

PERU

Response to Question 2 : There is no specific law providing for intellectual property protection of traditional knowledge but there is a draft that has been prepared with the participation of different institutions and individuals. This draft has been published in the Official Journal on August 31, 2000. An initial draft was published in the Official Journal on October 21, 1999. Important comments were received from different organizations and individuals such as professors, congressmen, indigenous peoples' representatives, NGOs, after the publication of the initial draft. The new draft has been prepared after careful consideration of the comments received to the initial draft.

The possibility of establishing *suigeneris* protection for indigenous knowledge was first mentioned in the current Law on industrial property (article 63).

Response to Question 3 : The draft is not yet in the process of legislative adoption.

Response to Question 4 : The objectives stated in the draft are the following:

- a) to promote the respect, protection, preservation, broader application and development of the collective knowledge of the indigenous peoples;
- b) to promote a fair and equitable distribution of the benefits arising out of the utilization of this collective knowledge;
- c) to promote the utilization of this knowledge for the benefit of mankind.

Response to Question 5 : Yes. Intellectual property protection was created in response to needs that are totally different than those of indigenous peoples. Its objectives are different as well. Last but not least, requirements for intellectual property protection are hardly applicable to traditional knowledge.

Response to Question 6 : The term used is "collective knowledge of the indigenous peoples."

Response to Question 7 : The "collective knowledge of the indigenous peoples" is the knowledge that has been developed by the indigenous peoples about properties, uses and characteristics of the biological diversity.

Response to Question 9 : It is provided that the traditional exchange of collective knowledge between indigenous peoples should not be affected by these regulations.

Response to Question 10 : Those who pretend to have access to the collective knowledge of the indigenous peoples with purposes of scientific, commercial, and industrial application will have to request of one or more indigenous communities who possess the collective knowledge in matter their prior informed consent. To have access to the knowledge with purposes of commercial and industrial application, a license must be signed. In these cases, an adequate retribution must be provided and an equitable distribution of the benefits must be guaranteed.

Response to Question 11 : The rights granted are not exclusive. They are shared by the indigenous communities that possess a certain knowledge, which may make use of them with a certain independence (see answer to question 18). The rights granted go beyond remuneration.

Response to Question 12 : Yes. If an indigenous community wishes to register its collective knowledge (which is not mandatory) or a licensing contract (which is not mandatory either), or if it wishes to bring action for infringement of its rights, it must comply with certain formalities. See articles 16, 17, 25, 26, 27, 45, 46 of the Draft.

Response to Questions 13 to 15 : No.

Response to Questions 16 : Any indigenous community that possesses collective knowledge.

Response to Questions 17 : Yes. One or more indigenous communities may give the prior informed consent (see answer to question 10).

Response to Questions 18 : Yes. The indigenous community whose prior informed consent has been sought must inform that it is beginning a negotiation to the biggest number of indigenous communities that possess the collective knowledge at issue, and take into account their interests and concerns.

Response to Questions 19 : Use for scientific purposes is allowed just with the prior informed consent of one or more indigenous communities. In this case, no license is required.

Response to Questions 20 : Any indigenous community that possesses the collective knowledge may proceed against those who reveal, acquire or use such collective knowledge without the consent of at least one indigenous community that possesses the collective knowledge at issue. As a part of the procedure, cautionary measures may be ordered such as: the ceasing of the activities which are the matter of the action, the confiscation of the products developed using the traditional knowledge at issue, among others.

Response to Questions 21 : Fines may be imposed as a penalty.

Response to Questions 22 : Any indigenous community may conclude a licensing contract. There are no provisions on compulsory licenses.

Response to Questions 23 : The competent authority established by the draft is the Patent Office, and the Intellectual Property Chamber of the Tribunal for Defense of Competition and Intellectual Property of INDECOPI (Peru's National Institute for Defense of Competition and Protection of Intellectual Property).

Response to Questions 24 : Yes. The *suigeneris* protection is independent from the one established in the legislation on intellectual property.

It is provided that if an application of a utility patent or a plant variety breeder's certificate, related to products or processes obtained or developed from a collective knowledge, is filed, the applicant must present a copy of the contract of license, as a previous requirement for the concession of the respective right, unless it is a collective knowledge which is of public domain. The breach of this obligation will cause the denial or, in the case, nullity of the utility patent or the plant variety breeder's certificate in question.

Response to Questions 25 : Yes. It is provided that indigenous peoples may use their customary laws and traditional ways of resolution of conflict to solve their disagreements. It is also provided that indigenous peoples may choose their representatives using their

traditional systems of adoption of decisions. Members of the Administrative Committee of the Fund for the Development of the indigenous peoples are encouraged to use the mechanisms that are traditionally used by the indigenous peoples for sharing and distributing collectively generated benefits.

Response to Questions 26: It is provided that to facilitate the registration of the collective knowledge of the indigenous peoples (which is not mandatory), the competent authority may send representatives to the indigenous peoples' places of origin in order to gather the necessary information.