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EXPERIENCES IN THE PROTECTION OF TRADITIONAL KNOWLEDGE: THE CASE OF PERU (LAW 27811)

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Peru ... facts and details



- South America - territory: 1,281,215 km²; second largest Amazon country after Brazil
- Megadiverse country (centre of origin and diversity of potatoes (3,000 varieties) and Andean roots and of diversification of maize, chilis, tomatoes)
- Over 4000 species of plants with proven uses; 72 ethnic groups (Andean and Amazonian); centre of origin of Andean camelids; over 25,000 species of vascular plants; 500 species of mammals; 1,500 species of birds; one of the most important fisheries in the world; home of the Inca and many pre Incan cultures
- 35% of its population is indigenous



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The background, policy and regulatory process



- Andean process for Plant Variety Protection (PVP) – based on the UPOV model (development of a national PVP protection regulation) (1992)
- ICBG bioprospecting Project, involving NIH, Washington University, Monsanto, national institutions and indigenous peoples (1994)
- Andean process for an “access and benefit sharing regime” (1994-1996) – includes references to traditional knowledge protection and *defensive protection*
- Process to develop a national law for TK protection (1996-2001) – led by INDECOPI
- Creation of the National Biopiracy Prevention Commission (Law 28216, of 2004)

LAW 27811 FOR THE PROTECTION OF COLLECTIVE KNOWLEDGE OF INDIGENOUS PEOPLES RELATED TO BIODIVERSITY ...



- Enacted on August 8, 2002
- Result of a 6 year process led by INDECOPI with support of various institutions

Law 27811 for the protection of collective knowledge of indigenous peoples related to biodiversity



Subject matter (Article 2)

Collective knowlege (or TK) of indigenous peoples related to biodiversity

- to be accessed for commercial or non commercial purposes
- which is not in the public domain

In the case of TK which entered the public domain *after* 1982, a percentage (not defined) of sales of products derived from TK will be destined to the Indigenous Peoples Development Fund

Law 27811 for the protection of collective knowledge of indigenous peoples related to biodiversity



Protection granted (Articles 7, 42)

- Indigenous peoples are protected against unfair revelation and access to TK, without their informed consent (when not in the public domain)
- Indigenous peoples can negotiate licence agreements for access to and use of their TK
- A percentage of no less than 10% of sales of products derived from TK will be destined to the Indigenous Peoples Development Fund (parties may decide on a higher percentage)

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Beneficiaries (Articles 6, 42)

- Indigenous peoples who possess TK
- Prior informed consent is granted by their representative organizations (through contracts of a license in the case of commercial or industrial uses of TK)
- In the case of *shared* TK, representative organizations will try and engage as many indigenous groups as possible; in any case, these groups will be entitled to benefit from monies destined to the Indigenous Peoples Development Fund

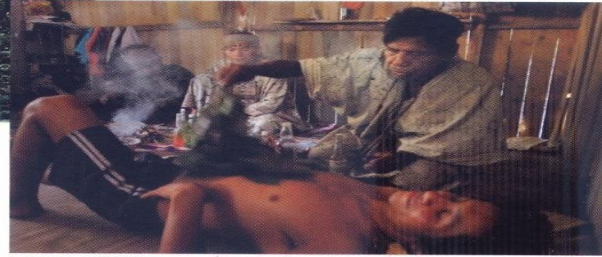
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Enabling instruments – REGISTERS (Article 15)

- Public and confidential registers of TK (under management of INDECOPI)
- Local registers (e.g. Potato Park Local Register)

Valoración y Protección de los Conocimientos Tradicionales en la Amazonía del Perú: Sistematización de una Experiencia



Manuel Ruiz-Muller

Number of entries or registries of TK in INDECOPI



Type of register/Year	06	07	08	09	10	11	12	13	14	Total
Confidential	2	2	19	50	156	275	404	443	71	1422
Public			7	15	193	178	201	200	50	844
Total	2	2	26	65	349	453	605	643	121	2226

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Enabling instruments – **CONTRACTS (licences) for commercial or industrial applications** (Article 7)

- Ensure mutually agreed terms for benefit sharing (by representative organizations)
- Ensure prior informed consent (of representative organizations)
- Registered with INDECOPI (the patent office)

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Enabling instruments - **INDIGENOUS PEOPLES DEVELOPMENT FUND** (Article 37)

- Trust fund destined to support development projects for indigenous peoples, receiving monies from the public treasury, international cooperation, projects, and set percentage (10% of sales) and benefits negotiated in the case of sale of products derived from TK in the public domain since 1982

Advances in implementation



- Advances in forming the board of the Indigenous Peoples Development Fund
- Advances in registration of TK in INDECOPI (public and confidential registers)
- Advances in capacity building and awareness raising among indigenous peoples

But

- Reality of indigenous peoples often “detached” from policy and legal framework and rules
- Set percentages considered unworkable by researchers and the private sector
- Information asymmetries makes negotiation of MAT an uphill battle and challenge for indigenous peoples representative organizations

Additional measures for TK protection

Defensive protection

Idea and concept “invented” in 1994 in the Andean Community process on ABS ... Patents processed only if legal provenance of resources and TK used in inventions (mostly biotechnological) can be proven and demonstrated

- Recognized in Andean Decision 391 on ABS (1996)
- Further developed in Andean Decision 486 on Industrial Property (2000)
- Refined in Law 27811 on TK protection (2001)
- Confirmed in Law 28216 which creates the National Commission for the Prevention of Biopiracy (2006)
- Today, a widely spread and adopted notion in ABS, biodiversity and IP frameworks ... Nagoya Protocol ... Draft regime for TK protection (WIPO)

Additional measures for TK protection

National Commission for the Prevention of Biopiracy (Law 28216 of 2004)

- Multidisciplinary group presided by INDECOPI (the IP office), and which reports to the Presidency of the Council of Ministries
- CIP, INDECOPI, SPDA, INIA, MINAM, Agrarian University, etc.
- Its mission is basically to prevent and confront situations of illegal access and use of genetic resources and TK of Peruvian origin
- Since 2004, it has focused on “attacking” novelty and inventiveness in questionable patents and claims related to national resources and TK: 13 cases solved in favor of the Commission involving USPTO, EPO, JPO, KPO and private companies

Key challenges in TK protection framework development



- **We are not short of legal instruments IMPLEMENTATION!**
- What do we want to protect ?
 - Knowledge, innovations/products, techniques, processes, cultural expressions ...
- For what purposes ?
 - Compensation, control, dissemination, maintenance ...
- How ?
 - A single law (e.g. Law 21 in Panama or Law 27811 in Peru), a legal tool (e.g. contract), through defensive protection, through a register ...

Key challenges in TK protection framework development



- The issue of SHARED traditional knowledge is a recurrent question which seems to have no technical solution or answer but rather, a second best type alternatives

End of presentation

Merci, Thank you

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