

A Regional Approach to the Protection of Traditional Knowledge: the Case of the Andean Community

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The Andean Community: background

- A regional economic, social and political integration treaty signed in 1969
- Member states: Bolivia, Colombia, Ecuador, Peru, *Venezuela* (originally Chile was a member state, now an associate state with Panama) – one of the most biodiversity rich areas in the world (with high concentration of indigenous peoples)
- Originally focussed on lowering trade barriers, harmonizing phytosanitary measures

The Andean Community: background (cont.)

Institutional structure of the Andean Community:

- Presidential Council
- Secretary general
- Andean Commission
- Andean Tribunal of Justice

Decisions and Resolutions are the main legal instruments approved by the Community;

Decisions prevail over national legislation (they do not require Congress approval); they usually approve “common legal regimes” applicable to all member states

The Andean Community: background (cont.)

- 1990`s: renewed Presidential mandates to address and regulate environmental issues
- Decision 391 for a Common Regimen on Access to Genetic Resources (1996)
 - TK (and biodiversity) recognized as critically important for indigenous peoples livelihoods and ultimate survival
 - Indigenous peoples have the right to determine how and under what conditions TK is accessed and used
 - Contracts are the main tool to establish obligations and rights between indigenous peoples and interested users
 - Defensive protection is recognized
 - Mandate to develop a specific sub- regional regime (Decision) on TK protection

Policy and legal advances in the Andean Community

- Decision 391- access to genetic resources (1996)
- Decision 486 – defensive protection of TK (2001)
- Decision 523 – Regional Biodiversity Strategy (2002)
- Decision 524 – indigenous peoples working group to draft elements for a common regime for TK protection (2002)

Lessons learnt from the Andean Community processes

- Identify the *key* forces which affect loss of TK and its erosion (i.e land loss, market influence, etc.)
- Biodiversity and access to genetic resources policies as a trigger for TK protection policies/laws (find and appropriate “circumstance” to streamline the policy debate ... biodiversity, FTAs, international processes, etc.)
- Need for TIME and bottom up approaches to ensure inputs and effective participation from indigenous peoples
- Need to involve IP authorities and a wide range of stakeholders
- Need for strong capacity building for key actors, including indigenous peoples
- Importance of clear scope for TK protection policies and laws: define: What is it we want to protect ? From what is protection needed ? How will rights be assigned ?

Thank you !

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