

Kené: art and ancestral legacy in search of legal protection

Guillermo Melgarejo of Colmenares & Asociados reflects on the urgent need to reinforce the regulatory framework for the protection of the traditional knowledge of indigenous people in Peru following the controversy generated by the statements of a fashion designer who suggested that its use should be free.

At the end of 2024, Peru hosted an event called 'Orígenes' (Origins), which aimed to promote innovation and sustainability in the local fashion industry. The speakers included Peruvian designer Anís Samanez, José Forteza, editor of Vogue Mexico and Latin America, and Annalucía Fasson Llosa, a lawyer specializing in fashion law.

“

With the aim of preventing declarations that seek to ignore the right of indigenous communities.

”

Controversy erupted when Samanez's statements regarding her experience trying to establish a collaborative work with the Shipibo-Konibo indigenous community went viral on social networks. She told the audience “the community had refused to share their knowledge of Kené art in exchange for receiving her design expertise”. Instead, the community demanded financial compensation, which came as a surprise and caused confusion for the designer, who considered that her Peruvian nationality entitled her to use their knowledge.

The controversy escalated even further with Forteza's statements, who – *in the following* – expressed that ‘*the heritage of humanity means that it belongs to everyone*’, suggesting that the Shipibo-Konibo community did not have the right to condition the use of their art (kené). These statements, questioned only by Fasson Llosa during the event, were received by Peruvian society as a flagrant case of cultural appropriation, which not only discredited the designer professionally, but also caused her to suffer significant financial losses in the competitive local fashion sector.



Image: Peruvian Ministry of Culture

In the wake of the controversy, the Peruvian Ministry of Culture expressed its rejection of the statements made, emphasizing that the Kené design has been recognized as part of the nation's cultural heritage by Directorial Resolution No. 540/INC-2008, as it is an essential element of the worldview and culture of the Shipibo-Konibo people native to the Peruvian Amazon. Likewise, the ministry reaffirmed its commitment to protect traditional knowledge and condemned any act of cultural appropriation. However, we consider that this pronouncement is merely symbolic and highlights the urgent need to establish a specific regulatory framework that guarantees the protection of this traditional knowledge. This includes the development of regulations that include incentives for its effective compliance and sanctions aimed at preventing situations that harm the holders of this ancestral knowledge. It is worth remembering that in the past there have been cases of violations of the rights of the Shipibo-Konibo community, such as the one that occurred in 2018, when the textile company Kuna used Kené designs without prior authorization or granting the corresponding economic recognition to the community. These events reflect a pattern of repeated actions that continue to affect the cultural and economic rights of the Shipibo-Konibo people due to the lack of a regulatory framework that protects them in a comprehensive manner.

In Peru, Law No. 27811 has been in force since 2002, establishing the *Regime for the Protection of the Collective Knowledge of Indigenous Peoples Linked to Biological Resources*. It should be noted that the aforementioned law expressly limits the scope of protection exclusively to knowledge or know-how that has a direct link to biological resources, leaving aside other traditional knowledge of an intangible nature. In contrast to the current law, legislative initiatives have

emerged in Peru which, although they did not manage to progress towards enactment, sought to cover a broader spectrum of protection. An example of this was the law project No. 2754/2001-CR, whose scope of protection extended to various community cultural manifestations such as Kené design, which is the subject of this reflection. This approach is relevant for improving the current law, with the aim of preventing declarations that seek to ignore the right of indigenous communities to decide on the use of their collective knowledge, especially when third parties try to incorporate it into the commercial circuits of the fashion industry.



Image: Helena De Bragança, Dior



Its elaboration contains a deep and enigmatic meaning, as it represents the healing energy of the sacred plants of the Amazon.



The current law, despite its limitations, represents significant progress on the road towards more comprehensive protection of the collective knowledge of indigenous communities, especially in a context in which much of this knowledge still lacks adequate protection. This regulatory framework lays the foundations for developing future reforms that expand and strengthen the rights of these communities against possible violations arising from their use by third parties. Likewise, a reading of the objectives established in Article 5 of the Law¹ highlights fundamental aspects such as:

- The fair and equitable distribution of the benefits generated by the use of collective knowledge, which seeks to guarantee that indigenous communities receive adequate compensation for the exploitation of their knowledge.
- To ensure that the use of collective knowledge is carried out with the prior informed consent of indigenous people.

On the other hand, one wonders what makes the intricate Kené designs so highly valued, to the point that the prestigious fashion house Dior has incorporated them into the reinterpretation of its iconic Lady Dior bag? The answer can be

found in the work of Sara Flores, a renowned artist from the Shipibo-Konibo community, who was the creator of this reinterpretation. Flores, whose creations have been exhibited in prestigious galleries around the world, has managed to capture and transmit the cultural and aesthetic richness of Kené art in her diverse pieces, exquisitely projecting it onto the global stage.

At first glance, Kené might appear to be a series of geometric figures contained within a structure. However, its elaboration contains a deep and enigmatic meaning, as it represents the healing energy of the sacred plants of the Amazon, and its designs are the result of spiritual visions that emerge during the consumption of these plants. In this way, kené breaks through the superficial barriers of aesthetics to become the materialization of complex spiritual experiences, reflecting the worldview and connection of the Shipibo-Konibo community with nature and the spiritual world.

¹ Law No. 27811, which establishes *the Regime for the Protection of the Collective Knowledge of Indigenous Peoples linked to Biological Resources*