

No. 183

RAFAEL CORREA DELGADO

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

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WHEREAS:

Article 3.1 of the Constitution of the Republic stipulates that the State has a fundamental duty to guarantee, without any discrimination whatsoever, the effective enjoyment of the rights established in the Constitution and in international instruments, in particular, rights recognized by the Constitution, such as the right to food;

under Article 13 of the Constitution, individuals and community groups have the right to safe and permanent access to sufficient quantities of healthy and nutritious food; preferably produced locally and in keeping with their various identities and cultural traditions. In the same Article it is also established that the State shall promote food sovereignty;

Article 15 of the Constitution prohibits, among other things, the development, production, ownership, marketing, importation, transport, storage and use of agrochemicals banned at the international level;

Article 66(2) of the Constitution of the Republic recognizes the right of individuals to a dignified life, which guarantees health, food and nutrition, as well as other elements indispensable to human life and necessary social services;

under Article 281 of the Constitution of the Republic, food sovereignty constitutes a strategic objective with a view to ensuring self-sufficiency in terms of healthy and culturally-appropriate food on a permanent basis;

indent (8) of the same Article states that, in order to achieve food sovereignty, the State has a duty to ensure the development of scientific research and technological innovation;

indent (13) of said Article establishes that the State is responsible for prevention and the protection of citizens with regard to the consumption of

food that is contaminated or that poses a risk to human health, or the effects of which are unclear from a scientific point of view;

under Ecuadorian national and community intellectual property regulations, as well as those set out in international treaties, the dissemination and responsible use, for the good of all, of scientific knowledge arising from human progress forms an integral part of development;

under Article 283 of the Constitution, Ecuador's economic system is socially oriented and mutually supportive; it recognizes the human being as both the subject and the end of production; it tends towards a dynamic, balanced relationship between society, State and the market;

in the interests of the development of a socially oriented and mutually supportive economic system, Article 284(3) of the Constitution establishes that one of the objectives of economic policy shall be to ensure food and energy sovereignty;

under Article 304(4) of the Constitution, one of the objectives of trade policy is to contribute to efforts to guarantee food sovereignty and to reduce internal inequalities;

under Article 10 of the Organic Law on Food Sovereignty, the State is responsible for fostering scientific and technological research in the field of agro-food, with the aim of improving the nutritional quality of foodstuffs, as well as productivity and food safety;

Article 31 of the standards concerning the availability, scope and use of Intellectual Property Rights contained in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the World Trade Organization (WTO) recognizes the right of countries to issue compulsory licenses for product patents when such action is deemed to be in the public interest on public policy grounds;

Objective No. 11 of the National Development Plan 2007-2010, enacted through Executive Decree 745 of April 7, 2008, is: "The establishment of a mutually-supportive and sustainable economic system";

With a view to fulfilling this objective, the said National Development Plan establishes policy 11.1: “The provision of a basket of nutritional, affordable, safe and continuously available food to the population, based on national agricultural production”, one of the strategies being the use of compulsory licenses as an instrument for reducing the cost of agricultural/livestock inputs, a key element in ensuring that the food basket is accessible to as many inhabitants as possible;

the Andean Standard provided for in Decision 486, which establishes the Common Intellectual Property Regime, makes provision for a Compulsory Licensing Regime, as does Ecuador’s Law on Intellectual Property;

in exercising the powers conferred by indents 1 and 3 of Article 147 of the Constitution of the Republic and Decision 486 of the Andean Community of Nations, as well as Article 154 of the Law on Intellectual Property,

DECREES:

Article 1.- that access to agrochemicals used in agricultural production is of public interest and that, consequently, compulsory licenses may be granted for patents for agricultural inputs necessary for the production of food that may be intended for domestic consumption.

Access to agrochemicals or any agricultural/livestock input that is not in line with the constitutional principles of food sovereignty, the right to a healthy environment, the quality of life regime (biodiversity) and with the rights of the natural world shall not be deemed to be in the public interest. This Executive Decree shall be applied subject to Article 18 of Constituent Mandate No. 16.

Article 2.- the Ecuadorian Institute of Intellectual Property (IEPI), through the National Directorate of Industrial Property, is the competent national office for granting compulsory licenses to applicants, on the condition that they meet the requirements laid out in the relevant legislation and in this Decree. Authorization of compulsory licenses shall be considered depending on the specific circumstances and grounds must be provided in each case. IEPI shall grant compulsory licenses in coordination with the Ecuadorian Agency for Agricultural Quality Assurance.

Article 3.- The Ecuadorian Institute of Intellectual Property, through the National Directorate of Industrial Property, shall establish the scope, object and period for which the license shall be granted, as well as the amount and conditions of payment of the royalties of that license, together with any other conditions set out in the relevant regulation.

Article 4.- The Ecuadorian Institute of Intellectual Property, through the National Directorate of Industrial Property, shall, in accordance with the provisions of the relevant legislation, notify patent holders that they are subject to the compulsory licensing regime.

Article 5.- The period of duration of the compulsory license shall be set by the competent body of the Ecuadorian Institute of Intellectual Property. This period may be brought to an end by the same authority, on the condition that the legitimate interests of the persons having received authorization for such licenses enjoy appropriate protection, if the circumstances under which the licenses were granted no longer exist and it is unlikely that those circumstances will arise again.

Article 6.- This Decree shall enter into force as of its publication in the Official Register.

General Provision.- The Ecuadorian Institute of Intellectual Property and the Ecuadorian Agency for Agricultural Quality Assurance shall be responsible for the implementation of the present Decree, depending on the scope of their competency.

Done at the National Palace, in Quito, on December 21, 2009

Signed

Rafael Correa Delgado

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

Signed

Nathalie Cely

**COORDINATING MINISTER FOR PRODUCTION, EMPLOYMENT AND
COMPETITIVENESS**