested to genetic resources or their by-products with an intangible component, the access contract shall incorporate, as an integral part of that contract, an annex stipulating the fair and equitable distribution of the profits from use of that component.

The annex shall be signed by the supplier of the intangible component and the applicant for the access. It may also be signed by the Competent National Authority, in accordance with the provisions of national law of the Member Country. If that annex is not signed by the Competent National Authority, it shall be subject to the suspensive condition referred to in Article 42 of this Decision.

Failure to comply with the stipulations of the annex shall constitute grounds for the rescission and nullification of the access contract.

Article 36.- The Competent National Authority may enter into access contracts with universities, research centers or well-known researchers to support the execution of several projects, as provided for in this Decision and in keeping with the national legislation of each Member Country.

Article 37.- The ex-situ conservation centers or other institutions that perform activities involving access to genetic resources or their by-products and, if appropriate, the associated intangible component, should enter into access contracts with the Competent National Authority, pursuant to this Decision.

That Authority may likewise sign access contracts with third parties in regard to genetic resources of which the Member Country is the country of origin and which have been deposited at those centers, bearing in mind the rights and interests referred to in Article 34.

CHAPTER IV: ON THE EXECUTION OF THE ACCESS

Article 38.- Once the contract has been adopted and signed, the corresponding Resolution shall be issued in a joint act. This resolution shall then be published together with an extract of the contract, in the Official Newspaper or a newspaper with wide national circulation. As of that moment, the access shall be considered to have been granted.

Article 39.- Such contracts as are signed in violation of the provisions of this regime shall be null and void. The nullification procedure shall be subject to the national provisions of the Member Country in which it is invoked.

Article 40.- The rescission or resolution of the contract shall be motive for the official cancellation of the registration by the Competent National Authority.

TITLE VI: ON THE ANCILLARY CONTRACTS TO THE ACCESS CONTRACT

Article 41.- Ancillary contracts are those that are signed in order to carry out activities connected with the genetic resource or its by-products, between the applicant and:

a) The owner, possessor or manager of the land where the biological resource containing the genetic resource is located;

b) The ex situ conservation center;

c) The owner, possessor or manager of the biological resource containing the genetic resource; or

d) The national support institution, with regard to activities that it should perform and that are not a part of the access contract.

Making an ancillary contract does not authorize access to the genetic resource or its by-product, and its contents are subject to the stipulations of the access contract as provided for in this Decision.

The national support institution must be accepted by the Competent National Authority.

Article 42.- Such ancillary contracts as are signed shall include a condition that subjects their execution to that of the access contract.

As of that moment, they shall become effective and binding and shall be governed by the mutually agreed terms, the provisions of this Decision and applicable Subregional and national legislation. The responsibility for their execution and compliance lies only with the parties to the contract.

Article 43.- Without detriment to what has been agreed upon in the accessory contract and independently of it, the national support institution shall be obliged to collaborate with the Competent National Authority in the follow-up and supervision of the genetic resources, by-products or synthesized products and associated intangible components, and to submit reports about the activities for which it is responsible, in the way or with the frequency that the Authority stipulates, according to the access activity.

Article 44.- The nullity of the access contract produces the nullity of the ancillary contract.

The Competent National Authority may also terminate the access contract when the nullity of the ancillary contract is declared, if the latter is essential for the access.

Its amendment, suspension, rescission or resolution may likewise produce the amendment, suspension, rescission or resolution of the access contract by the Competent National Authority if it substantially affects the conditions of the latter contract.

TITLE VII: ON THE LIMITATIONS TO ACCESS

Article 45.- Member Countries may establish, through an express legal rule, partial or total limitations on access to genetic resources or their by-products in the following cases:

a) Endemism, rarity or danger of extinction of species, subspecies, varieties or races or breeds;

b) Vulnerability or fragility of the structure or functioning of the ecosystems that could worsen as a result of access activities;

c) Adverse effects of access activities on human health or on elements essential to the cultural identity of nations;

d) Undesirable or not easily controlled environmental effects of access activities on the ecosystems;

e) Danger of genetic erosion caused by access activities;

f) Regulations on biosecurity; or

g) Genetic resources or geographic areas rated as strategic.

TITLE VIII: ON VIOLATIONS AND SANCTIONS

Article 46.- Any person performing access activities without the respective authorization shall be liable for punishment.

Also to be sanctioned is any person carrying out transactions with regard to by-products or synthesized products of such genetic resources or the associated intangible component, that is not protected by the corresponding contracts, signed in keeping with the provisions of this Decision.

Article 47.- The Competent National Authority, pursuant to the procedure provided for in its own national legislation, may apply administrative sanctions, such as fines, preventive or definitive confiscation, temporary or definitive closing-down of establishments and disqualification of the violator from applying for new accesses in cases of violation of this regime.

Those sanctions shall be applied without detriment to the suspension, cancellation of nullification of the access, the payment of compensation for such damages and losses as are incurred, including those caused to the biological diversity, and the civil and criminal sanctions that may possibly be in order.

TITLE IX: ON THE NOTIFICATIONS BETWEEN MEMBER COUNTRIES

Article 48.- The Member Countries shall notify each other immediately through the Board, of all applications for access and access resolutions and authorizations, as well as of the suspension and termination of such contracts as are signed.

They shall also advise each other about the signing of any bilateral or multilateral agreement on the subject, which must be in keeping with the provisions of this Decision.

Article 49.- Without prejudice to the stipulations of the previous article, the Member Countries shall immediately inform each other through the Board of all provisions, decisions, regulations, judgments, resolutions and other rules and acts adopted nationally that have to do with the provisions of this Decision.

TITLE X: ON THE COMPETENT NATIONAL AUTHORITY

Article 50.- The Competent National Authority shall perform all of the functions conferred on it in this Decision and in Member Country national legislation. In this connection, it shall be empowered to:

a) Issue the necessary internal administrative provisions to comply with this Decision and, until the appropriate Community rules and regulations are enacted, stipulate how the genetic resources and their by-products shall be identified and packed;

b) Receive, evaluate, accept or deny applications for access;

c) Negotiate, sign and authorize access contracts and issue the corresponding access resolutions;

d) Ensure the rights of suppliers of biological resources that contain genetic resources and of the intangible component;

e) Keep the technical files and the Public Registry of Access to Genetic Resources and their by-products;

f) Keep a directory of persons or institutions pre-qualified to perform scientific or cultural support tasks;

g) Amend, suspend, nullify or terminate access contracts and arrange their cancellation, as the case may be, in keeping with the terms of those contracts, this Decision and Member Country legislation;

h) Oppose the suitability of the national support institution proposed by the applicant and demand its replacement by another, suitable one;

i) Supervise and control compliance with the contractual conditions and the provisions of this Decision and accordingly establish such monitoring and evaluation mechanisms as it deems advisable;

j) Review, in keeping with this Decision, contracts involving access already signed with other institutions or persons and carry out the corresponding actions for repossession;

k) Delegate supervisory activities to other institutions, while keeping the responsibility and direction over that supervision, in conformity with national legislation;

l) Supervise the state of conservation of the biological resources containing the genetic resources;

m) Coordinate continuously with its respective liaison institutions all matters having to do with fulfillment of the provisions of this Decision;

n) Keep the national inventory of genetic resources and their by-products;

o) Keep in continuous contact with the competent national offices for industrial property and set up appropriate information systems with them; and

p) All such other functions as the domestic legislation of the Member Country itself may assign it.

TITLE XI: ON THE ANDEAN COMMITTEE ON GENETIC RESOURCES

Article 51.- The Andean Committee on Genetic Resources is hereby created, such to be comprised of the Directors of the Competent National Authorities on matters of Access to Genetic Resources or their representatives, their advisors and such representatives of other interested sectors as each Member Country may designate.

The Committee shall be responsible for:

a) Issuing national and Subregional recommendations for the best possible fulfillment of this Decision;

b) Issuing technical recommendations on such matters as the Member Countries may submit for its consideration;

c) Recommending the mechanisms for establishing an Andean information network on applications for access and access contracts in the Subregion;

d) Recommending and promoting joint actions to strengthen Member Country capacity in research, management and transfer of technology connected with genetic resources and their by-products;

e) Recommending to the Board for adoption through Resolutions, common documentation models, particularly those that will make it possible to easily verify the coding and identification of genetic resources and their by-products, as well as the legality of the access;

f) Promoting management, surveillance, control and supervision of access authorizations relating to genetic resources and their by-products that exist in two or more Member Countries;

g) Recommending and promoting joint emergency plans and warning mechanisms to prevent or resolve problems relating to access to genetic resources or their by-products;

h) Taking cooperative actions with regard to genetic resources or their by-products;

i) Drawing up their own internal regulations;

j) Writing an explanatory manual of this Decision; and

k) Such other functions as the Member Countries may assign to them.

COMPLEMENTARY PROVISIONS

FIRST.- The Member Countries shall, in keeping with their national legislation, set up or reinforce funds or other types of financial mechanisms financed by the profits from the access and resources from other sources to promote compliance with the aims of this Decision, under the direction of the Competent National Authority.

Through the Andean Committee on Genetic Resources, the Member Countries shall design and implement joint programs for the conservation of genetic resources and shall study the viability and desirability of creating an Andean Fund for their conservation.

SECOND.- The Member Countries shall not acknowledge rights, including intellectual property rights, over genetic resources, by-products or synthesized products and associated intangible components, that were obtained or developed through an access activity that does not comply with the provisions of this Decision.

Furthermore, the Member Country affected may request nullification and bring such actions as are appropriate in countries that have conferred rights or granted protective title documents.

THIRD.- The Competent National Offices on Intellectual Property shall require the applicant to give the registration number of the access contract and supply a copy of it as a prerequisite for granting the respective right, when they are certain or there are reasonable indications that the products or processes whose protection is being requested have been obtained or developed on the basis of genetic resources or their by-products which originated in one of the Member Countries.

The Competent National Authority and the Competent National Offices on Intellectual Property shall set up systems for exchanging information about the authorized access contracts and intellectual property rights granted.

FOURTH.- Such health certificates supporting the export of biological resources as are issued in accordance with Commission Decision 328, its amendments or addenda, shall incorporate the following statement at the end of the format: "Use of this product as a genetic resource is not authorized."

FIFTH.- The Competent National Authority may enter into, with the institutions referred to in Article 36, contracts for the deposit of genetic resources or their by-products or of the biological resources containing them, exclusively for purposes of their care, keeping those resources under its jurisdiction and control.

Likewise, it may make contracts that do not involve access, such as intermediation or administration contracts, in relation to genetic resources or their by-products or synthesized products, in keeping with the provisions of this Regime.

SIXTH.- When requesting access to genetic resources from protected areas or their by-products, the applicant must fulfill, in addition to the stipulations of this Decision, also the special national legislation on the subject.

FINAL PROVISIONS

FIRST.- Any disputes that may arise among Member Countries shall be settled as stipulated in the Andean body of law.

Any disputes that arise with third countries must be settled according to the provisions of this Decision. If a dispute arises with a third country party to the Agreement on Biological Diversity, signed in Rio de Janeiro on June 5, 1992, the solution adopted must also abide by the principles established in that Agreement.

SECOND.- In negotiating the terms of access contracts to genetic resources that originated in more than one Member Country or to their by-products and in carrying out activities connected with that access, the Competent National Authority shall bear in mind the interests of the other Member Countries, which may present their viewpoints and such information as they deem advisable.

THIRD.- The Board, through a Resolution and after hearing the opinion of the Andean Committee on Genetic Resources, may execute or adjust the procedure stipulated in Title V, Chapters I and II of this Decision.

FOURTH.- This Decision shall become effective on the date of its publication in the Official Newspaper of the Cartagena Agreement.

TEMPORARY PROVISIONS

FIRST.- On the date this Decision enters into force, those which possess, for purposes of access, genetic resources originated in the Member Countries, their by-products or associated intangible components, shall negotiate that access with the Competent National Authority pursuant to the provisions of this Decision. Accordingly, the Competent National Authorities shall set the time limits, which cannot exceed twenty-four months as of the date this Decision becomes effective.

Until this requirement is fulfilled, the Member Countries may disqualify such persons, as well as the institutions they represent or on whose account they act, from applying for new accesses to genetic resources or their by-products in the Subregion. This does not preclude the application of such sanctions as are in order once the time limit referred to in the previous paragraph expires.

SECOND.- Contracts or agreements signed by Member Countries or their public or State institutions with third parties in regard to genetic resources, their by-products, the biological resources containing them or associated intangible components, that are not in conformity with this Decision, may be renegotiated or may fail to be renewed, as applicable.

The renegotiation of such contracts or agreements, as well as the signing of new ones, shall be accomplished by common agreement among the Member Countries. To this end, the Andean Committee on Genetic Resources shall establish the common criteria.

THIRD.- The Member Countries may take such legal action as they deem advisable for the repossession of genetic resources of which they are the countries of origin, their by-products and the associated intangible components and for the collection of any damages and compensation to which they are entitled.

Only the State has the legal entitlement to the action for repossession of those genetic resources and their by-products.

FOURTH.- The Board, through a Resolution and after hearing the opinion of the Andean Committee on Genetic Resources, shall establish the necessary systems for the identification and packing of the genetic resources and, if applicable, their by-products.

FIFTH.- Within a period of no more than 30 working days after this Decision enters into force, the Member Countries shall designate the Competent National Authority on access to genetic resources and shall accredit it before the Board.

SIXTH.- The Member Countries, within a period of no more than 30 working days after this Decision enters into force, shall accredit before the Board their representatives to the Andean Committee on Genetic Resources.

SEVENTH.- The Member Countries shall adopt a common regime on biosecurity within the framework of the Agreement on Diversity. To that end, the Member Countries, in coordination with the Board, shall start the respective studies, particularly with regard to the cross-border movement of modified live organisms produced by biotechnology.

EIGHTH.- The Board shall draw up, within a period of three months after the Member Countries present their national studies, a proposal to establish a special regime or a harmonization regulation, as applicable, aimed at reinforcing the protection of know-how, innovations and traditional practices of native, Afro-American and local communities, in keeping with the provision of Article 7 of this Decision, ILO Convention 169 and the Agreement on Biological Diversity.

To that end, the Member Countries should present their respective national studies during the year after this Decision enters into effect.

NINTH.- The Member Countries shall design a training program to strength the capacity of the native, Afro-American and local communities to negotiate the intangible component within the context of access to genetic resources.

TENTH.- The Board, through a Resolution, shall adopt the reference models for the application for access to genetic resources and the access contract, within a period of no more than fifteen days after this Decision comes into effect.

Signed in the city of Caracas, Venezuela on the second of July of nineteen ninety-six.

Annex 13 Decision 486 of the Andean Community: Common Intellectual Property Regime

(Excerpt from DECISION 486) (Non official translation)

Signed in the city of Lima, Peru 14 September, 2000

THE COMMISSION OF THE ANDEAN COMMUNITY, HAVING SEEN:

Article 27 of the Cartagena Agreement and Commission Decision 344;

DECIDES: To replace Decision 344 by the following Decision:

COMMON INTELLECTUAL PROPERTY REGIME

TITLE I: GENERAL PROVISIONS

On National Treatment

Article 1. - Each Member Country shall accord the nationals of other members of the Andean Community, the World Trade Organization, and the Paris Convention for the Protection of Industrial Property, treatment no less favorable than it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in articles 3 and 5 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in article 2 of the Paris Convention for the Protection of Industrial Property.

Member Countries may also accord such treatment to the nationals of a third country under the terms of their respective domestic legislation.

On Most-Favored-Nation Treatment

Article 2.- With regard to the protection of intellectual property, any advantage, favor, privilege, or immunity granted by a Member Country to the nationals of any other Andean Community Member Country shall be accorded to the nationals of all other Members of the World Trade Organization or of the Paris Convention for the Protection of Industrial Property.

The stipulation set forth in the preceding paragraph shall be applicable without prejudice to the reservations provided for in articles 4 and 5 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

On the Biological and Genetic Heritage and Traditional Knowledge

Article 3.- The Member Countries shall ensure that the protection granted to intellectual property elements shall be accorded while safeguarding and respecting their biological and genetic heritage, together with the traditional knowledge of their indigenous, African American, or local communities. As a result, the granting of patents on inventions that have been developed on the basis of material obtained from that heritage or that knowledge shall be subordinated to the acquisition of that material in accordance with international, Andean Community, and national law.

The Member Countries recognize the right and the authority of indigenous, African American, and local communities in respect of their collective knowledge.

The provisions of this Decision shall be applied and interpreted in such a way that they do not contravene the stipulations of Decision 391 and its effective amendments.

On the Periods and Deadlines

Article 4.- The effective periods for carrying out the procedures stipulated in this Decision that are subject to publication or notification shall be counted as of the day following the notification or publication of the act involved, unless stipulated otherwise in this Decision.

Article 5.- When periods are given in days, these shall be considered working days, unless this Decision stipulates otherwise. If the period is stated in months or years, it shall be computed from date to date. If there is no day equivalent to the starting day of the period in the month of expiration, the last day of the month shall be considered the deadline. If the last day is not a working day, then the deadline shall be considered as having been extended to the following working day.

On the Notifications

Article 6.- The competent national office may set up a system of notification to adequately communicate its decisions to the interested parties.

On the Language

Article 7.- Application petitions addressed to the competent national office shall be submitted in Spanish.

Article 8.- All documents that are processed by the competent national offices shall be submitted in Spanish. Otherwise, they shall be accompanied by unauthenticated Spanish translations. The competent national office may, however, dispense with the presentation of the translations of those documents should it deem this advisable.

On the Claim of Priority

Article 9.- The first application for an invention or utility model patent or for the registration of register an industrial design or a trademark that is validly filed in another Member Country or with a national, regional, or international authority to which the Member Country is linked by a treaty establishing an analogous right of priority to that established in this Decision, shall confer on the applicant or the applicant's assignee the right of priority in filing for a patent or registration on the same subject-matter in the Member Country. The scope and effects of the right of priority shall be those provided in the Paris Convention for the Protection of Industrial Property.

The right of priority may be based on a previous application filed with the competent national office in the same Member Country, provided that a previous right of priority was not claimed in that application. In that case, filing a subsequent application claiming priority shall mean abandoning the previous application in respect of the subject matter that is common between the two.

Any application validly accepted for processing as provided for in Articles 33, 119, and 140 of this Decision or in such treaties as are applicable, is acknowledged to confer the right of priority.

In order to qualify for that right, an application claiming priority shall be filed within the following unextendible periods to be counted as from the filing date of the application whose priority is claimed:

a) twelve months for patents on inventions and utility models; and,

b) six months for registrations of industrial designs and trademarks.

Article 10.- For the purposes of the previous article, a declaration shall be submitted accompanied by the pertinent documentation claiming the priority of the previous application and stating its filing date, the office to which it was submitted, when it was granted, and the number assigned to it, if known. The competent national office may prescribe the payment of a fee for processing priority claims.

The declaration and the pertinent documentation shall be submitted together with or separately from the application within the following unextendible periods to be counted as from the filing date of the priority claim:

a) in the case of patents on inventions or utility models: sixteen months; and,

b) in the case of applications for registration of industrial designs or trademarks: nine months.

Also to be presented are a copy of the application whose priority is claimed, certified by the issuing authority, a certificate attesting to the application filing date issued by the same authority, and, if applicable, the proof of payment of the prescribed fee.

No formalities in addition to those stipulated in this article shall be required for purposes of the right of priority.

Article 11. - Failure to comply with the deadlines, present the documents, or pay the fee shall result in the loss of the priority claimed.

On Discontinuance and Abandonment

Article 12.- The applicant may discontinue the application at any time during the process. Discontinuance of a patent or registration application shall bring the administrative proceeding to an end as of the declaration of conclusion by the competent national office and the assigned presentation date shall be lost.

If the discontinuance predates the publication of the application, that application shall not be published. In the case of patents on inventions or utility models or the registration of an industrial

design, the information shall be kept confidential and may not be consulted without written consent from the applicant unless the time-limit set forth in article 40 has been reached.

Article 13.- The stipulations of the previous article shall be applicable to the abandonment of the application proceeding as pertinent.

TITLE II: ON PATENTS

CHAPTER I: On Patentability Requirements

Article 14.- The Member Countries shall grant patents for inventions, whether goods or processes, in all areas of technology, that are new, involve an inventive step, and are industrially applicable.

Article 15.- The following shall not be considered inventions:

a) discoveries, scientific theories, and mathematical methods;

b) Any living thing, either complete or partial, as found in nature, natural biological processes, and biological material, as existing in nature, or able to be separated, including the genome or germ plasm of any living thing;

c) literary and artistic works or any other aesthetic creation protected by copyright;

d) plans, rules, and methods for the pursuit of intellectual activities, playing of games, or economic and business activities;

e) computer programs and software, as such; and,

f) methods for presenting information.

Article 16.- An invention may be deemed new when not included in the state of the art.

The state of the art comprises everything that has been made available to the public by written or oral description, use, marketing, or any other means prior to the filing date of the patent or, where appropriate, of the priority claimed.

Solely for the purpose of determining novelty, the contents of a patent application pending before the competent national office and having a filing date or priority application date earlier than the date of the patent or patent priority application under examination, shall likewise be considered part of the state of the art, provided that the said contents are included in the earlier application when published or that the period stipulated in Article 40 has concluded.

Article 17.- For the purposes of determining patentability, no account shall be taken of any disclosure of the contents of the patent during the year prior to the filing date of the application in the Member Country or during the year before the date of priority, if claimed, providing that the disclosure was attributable to:

a) the inventor or the inventor's assignee;

b) a competent national office that publishes the contents of a patent application filed by the inventor or the inventor's assignee in contravention of the applicable provision; or,

c) a third party who obtained the information directly or indirectly from the inventor or the inventor's assignee.

Article 18.- An invention shall be regarded as involving an inventive step if, for a person in the trade with average skills in the technical field concerned, the said invention is neither obvious nor obviously derived from the state of the art.

Article 19.- An invention shall be regarded as industrially applicable when its subject matter may be produced or used in any type of industry; industry being understood as that involving any productive activity, including services.

Article 20.- The following shall not be patentable:

a) inventions, the prevention of the commercial exploitation within the territory of the respective Member Country of the commercial exploitation is necessary to protect public order or morality, provided that such exclusion is not merely because the exploitation is prohibited or regulated by a legal or administrative provision;

b) inventions, when the prevention of the commercial exploitation within the respective Member Country of the commercial exploitation is necessary to protect human or animal life or health or to avoid serious prejudice to plant life and the environment, provided that such exclusion is not made merely because the exploitation is prohibited or regulated by a legal or administrative provision;

c) plants, animals, and essentially biological processes for the production of plants or animals other than non-biological or microbiological processes;

d) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals.

Article 21.- Products or processes already patented and included in the state of the art within the meaning of Article 16 of this Decision may not be the subject of new patents on the sole ground of having been put to a use different from that originally contemplated by the initial patent.

CHAPTER II: On the Patent Owners

Article 22.- The right to a patent belongs to the inventor and may be assigned or transferred by succession.

Patent owners may be natural or judicial persons.

If several persons make an invention jointly, they shall share the right to patent it.

If several persons make the same invention, each independently of the others, the patent shall be granted to the person or assignee with the first filing date or, where priority is claimed, date of application.

Article 23.- Without prejudice to the provisions of national law in each Member Country, in the case of inventions made in the course of an employment relationship, the employer, whatever its form and nature, may transfer part of the economic benefits deriving from the innovations to the employee inventors in order to promote research activity.

Entities receiving state funding for their research shall reinvest part of the royalties received from the marketing of those inventions to generate a continuing supply of research funds and encourage researchers by giving them a share of the proceeds from the innovations, in accordance with the legislation in each Member Country.

Article 24.- The inventor shall have the right to be cited as such in the patent or to oppose being so mentioned.

CHAPTER III: On Patent Applications

Article 25.- A patent application may cover only one invention or a group of interrelated inventions that constitute a single inventive concept.

Article 26.- Applications for patents shall be filed with the competent national office and shall contain:

a) the petition;

b) the description;

c) one or more claims;

d) one or more drawings, if needed to understand the invention which, shall be considered an integral part of the description;

e) a summary;

f) such powers of attorney as may be needed;

g) proof of payment of the prescribed fees;

h) a copy of the contract for access, if the products or processes for which a patent application is being filed were obtained or developed from genetic resources or byproducts originating in one of the Member Countries;

i) if applicable, a copy of the document that certifies the license or authorization to use the traditional knowledge of indigenous, African American, or local communities in the Member Countries where the products or processes whose protection is being requested was obtained

or developed on the basis of the knowledge originating in any one of the Member Countries, pursuant to the provisions of Decision 391 and its effective amendments and regulations;

j) the certificate of deposit of the biological material, if applicable; and,

k) a copy of the document attesting to the transfer of the patent right by the inventor to the applicant or assignee.

Article 27.- The patent application petition shall be a form that shall include the following information:

a) the application for a patent grant;

b) the applicant's name and address;

c) the nationality or address of the applicant and, should the applicant be a judicial person, the place of incorporation;

d) the name of the invention;

e) the name and address of the inventor, if a person other than the applicant;

f) the name and address of the applicant's legal representative, if pertinent;

g) the signature of the applicant or of the applicant's legal representative; and,

h) the date, number, and office of filing of any such application for a patent or other patent protection as may have been filed or obtained abroad by the applicant or assignee in respect of part or all of the same invention claimed in the application being filed in the respective Member Country, if pertinent.

Article 28.- The description of the invention shall be sufficiently clear and complete to be understood and for the invention to be carried out by a person skilled in the art. The description shall contain the name of the invention and the following information:

a) the technological sector to which the invention refers or in which it shall be applied;

b) prior technology known to the applicant that would help the invention to be understood and examined and references to previous documents and publications that discuss the technology involved;

c) a description of the invention in such a way that the technical problem and the solution provided by the invention may be understood, explaining the differences and possible advantages with respect to previos technology.

d) a brief description of the drawings if there are any;

e) a description of the best method known to the applicant for carrying out the invention, with the use of examples and references to the drawings if they are pertinent; and,

f) a statement as to how the invention meets the condition of being capable of industrial application, if this is not clear from the description or the nature of the invention itself.

Article 29.- Where the invention refers to a product or a process involving biological material and the invention cannot be understood and carried out, as described, by a person skilled in the art, it must be accompanied by a deposit of the said material.

The material shall be deposited by the filing date in the Member Country or, where priority is claimed, the date of application. Deposits with an international authority recognized under the 1977 Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure or any other institution acknowledged by the competent national office as appropriate for this purpose shall be valid. In such cases, the name and address of the depositary institution, the date of deposit, and the number assigned by that institution to the deposit shall be included in the description.

The deposit of biological material shall be valid for granting a patent only if it is carried out in such a way that any interested person may obtain samples of that material by the date of expiration of the period stipulated in article 40, at the latest.

Article 30.- Claims shall specify the subject matter for which patent protection is sought. They must be stated clearly and concisely and be fully substantiated by the description.

Claims may be independent or dependent. A claim shall be independent when it defines the subject matter in respect of which protection is sought without referring to any previous claim. A dependent claim, on the other hand, defines the subject matter for which protection is sought by referring to a prior claim. A claim referring to two or more previous claims is considered a multiple dependent claim.

Article 31.- The summary shall consist of a synthesis of the technical explanation given in the patent application. That summary shall be used to provide technical information only and shall have no effect whatsoever on the interpretation of the scope of protection conferred by the patent.

Article 32.- No Member Country may require the fulfillment of patent application requirements additional to or other than those set forth in this Decision.

Without prejudice to the foregoing, should the competent national office, during the processing of the application, have any reasonable doubts about any of the elements included, it may request the applicant to provide the necessary substantiating evidence.

Article 33.- The date of its receipt by the competent national office shall be considered the application filing date, providing that the application contained the following elements:

a) a statement that the applicant is applying for a patent;

b) data identifying the applicant or person filing the application or that shall enable the competent national office to communicate with that person;

c) a description of the invention;

d) the drawings, if pertinent; and,

e) the proof of payment of the prescribed fees.

Failure to comply with any of the requirements specified in this article shall cause the competent national office to reject the application for processing and no filing date shall be assigned to it.

Article 34.- The applicant for a patent may, at time during the processing, request the modification of the application, but that modification may not involve extending the scope of protection beyond the use indicated in the initial application.

The applicant may, likewise, request the correction of any material error.

Article 35.- Patent applicants may, at any time during the processing, request the conversion of their applications for an invention patent into applications for a utility model patent. That change in application shall be possible only if the nature of the invention permits that conversion.

An applicant may submit a petition for conversion of an application one time only. The converted application shall keep the original filing date.

The competent national offices may, at any stage of the processing, suggest that the applicant make a convertion in the patent being applied for and order an additional fee to be paid for filing the application for its conversion.

The applicant may accept or reject the suggestion on the understanding that if it is rejected the application shall continue to be processed as originally filed for.

Article 36.- Applicants may, at any time during the processing, divide their applications into two or more divisional applications, but none of these may have the effect of extending the scope of protection beyond the use indicated in the initial application.

The competent national office may, at any time during the process, ask the applicant to divide the application if it fails to comply with the requirement for the unity of the invention.

Each divisional application shall be entitled to keep the original filing date or, where priority is claimed, the initial date of application.

Where multiple or partial priorities are claimed, the applicant or the competent national office shall state what priority date or dates shall be applicable to the subject matters that each of these divisional applications shall cover.

For the purposes of the division of an application, the applicant shall file the necessary documents to complete each of the resulting applications.

Article 37.- The applicant may, at any moment during the processing, combine two applications into a single one, but this combination may not involve extending the scope of protection beyond the use indicated in the initial application.

No combination shall be permitted if the merged applications fail to comply with the requirement for the unity of the invention stipulated in article 25.

The combined application shall be entitled to keep the original filing date or, where priority is claimed, the initial date or dates of application.

Annex 14 Side Letter in the US–Peru Free Trade Agreement

The text of the Side Letter:

UNDERSTANDING REGARDING BIODIVERSITY AND TRADITIONAL KNOWLEDGE

The governments of Peru and the United States have reached the following understandings concerning biodivesity and traditional knowledge in connection with the United States of America - Peru Trade Promotion Agreement signed this day:

The Parties recognize the importance of traditional knowledge and biodiversity, as well as the potential contribution of traditional knowledge and biodiversity to cultural, economic, and social development.

The Parties recognize the importance of the following: (1) obtaining informed consent from the appropriate authority prior to accessing genetic resources under the control of such authority; (2) equitably sharing the benefits arising from the use of traditional knowledge and genetic resources; and (3) promoting quality patent examination to ensure the conditions of patentability are satisfied.

The Parties recognize that access to genetic resources or traditional knowledge, as well as the equitable sharing of benefits that may result from use of those resources or that knowledge, can be adequately addressed through contracts that reflect mutually agreed terms between user and providers.

Each Party shall endeavor to seek ways to share information that may have a bearing on the patentability of inventions based on traditional knowledge or genetic resources by providing:

a) publicly accessible databases that contain relevant information; and

b) an opportunity to cite, in writing, to the appropriate examining authority prior art that may have a bearing on patentability.

FOR THE GOVERNMENT OF PERU:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Annex 15 Informe de Análisis de Potenciales Casos de Biopiratería en el Perú (Analysis of Potential Biopiracy Cases in Peru)

This 20-page report identifies six Peruvian species (hercampuri, yacon, camu camu, sangre de grado, sacha inchi, chanca piedra and caigua) used traditionally by *campesino* and native communities – mostly for food purposes – which have been subject to intellectual property rights in Europe, the US and Japan. These include dozens of patents for inventions related to these plants. The report presents a detailed description of the claims included in a series of patents.

The entire report may be accessed at www.biopirateria.org

DOCUMENTOS DE INVESTIGACIÓN Año I No.3 Setiembre 2005

Análisis de Potenciales Casos de Biopiratería en el Perú

Comisión Nacional contra la Biopiratería - Perú

Introducción

El Perú es uno de los doce países megadiversos del mundo pues posee un gran número de recursos biológicos (diversidad biológica) a los cuales se encuentran asociados diversos conocimientos tradicionales desarrollados por la multiplicidad de pueblos indígenas existentes en nuestro país (diversidad cultural). Dichos conocimientos son el resultado del estrecho contacto de los pueblos indígenas con la naturaleza, puesto que durante siglos los han desarrollado como un medio para conocer las características, propiedades, usos y aplicaciones de los recursos biológicos que les han servido y sirven de sustento.

Dichos recursos biológicos y conocimientos tradicionales no sólo son importantes para la humanidad por su valor en sí mismos, sino porque en la actualidad son utilizados en la ciencia, la tecnología, la industria y el comercio en general, debido a que su uso no sólo permite reducir costos de investigación, sino que aumenta las posibilidades de éxito en los resultados esperados. En este sentido, muchos recursos de origen peruano y conocimientos tradicionales de los pueblos indígenas del Perú vienen siendo empleados para el desarrollo de inventos y productos comerciales e industriales. Sin embargo, se ha evidenciado que en muchos casos no se ha respetado o cumplido con las normas vigentes en el Perú relacionadas con el acceso a los recursos genéticos y al uso de conocimientos colectivos de los pueblos indígenas, tales como la Decisión 391 de la Comunidad Andina sobre un Régimen Común de Acceso a los Recursos Genéticos (1996) o la Ley 27811 que establece un Régimen Especial de Protección de los Conocimientos Colectivos de los Pueblos Indígenas Vinculados a los Recursos Biológicos (2002).

En este contexto, surge un nuevo concepto llamado "biopiratería"[1], el cual se entiende como el acceso y uso de recursos biológicos o conocimientos tradicionales de los pueblos indígenas, sin la debida autorización ni compensación al Estado peruano como país de origen o a los pueblos indígenas del Perú como titulares de dichos conocimientos, respectivamente. Este fenómeno puede materializarse en derechos de propiedad intelectual concedidos a favor de terceros, casos en los cuales la apropiación ilegal y consecuente afectación de los intereses nacionales y de las comunidades indígenas se hace más evidente y clara.

En los últimos años el Estado peruano ha tomado conciencia del papel protagónico que debe desempeñar en la lucha contra la biopiratería, por esa razón es que, desde la entrada en vigencia el Convenio sobre Diversidad Biológica (1993), ha desarrollado una serie de políticas y normas con la finalidad de proteger sus recursos y los conocimientos tradicionales de sus pueblos indígenas. De esta manera, se convirtió en uno de los principales impulsores de Decisión 391 y fue pionero al establecer un

1 Según la Tercera Disposición Complementaria y Final de la Ley N° 26216 - Ley de Protección al Acceso a la Diversidad Biológica Peruana y los Conocimientos Colectivos de los Pueblos Indígenas – publicada el 1 de mayo del 2004: *"Para los efectos de la aplicación de la presente Ley se entiende por Biopiratería, el acceso y uso no autorizado y no compensado de recursos biológicos o conocimientos tradicionales de los pueblos indígenas por parte de terceros, sin la autorización correspondiente y en contravención de los principios establecidos en el Convenio sobre Diversidad Biológica y las normas vigentes sobre la materia. Esta apropiación puede darse a través del control físico, mediante derechos de propiedad sobre productos que incorporan estos elementos obtenidos ilegalmente o en algunos casos mediante la invocación de los mismos."*

Annex 16 List of interviewed persons/institutions and survey respondents

- Asociación Civil Pro Uso Diversitas (Civil association working on biodiversity issues in general) – Santiago Pastor, interview, October 27, 2005
- Asociación PROBIOANDES (Private center for the dissemination of biodiversity information) – Zósimo Huamán, respondent, December 5, 2005
- Centro Internacional de la Papa – CIP (International research center) two representatives – William Roca, Enrique Chujoy, interviews, December 15, 2005
- Centro Regional de Investigación de la Biodiversidad Andina – CRIBA (Academic association working with Andean peasant communities – Ramiro Ortega, respondent, November 25, 2005
- Confederación de Nacionalidades Amazónicas del Perú (CONAP) - James Pishagua, interview, February 14, 2006
- Convención Agraria – CONVEAGRO (Union of small and medium size farmers and agricultural producers) – Miguel Caillaux, interview, January 12, 2006
- Comisión de Coordinación de Tecnología Andina – CCTA (Association working with Andean farmers) – Juan Torres, respondent, January 29, 2006
- Finca Bioagricultura Casa Blanca (Private organic production centre) – Carmen Felipe Morales, respondent, January 16, 2006
- Grupo Yanapai (Private civil association working with communities) – Mariah Scurrah, respondent, December 20, 2005
- INCAGRO Project (rural development project of the Ministry of Agriculture) – Hugo Fano, respondent, November 12, 2005
- Instituto de Investigaciones de la Amazonía Peruana – IIAP (Public/private research centre) two representatives – Luis Campos Baca, Yolanda Guzman, respondents, 12 and 15 December 2005 respectively
- Instituto Nacional de Recursos Naturales – INRENA (Public national authority for flora and fauna) – Marina Rosales, respondent, January 18, 2006
- Instituto Nacional de Investigación y Extensión Agraria (Public agricultural research institute) – Manuel Sigueñas, respondent, November 12, 2005
- Instituto Nacional de Defensa de la Competencia y la Propiedad Intelectual (INDECOPI) – Silvia Bazán, interview, February 15, 2006
- Servicio Nacional de Sanidad Agraria – SENASA (Public sanitary authority of Peru) two representatives – Jose Aquino and assistant, interviews, November 23, 2005
- Secretaría Técnica del CGIAR (Public institute) – Ricardo Sevilla, respondent, December 19, 2005
- Sociedad Peruana de Derecho Ambiental – SPDA (Association working on environmental policy and legal issues) two representatives – Jorge Caillaux, Isabel Lapeña, interviews, January 2006

Important note: Those surveyed and interviewed did not necessarily respond from an institutional point of view or compromise their institutions with their comments.

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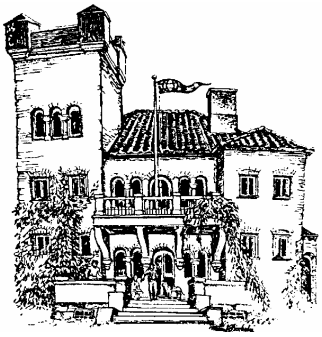

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