



Recognizing the Crucial Role of Indigenous People and Local Communities

Foreword by Ahmed Djoghlafl, Executive Secretary, Convention on Biological Diversity



Welcome to the fourth edition of the *Pachamama* and its focus on the Latin American and Caribbean region, one of the world's richest areas of biological and cultural diversity. In this issue you will discover, through the eyes of indigenous and local communities, what is being achieved in Latin America and the Caribbean, from their initiatives and experiences in the implementation of Article 8 (j) and other articles of the Convention on Biological Diversity (CBD). They are an inspiration for other initiatives in our mutual efforts to save Earth's biodiversity and celebrate the 2010 International Year of Biodiversity and its sister year — the International Year for the Rapprochement of Cultures. These stories take us on our journey to the tenth meeting of the Conference of the Parties (COP 10) to the Convention, to be held in Nagoya, Japan, in October 2010, and beyond.



Members of the Kuna people fishing, Kuna Yala, Panama (Photo courtesy of Hortencia Hidalgo Cáceres)

Negotiating an international regime on ABS

One of the most critical issues this year for indigenous and local communities, and indeed for the citizens of the world, is the negotiation of an international regime on access and benefit-sharing (ABS) of genetic resources, and associated traditional knowledge. The international community has recognized the close and traditional dependence of indigenous and

local communities on biological resources since the conception of this international instrument.

The Convention has three objectives. The most notable advance within the framework of the Convention, relevant to development, comes from the commitment of the Parties to implement the third objective of the CBD—the fair and equitable sharing of

In This Issue

Recognizing the Crucial Role of Indigenous People and Local Communities, Foreword by Ahmed Djoghlafl, Executive Secretary, Convention on Biological Diversity	1	Better Cooperation Needed between Scientists and Indigenous Peoples, interview with Professor Teodora Zamudio, Chair in Indigenous Peoples' Law, Law Department of the University of Buenos Aires	10
Protecting the Rights of Indigenous Peoples in the Andes, interview with Rodrigo de la Cruz, indigenous delegate for Llamado de la Tierra, member of the Kichwa indigenous people of Imbabura Province, Ecuador, master's degree candidate in intellectual property at the Universidad de las Américas ..	3	Respect Essential Ingredient for Indigenous Tourism Initiative, interview with Cecilio Solís Librado, President of RITA, the Indigenous Tourism Network of Mexico	12
Defending the Interests of Peru's Indigenous People, interview with Aurora Ortega Pillman, Executive, Department of Inventions and New Technology of the National Institute for the Defence of Competition and Protection of Intellectual Property, Lima, Peru	7	Engaging the Private Sector in Dialogue on Biodiversity, interview with Elisa Canqui Mollo, Project Coordinator, Establishment of Quality of Life Indicators, Ministry of Development Planning, Bolivia; and, Vice-President, UN Permanent Forum on Indigenous Issues	13
Empowerment through Education, interview with Florina López Miro, Coordinator, Indigenous Women's Biodiversity Network for the Latin American and Caribbean Region	10	The Legend of Coquena, by Alejandra Arganaraz	14
		Workshop on Forest Ecosystems	15
		2010 Indigenous Tourism and Biodiversity Website Award	16

the benefits arising out of the utilization of genetic resources—through the adoption and implementation of the international regime on access to genetic resources and benefit-sharing, at COP 10.

The most important aspect for indigenous and local communities with regards to an international regime is the protection of their knowledge, innovations and practices associated with genetic resources through a requirement that such knowledge is accessed with their prior informed consent or approval. Secondly and of equal importance, is that when such knowledge is accessed, it gives rise to the equitable sharing of benefits.

The role of traditional knowledge associated with genetic resources is a fundamental aspect in negotiating the international regime. The effective participation of indigenous and local community representatives in these important negotiations has been a unique feature of this process. They have participated in all relevant meetings, including three expert meetings dealing respectively with “concepts, terms, functional definitions and sectoral approaches,” “compliance,” and “traditional knowledge associated to genetic resources.”

To ensure that traditional knowledge issues and indigenous peoples rights are fully addressed in the development of an international regime on ABS, some Parties and regional groupings, in collaboration with the Secretariat, have pursued their own initiatives, such as the European Union-sponsored Vienna workshop on matters

related to traditional knowledge associated with genetic resources and the international access and benefit-sharing regime, which was held in December 2008, and the Vilm workshop on matters related to traditional knowledge associated with genetic resources and the international regime on access and benefit-sharing, which was sponsored by the Government of Germany and held on the Isle of Vilm in June 2009. The Government of Spain has also generously funded a meeting of indigenous negotiators, facilitated by the Secretariat in Cali, Colombia, just prior to the 9th and final meeting of the Working Group on ABS.

To further support the participation of indigenous and local communities in Convention processes, the Secretariat, with the assistance of the Government of Spain, signed a long-term capacity-building strategy in early 2009 and entered into a three-year memorandum of understanding with the Fundación para la Promoción del Conocimiento Indígena, acting on behalf of the Latin American and Caribbean Indigenous Women's Biodiversity Network, to provide capacity-building for indigenous women and men, to assist them in effectively participating in meetings held under the Convention and specifically to assist their participation in the ABS negotiations and in the preparations for COP 10. These workshops are assisting to the development of an indigenous and local community participation guide for meetings held under the Convention.

The International Year of Biodiversity

The United Nations General Assembly declared 2010 the International Year of

Biodiversity, providing a unique opportunity for highlighting the role of indigenous and local communities and their traditional knowledge in achieving the goals of the Convention, which I often paraphrase as “saving life on Earth,” or perhaps as indigenous and local communities may say, “saving Mother Earth – or Pachamama.”

In particular, the Secretariat is working with indigenous and local communities to develop alternative community education and public awareness products. These include materials to assist indigenous and local communities improve their knowledge of Convention processes and products geared towards the general public highlighting the important role that indigenous and local communities and their traditional knowledge play in promoting biological and cultural diversity. These materials include: a short film on traditional knowledge in the South Pacific that looks at coral gardening, strengthening traditional fish traps and reef restoration; an animated film with a North American indigenous flavour that draws attention to the crucial role traditional knowledge plays in saving our diversity is being made for children of all ages; a photography exhibition will be launched at the Ninth Session of the United Nations Permanent Forum on Indigenous Issues at UN Headquarters in April 2010. The exhibition draws attention to both international years and the crucial role of indigenous and local communities as custodians of the World's biological and cultural diversity.

The Secretariat is also working with the United Nations Educational, Scientific



Participants to the Mesoamerican Capacity Building Workshop for Indigenous and Local Community of Guatemala, 2-6 March 2010, with the Vice-Minister of Natural Resources of Guatemala, Emma Díaz Larra (Photo courtesy of Onel Masardule Arias)



Latin American and Caribbean Indigenous and Local Community Capacity Building Workshop on the Convention on Biological Diversity, including issues relevant to Article 8(j) Traditional Knowledge and Access and Benefit-Sharing. Third Workshop, South Cone Region, Buenos Aires, Argentina, 4-6 February 2010 (Photo courtesy of Onel Masardule Arias)

and Cultural Organization (UNESCO) and indigenous and local communities to produce and distribute posters on the importance of traditional knowledge in various indigenous languages. Furthermore, the Secretariat is assisting indigenous and local community radio broadcasters in the Amazonia and Andean regions to produce news stories by indigenous experts on issues relevant to these communities and to our mutual goals of conservation and sustainable use.

In efforts to support indigenous owned communication initiatives, the Secretariat is also working with the indigenousportal.com, an Internet initiative which works in four languages (English, Spanish, French and Russian), to raise the profile of Convention issues of interest to indigenous and local communities and to inform indigenous and local communities about the opportunities to participate in the work of the Convention.

Nagoya biodiversity summit

The Conference of the Parties established a working group specifically to address the implementation of Article 8(j) and related provisions on traditional knowledge a decade ago. The Ad Hoc Open-ended Intersessional Working Group on Article 8(j) and Related Provisions is responsible for the development and implementation of an ambitious work programme aimed at achieving respect for, preservation and promotion of traditional knowledge, with the approval of the relevant of indigenous and local communities. The Working Group on Article 8 (j) is open to all Parties to the Convention, and indigenous and local communities' representatives play a full and active role in its work.

At the Sixth Meeting of the Working Group on Article 8 (j) in November 2009 participants discussed an exciting forward looking, multi-year programme of work focusing

on customary sustainable use. They also considered whether future in-depth dialogues could contribute to the grave issues currently facing humanity, such as climate change, the unsustainable use of the Earth's resources and the mass extinctions of plants and animals.

Increasingly, the work of Article 8(j) and the other related articles of the Convention clearly highlight the fundamental role that traditional knowledge plays in biodiversity conservation, as well as the need for implementation at the local level. The experiences and challenges outlined in this edition of *Pachamama* are some examples of how these local actions show a deep connection with, and a true love for, Pachamama—Mother Earth. It is with deep respect that I extend my hand to the world's indigenous and local communities as my partners in saving our Earth in all her beauty and diversity both now and for future generations. ☐

Protecting the Rights of Indigenous Peoples in the Andes

Helping provide the best protection for indigenous territories and their natural resources so that the rights of indigenous peoples may be respected at every level

Rodrigo de la Cruz, indigenous delegate for Llamado de la Tierra, member of the Kichwa indigenous people of Imbabura province in Ecuador, and a candidate for a master's degree in intellectual property at the Universidad de las Américas, discusses his experience with the Andean Community of Nations and the adoption of various decisions geared to protect genetic resources and traditional knowledge



Tell us about CAN, how did this initiative arise?

The Andean Community of Nations is an organization for the sub-regional integration of Andean countries. It currently has four members: Bolivia, Colombia, Ecuador and Peru. It is a 40-year-old integration system which began to seriously address environmental questions after the adoption of the CBD.

What was your experience with the implementation of CBD Articles 8 (j) and 15 in the Andean Community?

Since the member countries of Bolivia, Colombia, Ecuador and Peru signed the Convention in 1993 the issues related to Article 8 (j) (traditional knowledge) and to Article 15 (access to genetic resources) have been addressed within the framework of the Andean Community of Nations (CAN). One of the first measures taken in the region was to adopt Decision 391 – Common Regime on Access to Genetic Resources, in July 1996. In July 2002, Decision 523, the Regional

Biodiversity Strategy for Tropical Andean Countries, was adopted.

While it is true that both the Regional Strategy and the decision on genetic resources recognize the collective character of ancestral knowledge related to genetic resources and that both texts recognize indigenous peoples' rights in respect of traditional knowledge, no standards have yet been adopted within the Andean Community framework to ensure protection of traditional knowledge and of associated rights.

The natural heritage of CAN member countries represents approximately 20% of the planet's biodiversity. The Andean Community boasts tremendous cultural wealth and variety and its countries are home to nearly 200 culturally diverse indigenous communities. Thus the objective of adopting the Regional Biodiversity Strategy was to establish sub-regional public policies and guidelines for the conservation and sustainable use of the biodiversity of this region. This is a rich area which includes large strategic eco-regions such as the

Amazon region (part of the Amazon basin), the Andean region, the Pacific and Caribbean coasts, and mega-diverse eco-regions, including the Galapagos archipelago, whose endemic biological diversity makes it unique in the world.

How long did CAN debate the adoption of the Common Regime on Access to Genetic Resources?

The formulation and adoption process lasted approximately three or four years. Adoption was not immediate because individual States had their own concerns regarding both genetic resources and traditional knowledge. There was also the recurrent phenomenon of biopiracy in the sub-region and the possibility of free trade agreements with the United States involving the questions of intellectual property and biodiversity. Urgent measures were taken to address the issue with policies and legal standards having regional scope, and the decision set a precedent for treatment of these issues in the world after the CBD. Today, however, gains have not been made as regards implementation. In particular, it has not been possible to ensure either proper access to genetic resources and the associated traditional knowledge, or the fair and equitable distribution of benefits, or control and prevention of biopiracy, or

transfer of technology, inter alia. There are still unresolved difficulties in the region.

What difficulties have been encountered?

Biopiracy is one of these difficulties. This is a frequent and recurrent phenomenon in the region which is due to such factors as the non-recognition of indigenous peoples' ownership of traditional knowledge. It is also due to the lack of effective measures and policies in the region where Decision 391 has not been implemented.

Countries such as Colombia and Peru have taken decisions on access to genetic resources within their respective national contexts. We hope that these experiences will help to ensure more efficient and effective work, leading to equitable benefits both for States and for indigenous peoples.

Concretely, how is Decision 391, the Common Regime on Access to Genetic Resources, applied? How does it work?

The application mechanism is set out in the Decision, which describes the general application procedures through a model access contract. Colombia implemented the Decision as is, without adopting secondary procedures. Ecuador took a long time to implement the Decision because it deemed

a regulation on Decision 391 access necessary. The biggest problem is that this regulation has yet to be adopted.

There is an interesting debate taking place and many of its aspects concern indigenous peoples' demands for recognition of indigenous rights in the treatment of these issues.

Every State has sovereignty over its own genetic resources and over the procedures and regulations it adopts in order to implement the Decision.

Are cases of transboundary traditional knowledge and genetic resources included?

Yes, such cases are included. The Decision contains a provision which states that when accessing associated and shared traditional knowledge and genetic resources, the genetic resources and traditional knowledge supplier country must inform the other country concerned and that the latter's interests must be taken into account in the access contract for the shared genetic resources in question.

With whom must the user sign the access contract?

With the competent national authority of the country that supplies the genetic resource.

What if the genetic resource is shared and is located in a different country?

The country supplying the genetic resource is the decision-maker. However, it has the obligation to inform the other country of origin and take the latter's interests into account.

And this applies even if it is a shared resource?

Yes. The Decision states that a Member Country which is not involved in a negotiation on access has the right to ask for information.

It is now 13 years since the Decision was adopted. What has been achieved during that time?

The sub-region has been able to establish regional control regulation and policy. As well, national laws have been established which govern access to genetic resources. Perhaps the Peruvian case is the most significant; Peru passed a law introducing a Protection Regime for the Collective Knowledge of Indigenous Peoples Derived from Biological Resources (No. 27811). In



The Tinkunaku Kolla indigenous community in the Yungas, Argentina, between the provinces of Salta and Jujuy, is situated in a UNESCO-declared Biosphere Reserve (Photo courtesy of Cesar A. Palacios)



Flower of the Andean region of South America (Photo courtesy of Cesar A. Palacios)

Ecuador and Bolivia, there has been constitutional progress in the areas of biodiversity and traditional knowledge. Another positive step is that the four Andean countries have objectives and macro-policies to guide access contract negotiations with user States.

In light of the current situation and the progress made internationally, do you believe that the Decision should be modified? If so, how?

The Decision itself is sound. From the strict standpoint of conservation and the sustainable use of biodiversity, there are elements which are important as regards precautions in respect of genetic resources, biological resources, and the associated traditional knowledge of indigenous peoples. What has not been fully developed is the matter of how to deal with access and distribution of benefits. In this area, the Decision does not provide guidelines for State action because this is contingent on the outcome of global negotiations concerning the CBD.

The other issue which the region must resolve, ideally before the adoption of the International Regime on Access to Genetic

Resources, is the establishment of regional regulations for the protection of traditional knowledge. The matter has been under study since 2003-2004, and a proposal for basic guidelines was officially submitted following a series of national socialization processes involving organizations representing indigenous peoples from Bolivia, Colombia, Ecuador and Peru. Regional discussions also took place. Today, the region has a proposal for a possible Andean decision on the protection of traditional knowledge. We hope it will be adopted before COP 10. This would be an important step forward for the region.

A[sic]: Decision 391 (8th Transitory Provision) and the Regional Biodiversity Strategy (Objective III, Result 11.1) expressly establish that traditional knowledge must be recognized and safeguarded by means of a protection regime. Furthermore, Article 3 of Decision 486 on industrial property (2000) establishes that Member Countries must recognize the rights and decision-making authority of their indigenous, African descendants, and local communities in respect of their collective knowledge.

The Andean region generally aims for a sui generis regime for the protection of traditional knowledge.

Despite the efforts made CAN's response to, and progress made, in this area has been quite slow. Since the adoption of Decisions 391, 523, and even 486, no significant steps have been taken to generate proposals for the protection of traditional knowledge. Only in 2003-2004 did serious and effective work on the matter begin to take place. At that time, the General Secretariat of the Andean Community, at the request of the Andean Committee of Environmental Authorities (CAAAM), established a working group of indigenous experts with delegates from the organizations of the indigenous communities from the five countries in the region, which at the time included Venezuela. I had the privilege to be designated Regional Coordinator of the Indigenous Working Group on Biodiversity. The aim of the Group was to develop a proposal for regional regulations on the protection of traditional knowledge, with the coordination and participation of the

organizations representing the indigenous peoples of each member country.

During the first phase, a preliminary proposal titled *Elements for a Sui Generis Protection System for Collective and Comprehensive Traditional Knowledge from an Indigenous Perspective* (May 2005) was developed. This was made possible through regional workshops in Lima, Santa Cruz, and Caracas and which were directly sponsored by the CAN and the Andean Development Corporation (ADC). The following national indigenous representation organizations participated in the consultation process: in Bolivia, the Indigenous Confederation of Bolivia (CIDOB) and the National Council of Ayllus and Marcas of the Altiplano (CONAMAC); in Peru, the Inter-Ethnic Association for the Development of the Peruvian Jungle (AIDSESP); in Ecuador, the Confederation of Indigenous Nationalities of Ecuador (CONAIE); in Colombia, the National Indigenous Organization of Colombia (ONIC); and in Venezuela, the National Indian Council of Venezuela (CONIVE).

When this initial proposal was completed in 2005, there followed a lull in activity due to the Free Trade Agreement negotiations with the United States and the involvement of the CAN region therein. Some legal and political friction arose which prevented the progress of the Andean decision on the protection of traditional knowledge, and the very importance of Decision 391 with regard to these matters was put to discussion. For this reason, the question of traditional knowledge was put on hold until mid-2008, when the General Secretariat restarted the consultation process with funds provided by Spain and with the full support of the Peruvian Society for Environmental Law. I served as sub-regional coordinator. A new regional indigenous technical team was formed for this consultation. It included one delegate from each country who was appointed by the national indigenous organizations involved in the previous process, and it also included the Coordinator of the Indigenous Organizations of the Amazon Basin (COICA) and the Andean Coordinator of Indigenous Organizations (CAOI).

Finally, the proposal was further consolidated in July 2009. It was then handed

over to the General Secretariat of the Community to be officially submitted to the respective ministries of the environment and ministries of foreign affairs of the four CAN Member Countries. The objective was to begin the revision and recommendation process of the corresponding national bodies in order to ultimately ensure the proposal's adoption as a sub-regional regulation.

What new tools, processes or bodies would figure if your proposal were to be implemented? How could this proposal be a tool for indigenous peoples?

Basically, this draft decision aims for the recognition of indigenous peoples' right to the ownership of their traditional knowledge. The decision provides that use of this traditional knowledge must be subject to the free, prior and informed consent of the indigenous peoples. It provides for the right to fair and equitable distribution of benefits. It provides for the recognition of the intergenerational character of traditional knowledge. It establishes that the right to ownership of traditional knowledge is non-transferable, inalienable, and not subject to seizure. The decision also covers intellectual property rights, community and public registers, funding for the conservation of traditional knowledge, and control authorities. These are the most significant aspects of the decision.

As regards the methods of implementation of the future Andean decision, some believe that implementation should be carried out through the environmental authorities, with focal points within each country's respective ministry of the environment. Others believe that implementation should be the responsibility of the four countries' respective intellectual property offices. Still others believe that this should be the responsibility of independent bodies not necessarily linked to such State structures. Decisions need to be taken regarding the matter.

Within the framework of the Convention, there is currently debate on the IR and the adoption of an international regime on access and on distribution of benefits. There is also discussion about the importance of regional access systems in light of the existence of shared genetic resources mainly in border areas. Do you think that the Andean Community can serve as a model? If so, based on your experience these past few years, what issues would the Andean Community model influence?

The adoption of a regional regulatory framework for Decision 391 ensures precautionary measures for the conservation and sustainable use of genetic and biological resources. In the region there have been no effective experiences regarding access which could tell us about the actual obstacles encountered at the time of implementation. Colombia, as a sovereign State, decided to go ahead with implementation as established by the regulatory framework for access. However, it will have to wait before it can determine where such direct implementation has succeeded and where it has failed. Likewise, it will have to wait before it can share with us its experience with implementation on a national level. Ecuador is having difficulties with implementation and the country has no experience with legal access to genetic resources.

As one of the first regions in the world to adopt such regulations, the CAN has made significant progress. This has provided an incentive for other regions and countries to adopt similar policies and regulations. We also hope that other regions will share their experiences as to how they are dealing with the issues of real and effective access. Despite the unfortunate fact of biopiracy, the illegal use of genetic and biological resources which affects the country and, indigenous peoples in particular, we hope to hear of positive experiences in dealing with these issues.

What message would you like to give to the indigenous peoples of your region and of Latin America in respect to the issues on which you are working?

I would just like to communicate a message of unity and of awareness on a global, regional, national, and local level so that indigenous peoples may give due importance to these issues. After all, our resources are at stake. The genetic and biological resources are in our communities, our territories. The intangible heritage of our ancestral knowledge is at stake. Countries rich in biotechnology have direct interest in our rich biological and cultural diversity. Thus, the best strategy for dealing with these aspects of globalization can only be to provide the best protection for indigenous territories and their natural resources so that the rights of indigenous peoples may be respected at every level. ☐



(Photo courtesy of Aurora Ortega Pillman)

Defending the Interests of Peru's Indigenous People

Preserving indigenous' collective knowledge through confidential, public and local registers

Pachamama interviewed Aurora Ortega Pillman, Executive, Department of Inventions and New Technology (DIN) of the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI) in Lima, Peru, about the Register of Collective Knowledge of Indigenous Peoples, a law that protects indigenous knowledge of biological resources in Peru.



material, format design, and the establishment of requirements in INDECOPI's Unified Administrative Procedures Text. Submission of applications is free under Ministerial Resolution No. 076-2006-PCM of March 2006. At the end of 2006, the first two applications for the registration³ of collective knowledge were submitted.

Can you tell us about your experience with the Register of Collective Knowledge?

Law 27811 was passed in Peru in August 2002. This law establishes a sui generis intellectual property regime for the protection of indigenous peoples' collective knowledge¹ related to biological resources. One of the regime's objectives is to preserve collective knowledge by means of confidential, public, and local registers. Through the other mechanisms it establishes, the regime also aims to ensure that the benefits derived from the use of this knowledge in any type

of industry be fairly and equitably distributed among the owners of said knowledge. The competent administrative authority is the Department of Inventions and New Technology (DIN) of the National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI).

Within the framework of this regulation, the DIN set up the public and confidential national registers. First, the law was widely disseminated through spaces created for dialogue, a website², informational

How and when did the initiative arise? What were the initiative's aims?

As mentioned, the initiative followed from the enactment of Law 27811 in 2002. Since then, assorted dissemination work has been carried out, such as the creation of spaces for dialogue with indigenous representatives and the development of written and audio material which has been translated into the main indigenous languages (Ayacucho Quechua, Central Quechua, Southern Quechua, Ashaninka, Shipibo-Conibo,



Yanesha). The main aims were those stated in the national law:

- To preserve and safeguard the collective knowledge of indigenous peoples and their rights therein
- To provide INDECOPI with such information as enables it to defend the interests of indigenous peoples where their collective knowledge is concerned.

As you can see, the main objective is to ensure preservation and the second objective is to provide a dated document proving the origin of given knowledge in the event that the law is violated in respect of said knowledge.

“Indigenous communities now have an appropriate and accessible process for registration.”

What process led up to the creation of the registers of collective knowledge?

Within the framework of the implementation of this law, material was developed in support of the register. Various dissemination activities were also conducted, not only vis-à-vis indigenous representations, but also vis-à-vis national research centres and public and private institutions somehow related to the collective knowledge of Peru’s indigenous peoples.

One of the most significant dissemination events was the Indigenous Facilitators Workshop, which involved indigenous representatives interested in the law and its dissemination within their communities. The broadcast relied on material provided by the DIN and its effect was exponential; the undertaking was even reproduced by a number of institutions working with indigenous peoples.

In 2006, the first two applications for registration in the Confidential National Register were submitted by a native community from the Peruvian Amazon. This community had been working on a project with the Peruvian

Amazon Research Institute, which acted as a facilitator during the registration process.

What were the objectives of the registers of collective knowledge?

The objectives were as follows:

- Ensure compliance with the objectives stated in Law 27811 regarding this tool
- Ensure that the process be accessible to indigenous communities and their representatives

- Ensure that the process be accompanied by capacity-building in respect of the national law
- Ensure the revaluation of indigenous knowledge within the communities themselves and to enable communities to progressively use the other tools offered by the national law.

When were the national registers of collective knowledge created? When were the local registers created? (Public National Register of Collective Knowledge of Indigenous Peoples, Confidential National Register of Collective Knowledge of Indigenous Peoples)

They were created when Law 27811 was enacted.

How are the registers of collective knowledge organized? How do they function? Who can register? What requirements must be met? How do the different registers correlate? What is the nature of the register?

The Public and Confidential National Registers of Collective Knowledge of Indigenous Peoples are administrated by INDECOPI. However, ex officio, our institution can only make use of the Public National Register based on accessible bibliographic information. At present, we have a National Public Register Database which contains collective knowledge associated with 400 species of plants.

Entry in the confidential registers can only be requested by indigenous peoples, provided that proof of compliance with certain formal requirements⁴ is presented at INDECOPI and subject to agreement from the community.

The local registers are managed exclusively by indigenous peoples⁵ in accordance with their practices and customs, in accordance with Article 24 of Law 27811. However, at the request of indigenous peoples, INDECOPI can provide technical assistance in the registration process.

When an indigenous people or community applies for the registration of particular collective knowledge, the following documents must be presented:

- Identification of the indigenous people or community applying for registration
- Certificate of agreement to registration
- Description of the knowledge in question (including uses)

- Common name of the biological resource
- Sample or photographs which make it possible to reliably identify the scientific name of the biological resource with which the knowledge in question is associated.

It bears noting that registration is optional. The indigenous community does not have to register its knowledge in order to be protected; the Confidential National Register may not be accessed by third parties and the information contained in the Public National Register must be sent to the world's main patent offices so that it may be treated as prior art in the examination of the novelty and inventiveness of patent applications⁶.

What obstacles did you encounter and how did you overcome them?

When the application process for registration began, the main obstacle was making sure that we had the tools to identify the scientific name of the biological resource associated with the collective knowledge in question. As the administrative entity in this process, INDECOPI relied on the institutions⁷ dedicated to the taxonomic study of plants in Peru.

With the technical expertise of these institutions it was possible to develop manuals on proper plant collection methods to ensure that the samples presented could be adequately analyzed.

Other obstacles were the administrative deadlines given, which in some cases did not provide enough time for a community to supply the documents required. However, this problem was solved using a strategy for community communication; via rural telephones, a call could be placed prior to sending a communication, for example. This also served to create a closer relationship with the representatives of the indigenous communities in question.

What are the initiative's main achievements to date?

The main achievement is that since 2006, applications for registration have been submitted by indigenous communities through the organizations which represent them.

The Department of Inventions and New Technology of INDECOPI has gained a great

deal of experience in a process which is not merely administrative. It is a process which must be regarded comprehensively and whose social component must be taken into consideration.

Indigenous communities now have an appropriate and accessible process for registration.

There are now documents which can serve as reliably dated proof with which to defend the interests of indigenous peoples.

It also bears noting that in August 2007, INDECOPI received the Good Governmental Practices Award in the "Social Inclusion" category for its mission to ensure the effective protection of the collective knowledge of indigenous peoples. This award is granted every year by the NGO *Ciudadanos al Día* in recognition of the work done by public institutions which has a meaningful impact on society and which can, in turn, be replicated by other institutions. In November of the same year, INDECOPI was also honoured when it became a finalist in the "Communications" and "Commitment to Society" categories of the 2007 Business Creativity Contest organized by the Peruvian University of Applied Sciences.

What incentives do you use to promote the registration of collective knowledge?

The process whereby a community decides to register at INDECOPI is a progressive one. The key is to work with a community's representative organizations from the beginning. Through cooperation, a work programme is established which progressively uses the tools established by the law.

The main incentive is the revaluation of knowledge and the importance of its preservation, particularly vis-à-vis the youngest members of the community, who, due to social factors, gradually lose interest in the preservation of knowledge associated with biological resources.

What observations or recommendations would you make as a result of your experience?

In the particular case of Peru, it is important to respect the hierarchy of indigenous organizations. It is thus important to initiate the work with the cooperation of indigenous organizations in order to establish their trust.



It is important to establish strategic alliances with institutions, such as those in the areas of research and health, which can assist in this undertaking. Confidentiality must be taken into account; this is important in the case of local and confidential registers. ☐

(For more information see: www.indecopi.gob.pe)

- 1 Article 2 b) of Law 27811 defines "collective knowledge" as "the accumulated, transgenerational knowledge evolved by indigenous peoples and communities concerning the properties, uses and characteristics of biological diversity. The intangible components referred to in Decision 391 of the Commission of the Cartagena Agreement include this type of collective knowledge."
- 2 Established with the cooperation of the Peruvian Society for Environmental Law, a non-governmental organization which has an agreement with INDECOPI. The website's address is: <http://aplicaciones.indecopi.gob.pe/portalctpi/index.jsp>.
- 3 These two applications were presented by the Caco Macaya Native Community, located in the province of Coronel Portillo in the department of Ucayali, Peru.
- 4 See requirements at the following address: http://www.indecopi.gob.pe/0/modulos/JER/JER_Interna.aspx?ARE=0&PFL=10&JER=474.
- 5 Article 24 of Law 27811 — Local Registers of Collective Knowledge of Indigenous Peoples Indigenous peoples can organize local registers of collective knowledge in accordance with their practices and customs. INDECOPI will provide technical assistance for the organization of these registers at the request of indigenous peoples.
- 6 Article 23 of Law 27811
- 7 Museum of National History of the Main National University of San Marcos; Biology Department of La Molina National Agricultural University; Veterinary Institute of Tropical and High Altitude Research.

Empowerment through Education

Pachamama interviewed Florina López Miro, Coordinator, Indigenous Women's Biodiversity Network for the Latin American and Caribbean Region, about the cooperation strategy for capacity-building among indigenous women and local communities in respect of the Convention on Biological Diversity (CBD) and related issues with a view to enhancing preparation for COP 10



involved in decision-making in their respective communities, organizations, and villages.

We lobbied various financial bodies, and finally, the Spanish Government provided this support through the SCBD. The lobbying process began over two years ago, and we are now beginning the training stage.

Can you discuss your experience with capacity-building to assist in the implementation of Article 8 (j) and Article 15 of the CBD?

For indigenous peoples, and especially for the participants, this kind of training is an opportunity to improve our understanding of these complex issues which affect all men and women, including the younger generations, and which affect our ways of life, traditions, resources, lands, and territories. We must therefore be present whenever decisions are made and we must be involved in the implementation of these national and international instruments. This is why this empowerment in respect of the Convention, especially Articles 8 (j) and 15, is so necessary.

How did the initiative arise to establish a capacity-building strategy for indigenous women and local communities in Latin America and the Caribbean?

Aware of the complexity of the process and of our limited access to information, we, the indigenous women participating in the discussion process, felt that we did not have full and effective participation therein. This initiative stemmed from the need for such full involvement.

The Indigenous Women's Biodiversity Network for the Latin American and Caribbean Region (LAC IWBN) vocalized these concerns and established workshops in order to develop a strategy for strengthening the capacities of the leaders who, directly and indirectly, are

What does the strategy comprise?

This initiative's strategy is to educate indigenous peoples, and particularly indigenous women, about the CBD so that they can have a greater impact on Convention-related meetings and negotiations and on national laws related to Convention issues, and so that they can take on responsibilities and leadership in the process.

To this end, sub-regional workshops will be held throughout Latin America and the Caribbean. Twenty men and women will participate in these workshops, and the younger generations will also be involved. Finally, there will be a Latin American workshop which will conclude with participation in COP 10 in Nagoya, Japan.

Better Cooperation Needed between Scientists and Indigenous Peoples

Pachamama spoke with Professor Teodora Zamudio, Chair in Indigenous Peoples' Law in the Law Department of the University of Buenos Aires (UBA). Professor Zamudio is also the coordinator of the UBA Science and Technology Secretariat Research Project D001 — The Legal System for Genetic Resources Management and Associated Traditional Knowledge



What, in your opinion, are the critical factors in the relationship between researchers and indigenous communities?

Researchers have not received training in the philosophy of the Convention; they are fully unaware of it. If they *have* heard something about it, they view Article 8 (j) as a possible hindrance to their work,

or a burden which they have not been taught how to handle. Indigenous communities are also unprepared — in most cases — to handle this relationship with researchers.

How and when did the initiative to work on a code of ethical conduct arise?

Biological research institutions did not have this type of code. Actually, there are few such institutions in the world that do have one — I'm talking about institutions that deal with basic science which does not involve human testing. However, we — the department chair and the research team (accredited by the University of Buenos Aires) supporting me — believe that it is precisely these institutions which can serve as an early "check-point" for compliance with the Convention on Biological Diversity by verifying, at the beginning of a research project, that access to resources has been properly granted. Doing this just means obeying the law. (In Argentina it is Law 24375 of 3 October 1994.)



Coveneño youth from the Galilea Community, Beni River, Bolivia
(Photo courtesy of Johannes Stahl)

For how long will the strategy be implemented?

Implementation of the strategy is expected to take place over a three-year period and it is hoped, above all, that the strategy will have permanent results.

What objectives form part of the strategy?

The strategy's objectives are as follows:

- Effectively implement COP 9 Decision IX/13 D and E as regards the development of capacity-building and taking into account Decisions VIII/5 B and C; the Annex to Decision VII/16; and Decision V/16, Annex II, Task 4
- Educate representatives from indigenous and local communities, particularly

women, in order to ensure their effective participation in CBD proceedings, especially those concerning Article 8 (j) and Article 15

- Ensure LAC IWBN capacity-building in order to increase the number of representatives from indigenous and local communities, particularly women, who participate in CBD proceedings
- Educate indigenous and local communities about CBD processes.

Which sub-regions are included in the strategy?

The following sub-regions are included:

1. Capacity-building workshop I
Sub-region: Southern South America — Argentina, Chile, Paraguay and Uruguay
2. Capacity-building workshop II
Sub-region: Central America — Guatemala
3. Workshop IV
Sub-region: Amazonia — Brazil
4. Workshop V
Sub-region: Andes — Colombia
5. Workshop VI
Sub-region: Caribbean — Guyana

With whom are you working to implement the strategy?

We are working closely with the Secretariat of the Convention on Biological Diversity

What process did you follow?

In the case on which we are working, we began by organizing talks in the laboratory to discuss the scope of the Convention. We asked the researchers, assistants, technicians and fellows about how they thought Convention standards (those related to access) should be implemented. We also worked with best practices guides: we summarized and studied them and passed them on to the researchers. This is how we gradually developed a text which we have proposed for inclusion in the Code of Ethics. Now we are at the analysis and contribution stage. We hope to have the final text ready by the end of February 2010.

We think that all institutions with a similar profile can benefit from this Code; they can contribute to it and apply it, thereby complying not only with the letter, but also with the spirit of the Convention. I believe that these participants had never been consulted before, and yet they play a key role.

What obstacles did you encounter and how did you overcome them?

Fear and distance among the participants. That is to say, scientists had not figured prominently in the development of concrete standards to establish compliance with the Convention. Because of this, many of them saw it as disruptive to their activities and as a hindrance to their right to research and to work.

Can you tell us about your achievements?

Before we began the first sub-regional workshop, we felt that there was a great deal of interest on the part of organizations. Unfortunately, we cannot make more space for indigenous representatives.

How do you expect to continue implementing the strategy after 2010?

We have no doubt that we will continue to implement this strategy after 2010 because our results have drawn the attention of many organizations which are not involved at this stage. We have also drawn the attention of several financing bodies. This will help us to continue developing the strategy. We also plan to establish the graduation of trainees.

What observations or recommendations would you make as a result of your experience?

I would recommend that this kind of initiative be made more permanent through the various networks able to provide this opportunity to the representatives from indigenous communities who are fighting for our rights and for our equal participation. Knowledge of these international instruments helps to ensure full and effective participation, which leads to consistent and concrete proposals; this is especially important for indigenous women. ☐



Dancing and drumming performance within the community of Batalla, from the Garifuna indigenous group, a mix of African descendent slaves and local indigenous peoples (Photo courtesy of La Alianza La Ruta Moskita)

What observations or recommendations would you make as a result of your experience?

Much more work should be done with the participation of scientists because it is they who must respond more actively to this text (CBD). ☐

Respect Essential Ingredient for Indigenous Tourism Initiative

Pachamama spoke with Cecilio Solís Librado, a member of the Nahua people of Mexico, about RITA, the Indigenous Tourism Network of Mexico, of which he serves as President

Tell us about your initiative?

RITA (Red Indígena de Turismo de México — Indigenous Tourism Network of Mexico) is the product of more than 10 years of work by a group of indigenous women and men. We were concerned about development, culture, and Mother Nature and we decided to pool our efforts to lay the foundations for our organization, RITA.

Biodiversity, culture, art, and tradition abound in indigenous territories, and indigenous landscapes and cosmogonies are rich. This and more is part of our ancestors' legacy, and there is no doubt that our duties include the conservation, preservation, and revaluation of our lands, territories, and indigenous culture. This is the geographic space in which we were created and in which we play, and it is the source of our identity and our way of being, living, and relating to life. It is where we were born, where we have grown and multiplied, and where we will live after this lifetime.

At RITA we have defined our own concept of indigenous tourism. By means of recreational activities and shared living,



Aymara Community of Zapahuira, in northern Chile (Photo courtesy of Hortencia Hidalgo Cáceres)

indigenous communities share with the visitor their culture, traditions, art, language, hospitality, food, and the territory which makes them who they are. Respect for the local culture and the visitor's culture and respect for Mother Nature are fundamental to this concept. Profits are distributed and shared for the preservation of nature.

“Globalization is like a party. You have two options: you can either stand by the wall and watch the action or you can play your own music and have people dance to your beat”

How and when did the initiative originate?

RITA came into being in October 2002. Its

creation involved indigenous delegates from 17 different communities, 15 Mexican states, and 32 micro-businesses from the tourism industry.

There have been two main perspectives from which indigenous peoples have typically been regarded:

1. The folkloric standpoint
2. As groups seeking to improve our quality of life by uniting to demand services and rights which have been neither recognized nor granted.

In addition to adopting the general demands of the indigenous movement, RITA is a strategy which implements the right to development, which has been recognized by the State and various international agreements. Within this framework, we have joined forces to create an indigenous tourism enterprise based on the revaluation of territory and of culture and respect for differences and for Mother Earth. This model entails welcoming visitors and making them see that indigenous culture is just as important as their own. In this model, globalization, which is as real as water, must no longer view us as objects and must now view us as subjects with abilities and with a great deal to offer. ☐

(Website: www.rita.com.mx)



Comarca Kuna, Panama (Photo courtesy of Hortencia Hidalgo Cáceres)

Engaging the Private Sector in Dialogue on Biodiversity

Important steps taken but need for increased dialogue between indigenous peoples and business

Pachamama interviewed Elisa Canqui Mollo, Project Coordinator, Establishment of Quality of Life Indicators, Bolivian Ministry of Development Planning; and, Vice-President, United Nations Permanent Forum on Indigenous Issues, on the dialogue between indigenous and local communities and the private sector on the subject of biodiversity, and, in particular, Article 8 (j) (traditional knowledge) and Article 15 (access to genetic resources and distribution of benefits).



Can you tell us about your experience with the dialogue between indigenous and local communities and the private sector on the subject of biodiversity, and, in particular, Convention Article 8 (j) and Article 15? How and when did the initiative originate?

You would have to ask the organizers about the origin, but it is certainly true that the initiatives provided a response to the demands of indigenous peoples. We must also acknowledge that the cosmetics, perfume and aromatic industry has taken the time to consider this internally and has begun to take pioneering steps with a declaration of good faith, which is a start. We hope that this will serve as an example for other industries to adopt similar initiatives.

I believe that it is not easy for businesses. Sometimes during the meetings, business interests figured especially prominently, but the indigenous presence countered this bias, balancing the dialogue and bringing it back on track so that it could lead to serious and sustainable commitments.

These initiatives stem from the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. I believe that within this framework, the Permanent Forum plays an important role as regards the definition of operational parameters for implementation. We have seen that many such initiatives never become anything more than good intentions, becoming mired in questions of whom and how. It is not only up to industry to establish these parameters; it is also up to indigenous peoples.

What did the process comprise?

The process — and I don't wish to leave out specific experiences — stems from prior dealings between indigenous peoples and businesses in the aromatic, perfume, and cosmetics industry. This includes, for example, the supply of raw material and business support from indigenous communities.

The process also results from the recognition of the rights of indigenous peoples in this

matter and the effort on the part of these businesses to support the objectives of the United Nations Declaration on the Rights of Indigenous Peoples, the Convention on Biological Diversity and Convention 169.

What objectives were part of the initiative?

The first objective was to consult with indigenous and local representatives on how the industry could implement the objectives of the Declaration of the Natural Resources Stewardship Circle of the *Aromatic, Perfume and Cosmetics Industry*.

The second objective was to implement the Natural Resources Stewardship Circle Declaration with joint support from businesses and from indigenous peoples.

What actors were involved? What were their roles?

The first initiative involved representatives from the aromatic, perfume and cosmetics industry; representatives from indigenous communities, both those with strategic alliances with businesses and those promoting the implementation of the recognized rights of indigenous peoples; and NGOs working on this issue and serving as facilitators for these engagements.

Business was very involved in the second initiative. The participants were decision-makers, the Natural Resources Stewardship Circle of the Aromatic, Perfume and Cosmetics Industry, and entrepreneurs from indigenous communities. An important highlight was the one-day dialogue which took place between indigenous peoples and business owners in order to lay the foundations for direct and sustainable cooperation.

With whom did you work, and how and when did the work take place?

I participated in two initiatives. The first was the Indigenous and Local Community, Business and Biodiversity Consultation, which took place in New York, USA, on 12 and 13 May 2009; this was organized by the NGO Tribal Link. The second was the cosmetics conference held in Grasse, France, from 13 to 16 October 2009, which was organized



Indigenous women tinting wool with plants, Calcha, Bolivia (Photo courtesy of Johannes Stahl)



Building a "pahuichi" house in Galilea, in the Cavineño community, Beni River, Bolivia (Photo courtesy of Johannes Stahl)

and funded by the aromatic, perfume, and cosmetics industry.

Did you encounter any obstacles and how did you overcome them?

The second event sought to introduce the matter of patents. However, I think that businesses are not yet ready to negotiate on this issue. This is still a question which many businesses do not want to address.

When we talk about sharing benefits, important questions arise. With whom must these benefits be shared? To which indigenous peoples does traditional knowledge belong? I believe that the issue needs to be addressed and that we, as indigenous peoples, must establish common ground among ourselves so that there can be no excuses on the part of business when the time comes to pay, share benefits, or other such situations.

Can you tell us about your achievements?

I think that a specific beneficial outcome for indigenous peoples has been the creation of a small fund to finance indigenous initiatives, which will primarily concern biodiversity.

Amendments have also successfully been made to the Natural Resources Stewardship Circle Declaration (NRSCD). The NRSCD is important because it is a commitment to ethical practices made by the businesses themselves.

What activities do you plan to organize in future?

It is the businesses which can respond as to future activities. However, we, the indigenous peoples, wherever we are and wherever we can participate, will continue to demand the right to share benefits and will continue to address the patent issue.

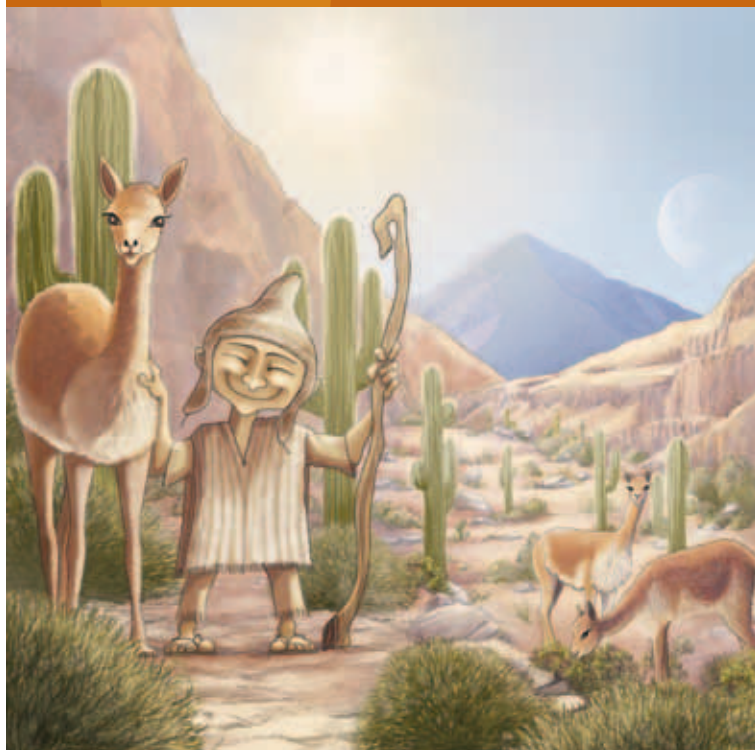
What observations or recommendations would you make as a result of your experience?

I believe that an important step has been taken, mainly because business owners are participating and are directly involved in this process. As indigenous peoples we must begin internal dialogue so that we can reach a consensus on the issue, even though some indigenous organizations do not fully agree with this type of approach. There should be more such engagement with more specific objectives to ensure the progressive conclusion of negotiations and unrestricted discussion about the sharing of business benefits in cases where research based on indigenous knowledge leads to the development of a product. There must be more dialogue and more specific initiatives must be established. This will allow us to learn more and to define the basis for negotiations and future relations between indigenous peoples and business. ☐

(Website: www.planificacio.gov.bo)

The Legend of Coquena

By Alejandra Arganaraz



Coquena is the supernatural protector of the vicuñas in the Quechua folklore of the Puna de Atacama (Peru, Ecuador and Bolivia)

Our grandparents tell us that Coquena roams the mountainous region of South America, watching over wild animals such as vicuñas and guanacos. When these creatures are badly injured, Coquena heals them. He also finds the best spots for them to graze so that they are healthy and well-fed.

Coquena walks around unseen, but if a person tries to slay or harm a vicuña or guanaco, he suddenly appears to protect the animal. He is said to warn would-be hunters that they must only kill these mammals for sustenance and that they may only do so after first asking permission from Pachamama - Mother Earth. A curse befalls anyone who fails to heed this admonition.

The indigenous peoples of the Andean region of South America know Coquena well. They thus respect vicuñas and take from them only what they need, always making sure to ask Pachamama's permission so as not to raise the ire of Coquena.

Drawing by Alejandra Arganaraz



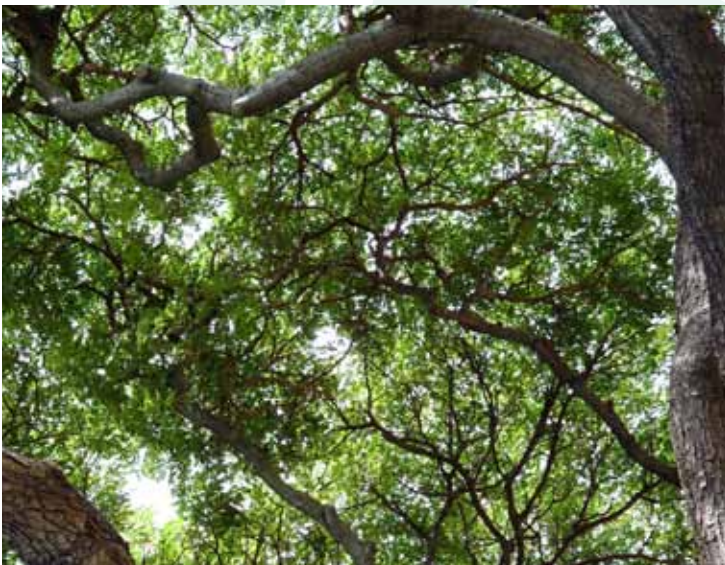
Workshop on Forest Ecosystems

As part of the implementation of the Convention on Biological Diversity's Guidelines on Biodiversity and Tourism Development and the celebrations of the 2010 International Year of Biodiversity, the region of Latin America and the Caribbean (LAC) will host the next workshop of the series Indigenous Communities, Tourism and Biodiversity: New Information and Web-based Technologies. The Secretariat of the Convention is currently organizing the third workshop of this series in partnership with the United Nations Environment Programme Regional Office for Latin America and the Caribbean (UNEP ROLAC) in Panama, with the support of the Government of Spain. The focus of this third event is on forest basins in the LAC region, where several indigenous and local communities have developed tourism products in and around forest areas.

WORKSHOP III

Forest Ecosystems, Latin America and the Caribbean Region takes place 6-8 April in Panama City, Panama, and gathers representatives of indigenous and local tourism organizations from 10 countries to exchange information and improve their cultural and sustainable practices on biodiversity conservation within their communities and their countries. Some 20 participants will take part in training activities using web-based tools to more effectively communicate the biodiversity concepts of their tourism products.

More: www.cbd.int/tourism/ForestWorkshop.shtml



(Photos courtesy of iStockphoto)

2010 Indigenous Tourism Web Site Award

Recognizing excellence in the sustainable use of biodiversity in tourism operated in areas managed by indigenous and local communities, the Secretariat of the Convention on Biological Diversity (CBD) in collaboration with the leading sustainable travel web portal Planeta.com, and with the generous support of the Heidehof Foundation, has announced the winners of the second annual Indigenous Tourism and Biodiversity Website Award.

The 2010 Indigenous Tourism and Biodiversity Website Award is presented to indigenous tourism operators for websites that promote sustainable practices and educates visitors about cultural protocols and biodiversity conservation and complements the CBD workshop series on indigenous tourism, biodiversity and web-based technologies supported by the Government of Spain.

“The award is a unique way to reward the efforts of indigenous and local communities (ILC) promoting and embodying traditional lifestyles to integrate biodiversity in their tourism operations,” said Ahmed Djoghlaif, CBD Executive Secretary. “Particularly during 2010, the International Year of Biodiversity, this initiative contributes to the global efforts to raise public awareness of the unacceptable rate of biodiversity loss.”

By highlighting the world’s best indigenous and local community-owned and operated tourism services, the CBD Secretariat helps motivate operators worldwide to improve their online communication on biological and cultural diversity, highlight best practices in managing tourism and to raise operators and the public’s awareness on biodiversity.



Winner of the judged 2010 ITBW Award

Nutti Sami Siida (www.nutti.se), a company that arranges nature and culture tours based on the Sami culture. Owners Nils Torbjörn Nutti and Carina Pingi are both Sami from Gabna Sameby, Sweden.



Winner of the popular count 2010 ITBW Award

TIME Unlimited Tours (www.newzealandtours.travel) from New Zealand, operated by the Maori-European couple Ceillhe Tewhare Teneti Hema Sperath and Néill Sperath, provide personalized and interactive Auckland and Maori Indigenous Cultural Tours.

Other finalists were:

Brambuk National Park and Cultural Centre (www.brambuk.com.au)
Kakadu Culture Camp (www.kakaduculturecamp.com)
Chalalan Ec lodge (www.chalalan.com)

Squamish Lil'wat Cultural Centre (www.slcc.ca)
Te Urewera Treks (www.teureweratreks.co.nz)
Xe Pian National Protected Area (www.xepian.org)

Applications were received from 10 countries (Australia, Bolivia, Canada, Kyrgyzstan, Laos, Mexico, Micronesia, New Zealand, Pakistan and Sweden). Over 400 people cast their vote, examining the 14 websites that fit the ambitious criteria set on Planeta.com's wiki site (www.planeta.wikispaces.com/itbw). Additionally, a jury composed of six internationally recognized experts in indigenous and sustainable tourism voted using the same criteria.

Winners will receive the award on 23 April 2010 at a tourism trade fair, the Reispavillon, in Berlin. The Reispavillon (www.reispavillon-online.de) has, since 1991, been a global focal point for responsible tourism. The Secretariat of the CBD will organize, together with leading German tourism trade associations, an awards ceremony featuring the Executive Director of the World Tourism Organization (UNWTO) and executives from Germany's GTZ. The Secretariat will assist winners and runners up in meeting leading German operators and agents dedicated to sustainable tourism. Winners will also receive technical support and participate in a workshop, on 24 April 2010, on innovative Web 2.0 tools for marketing and communications, facilitated by Planeta.com founder Ron Mader. A publication about the award, its nominees, winners and the lessons learned, will be distributed at the event and posted online in April. More: www.cbd.int/tourism/wstour-01.shtml

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We would like to hear from you:

We are encouraging indigenous and local communities, governments, and relevant stakeholders to send articles and digital photos on their implementation, awareness, outreach and relevant activities regarding Article 8(j) and Related Provisions. Please send your contributions to the attention of John Scott at the following email: secretariat@cbd.int

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* Pachamama means Mother Earth (Pacha: Earth, Mama: Mother) in the Quecha /Aymara languages. The Earth was a divinity venerated by the Incas and other inhabitants of the Andean plateau such as the Aymara and the Quecha peoples.

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