

**LAW ON THE PROTECTION OF ACCESS TO PERUVIAN BIOLOGICAL DIVERSITY AND THE COLLECTIVE
KNOWLEDGE OF INDIGENOUS PEOPLES**

LAW No. 28216

THE PRESIDENT OF THE REPUBLIC:

WHEREBY:

The Congress of the Republic has passed the following law: THE CONGRESS OF THE REPUBLIC:

Has passed the following law:

**LAW ON THE PROTECTION OF ACCESS TO PERUVIAN BIOLOGICAL DIVERSITY AND THE COLLECTIVE KNOWLEDGE OF INDIGENOUS
PEOPLES**

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The purpose of the present Law is to provide protection for access to Peruvian biological diversity and to the collective knowledge of indigenous peoples.

Article 2.- Creation of a National Commission

The National Commission for the Protection of Access to Peruvian Biological Diversity and to the Collective Knowledge of Indigenous Peoples relating thereto is hereby established in the Office of the President of the Council of Ministers.

Article 3.- Composition

The National Commission for the Protection of Access to Peruvian Biological Diversity and to the Collective Knowledge of Indigenous Peoples is made up of:

- a representative of the National Institute for the Defense of Competition and Intellectual Property Protection (INDECOPI), as Chair.
- a representative of the Ministry of Foreign Relations.
- a representative of the Ministry of Foreign Trade and Tourism.
- a representative of the National Environmental Council (CONAM).
- a representative of the Commission for the Promotion of Exports (PROMPEX).
- a representative of the National Institute for Natural Resources (INRENA).
- a representative of the National Institute for Agricultural Research and Extension (INIEA).
- a representative of the International Potato Institute (CIP).
- a representative of the National Center for Intercultural Health (CENSI).
- a representative of the Universities of the country concerned with the subject of the present Law, appointed by the National Assembly of Governors (ANR).
- two representatives of civil society (one from NGOs and the other from business associations) concerned with the subject of the present Law.
- a representative of the National Commission of Andean, Amazonian and Afro-Peruvian Peoples (CONAPA).

Within eleven (11) days of the present Law coming into force, the members of the Commission shall be appointed by Ministerial Resolution of the President of the Council of Ministers, in the case of public institutions; and through accreditation of the organization or body which they represent, in the case of the private sector. Alternate representatives shall also be appointed.

The Technical Secretary shall be appointed by the same Commission.

Article 4.- Functions of the Commission

The Commission shall have the following functions:

- (a) Establishing and maintaining a register of biological resources and collective knowledge of Indigenous Peoples of Peru.
- (b) Providing protection against acts of biopiracy.

- (c) Identifying and following up patent applications filed or patents granted abroad that relate to biological resources or the collective knowledge of indigenous peoples of Peru.
- (d) Carrying out technical evaluations of the above-mentioned patent applications filed and patents granted.
- (e) Issuing reports concerning cases studied, making recommendations for action in the competent State authorities.
- (f) Lodging objections or instituting actions for annulment concerning patent applications filed and patents granted abroad that relate to biological or genetic resources, or the collective knowledge, of indigenous and native peoples of Peru.
- (g) Establishing permanent information and dialog channels with the industrial property offices of other countries.
- (h) Promoting links with State and civil society regional participatory bodies.
- (i) Drawing up proposals for the defense of the position of the State and of indigenous and native peoples of Peru in different international fora with a view to preventing and avoiding acts of biopiracy.

Article 5.- Commission resources

The Commission shall have the following resources:

- (a) those resources obtained by way of international cooperation.
- (b) other resources obtained by donations.

Article 6.- Reporting to the President of the Council of Ministers

The Commission shall submit a report every six months to the President of the Council of Ministers on the activities carried out and the cases studied, including their recommendations.

SUPPLEMENTARY AND FINAL PROVISIONS

First.- By Resolution of the President of the Council of Ministers any supplementary measures shall be issued, which may be necessary to comply with the provisions of the present Law.

Second - Within ninety (90) days of publishing the present Law, the Regulations thereunder shall be issued by Supreme Decree.

Third.- For the purposes of implementing the present Law, “Biopiracy means unauthorized and non-remunerated access to and use of biological resources or collective knowledge of indigenous peoples by others, without the relevant authorization and in contravention of the principles established in the Convention on Biological Diversity and the rules in force on the matter. Such appropriation may occur by means of physical control, through ownership rights to products which incorporate such elements that were illicitly obtained or in some cases through invocation of such elements.”

Fourth.- Other technical terms employed in the present Law are defined in existing legislation.

The President of the Republic is hereby informed of its promulgation.

Lima, the seventh day of April, two thousand and four.

HENRY PEASE GARCÍA
President of the Congress of the Republic

MARCIANO RENGIFO RUIZ
First Vice-President of the Congress of the Republic

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

WHEREFORE

Order that it be published and observed.

Done at Government House, Lima, on the thirtieth day of April, two thousand and four.

ALEJANDRO TOLEDO
Constitutional President of the Republic

CARLOS FERRERO
President of the Council of Ministers