

OFFICIAL TRANSLATION

EL PERUANO, THE OFFICIAL GAZETTE

LAW 27811

LAW INTRODUCING A PROTECTION SYSTEM FOR THE
COLLECTIVE KNOWLEDGE OF INDIGENOUS PEOPLES
REGARDING BIOLOGICAL RESOURCES

LEGISLATIVE BRANCH
CONGRESS OF THE REPUBLIC

LAW 27811

TO THE PRESIDENT OF THE REPUBLIC

WHEREAS:

The Standing Commission of the Congress of the Republic has passed the following Law:

**LAW INTRODUCING A PROTECTION SYSTEM FOR THE COLLECTIVE
KNOWLEDGE OF INDIGENOUS PEOPLES REGARDING BIOLOGICAL
RESOURCES**

TITLE I

RECOGNITION OF THE RIGHTS OF INDIGENOUS PEOPLES ON THEIR
COLLECTIVE KNOWLEDGE

Article 1º.- Recognition of Rights

The Peruvian State recognizes the right and authority of indigenous peoples and communities to decide on their collective knowledge.

TITLE II
DEFINITIONS

Article 2º.- Definition of Terms

The following terms shall have meanings indicated when used in these regulations:

a) "**Indigenous peoples**" shall mean aboriginal peoples who have rights prior to the formation of the Peruvian State, maintaining their own culture, occupying a specific territory and acknowledging themselves as such; including voluntarily isolated or non-contacted peoples, as well as native and peasant communities.

The term "indigenous" includes and may be used as synonym for "aboriginal", "traditional", "ethnic", "ancestral", "native", or other similar words.

b) "**Collective knowledge**" shall mean accumulated and transgenerational knowledge developed by indigenous peoples and communities regarding properties, uses and characteristics of biological diversity. The intangible component considered in Decision 391 of the Commission of the Cartagena Agreement includes this type of collective knowledge.

(c) "**Prior informed consent**" shall mean the authorization given within the framework of this protection system by the representative organization of indigenous peoples possessing collective knowledge, in accordance with the rules recognized by them, for

conducting a particular activity that entails access to and use of the said collective knowledge, subject to the provision of sufficient information on the purposes, risks or implications of the said activity, including any possible uses of the knowledge and, if applicable, its value.

(d) “**Collective Knowledge Use License Agreement**” shall mean an express agreement entered into between the representative organization of indigenous peoples possessing collective knowledge and a third party that incorporates terms and conditions for the use of the said collective knowledge. Such agreement may constitute an annex to the agreement mentioned in Article 34, Decision 391, Commission of the Cartagena Agreement, introducing the Common Regime on Access to Genetic Resources.

(e) “**Biological resources**” shall mean genetic resources, organisms or parts thereof, populations or any other biotic components of ecosystems that are of real or potential value or use to the human race.

TITLE III SCOPE OF PROTECTION

Article 3º.- Scope of Protection Under these Regulations

These regulations establish a special protection regime for the collective knowledge of indigenous peoples relating to biological resources.

Article 4º.- Exceptions to the Regime

This regime shall not affect the traditional exchange between indigenous peoples of the collective knowledge protected under this regime.

TITLE IV PURPOSE

Article 5º.- Purpose of the Regime

The regime shall have the following purpose:

- a) To promote respect, protection, preservation, a wider application and development of the collective knowledge of indigenous peoples;
- b) To promote fair and equitable distribution of the benefits derived from the use of such collective knowledge;
- c) To promote the use of the knowledge for the benefit of indigenous peoples and mankind in general;
- d) To ensure that the knowledge is used with prior informed consent of indigenous peoples;
- e) To promote strengthening and potential/capacity development of indigenous peoples as well as the systems traditionally used by them to share and distribute collectively generated benefits, within the framework of this protection system;
- f) To prevent grant of patents to inventions obtained or developed from the collective knowledge of Peruvian indigenous peoples if such knowledge is not taken into account as prior art in the examination as to novelty and inventiveness of the said inventions.

TITLE V GENERAL PRINCIPLES

Article 6^o- Conditions on Access to Collective Knowledge

Those interested in having access to collective knowledge for the purposes of scientific, commercial and industrial application shall request prior informed consent of the representative organizations of indigenous peoples possessing collective knowledge.

The organization of indigenous peoples whose prior informed consent has been requested shall inform the greatest possible number of indigenous peoples possessing the collective knowledge that it is engaging in negotiations and shall take due account of their interests and concerns, in particular those connected with their spiritual values or religious beliefs.

The information supplied shall be confined to the biological resource to which the collective knowledge under negotiation relates in order to safeguard the other party's interest in keeping the details of the negotiation secret.

Article 7^o- Access for the Purposes of Commercial or Industrial Application

In the event of access for the purposes of commercial or industrial application, a license agreement shall be signed in which terms are provided so as to ensure due reward for the said access and guarantee equitable distribution of the benefits deriving therefrom.

Article 8^o- Allocation of Percentage to the Fund for the Development of Indigenous Peoples

A percentage which shall not be less than 10 per cent of the value, before tax, of gross sales resulting from marketing of goods developed on the basis of collective knowledge shall be allocated to the Fund for the Development of Indigenous Peoples as provided for in Articles 37 et seq. The parties may agree on a higher percentage according to the degree of direct use or incorporation of the said knowledge in the resulting end product and the degree to which the said knowledge contributed to reduce the research and development costs of the derived products, among other things.

Article 9^o- Role of Present Generations

The present generations of indigenous peoples preserve, develop and administer their collective knowledge for the benefit of future generations as well as for their own benefit.

Article 10^o- Collective Nature of the Knowledge

The collective knowledge safeguarded by this regime shall be that which belongs to an indigenous people and not to particular individuals making up the people. It may belong to more than one indigenous people. The rights shall be independent of those that may come into being within indigenous peoples, which may have recourse to their traditional systems for the purposes of benefit distribution.

Article 11^o- Collective Knowledge and Cultural Heritage

Collective knowledge forms part of the cultural heritage of indigenous peoples.

Article 12^o- Inalienability and Indefeasibility of Rights

Because they form part of the cultural heritage, the rights of indigenous peoples in their collective knowledge shall be inalienable and indefeasible.

Article 13º.- Collective Knowledge in the Public Domain

For the purposes of this regime, collective knowledge in the public domain shall mean collective knowledge that has been made accessible to persons other than indigenous peoples by mass media such as publications or, if it is concerning properties, uses or characteristics of a biological resources, that it has become extensively known outside the confines of the indigenous peoples and communities. In the case of collective knowledge that has enter the public domain within the previous 20 years, a percentage of the value, before tax, of the gross sales resulting from the marketing of the goods developed on the basis of that knowledge shall be set aside for the Fund for the Development of Indigenous Peoples, as provided in Article 37 et seq.

Article 14º.- Representatives of Indigenous Peoples

For the purposes of this regime, indigenous peoples shall be represented by their representative organizations, having respect for the indigenous peoples' traditional forms of organization.

TITLE VI

REGISTRATION OF COLLECTIVE KNOWLEDGE OF INDIGENOUS PEOPLES

Article 15º.- Registries of Collective Knowledge of Indigenous Peoples

The collective knowledge of indigenous peoples may be registered in three types of registries:

- (a) National Public Registry of Collective Knowledge of Indigenous Peoples;
- (b) National Confidential Registry of Collective Knowledge of Indigenous Peoples;
- (c) Local Registries of Collective Knowledge of Indigenous Peoples.

The National Public Registry of Collective Knowledge of Indigenous Peoples and the National Confidential Registry of Collective Knowledge of Indigenous Peoples shall be administered by The National Institute for the Defense of Competition and Intellectual Property (INDECOPI).

Article 16º.- Purpose of the Collective Knowledge Registries

The purpose of the Collective Knowledge of Indigenous Peoples Registries is the following, as the case may be:

- a) To preserve and safeguard the collective knowledge of indigenous peoples and their rights therein;
- b) To provide INDECOPI with such information that enables it to defend the interests of indigenous peoples in their collective knowledge.

Article 17º.- Nature of the National Public Registry of Collective Knowledge of Indigenous Peoples

The National Public Registry of Collective Knowledge of Indigenous Peoples shall keep collective knowledge that is in the public domain.

INDECOPI shall register the collective knowledge that is in the public domain with the National Public Registry of Collective Knowledge of Indigenous Peoples.

Article 18º.- Nature of the National Confidential Registry of Collective Knowledge of Indigenous Peoples

The National Confidential Registry of Collective Knowledge of Indigenous Peoples shall not be consulted by any third party.

Article 19^o.- Registration at the request of indigenous peoples

Any people may, through its representative organization, may register with Indecopi the collective knowledge in its possession, in the National Public Registry or the National Confidential Registry.

Article 20^o.- Applications for the Registration of Collective Knowledge

Applications for the registration of collective knowledge of indigenous peoples shall be filed with INDECOPI, through the representative organizations of the said peoples, and shall contain the following information:

- a) Identity of the indigenous people applying for the registration of its knowledge;
- b) Identity of the representative;
- c) Designation of the biological resource to which the collective knowledge relates, the indigenous name may be used;
- d) A mention of the use or uses of the biological resource;
- e) A clear and full description of the collective knowledge to be registered; and
- f) A record of the agreement on the registration of knowledge reached by the indigenous people.

The application shall be accompanied by a sample of the biological resource to which the collective knowledge to be registered relates. In the cases that the sample is difficult to transport or manipulate, the indigenous people applying for the registration may request INDECOPI to be exempted from the submission of the said sample and allowed to file instead photographs that show the characteristics of the biological resource to which the collective knowledge relates. Such sample or photographs, as the case may be, shall enable INDECOPI to identify unmistakably the biological resource concerned and to enter its scientific name in the file.

Article 21^o.- Application Procedures

INDECOPI shall verify within ten (10) days after the filing of the application that the application contains all information as specified in preceding Article.

In the case of any omission, the indigenous people applying for registration shall be notified to complete the application within a six (6)-month period, which may be renewed at its request with a warning that if failing the application would be declared abandoned.

Once INDECOPI has verified that the application contains all the information specified in the preceding Article, it shall register the collective knowledge in question.

Article 22^o.- Representatives of INDECOPI

In order to make the registration of collective knowledge of indigenous peoples easier, INDECOPI may send duly accredited representatives to the various indigenous peoples for the purpose of gathering the information necessary for the prosecution of such applications for registration as they may wish to file.

Article 23^o.- Obligation on INDECOPI to Send the Information Contained in the Public National Register to the Main Patent Offices of the World

With a view to its opposing pending patent applications, disputing granted patents or otherwise intervening in the grant of patents for goods or processes produced or developed on the basis of collective knowledge, INDECOPI shall send the information entered in the Public National Registry to the main patent offices in the world in order that it may be treated as prior art in the examination of the novelty and inventiveness of patent applications.

Article 24º.- Local Registries of Collective Knowledge of Indigenous Peoples

Indigenous peoples may organize local registries of collective knowledge in accordance with their practices and customs. INDECOPI shall provide technical assistance in the organization of such registries at the request of the indigenous peoples.

TITLE VII LICENSING

Article 25º.- Compulsory Registration of License Contracts

License contracts shall be entered in a registry kept for the purpose by INDECOPI.

Article 26º.- Compulsory Written Form for License Contracts

The representative organization of indigenous peoples in possession of collective knowledge may license third parties to use the said collective knowledge only by written contract, in the native language and in Spanish, for a renewable period of not less than one year or more than three years.

Article 27º.- Contents of the License Contract

For the purposes of this regime, contracts shall contain at least the following clauses:

- (a) Identification of the parties;
- (b) A description of the collective knowledge to which the contract relates;
- (c) A statement of the compensation that the indigenous peoples receive for the use of their collective knowledge; such compensation shall include an initial monetary or other equivalent payment for its sustainable development, and a percentage of not less than five per cent of the value, before tax, of the gross sales resulting from the marketing of the goods developed directly and indirectly on the basis of the said collective knowledge, as the case may be;
- (d) The provision of sufficient information on the purposes, risks and implications of the said activity, including any uses of the collective knowledge and its value where applicable;
- (e) The obligation on the licensee to inform the licensor periodically, in general terms, of progress in the research on and industrialization and marketing of the goods developed from the collective knowledge to which the license relates;
- (f) The obligation on the licensee to contribute to the improvement of the ability of the indigenous peoples to make use of the collective knowledge relating to its biological resources.

Where the contract embodies a safeguard obligation, it shall expressly so state. INDECOPI shall not register contracts that do not conform to the provisions of this Article.

Article 28º.- Applications for Registration of License Contracts. Confidentiality of the Contract

Applications for the registration of a license contract filed with INDECOPI shall enclose the following:

- (a) Identity of the indigenous peoples party to the contract and their representatives;
- (b) Identity of the other parties to the contract and their representatives;

- (c) A copy of the contract;
- (d) The instrument evidencing agreement to enter into a license contract on the part of the indigenous peoples party to the contract.

The contract may not be consulted by third parties except with the express permission of both parties.

Article 29^o.- Processing of the Application

INDECOPI shall verify within ten days of the filing of the application that it contains all the data specified in the foregoing Article. If anything has been omitted it shall serve notice on the party who applied for the registration to complete the application within a period of six months, which period may be renewed at his request, with the warning that otherwise the application shall be declared abandoned.

Article 30^o.- Verification of the Contents of the Contract

With a view to the registration of a license INDECOPI shall, within 30 days of the filing of the application, verify that the clauses mentioned in Article 27 have been included.

Article 31^o.- Additional Information on Environmental Impact

INDECOPI shall request additional information, either at the request of a party or ex officio, in cases where it considers that there is risk of the balance of the environment being affected in the territories inhabited by the indigenous peoples as a result of the contract filed for registration. Registration of the contract shall be refused if such a risk is detected and where the parties fail to undertake to do what is necessary to avoid it to the extent required by the national authority responsible for environmental concerns.

Article 32^o.- Scope of Licenses for Use

The licensing for the use of the collective knowledge of an indigenous people shall not prevent others from using or licensing the same knowledge, nor shall it affect the right of present and future generations to continue to use and develop collective knowledge.

Article 33^o.- Prohibition of Sublicensing

Sublicensing shall be allowed only with the express permission of the representative organization of the indigenous peoples that granted the license.

TITLE VIII
CANCELLATION OF REGISTRATION

Article 34^o.- Causes of Cancellation of Registration

INDECOPI may, either ex officio or at the request of a party, cancel a registration of collective knowledge or a license, after the parties concerned have been heard, where:

- (a) The registration or license has been granted in violation of any of the provisions of this regime;
- (b) It is shown that the essential data contained in the application are false or inaccurate.

Cancellation actions arising out of this Article may be initiated at any time.

Article 35º.- Request for Cancellation of Registration

The request for cancellation of a registration shall record or enclose, as the case may be, the following:

- (a) Identity of the party requesting cancellation;
- (b) Identity of the representative or agent, if any;
- (c) Registration affected by the cancellation;
- (d) A statement of the legal grounds for the action;
- (e) Evidence substantiating the grounds for cancellation invoked;
- (f) Address at which notice was served on the owner of the registration whose cancellation is requested;
- (g) Where appropriate, copies of whatever powers of attorney are necessary;
- (h) Copies of the application and its enclosures for the owner of the registration.

Article 36º.- Processing of the Request

The request for cancellation shall be notified to the owner of the registration, who shall be allowed a period of 30 days to make his rebuttal. After that period, INDECOPI shall settle the issue with or without the relevant rebuttal.

TITLE IX FUND FOR THE DEVELOPMENT OF INDIGENOUS PEOPLES

Article 37º.- Purpose of the Fund for the Development of Indigenous Peoples

The Fund for the Development of Indigenous Peoples and Communities is hereby created for the purpose of contributing to the comprehensive development of indigenous peoples through the financing of projects and other activities. The Fund shall enjoy technical, economic, administrative and financial autonomy.

Article 38º.- Access to the resources for the Fund for the Development of Indigenous Peoples and Communities

Indigenous peoples have the right to draw on the resources of the Fund for the Development of Indigenous Peoples through their representative organizations for the purpose of development projects, subject to prior evaluation and approval by the Administrative Committee.

Article 39º.- Administration of the Fund for the Development of Indigenous Peoples

The Fund for the Development of Indigenous Peoples shall be administered by five members of representative organizations of indigenous peoples and two members of the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, who shall constitute the Administrative Committee. The Committee shall to the extent possible use the machinery traditionally used — by indigenous peoples — for allocating and distributing collectively-generated benefits. The Administrative Committee shall give the representative organizations of indigenous peoples quarterly information on funds received.

Article 40º.- Obligation on Members of the Administrative Committee to Submit Sworn Statements

The members of the Administrative Committee shall, on taking up their duties and annually thereafter, submit a sworn statement of assets and income to the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples.

Article 41^o- Resources of the Fund for the Development of Indigenous Peoples

The resources of the Fund for the Development of Indigenous Peoples shall be derived from the State budget, international technical cooperation, donations, the percentage of economic benefits referred to in Articles 8 and 13, the fines referred to in Article 62 and other sources.

TITLE X PROTECTION CONFERRED BY THIS REGIME

Article 42^o- Rights of Indigenous Peoples Possessing Collective Knowledge

Indigenous peoples possessing collective knowledge shall be protected against the disclosure, acquisition or use of that collective knowledge without their consent and in an improper manner provided that the collective knowledge is not in the public domain.

It shall likewise be protected against unauthorized disclosure where a third party has legitimately had access to collective knowledge covered by a safeguard clause.

Article 43^o- Actions for Violation of Rights of Indigenous Peoples

Indigenous peoples possessing collective knowledge may bring infringement actions against persons who violate the rights specified in the foregoing Article. An infringement action shall also be permissible where there is an immediate danger of such violation. Infringement actions may be brought ex officio by order of INDECOPI.

Article 44^o- Reversal of the Burden of Proof

Where infringement of the rights of an indigenous people possessing specific collective knowledge is alleged, the burden of proof shall be on the defendant.

Article 45^o- Actions Claiming Ownership and Indemnification

The representative organizations of indigenous peoples possessing collective knowledge may bring the actions claiming ownership and indemnification that are available to them under the laws in force against a third party who, in a manner contrary to the provisions of this regime, has directly or indirectly made use of the said collective knowledge.

Article 46^o- Settlement of Disputes Between Indigenous Peoples

In order to settle such disputes as may arise between indigenous peoples in connection with the implementation of this regime, including those concerning the compliance, on the part of the indigenous people that has negotiated a license contract for the use of its collective knowledge, with the provisions of the second paragraph of Article 6 of this Law, they may have recourse to the law of equity and to their traditional forms of dispute settlement, it being possible to apply to a higher-ranking indigenous organization for mediation.

TITLE XI INFRINGEMENT ACTIONS

Article 47^o- Contents of the Complaint

Indigenous peoples wishing to bring an infringement action shall submit an application, through their representative organization, to the Office of Inventions and New Technology, which shall contain:

- (a) The identity of the representative organization of the indigenous peoples bringing the action, and that of their representatives;
- (b) The identity and address of the party committing the infringement;
- (c) A mention of the registration number assigned to the rights of the complainant or, failing that, a description of the collective knowledge and a mention of the biological resource to which the collective knowledge at issue relates;
- (d) An account of the facts constituting the infringement, with a mention of the place and of the means actually or presumably used, and any other relevant information;
- (e) A submission or offer of proof;
- (f) An express mention of the provisional measure applied for.

Article 48°.- Processing of the Complaint

Once the complaint has been accepted for processing, it shall be conveyed to the defendant so that the latter may submit his rebuttal. The period for the filing of the rebuttal shall be five years following notification, on the expiry of which the administrative authority of INDECOPI shall declare the defendant who has failed to file it to be in contempt. In the case of ex officio procedures, the period for the filing of rebuttals shall start on the date on which the administrative authority notifies the defendant of the circumstances being investigated, and also the nature and description of the alleged infringement. The administrative authority of INDECOPI may make such inspections and investigations as it considers necessary before sending the said notification. The complaint may be notified at the same time as an inspection is made, either at the request of the plaintiff or ex officio, where the administrative authority of INDECOPI considers such a step judicious.

Article 49°.- Provisional Measures

At any stage in the proceedings, either ex officio or at the request of a party, the administrative authority of INDECOPI may, within the limits of its relevant competence, order one or more of the following provisional measures in order to ensure compliance with the final ruling:

- (a) Cessation of the acts that gave rise to the action;
- (b) The seizure, confiscation or immobilization of the goods produced using the collective knowledge to which the action relates;
- (c) The adoption of the measures necessary to ensure that the customs authorities prevent the entry into the country and the departure from it of goods produced using the collective knowledge to which the action relates;
- (d) The temporary closure of the defendant's premises;
- (e) Any other measure whose purpose is to avoid the occurrence of any prejudice deriving from the act to which the action relates, or to bring about the cessation of that act.

The administrative authority of INDECOPI may, if it sees fit, order a provisional measure different from that requested by the interested party. The party against whom a provisional measure is ordered may file a request with INDECOPI to have it modified or lifted where new evidence comes to light that justifies such a step.

Article 50°.- Failure to Comply with a Provisional Measure

Where the party required to comply with a provisional measure ordered by the administrative authority of INDECOPI fails to do so, he shall be automatically subjected to a sanction not exceeding the maximum of the permitted fine, for the gradation of which due regard shall be had to the criteria used by the administrative authority of INDECOPI for handing down final rulings. That fine shall be paid within a period of five

days of notification, on the expiry of which enforced collection shall be ordered. Where the party under obligation persists in failing to comply, he shall be subjected to further fines successively doubling, without limitation, the amount of the previous fine imposed until the provisional measure ordered is complied with, and without prejudice to the possibility of the party responsible being reported to the Attorney General's Office with a view to the latter ordering the appropriate criminal proceedings. The fines imposed shall not prevent the administrative authority of INDECOPI from imposing a different fine or other sanction at the end of the proceedings.

Article 51º.- Conciliation

At any stage in the proceedings, until such time as the complaint is entertained, the competent administrative authority of INDECOPI may summon the parties to a conciliation hearing. If both parties arrive at an agreement on the complaint, an instrument shall be drawn up recording the agreement concerned, which will have the effect of an out-of-court settlement. The administrative authority of INDECOPI may in any event continue with the proceedings ex officio if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.

Article 52º.- Alternative Dispute Settlement Mechanism

At any stage in the proceedings, until such time as the complaint is entertained, the parties may submit to arbitration, mediation or conciliation or mixed dispute settlement arrangements conducted by third parties. Where the parties decide to submit to arbitration, they may immediately sign the appropriate arbitration convention in accordance with the rules that the governing body of INDECOPI shall have approved for the purpose. The administrative authority of INDECOPI may in any event continue with the proceedings ex officio if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.

Article 53º.- Evidence

The parties may submit the following forms of evidence:

- (a) Expert opinion;
- (b) Documents, including all kinds of written or printed matter, photocopies, plans, tables, drawings, x-rays, cinema film and other audio and video reproductions, computer-based communications in general and other subject matter and property that encompasses, contains or represents any fact or human activity or the result thereof;
- (c) Inspection.

Evidence different from that mentioned may be submitted as an exceptional measure, but only if, in the judgment of the competent administrative authority, it is of particular importance to the settlement of the case.

Article 54º.- Inspection

In the event of an inspection being necessary, it shall be conducted by the competent administrative authority of INDECOPI. Whenever an inspection is conducted, a record shall be taken which shall be signed by the party in charge of it and also by the interested parties or those representing them, or by the appointed representative of the establishment concerned. Where the defendant, his representative or the appointed representative of the establishment refuse to sign, that fact shall be recorded.

Article 55º.- Assistance of the National Police

The administrative authority of INDECOPI may, both for the administration of evidence and for the making of representations, request the intervention of the National Police, without prior notification being necessary, in order to ensure that it is able to carry out its functions.

Article 56º.- Administration of Evidence. Insufficiency of Evidence

Where, on inspection of the information submitted, the administrative authority of INDECOPI considers it necessary to procure stronger evidence, it shall serve notice on the parties to respond to the comments made within the period that the said authority shall specify, or shall administer ex officio such evidence as it considers necessary. The parties shall respond to the comments in writing, and shall submit such supporting evidence as they consider appropriate.

Article 57º.- Oral Report

The administrative authority of INDECOPI shall notify the parties that the case is ready for settlement. The parties may request the conduct of an oral proceeding before the said authority within five days. The acceptance or refusal of the said request shall be at the discretion of the administrative authority of INDECOPI, depending on the importance and implications of the case.

Article 58º.- Calculation Basis for Fines

The amounts of the fines imposed by the administrative authority of INDECOPI shall be calculated on the basis of the tax unit (UIT) applicable on the day of voluntary payment, or on the date on which enforced collection takes place.

Article 59º.- Reduction of the Fine

The fine applicable shall be reduced by 25 per cent where the infringer pays the amount thereof prior to the expiry of the period for appealing against the ruling that concluded the proceedings, provided that no appeal against the ruling has been filed.

Article 60º.- Expenses for Administration of Evidence

The cost of experts' reports, the administration of evidence and inspections, and other costs arising from the conduct of the proceedings shall be initially borne by INDECOPI. In all cases the final rulings shall determine whether the costs should be borne by one or other of the parties and refunded to INDECOPI in addition to the payment of any fine that may have been imposed.

Article 61º.- Register of Sanctions

INDECOPI shall keep a register of sanctions imposed for the information of the public and also in order to detect instances of recidivism.

Article 62º.- Sanctions

Violations of the rights of indigenous peoples possessing collective knowledge shall give rise to the imposition of a fine, without prejudice to such measures as may be ordered to cause the infringing acts to cease or to prevent them from being committed.

The fines that may be imposed shall be up to one hundred and fifty (150) UITs. The imposition and gradation of fines shall be determined according to the economic benefit secured by the infringer, the economic prejudice caused the indigenous peoples and communities and the conduct of the infringer throughout the proceedings. Recidivism shall be considered an aggravating circumstance, and the sanction applicable shall therefore not be less severe than the previous one. Where the defendant fails to comply within a period of three (3) days with the terms of the ruling that concludes a proceeding, he shall be subjected to a sanction not exceeding the

maximum of the fine allowed, according the criteria referred to in the foregoing Article, and enforced collection shall be ordered. Where the defendant persists in failing to comply, the fine imposed may be successively doubled without limitation until such time as compliance occurs without prejudice to the possibility of the party responsible being reported to the Attorney General's Office with a view to the latter initiating the appropriate criminal proceedings.

TITLE XII COMPETENT NATIONAL AUTHORITY AND INDIGENOUS KNOWLEDGE PROTECTION BOARD

Article 63^o- Competent National Authority

The Office of Inventions and New Technology of the National Institute for the Defense of Competition and Intellectual Property (INDECOPI) shall be competent to hear and settle in the first instance all matters concerning the protection of the collective knowledge of indigenous peoples. The Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI shall hear and settle all appeals in the second and last administrative instance.

Article 64^o- Functions of the Office of Inventions and New Technology

The following shall be the functions of the Office of Inventions and New Technology of INDECOPI:

- (a) To maintain the Register of Collective Knowledge of Indigenous Peoples and keep it up to date;
- (b) To maintain the Register of Licenses for the Use of Collective Knowledge and keep it up to date;
- (c) To assess the validity of contracts for the licensing of collective knowledge of indigenous peoples, taking due account of the opinion of the Indigenous Knowledge Protection Board;
- (d) To perform such other functions as may be entrusted to it under these provisions.

Article 65^o- Indigenous Knowledge Protection Board

The Indigenous Knowledge Protection Board shall be composed of five persons specialized in the subject, three of them designated by the representative organizations of indigenous peoples and two designated by the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, whose membership of the Board shall be honorary in character.

Article 66^o- Functions of the Indigenous Knowledge Protection Board

The following shall be the functions of the Indigenous Knowledge Protection Board:

- (a) To monitor and oversee the implementation of this protection regime;
- (b) To support the Administrative Committee of the Fund for the Development of Indigenous Peoples and the Office of Inventions and New Technology of INDECOPI in the performance of their functions;
- (c) To give its opinion on the validity of contracts for the licensing of the collective knowledge of indigenous peoples;
- (d) To give advice and assistance to the representatives of indigenous peoples who so request regarding matters connected with this regime, and in particular in the planning and implementation of projects within the framework thereof;

(e) To supervise the Administrative Committee of the Fund for the Development of Indigenous Peoples in the exercise of its functions.

To that end, it may demand of the Administrative Committee any kind of information relating to the Fund's administration, order inspections or audits, examine its books and documents and appoint a representative who shall attend its meetings with the right to speak but not to vote. The decision ordering the conduct of an audit shall be accompanied by a statement of reasons. It shall be empowered to impose sanctions on them, including warnings, temporary suspension from the exercise of their functions or final dismissal from their positions, where they infringe the provisions of this regime or regulations under it, or where they are implicated in cases that affect the interests of indigenous peoples and communities, without prejudice to any criminal sanctions or civil actions that may be appropriate.

TITLE XIII ADMINISTRATIVE APPEALS

Article 67°.- Request for Review

A request for the review of decisions handed down by the Office of Inventions and New Technology may be filed within 15 days following the notification thereof, and shall be accompanied by new evidence.

Article 68°.- Appeal

An appeal, which shall be solely against a decision concluding proceedings that are handed down by the Office of Inventions and New Technology, may be lodged within fifteen (15) days following notification of the said decision. An appeal may not be lodged against first-instance rulings that impose provisional or precautionary measures.

Article 69°.- Substantiation of Appeals

Appeals shall be lodged when the challenge relies on a different interpretation of the evidence produced, or where purely legal questions are involved, the latter having to be substantiated before the Office of Inventions and New Technology. On verification of the requirements laid down in this Article and in the Single Text on Administrative Procedure (TUPA) of INDECOPI, the Office shall allow the appeal and raise the case to the second administrative level.

TITLE XIV PROCEDURE BEFORE THE TRIBUNAL

Article 70°.- Second-instance Procedure

When the file on the case has been received by the Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI, the appeal shall be conveyed to the other party, who shall be required to submit his rebuttal within a period of fifteen (15) days.

Article 71°.- Evidence and Oral Report

No evidence shall be allowed other than documents. Nevertheless, any of the parties may ask to speak, and shall be required to specify whether matters of fact or of law will be raised. The grant or refusal of the request shall be at the discretion of the Chamber of the Tribunal. Where the parties are summoned to an oral proceeding, it shall be conducted in the presence of those who attend it.

COMPLEMENTARY PROVISIONS

ONE.- Independence of Intellectual Property Legislation Currently in Force

This special protection regime is independent of that provided for in Decisions 345 of the Commission of the Cartagena Agreement and 486 of the Commission of the Andean Community, in Legislative Decrees Nos. 822 and 823 and in Supreme Decree No. 008-96-ITINCI.

TWO.- Submission of the License Contract as a Requirement for Obtaining a Patent

Where a patent is applied for in respect of goods or processes produced or developed on the basis of collective knowledge, the applicant shall be obliged to submit a copy of the license contract as a prior requirement for the grant of the rights concerned, except where the collective knowledge concerned is in the public domain. Failure to comply with this obligation shall be a cause of refusal or invalidation, as the case may be, of the patent concerned.

TRANSITIONAL PROVISION

SOLE PROVISION.- Composition of the Administrative Committee of the Fund for the Development of Indigenous Peoples

The designation of the members of the Administrative Committee of the Fund for the Development of Indigenous Peoples shall be the responsibility of the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, and shall be coordinated with the representative organizations of the indigenous peoples.

FINAL PROVISION

SOLE PROVISION.- Regulations of the Fund for the Development of Indigenous Peoples

Within a period of 90 days following the entry into force of this Law, the representative organizations of indigenous peoples shall submit draft rules to the Administrative Committee of the Fund for the Development of Indigenous Peoples, referred to in Article 39 of this Law, for approval. The said rules shall govern the organization and operation of the Fund for the Development of Indigenous Peoples, and shall determine the maximum amount or percentage of the Fund's resources that may be used to defray expenses incurred in its administration.

Let the President of the Republic of Peru notified for enacting this Law.

In Lima, this 24th day of July, 2002

CARLOS FERRERO
Chairman, Peruvian Congress

HENRY PEASE GARCIA
First Vice-President, Peruvian Congress

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF PERU

THEREFORE:

Let it be published and enforced.

Given in the Government House, Lima, this 8th day of August, 2002

ALEJANDRO TOLEDO
Constitutional President of the Republic of Peru

LUIS SOLARI DE LA FUENTE
Chairman, Peruvian Cabinet
14272
(...)

El Peruano, The Official Gazette - Newspaper and Periodicals Library

“Year of the Citizens’ Duties” - The undersigned, certifying officer of *El Peruano*, the official gazette, does hereby certify that the foregoing is a true copy of the following legal regulations: Law N° 27811 published on August 10, 2002, pages 227956 to 227959, edition N.L. N° 8085. - Lima, December 4, 2007 - (signature) Maria APAESTEGUI SILVA – Certifying officer – *El Peruano* Official Gazette.

MINISTRY OF FOREIGN AFFAIRS - OFFICE OF CONSULAR AFFAIRS –
AUTHENTICATION N° 122653 - The preceding signature of Maria APAESTEGUI SILVA is hereby authenticated without judging the content of the document. Lima, December 4, 2007 (seal and illegible signature) Virgilio Z. ARENAZA PICKMANS –
Department of Authentications - Office of Consular Formalities
