

Legal Protection for Coca

Genetics, human rights, Indigenous knowledge,
cultural heritage and the coca leaf: exploring the
legal options for safeguards

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Further information: <https://www.tni.org/en/dossier/who-critical-review-of-coca-leaf>

Introduction

Failed attempts to modify the level of control of the coca leaf under the global drug control regime leaves trade restrictions on the plant intact.¹ While international drug treaties maintain this state of prohibition, legal regulation of the plant in the Andean-Amazonian region continues to develop, and can be strengthened and broadened.

Beyond its cultural significance, the plant has become a political symbol of resistance against prohibitionist narratives and foreign intervention. The defence of coca, more than a question of protecting traditional practices, is also a political and epistemic affirmation, challenging the imposition of foreign regulatory frameworks on local realities. Cultural heritage preservation can thus be seen as both a legal tool and a political strategy to reposition coca on the world stage.

From this perspective, coca ceases to be understood solely as a plant or raw material under international control. Rather, it is part of a complex cultural system that encompasses agricultural, ritual and medicinal practices as well as forms of community organisation and diverse worldviews a collective and living knowledge system.² This view enables the activation of legal mechanisms to legitimise such practices at the national and international levels.

There are four distinct and separate legal frameworks, though these are not always optimally interconnected. They can be regarded individually or collectively by countries where coca remains a cultural reference point for their citizens. The specific features and advantages of each regime can be promoted, strengthened and validated at both the domestic and external levels. This document analyses in detail the legal complexities of the four regimes and illustrates how the various mechanisms interact at the international, regional and national levels, and

provides examples of existing practices. The aim is to explore viable ways to safeguard genetic resources, cultural heritage and Indigenous knowledge of the coca leaf, as well as to protect legal markets for coca from risks of misappropriation, biopiracy and corporate capture. ■

1. Genetic resource

Viewed as a genetic resource, coca, rather than a substance under international control, becomes an element of biological diversity and a part of the sociocultural knowledge systems historically constructed by the Indigenous Peoples of the Andes and Amazon. In this context, the Convention on Biological Diversity (CBD), the Nagoya Protocol and other binding instruments provide a legal basis for recognition of the relationship between genetic resources and traditional knowledge. They also address the need to ensure fairer, more equitable procedures for the use, management and associated benefits of these resources.

As coca's place of origin, the Andean countries share particular responsibility for this genetic resource. Decision 391 of the Andean Community establishes that states have sovereignty over their own genetic resources and regulates access to them via contracts. It further calls for protection of the traditional knowledge associated with these resources. This regional framework enables the application of international principles as regulations that are aligned with local realities. Though implementation has been uneven and faces institutional challenges, it offers an important basis for the formulation of coordinated responses as coca gains greater commercial and scientific interest.

From this perspective, coca is at a critical juncture. Coordination between the international, regional and national levels will be crucial to ensure that patterns of appropriation are not perpetuated, and that the rights and economies of the communities that have historically sustained the plant are strengthened.

1.1 International system

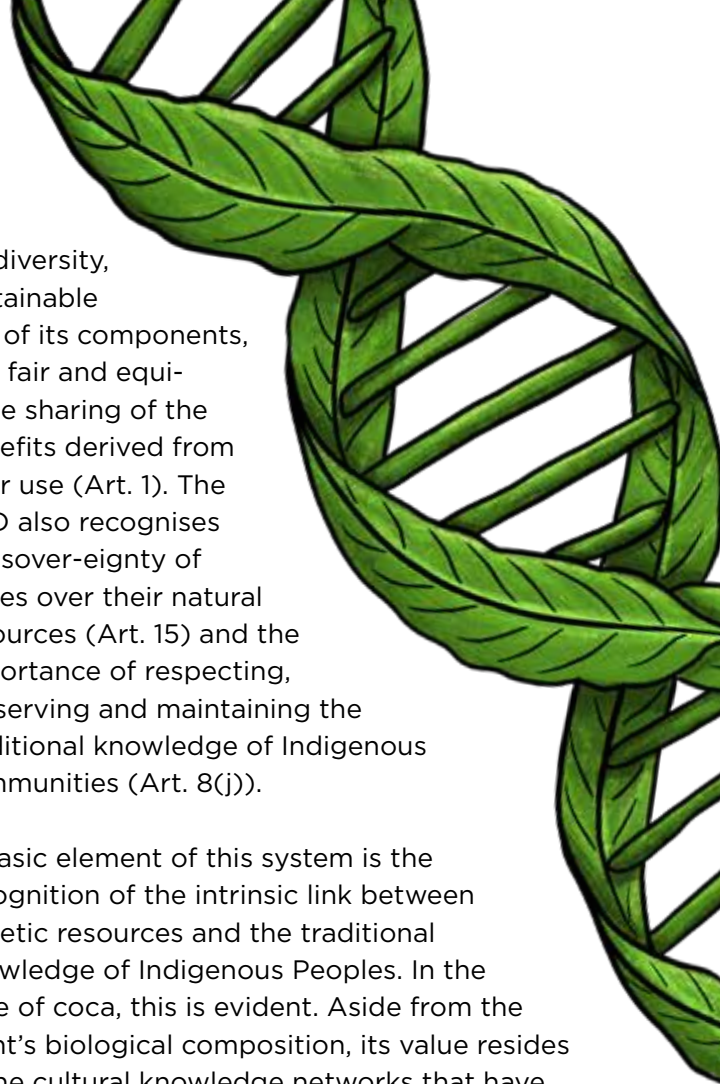
As a genetic resource, the coca leaf is protected under the legal framework for international biodiversity, which addresses the relationship between nature, knowledge and collective rights. This scheme is based on the **Convention on Biological Diversity (CBD)**³ of 1992, which sets three core objectives: conservation of

biodiversity, sustainable use of its components, and fair and equitable sharing of the benefits derived from their use (Art. 1). The CBD also recognises the sovereignty of states over their natural resources (Art. 15) and the importance of respecting, preserving and maintaining the traditional knowledge of Indigenous communities (Art. 8(j)).

A basic element of this system is the recognition of the intrinsic link between genetic resources and the traditional knowledge of Indigenous Peoples. In the case of coca, this is evident. Aside from the plant's biological composition, its value resides in the cultural knowledge networks that have enabled its domestication, cultivation, and medicinal, ritual and dietary uses over hundreds of generations.⁴

Based on these ideas, the **Nagoya Protocol**⁵ implements the CBD through the ABS (Access and Benefit-Sharing) system, which strives to promote access to genetic resources and the sharing of their benefits. The protocol establishes a set of legal obligations to regulate access to genetic resources and ensure they are fairly used, particularly for commercial or research purposes. The operation of the protocol is structured around several key elements:

- **Free, prior and informed consent:** these can be monetary (royalties, direct payments) or non-monetary (technology transfer, skills building, joint research).
- **Mutually agreed-upon terms:** access must be formalised via contracts that clearly set out conditions for use and sharing of benefits.



- **Fair and equitable sharing of benefits:** these can be monetary (royalties, direct payments) or non-monetary (technology transfer, skills building, joint research).
- **International compliance certification:** states may issue certification that access is granted in accordance with the Protocol's standards, thereby enabling recognition in other countries.

This mechanism for accessing genetic resources and the sharing of benefits derived from them (ABS) may serve to address the historical and colonial imbalances in the distribution of biological resources and traditional knowledge. Under the ABS approach, access to a genetic resource is subject to state authorisation processes, and where necessary, the consent of Indigenous communities. Such access must be formalised under agreements that define both their conditions of use and the form in which the resulting benefits may be shared. The latter may include not only payments but also technology transfer, joint research or local skills building.⁶

The South African Rooibos case is one of the most oft-cited examples of practical implementation of the ABS principles. Following years of commercial use of the plant without either recognition of or compensation for the Indigenous Khoi and San Peoples that originally used it, an agreement between the industry and representatives of these communities was reached, ensuring the sharing of benefits derived from its commercialisation.⁷ This agreement expressly recognised the value of knowledge associated with the resource and provided mechanisms for financial compensation, thus setting an important precedent for how ABS systems can redress historical patterns of appropriation, at least to some degree.

That said, implementation of ABS at the international level has remained limited, and in many cases hasn't translated into fully operational agreements nor tangible benefits to communities. In Peru, the maca case illustrates

how biopiracy and the appropriation of traditional knowledge abroad have flourished in the absence of effective mechanisms for access and sharing of benefits.⁸ In response to such abuses, the state subsequently strengthened protective mechanisms. In Bolivia, the rising value of *quinoa* on the international market has spurred debate over the recognition of traditional knowledge and benefits to producer communities.⁹ Although these cases stand as examples of inadequate implementation of the ABS system, they highlight the practical challenges involved in its application, as well as the importance of having effective mechanisms tailored to the realities of each country.

Another binding instrument under the rubric of international rights is the **International Treaty on Plant Genetic Resources for Food and Agriculture**¹⁰, which addresses the particular cases of food security and farmers' rights. This pact highlights the importance of preserving and sustainably using plant genetic resources, as well as the historical role of Indigenous communities in their creation and maintenance. Although it has focused on strategic food crops, its principles can well be brought to bear on coca, to the extent that it reinforces the notion that plant resources cannot be separated from the social systems that produce and safeguard them.

Further complementing the CBD are the **Mo'otz Kuxtal Voluntary Guidelines** (considered "soft law").¹¹ These guidelines were adopted to bolster protections for the traditional knowledge of Indigenous Peoples and local communities. They provide specific guidance for the implementation of free, prior, and informed consent, as well as for the participation of communities in decisionmaking processes, while recognising their rule systems, forms of organisation and worldviews. Rather than reducing access to traditional knowledge to a set of administrative procedures, the guidelines address the communities' own cultural processes and timelines, as well as the associated authorities and forms of deliberation.

Worth noting is that the implementation of such international instruments for the protection of genetic resources may clash with other



international frameworks, in particular intellectual property systems (see point 4). The clearest example is the **Agreement on Trade-Related Aspects of Intellectual Property Rights** (TRIPS).

Lacking specifications for compliance with access and distribution requirements, it opened the door to biopiracy and the legal appropriation of traditional resources and knowledge without either the consent of or compensation for the countries and communities involved.¹² In practice, such ambiguities highlight the complexity and interconnectedness of the different frameworks under analysis, while underlining the need to strategically coordinate the different instruments to avoid tensions and make the most of potential benefits.

1.2 Regional system

Coca originates from Bolivia, Colombia, Peru and Ecuador (in this last country consumption virtually disappeared following the colonial era), supporting the case for state sovereignty over the plant's biological diversity and securing a place for Indigenous Peoples as the historical custodians of knowledge about it. Apart from the biological dimension, the politics of coca cuts across regional regulatory frameworks. The tools it provides for protecting and gaining access to this genetic resource transcend technical or administrative procedures. More than just a question of establishing authorisations, contracts or legal requirements, it is important to recognise what is at stake: collective rights, knowledge networks, historical relationships with the territories, and disputes over who controls the rights to the benefits these resources provide.¹³

In this regard, the **Andean Community** (*Comunidad Andina de Naciones, CAN*), created in 1969 as part of the Cartagena Agreement¹⁴,

stands as the primary forum for regional integration of these countries. Unlike other instruments for cooperation, the CAN has the power to issue binding regulations (decisions) that are mandatory for member states. Within this framework, a set of common standards has been developed over biodiversity, genetic resources and intellectual property, the goal being to align national legislation and bolster the ability of the states to regulate access to and use of their resources. As far as coca is concerned, this regional framework can serve as an important platform for coordinating positions among countries of origin. Furthermore, it establishes common standards for protection and prevents regulatory gaps that may open the door to misappropriation.

The CAN developed one of the earliest, and in many ways most advanced, frameworks in the field. **Decision 391** of 1996, establishing the **Common Regime on Access to Genetic Resources**¹⁵, had a pioneering role internationally, predating the Nagoya Protocol. It established that associated traditional knowledge is an integral component of genetic resources (Art. 1) and that it forms a part of a nation's heritage and is thus subject to state sovereignty (Art. 6 and 7). Based on this notion, it ushered in legal processes, such as prior authorisation for access (Art. 16), the signing of contracts between the state and interested parties (Art. 32), and the obligation to ensure the fair and equitable sharing of any derived benefits (Art. 34). Thus, access to genetic resources must consider community participation where its members possess associated knowledge.¹⁶

Another CAN initiative, **Decision 523** of 2002, the **Regional Biodiversity Strategy for the Tropical Andean Countries**¹⁷, broadens the regional focus by recognising biodiversity as being closely linked to the territories, knowledge and ways of life of Indigenous Peoples and local communities. Unlike Decision 391, it established no binding legal mechanism. However, it can serve as a tool to politically bolster participating communities, conservation, protection of traditional knowledge and regional cooperation on biodiversity.

Other regional instruments, such as the **Amazon Cooperation Treaty**¹⁸, may be added to those decisions. While not focusing exclusively on access to genetic resources, these agreements underline the importance of biodiversity and traditional knowledge from a territorial perspective. Taken together, such instruments comprise a legal framework, which, though somewhat fragmentary and varying in degrees of implementation, provide the basis for a regional coca protection strategy, inasmuch as the coordination between regional and international instruments is crucial to their effectiveness.¹⁹ At the regional level, the problem is not so much an absence of regulations as their limited application and a lack of coordination between countries.

In practical terms, such differences are reflected in distinct approaches. While Colombia has made progress in formalising contracts for access to genetic resources²⁰, Peru has developed more robust mechanisms to combat biopiracy²¹, and Bolivia has focused on the sovereignty and appreciation of its resources. Such disparities underline the need for greater regional coordination to address gaps that may be exploited by outside parties.

As coca attracts greater commercial and scientific interest, such limitations weigh more heavily. Regulatory fragmentation and a lack of regional coordination may open the door to unregulated competition, to the detriment of the communities that have historically sustained the crop. Rather than creating new instruments, the real challenge seems to lie in applying and coordinating those that already exist, thus granting them the political consistency and operational capacity to respond to such new opportunities.

1.3 The Peruvian experience

The case of Peru illustrates both the progress and the limitations of international regulatory systems. The country has developed a set of instruments and institutions for the protection

of genetic resources. These include mechanisms for access and benefit-sharing, registration of collective knowledge, and actual experience in countering biopiracy, as in the case of *maca*. That said, significant gaps remain in the effective implementation of such mechanisms, thus limiting their impact in actually protecting resources and communities.

Over the past few decades, the country has built up institutional and regulatory frameworks to govern access to and protection of biodiversity and traditional knowledge. Such development includes both the adoption of the Convention on Biological Diversity and the progressive implementation of the Nagoya Protocol, as well as the creation of specific regulations on collective knowledge and biopiracy.

One of the cornerstones of this system is the implementation of the ABS mechanism. In Peru this effort has been coordinated among several institutions, which include the Ministry of the Environment (MINAM), the National Institute of Agrarian Innovation (INIA), the National Forestry and Wildlife Service (SERFOR), and the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI), among others. Under this system, the various functions are allocated by resource type: SERFOR focus on forest resources (including wild species), and INIA on cultivated or domesticated species (which would include the coca plant). To these may be added the coordination and propagation of knowledge by such agencies as the National Council of Science, Technology and Investment (CONCYTEC), the National Institute of Health (which includes the National Centre for Social Research and Intercultural Health - CENSI) and public and private universities, together comprising a broad and complex institutional network.

In operational terms, a strategy based on three complementary approaches has been proposed. The first of these is state recognition of Indigenous Peoples as owners of knowledge and practices associated with coca; this would include the option of issuing certificates of origin in areas with evidence of ancestral

use. The second: signing of contracts for access to genetic resources for research and development, which must guarantee free, prior and informed consent, mutually agreed-upon terms, and benefit-sharing. The third priority is the registration of collective knowledge by INDECOPI, in order to prevent misappropriation.

On this point, the notion of ‘intangible components’ from the CAN’s Decision 391 is key, as the deducted Peruvian Law No. 27811 regulates knowledge, innovation and individual or collective practices, granting real or potential associated value to these resources or their derivatives. Such knowledge is collective, intergenerational and, in principle, not in the public domain. Following the logic of benefit-sharing, use by third parties requires not only authorisation but also licence agreements and contributions to a Fund for the Development of Indigenous Peoples.

To this can be added such tools as the designation of Agrobiodiversity Zones²², reporting to the Secretariat of the Convention on Biological Diversity and issuance of compliance certification. Peru also has a National Commission Against Biopiracy. In operation for more than two decades, it has played a key role in the defence of traditional resources and the identification of unauthorised use abroad.²³ Alongside these, such regional initiatives as the GEF-ABS project for Latin America and the Caribbean have aimed to build technical and institutional skills for implementation of the system.²⁴

As previously mentioned, the case of *maca* well illustrates the situation. Faced with the granting of patents to US and European companies for products derived from this resource, Peru brought legal proceedings before such international agencies as the World Intellectual Property Organization (WIPO), claiming lack of novelty and unauthorised access to the resource. Due to these actions, several patents were cancelled and revoked, setting an important precedent for the defence of biodiversity. The process also demonstrated barriers to local producers, such as restrictions on access to

international markets due to raised standards, as well as the need to develop technical mechanisms –such as the identification of markers– to prevent product adulteration.

That said, the Peruvian experience also highlights the system’s limitations. Although there is a relatively advanced regulatory framework in place, implementation of ABS has been limited. Peru made some progress even before the formal incorporation of the Nagoya Protocol in establishing the National Mechanism for Integrated Supervision and Monitoring of Genetic Resources (D.S. 003-2009-MINAM), aimed at ensuring prior consent and mutually agreed-upon terms. Nevertheless, certain omissions and gaps in the system have hindered its operation. Besides lacking the administrative authority to issue relevant permits or certify compliance with the Nagoya Protocol, its coordination with international certification mechanisms under the Secretariat of the Convention on Biological Diversity remains limited.²⁵

Challenges remain not just on the regulatory front but also the political and institutional levels. The issue is how to translate a relatively sophisticated legal framework into effective tools for communities. This entails strengthening local skills, simplifying procedures and improving coordination among institutions. At the same time, these mechanisms must be aligned with programmes for Indigenous rights, cultural heritage and intellectual property. Only through such coordination will these instruments be able to fulfil their role of protecting genetic resources and the associated knowledge amidst a background of growing interest – as may be the case with coca.

2. Human rights and Indigenous Peoples

The framework of human rights and Indigenous Peoples’ rights provides a basis for rethinking and reconfiguring public policies towards coca

and its various uses. In this context, coca is no longer viewed merely as a component in the production of cocaine, but rather as a natural resource closely linked to territorial, cultural and knowledge systems that are protected by international and inter-American law. This entails recognition of a direct connection to the collective rights of Indigenous Peoples, along with the protection of their territories and resources and their active participation in decision-making.

By means of legal instruments, court rulings and landmark measures, a set of standards and specific legal tools have been established that can be used for the recognition of self-determination and limitation of state intervention in Indigenous territories, resources and ways of life. These standards have been progressively applied in mining, hydrocarbons and other high-impact sectors, where they have served to influence state decisions and boost the participation of Indigenous Peoples.

In the case of coca, the use of these instruments to challenge policies of forced eradication, fumigation or armed violence has been very limited, despite the obvious negative impact of these practices on various Indigenous and rural communities. The issue, then, is less a lack of standards than the strategic application of them to challenge the historical criminalisation of the plant and to reposition coca within a rights-based framework.

2.1 Sistema internacional

Within the international human rights system –particularly with regard to the rights of Indigenous Peoples– there exists a regulatory structure that manages binding instruments for signatory states, with specific standards linking territories to natural resources and to the knowledge of the people who inhabit and use them. In the case of coca, this structure goes

beyond the material level to place the crop within cultural and productive systems that are protected by international law.

Under this rubric we may include the **International Covenant on Civil and Political Rights**²⁶ and the **International Covenant on Economic, Social and Cultural Rights**.²⁷ These support the legal basis for recognition of the rights of Indigenous Peoples to free self-determination and the use of their own natural wealth and resources (Art. 1); their rights to cultural life (Art. 15); and the rights of national minorities (Art. 27). These instruments have been used at the international level to challenge state interventions in the territories of Indigenous Peoples without their consent, particularly in cases of exploitation of resources or other ecologically harmful activities.²⁸

Another important instrument is the **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD) of 1965.²⁹ This lends crucial support to the notion that structural discrimination against Indigenous Peoples (which includes anything that affects their territories, resources or ways of life) constitutes a violation of human rights. Through the *Committee for the Elimination of Racial Discrimination*, specific mechanisms have been developed for the issuance of general recommendations, observations and early-warning or red-alert procedures. These mechanisms have been used to challenge extraction projects, as well as public policies or state decisions that unequally affect Indigenous Peoples without their consent.

In the Andean countries, CERD has consistently pointed out the disproportionate impact of various state interventions on Indigenous territories, as well as the failure to adequately guarantee prior consultation or the protection of cultural rights. Such observations, even when not referring to specific sectors, make it patently clear that states should avoid measures that



disproportionately affect Indigenous Peoples while ensuring their active participation in decision-making.³⁰

Convention No. 169 of the **International Labour Organization (ILO)**³¹ of 1989 is one of the most significant instruments for recognition of the collective rights of Indigenous Peoples under international law. It upholds the connection between peoples, their territories and the natural resources within them, setting specific obligations for the protection, use and control of such resources.³² In addition, it recognises the right of Indigenous Peoples to participate in the use, management and conservation of natural resources within their territories (Art. 15), as well as the importance of their spiritual and cultural relationship with the land (Art. 13).

Convention No. 169 also lays out safeguards against interference by outside parties. These include the obligation to carry out free, prior and informed consultation to reach agreements over proposed measures (Art. 6) and guarantees that Indigenous Peoples may set their own priorities where development is concerned (Art. 7). More than simply formal procedures, such mechanisms function as restrictions on state action and guarantees of greater autonomy for communities.

In this regard, the **United Nations Declaration on the Rights of Indigenous Peoples**³³ of 2007 (UNDRIP) represents one of the most significant milestones in the development of international law. Although not legally binding in the strict sense, it compiles and systematises the standards that now guide the interpretation of treaties, particularly with regard to Indigenous Peoples' control over and relationship with their territories, resources and knowledge. The UNDRIP recognises not only individual rights but also collective rights, including the right to self-determination (Art. 3) and the right to maintain and strengthen institutions, cultures and traditions (Art. 5), as well as to preserve and protect traditional knowledge (Art. 31).

One of the declaration's most significant contributions is the development of the principle

of *Free, Prior and Informed Consent* (FPIC), which is more clearly defined since Convention No. 169, as referred to in Articles 10, 11, 19 and 32. The declaration moves toward requiring the consent of Indigenous Peoples in situations that directly affect them, particularly those that have an impact on their territories, resources or ways of life. Such a shift in approach is no small matter; more than just a formality, it makes FPIC a genuine constraint on the powers of the state.

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), FPIC should be understood as an ongoing element in the entire decision-making process concerning Indigenous Peoples under international law. The implication is that free, prior and informed consultation should be carried out under culturally appropriate conditions that respect the timelines, forms of organisation and traditional authorities of each community. Rather than being limited to specific projects, FPIC extends to policies, regulatory frameworks and governmental decisions.³⁴

Such instruments, it is worth noting, do not operate in isolation. Rather, they are part of an interconnected system that gradually gains strength through international practice. Within the process, UN mechanisms such as the *Special Rapporteur on the Rights of Indigenous Peoples*, the *Permanent Forum on Indigenous Issues*, and the *Expert Mechanism on the Rights of Indigenous Peoples*, along with other treaty-monitoring bodies, translate general principles into applicable standards. They do so via reports, country visits and communications with governments. Through such institutional channels, positions in the debate over coca gain support. As violations are highlighted, experiences systematised and interpretations synthesised, collective rights are ultimately better protected.

Following the World Health Organization's (WHO) critical review of the coca leaf, the discord between international drug control and current standards for the rights of Indigenous Peoples has become increasingly apparent. Various analyses concluded that the decision

to maintain coca as a Schedule I substance in the Single Convention on Narcotic Drugs of 1961 is incompatible with international obligations for Indigenous Peoples' rights, particularly on questions of cultural heritage, traditional knowledge and ancestral medicine.³⁵ More than a procedural discussion, the process should be seen as a way to rethink the global drug policy guidelines by analysing the historical and political foundations of the international drug control regime and bring scientific evidence, cultural diversity and human rights into the equation.³⁶

The disconnect between the international drug control regime and the rights of Indigenous Peoples was also underlined by the Special Rapporteur on the Rights of Indigenous Peoples at the 69th session of the UN Commission on Narcotic Drugs (CND) in March 2026.³⁷ In his statement, he noted that global control of coca encourages the criminalisation of traditional practices, undermine cultural rights and erect barriers for the access to traditional medicines of Andean-Amazonian Indigenous Peoples. He stressed that the coca leaf remains a central element in cultural, spiritual and medicinal systems, and that any review by international drug control agencies must take a human rights-based approach and ensure Indigenous participation.

The international Indigenous rights regime recognizes traditional knowledge, rather than an incidental element, as an integral component of Indigenous cosmovision. Knowledge associated with the cultivation, usage and management of coca, from seed selection to medicinal, traditional and ritual uses, comprises a coherent system that cannot be separated from either its territories or from the communities that nourish it. There is a direct connection between developments in the genetic resource system and the knowledge that makes it usable.³⁸

From this perspective, mechanisms developed in the field of biodiversity, such as the ABS system, cannot be seen as separate from the international framework for Indigenous Peoples'

rights. FPIC, as stipulated in Convention No. 169 and mentioned in the Nagoya Protocol, is a basic condition for restricting access to genetic resources and the knowledge associated with it. In practical terms, this entails such tools as the registration of traditional knowledge, certificates of origin and schemes for the control of resources. Such measures are designed to prevent their misappropriation and ensure that communities share the benefits from their use, while redressing historical disparities in access to and control over biodiversity.

As with the regime governing genetic resources, rights recognised under this international framework may come into conflict with the intellectual property system. Compliance with mechanisms for consent, monitoring and benefit sharing must be required; otherwise, knowledge may be misappropriated. The global drug control regime, too, comes into direct conflict with the frameworks for human rights and Indigenous Peoples, most obviously in its intent to eliminate traditional uses of coca. In its statement of 2009, the Permanent Forum, with reference to Article 49 of the treaty, "notes that coca leaf chewing is specifically banned by the United Nations Single Convention on Narcotic Drugs (1961). The Permanent Forum recommends that those portions of the Convention regarding coca leaf chewing that are inconsistent with the rights of Indigenous Peoples to maintain their traditional health and cultural practices, as recognised in articles 11, 24 and 31 of the Declaration, be amended and/or repealed".³⁹ In the words of Volker Türk, UN High Commissioner for Human Rights, referring in 2024 to the WHO's critical review process: "Any decision taken on this matter must consider the human rights implications for the Indigenous Peoples concerned."⁴⁰ Such tensions demonstrate that the protection of genetic resources and associated cultural knowledge, more than merely a procedural issue, remains a matter of dispute between the different regulatory frameworks.

2.2 Inter-American system

Within Latin America, the Inter-American Human Rights System, developed by the Organisation of American States (OAS), is at the forefront of initiatives for the protection of Indigenous People's rights. This system is built upon a set of legal instruments, supervisory bodies and the robust jurisprudence of the Inter-American Commission and Court of Human Rights. The result is a legal and regulatory body that not only recognises rights but can enforce its judgments by obliging states to modify public policies, legal decisions and disputes over territory, resources and ways of life.

The cornerstone of the system is the American **Convention on Human Rights** of 1969⁴¹, whose interpretation by the Inter-American Court of Human Rights (IACHR) has been instrumental in broadening the scope of Indigenous rights in the region. On the basis of an evolving interpretation of property law (Art. 21), the court has developed a line of jurisprudence for recognition of the collective ownership of ancestral lands and associated natural resources. These are tied to such other rights as personal safety, legal identity and legal guarantees.

Since the 1990s, this form of case law has gained ground, as numerous decisions redefine the meaning and scope of the law in Indigenous contexts, establishing the notion that absence of formal recognition does not invalidate

Indigenous Peoples' territorial rights. In practice this means that states have specific obligations, including the demarcation, titling and protection of territories, as well as guarantees of prior consultation and, in certain cases, the sharing of benefits derived from the use of natural resources, or reparations in cases of serious rights violations.

Appended to the American Convention on Human Rights in 1988 to address economic, social and cultural rights, the **Protocol of San Salvador**⁴² further defines and reinforces aspects related to Indigenous Peoples' livelihoods, health and traditional practices. It recognises the rights to health (Art. 10) and a healthy environment (Art. 11), as well as the right to participate in cultural life (Art. 14). These rights are interpreted in tandem with the territorial rights developed by the IACHR. Thus, violations against Indigenous Peoples can be addressed not only on the basis of land loss, but also the impact on their productive systems and cultural practices.

The **American Declaration on the Rights of Indigenous Peoples** of 2016⁴³ complements the inter-American framework by establishing specific standards for collective rights. The relationship between territory, culture and self-determination is more explicitly articulated. Although it is not legally binding like the American Convention, the adoption of the declaration by the OAS reflects a regional consensus on the need to recognise and protect



Indigenous Peoples' rights over their lands, territories and resources (Art. XXV and XXVI), as well as their right to maintain, control and develop traditional knowledge (Art. XXVIII). Furthermore, it reinforces the principle of free, prior and informed consent (FPIC) as a condition for any steps that directly affect these peoples, thus broadening the scope of the standards developed by the Inter-American Court.



Within the inter-American system, the issuance of **precautionary measures** by the *Inter-American Commission on Human Rights* (IACHR) stands as a milestone. These may be invoked in the event of urgent situations where there is a risk of irreparable harm. They serve as protective instruments to confront violence or threats against Indigenous Peoples⁴⁴, particularly regarding such collective aspects as territories, natural resources and cultural identity⁴⁵. In practice, they sanction the suspension of state actions or decisions and the adoption of measures to protect territories and natural resources in cases of violence or threats, intervention into territories or interference with cultural practices.

Beyond recent precautionary measures, several landmark cases before the IACHR linking the territory, natural resources and cultural survival of Indigenous Peoples form the basis for an inter-American protective framework.⁴⁶ Due to these precedents, it has been established that encroachment on Indigenous territories cannot be analysed solely in terms of property rights but may also involve such interdependent rights as cultural integrity and collective survival. States are thus obliged to guarantee processes of consultation and prior consent and to ensure the sharing of derived benefits from the use of natural resources. This development is crucial in the case of coca, as it can now be argued that any intervention regarding the plant's cultivation or uses cannot be separated from the territorial and cultural systems that sustain it, and these are protected under regional and international law.



The principle of free, prior and informed consent (FPIC) is a highly significant aspect of the Inter-American System, particularly in contexts of high impact on Indigenous territories. It has made participation a substantive requirement, in some cases directly restricting the state's ability to intervene without community consent. In countries like Colombia and Peru, such standards have gradually been incorporated into court decisions and regulatory frameworks, so that states are obligated to guarantee prior consultation processes and to protect the cultural identity of Indigenous Peoples in the face of development projects, particularly those related to the exploitation of natural resources.⁴⁷

One tangible result of this framework is the creation of national protection mechanisms, such as the registration of collective knowledge and systems for regulating the use of resources. Such instruments aim to prevent misappropriation and ensure the sharing of benefits. That said, it also reveals certain structural tensions where drug control policies contradict Indigenous rights standards. Such measures as crop eradication or fumigation have been implemented without due consultation processes, thus demonstrating the selective application of Indigenous rights standards.⁴⁸

The case of Colombia clearly illustrates such tensions. Indigenous communities like the Nukak, Awá and Nasa have challenged the impact of such policies as forced eradication, armed violence and aerial spraying with glyphosate.⁴⁹ Rather than directly regulating coca, institutions have responded by upholding human rights standards to limit the effects of such policies. As control or restriction of the plant has direct implications for ways of life, knowledge and local economies, the approach needs to shift from one based on control to a rights-based model.⁵⁰

Such experiences make it evident that coca has been partially integrated into the inter-American system and national systems, primarily due to the harm caused by state control and organised crime, instead of recognising it as an ancestral plant associated with a wide array of agricultural

and cultural practices that form part of many Indigenous Peoples' lives.

3. Cultural heritage

Although the question of cultural heritage remains under explored, it is potentially a strategic avenue for the protection of the coca leaf and its social and cultural uses. Rather than regulating it as a biological resource or addressing human rights, the heritage-based approach shifts the focus toward the culture, knowledge systems and living practices that have historically sustained coca in the Andean and Amazon regions.

The framework provided by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) offers a concrete procedure for recognising and safeguarding coca as a *tangible and intangible cultural heritage*. This refers to the plant itself, its cultivation, uses and traditions and the ancestral knowledge associated with it. By focusing on safeguards, recognition and intergenerational transmission, coca may be defended as a legitimate cultural expression rather than an exceptional case.

Recognition is not the same as material protection; cultural heritage is by no means a self-contained system. The legal framework may enable the recognition of certain practices and strengthen identity, but it cannot ensure the sharing of economic benefits, nor does it prevent misappropriation by outside parties or regulate national and international markets that might emerge. Thus, the systematic protection of cultural heritage best functions in conjunction with other protective systems rather than replacing them. To fulfil its true potential, it can complement frameworks for Indigenous rights, genetic resources and intellectual property by adding a symbolic, political and legal dimension that reinforces the legitimacy of coca as part of a collective heritage.

3.1 The UNESCO system

The system developed by UNESCO represents the chief international framework for the protection of cultural heritage, in both its tangible and intangible senses. This system is structured around several conventions, which taken together provide a legal basis for safeguarding cultural wealth that is of exceptional value to humankind.

The Convention for the Safeguarding of the Intangible Cultural Heritage⁵¹ of 2003 is the most directly applicable of these instruments. It defines intangible cultural heritage (Art. 2) as *“the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.”*

The legal frameworks for cultural heritage, unlike others, is neither static nor strictly conservationist. Rather, it is based on the principle of *safeguarding* – the implication being that cultural practices are in a state of constant transformation. That said, the significance of this instrument is not limited to its definitions;

it also specifies methods for putting it into practice. These include the compilation of national inventories or registers and inscription on international lists (such as the *Representative List* or the *Urgent Safeguarding List*), based on dossiers with evidence of community recognition, protective measures and plans for transmission.

To ensure the continuity of traditional practices, states must implement concrete measures based on such safeguarding plans, including educational programs, strengthening of institutions and protection of the cultural environment. A system for international cooperation and technical assistance may offer additional support, as well as access to financing through the *Intangible Cultural Heritage Fund*.⁵²

Inclusion on the safeguarding lists, it must be stressed, confers neither property rights nor control over the economic use of recognised practices, and effective plans for safeguarding depend to a large extent on the institutional capacity and commitment of the state to implement them. Furthermore, nomination processes may be highly technical or protracted, thus tending to favour those with greater access to administrative resources and specialised knowledge. Thus, while the convention establishes a robust framework for cultural recognition and transmission, it is not in itself a tool for economic regulation or protection against the threat of outside misappropriation.

In this regard, the 2005 **Convention on the Protection and Promotion of the Diversity of Cultural Expressions**⁵³ enables states to step in and protect cultures from trade liberalisation processes. Its most significant mechanism is the explicit recognition of the sovereign right of states to adopt policies for the protection and encouragement of cultural expression.

These include such instruments as subsidies, tax incentives, market regulation and preferential conditions for the production and circulation of cultural wealth. In addition, the term “cultural exception” may be added



to commercial agreements, which justifies the implementation of certain regulatory measures to protect cultural diversity. The convention also offers provisions for international cooperation, as well as access to the International Fund for Cultural Diversity, which finances projects in developing countries, particularly those for developing cultural industries and institutional skills.

Nevertheless, as with the 2003 convention, these mechanisms are not automatically binding, nor do they require direct implementation. Their effectiveness depends largely on states' political volition and ability to translate the principles into concrete measures. Furthermore, the convention provides no regulation over intellectual property issues or access to resources, limiting its ability to address economic misappropriation. Thus, its chief contribution is establishing a legal framework for the state to intervene in the cultural sphere, rather than setting protective regulations in favour of traditional or autochthonous producers.

A different approach is offered by the 1972 **Convention Concerning the Protection of the World Cultural and Natural Heritage**⁵⁴, which focuses on territorial recognition. Although it does not directly protect cultural practices, it would permit establishing a link between coca and the cultural landscape, recognising the plant's place within complex agroecological systems. This approach could be useful for developing regional initiatives in recognised areas of shared production and use. However, its focus on specific sites and state-centric logic limits its ability to address living, dynamic practices.

For their part, the 1954 **Convention for the Protection of Cultural Property in the Event of Armed Conflict**⁵⁵ and the 1970 **Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property**⁵⁶ offer certain instruments for the protection of coca that, while less direct, may be quite useful in strategic terms. The former opens a particularly relevant

line of interpretation where drug policies lead to the destruction of crops and territories. The latter addresses the misappropriation of traditional knowledge, a pertinent issue in debates over biopiracy. Where practices are embedded in community life, particularly those of Indigenous Peoples, such actions can be seen as infringements on cultural heritage.

Less visible mechanisms, such as the *UNESCO network of facilitators and chairs*, also play a key role in implementation. Their importance resides in their ability to translate regulatory frameworks into concrete processes – facilitating the issuance of dossiers, providing technical training in the field, and coordinating communities and institutions. UNESCO's heritage protection system thus offers no single solution. Rather, it provides a set of tools that, when strategically utilised, may reposition coca under international law, directly challenging the colonial and racist foundations of the global drug prohibition regime.

Taken together, these instruments make it possible to formulate a legal narrative where coca, rather than being viewed solely as a resource, is recognised as a cultural expression with the potential for international protection. The chief challenge, again, lies not in an absence of regulatory tools but in the effective activation of those that exist. The protection of cultural heritage entails technically demanding processes and requires coordination among different institutional levels. Above all, it depends on the active participation of the communities that possess the knowledge and practices to be safeguarded.

3.2 National experiences

Experiences in three Andean countries (Bolivia, Colombia and Peru) show that the protection of coca as cultural heritage, rather than a hypothetical scenario, is an ongoing process. While progress has been uneven and the results still limited, these experiences make it possible

to recognise both the potential and tensions associated with such processes.

Peru has a significant history of recognising cultural heritage linked to traditional practices. Numerous declarations of intangible heritage have been formulated (such as the textile art of Taquile⁵⁷ and the pilgrimage to Qoyllurit'i⁵⁸) that can serve as references for the case of coca. The 2005 **Declaration on the Traditional Uses of Coca as Cultural Heritage**⁵⁹ marked a first step toward recognition of the plant on the national level. However, its scope remained limited, as it did not clearly define the practices, knowledge or cultural contexts to be protected, nor did it establish concrete measures for safeguarding them. In practical terms, the declaration functioned primarily on a symbolic level, without actually implementing any instruments that would ensure effective protection of the knowledge systems associated with coca.

Initiatives under way in the province of La Convención, Cusco department, demonstrate local approaches to recognition of coca as cultural heritage. Unlike general declarations, in this case municipal ordinances were instituted to recognise and protect actual cultural practices associated with the coca leaf. These include ritual uses, forms of community organization and the knowledge networks linked to its cultivation. These efforts have incorporated detailed documentation of traditional systems, including seed selection, germination techniques, growing cycles, harvesting and the social uses of the leaf. The initiative follows the participative approach to safeguarding being promoted at the national level.

In **Bolivia**, one milestone was the recognition by UNESCO of the **traditional medical practices of the Kallawayas** as intangible cultural heritage of humanity.⁶⁰ In this knowledge system, coca plays a central role, alongside other plants, ritual practices and ways of transmitting wisdom. The UNESCO recognition has been widely cited as a textbook case for the protection of intangible cultural heritage, where complex systems of Indigenous medical knowledge and healing

cannot be separated from people's spiritual beliefs and territorial practices.

Beyond the UNESCO declaration, Bolivia has also developed its own set of initiatives to more broadly recognise coca in cultural and political terms. Article 384 of the **Political Constitution**⁶¹ of 2009 establishes that coca, as traditionally and ancestrally used, is part of the country's cultural heritage, as well as a renewable natural resource and an element of social cohesion, thus explicitly recognising its integral role within Bolivian society. This recognition is further elaborated in the **General Coca Law**⁶² (law No. 906, 2017), which defines and protects the traditional uses of coca in social, cultural, ritual, medicinal and productive contexts, incorporating principles of cultural identity and respect for ancestral customs.

In **Colombia**, initiatives are under way for the protection of intangible heritage, in conjunction with the Ministry of Culture, Art and Knowledge, the Ministry of Foreign Affairs and Indigenous Peoples of four regions (the Nasa and Misak, Cauca; the peoples of Chorrera, Department of Amazonas; the peoples of the Sierra Nevada de Santa Marta; and the Indigenous councils of the Jaguares of Yurupari). This coalition submitted a dossier to UNESCO entitled, "*Safeguarding the knowledge systems of Indigenous Peoples: the coca plant (Ayu, Abimaya, Kaji, Jibina, Ipatuina, Maso, Éxs, Ibihe, Jibiho, Jiibi, Ta'áfika, Fatu, Patu Dtkk) handed down by its ancestral creators*".⁶³

This initiative seeks to position the coca plant within a broader cultural context that encompasses knowledge networks, ritual practices and complex regional relationships. Within this scheme, coca is considered an intrinsic symbolic element for Indigenous Peoples, challenging its stigmatisation in the colonialist narratives of the international drug control regime. This development illustrates both the potential for and challenges to the protection of coca as cultural heritage. While it opens legitimate avenues for international recognition, its true impact will depend on the state's ability to guarantee safeguards and

tangible benefits to communities that uphold knowledge of the plant.

Progress in the political recognition of coca use as a legitimate cultural practice can also be observed on the regional level. One example is the **Declaration on the Chewing of the Coca Leaf**⁶⁴ adopted by the **Andean Parliament** in 2019, which recognises the cultural, ancestral and social value of this practice in the Andean nations. Although such instruments are neither legally binding nor capable of implementing safeguarding mechanisms, they remain significant insofar as they support the legitimisation of the traditional uses of coca while challenging its comparison to illicit substances. In this sense, such statements may add weight to political initiatives for cultural recognition at the national and local levels.

Another pertinent experience is the designation of the **Qhapaq Ñan**, or *Andean Road System*⁶⁵ as a cross-border, multinational World Heritage Site. This vast network of pre-Hispanic roads and structures, erected by the Inca Empire over hundreds of years, stretches more than 6000 km traversing six countries: Argentina, Bolivia, Chile, Colombia, Ecuador and Peru. The Qhapaq Ñan encompasses roads, archaeological sites, production systems, ritual practices and forms of social organisation still in use in many of today's Andean communities. Its citation in 2014 on UNESCO's World Heritage List stands as a textbook case of transnational cooperation, with several countries pooling their efforts to submit a joint nomination.

Such a dynamic gains particular importance in the case of coca, since its presence is not limited to the three Andean-Amazonian countries but extends southward to Chile, Argentina and Brazil. In northern Chile, for example, there are traditional uses among Aymara and Lickanantay communities, where the (imported) leaf serves ritual, social and everyday functions linked to community customs and life at high altitudes.⁶⁶ Similarly, coca is part of daily life, work and ritual practices in northwestern Argentina, where it remains socially acceptable despite legal restrictions on its trade.⁶⁷ In Brazil, though its cultivation is not widespread, traditional uses

of the leaf have been documented among the Indigenous communities of the upper Negro-Amazonas river, where it serves ritual functions and forms part of broader cosmological systems.⁶⁸

These experiences point to a central tension: protection of cultural heritage may serve as a mechanism for legitimisation and visibility, but its effectiveness depends on the level of specificity and degree of integration with other systems. When limited to general declarations, its impact remains minor; when based on specific practices, participatory processes, and multi-level (local, national, regional and international) strategies, it can become a more robust tool. In this regard, the aim is not only to protect cultural and ancestral customs but also to mobilise communities, strengthen their collective identities and promote their political rights to defend their knowledge and genetic resources.

4. Intellectual property

As interest grows in the medicinal, industrial, dietary and commercial uses of coca, so too do disputes over its control and the benefits derived from the knowledge and resources associated with the plant. Patents, designations of origin, geographical indications, collective trademarks and plant variety rights are key intellectual property tools for the economic assessment of biological resources and traditional knowledge.

But the international intellectual property system was not designed to protect collective knowledge networks, nor the cultural relationships that Indigenous Peoples maintain with nature and the land. On the contrary, the system has been developed primarily to guarantee exclusive rights to the commercial exploitation of technological innovations and developments. This has caused tensions in the nations of the Global South, where local communities have reported cases of biopiracy, appropriation of ancestral knowledge and privatisation of biological resources without

either their consent or the fair sharing of benefits.

That said, this system offers mechanisms that may prove strategic for protecting certain coca-based products against misuse or misappropriation by outsiders. Instruments such as geographical indications, designations of origin and collective trademarks may actually strengthen regional and community-based methods of production, provided that adequate safeguards are in place and that there is coordination with other international, national and regional systems. Thus, intellectual property, rather than a homogeneous protective system, appears to be a field of contention between models for private appropriation and collective control of the knowledge and resources associated with coca.

4.1 International system

The international intellectual property system consists of a set of treaties designed to protect intellectual creations and facilitate recognition of them among states. Developed along the lines of commercial and private interests, the system has in recent decades been the subject of debates over genetic resources, cultural production and collective rights. It is particularly relevant to coca, as the plant's potential commercial uses are closely tied to the ancestral knowledge and cultural practices of Andean-Amazonian peoples.

One of the most important initiatives in the field, the **Paris Convention for the Protection of Industrial Property**⁶⁹, adopted in 1883, is considered the basis for the modern industrial property system. This system established certain fundamental principles for the international protection of patents, trademarks and designations of origin. Subsequently, the **Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration**⁷⁰, adopted in 1958 under the World Intellectual Property Organization (WIPO), developed a specific system for the international recognition of products connected to a specific territory.

This latter instrument may be particularly relevant to coca insofar as it enables the protection of products characterised by certain geographical, environmental and human factors. In theory, such mechanisms as designations of origin and geographical indications can be used to protect coca-based products that are associated with the regions where they are historically produced. Outside parties would thus be prevented from using names or prestigious reputations linked to such regions without authorisation.

Another key instrument is the 1994 **Agreement on Trade-Related Aspects of Intellectual Property Rights** (TRIPS)⁷¹ within the framework of the World Trade Organization (WTO). This agreement establishes mandatory minimal standards of protection for patents, trademarks, copyright and other intellectual property rights, thus directly linking intellectual property protection to global trade. Unlike previous treaties administered by WIPO, the TRIPS makes use of much stricter compliance mechanisms, thus non-compliance may lead to trade disputes between states.

This agreement makes it mandatory for states to recognise exclusive rights to technological innovations and developments for specified periods and sets measures for the protection of trademarks, geographical indications, trade secrets and plant varieties. In addition, it facilitates the international recognition of



such rights and establishes more stable legal conditions for the global circulation of goods and technologies. From this perspective, the system may be of use to protect coca-based products against imitations or improper commercial use, primarily via *collective trademarks, geographical indications, or certificates of origin*.

That said, the agreement was designed mainly to protect commercial and industrial interests rather than traditional knowledge or ancestral uses. The TRIPS does not require patent applicants to disclose the source of resources they use, nor to demonstrate prior consultation or benefit-sharing with communities holding ancestral knowledge. This omission has been one of the main factors enabling cases of biopiracy and private misappropriation under the colonialist, patriarchal mentality that afflicts the countries of the Global South.⁷²

Expressly in response to such criticisms, for two decades the countries of the South pushed for negotiations under the WIPO to incorporate protective mechanisms against misappropriation of genetic resources and traditional knowledge. The process culminated in May 2024 with the adoption of the **WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge** (GRATK).⁷³ This treaty establishes, for the first time in the international intellectual property system, the obligation to disclose the source of genetic resources and associated traditional knowledge in patent applications (Art. 3). Though the treaty represents progress in addressing historical oversights in the international intellectual property system, its scope remains limited, as it sets no mandatory mechanisms for benefit-sharing, nor does it recognise substantial collective rights over traditional knowledge.

Another framework that could come into conflict with collective rights is the **International Convention for the Protection of New Varieties of Plants**⁷⁴, administered by the International Union for the Protection of New Varieties of Plants (UPOV). In particular, its Act of 1991

strengthens the rights of private breeders while restricting such traditional farming practices as seed exchange and reuse. In the case of coca, where there are multiple varieties and communal systems for growing and selection, such mechanisms could encourage appropriation of developments based on traditional knowledge – especially where there are no robust safeguards for access to genetic resources or sharing of benefits.

On the plus side, the international intellectual property system provides mechanisms for worldwide recognition, which may encourage the protection of coca-derived products against misuse or commercial imitations, given the considerable interest shown in the plant's industrial, medicinal, food and cosmetic uses. Even so, an absence of safeguards (from other systems) could enable private appropriation of varieties, derivatives, methods or knowledge associated with the traditional cultivation and use of coca.

For this reason, various sectors have cautioned that the intellectual property system is not in itself sufficient to guarantee comprehensive protection of nature and associated knowledge. International experience demonstrates how intellectual property tools are as likely to become instruments for appropriation and economic concentration as protection mechanisms, depending on how they are implemented.⁷⁵ One emblematic case was that of Peruvian maca, in which multiple patents for extracts and uses of a plant that had been historically grown and used by Andean communities were registered in the US, Japan and Europe. Different sectors reported that these applications were based on traditional knowledge and biological resources that were obtained without adequate processes for consent or benefit-sharing.⁷⁶ It thus became a textbook case of biopiracy linked to the international intellectual property system.

4.2 Regional system

At the regional level, the Andean Community (CAN) has developed a regulatory framework that is particularly significant for linking intellectual property to the protection of genetic resources and traditional knowledge. The structure of this system is based mainly on **Decision No. 486: Common Regime on Industrial Property**⁷⁷ of 2000. It represents one of the few regional attempts to incorporate safeguards against misappropriation within the system itself.

The decision stipulates that the granting of industrial property rights is contingent upon ensuring safeguards for the biological heritage and traditional knowledge of the Indigenous, Afro and local communities (Art. 3). In this regard, it requires applications for patents to include information on legal access to genetic resources and, where relevant, authorisation for use of associated traditional knowledge (Art. 26(h) and 26(i)). Failure to meet these requirements could result in invalidation of the patent (Art. 75).

In addition to patents, the legislation also covers the creation of collective marks (Art. 180–184), certification marks (Art. 185–189), geographical indications and designations of origin (Art. 201–223). Such tools enable the protection of products linked to specific regions, traditional growing systems and collective forms of production without relying solely on individual forms of privatisation (i.e., patents). As markets open, the CAN's Decision 486 can facilitate forms of regional and community-based valorisation of coca and its derivatives, particularly if coordinated with Decision 391 (1.2 Regional Regime). Thus, comprehensive strategies must combine legal protection, recognition of traditional knowledge and benefit-sharing mechanisms.

Nevertheless, there remain significant tensions within the CAN itself, as can be seen in **Decision No. 345: Common Regime on the Protection of**

the Rights of Breeders of New Plant Varieties⁷⁸ of 1993. This decision is influenced by UPOV's proposed standards. Unlike Decision No. 486, it does not require proof of legal access to genetic resources when registering new plant varieties, nor authorisation for the use of traditional knowledge. It thus entails risks of appropriation of plant varieties developed on the basis of collective knowledge and could favour the concentration of rights among operators with greater technological and commercial capacity.

The chief challenge, then, lies not in creating new instruments but in effectively coordinating the existing ones. The coexistence of systems with different rationales –some geared toward collective protection, others toward the private appropriation of rights– sets up a field of contention that will prove decisive as scientific, industrial and commercial interest in coca heightens. Still, the Andean framework represents one of the few regional platforms in which the chief coca-producing countries share common standards for intellectual property, genetic resources and traditional knowledge.

This situation may pave the way for the development of better coordinated regional mechanisms to protect against risks of biopiracy and misappropriation. ■



CONCLUSIONS

We are dealing with a genetic resource –coca– that has its historical roots in the Andean-Amazonian basin and that is currently used in as many as seven South American countries, both by diverse Indigenous communities and the general population. There it is seen as a potential source of health benefits, as well as a resource with significant potential to bring economic benefit to its traditional cultivators.

The set of legal frameworks described in this report have to date been hardly used to protect knowledge of the coca leaf, or the culture that surrounds it, in favour of the communities that grow and consume it. Their usefulness in this regard is worthy of serious consideration by countries where the coca leaf is a cultural reference point, whether individually or collectively. This is, after all, a cross-border phenomenon. Each of these systems has its own variations and advantages, which can be promoted, strengthened and validated at both the domestic and international levels.

These legal frameworks can also support the rights of the Andean-Amazonian Indigenous Peoples, in particular with regard to the protection of both the traditional and modern uses of coca, to the degree that their provisions have been incorporated into domestic law. The protection of coca also requires coordination between the different international regimes if safeguards against biopiracy and cultural appropriation are to be established. The intellectual property system can be complemented by mechanisms for the protection of biodiversity and genetic resources; the systems for human rights, Indigenous Peoples' rights and protection of tangible and intangible cultural heritage may also be incorporated. Such coordination can reduce the risks of misappropriation and strengthen community control over traditional knowledge, while ensuring that any future economic potential from coca provides benefits to the communities that have historically preserved the plant.

In each of the countries that produce coca – Bolivia, Peru and Colombia– specific frameworks are already in place to enable protections for the cultivation and uses of the leaf by means of its own legislative tools. The Andean governments, Indigenous Peoples and other communities involved must make intensive, pragmatic and consistent use of the mechanisms available under their own laws. This entails the design of genuine Indigenous features to systematically compile the diverse forms of wisdom, with the ultimate aim of developing a typology that covers the entire process from production to consumption.

At the same time, good regional coordination is essential, since coca's collective character transcends borders. Its legacy is shared by the millions of citizens who belong to the Indigenous Peoples of the Andes and Amazon, among them the Quechua, Aymara, Chibcha, Arawak and other peoples from the Amazon rain forest. Such coordination can be achieved, for example, by reviving a committee under the auspices of the CAN dedicated to this issue. Alternatively, an Andean-Amazonian technical committee comprising specialists and representatives of Indigenous Peoples could be formed. It would be their mission to determine the most appropriate mechanism for the different objectives, provide advice for decision-making and facilitate the coordinated processing of petitions, complaints and demands. ■

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