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## INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

**Eighth Session**  
**Geneva, June 6 to 10, 2005**

### WIPO PANEL ON, "INDIGENOUS AND LOCAL COMMUNITIES' CONCERNS AND EXPERIENCES IN PROMOTING, SUSTAINING AND SAFEGUARDING THEIR TRADITIONAL KNOWLEDGE, TRADITIONAL CULTURAL EXPRESSIONS AND GENETIC RESOURCES"

*EXPERIENCES FROM THE NORDIC COUNTRIES*

*JUNE 6, 2005*

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1. My name is Mathias Ahren. I come from the Saami people, an indigenous people to Northern Scandinavia, Finland and the Kola Peninsular in Russia. More particularly, I am from Ora Saksavan Village, as they call it in Swedish. Saami villages are small communities. We are a small community of 31, 000 people. Few families pursue reindeer husbandry together. The Saami Benaw is an administrative object constructed under Swedish law but it builds on an old system on how the Saami society was structured. This is a reindeer herding community which means that we are semi-nomadic, we move the reindeer with the seasons, having more than 300 kilometers between our summer pasture and winter pasture areas, and most of my family are still active in reindeer husbandry and that's their livelihood together with hunting and fishing. I went to school and have studied law and also practiced in a law firm before now working full time with indigenous and Saami rights but mostly from a human rights perspective.

2. We still pursue our traditional lifestyle, I guess we are lucky in that sense even though reindeer herding is under a lot of pressure, we are an indigenous people that managed to preserve our traditional lifestyle that is quite distinct when it comes to reindeer herding from the surrounding society, and even though today we use snowmobiles, motorcycles, sometimes even helicopters, and it's been quite modernized, it's in its essential pursued in very much the same way as it has for hundreds and thousands of years.

3. I would like to also to thank WIPO for organizing this panel and allowing me the opportunity to be on it. I would like to say though that I don't view this as a substitute for the claim people made at the last session that the speaking order in this committee needs to be changed in order for us to give our perspectives on the various documents not always last but in between governments so that we can get a response to our points of view. For most, if not all indigenous peoples, and for the Saami people our traditional knowledge and cultural expressions spring from our way of life and as it was pointed out it is very much integrated into a holistic whole and we cannot really separate the genetic resources from the knowledge or the cultural expressions. Saami costume, for example, or all the clothes you're wearing are designed to be practical for the life you're conducting but they also reflect our beliefs and our identity so it represents a combination of knowledge of how to survive in our environment but it also reflects artistic expressions and designed to show who we are. There are not many Saami people who have been participating in this Committee, but if they did you would see that they would probably come in costumes that are quite different from mine. That very much depends on the region, and the patterns here and also on the belt that you cannot see tell from what community and what family I am and also that I come from reindeer herding community.

4. And of course the same applies to our traditional songs, the joik that some of you might have heard and our stories and literature. These, in addition to being cultural expressions, also contain elements of our traditional knowledge that are mostly, particularly these songs, related to our traditional livelihoods, in my case the reindeer herding, so these songs would contain knowledge of how to pursue the reindeer herding. It would tell about how the wind affects the reindeer and where to find the reindeer depending on how the wind has been blowing. It tells about the predatory animals and how they will scatter the herds and where you would find them after such attacks and so on. These are essential elements for reindeer herding to survive.

5. Saami people are not so rich in genetic resources coming from an Arctic climate. There are some plants that have medical affects, for example, to stave off hunger, but there are few examples of these being misappropriated. Some of you might have heard that in some

countries reindeer are exported to people who believe they have positive medicinal effects. I cannot tell whether this is true. The Saami people have never needed any such medicines.

6. Preparing for this panel I was asked why these cultural elements are important to us and for me the answer is very obvious. The traditional knowledge and the country expressions are part of our identity and fundamental to the continued existence of our culture. Traditional knowledge relating to our traditional livelihoods makes us, Saami reindeer herders, hunters and fishers, distinct from those who fish and hunt in a more conventional way. And of course much of who we are, are encompassed in our songs and lyrics, in our handicrafts and traditional dresses, which all have evolved from thousands of years and therefore could be compared to a history book that explains who we are as a people, as a community, and as an individual. So without these elements we lack the history, personal identity and will no longer exist as a distinct people, separate from the majority society.

7. Many of my colleagues have addressed customary laws, so I will not go too much into that. Saami people, also as most if not all indigenous peoples, have distinct legal systems that have evolved before the colonization of our areas. I would like to make two points with regard to this customary legal system, one is that it includes, and this has not been mentioned so much today, a mechanism for dispute resolutions. What will happen if there is a conflict in the Saami society? If it's settled in a traditional way, two elders, two wise men, from the separate communities would meet and basically sit down together and talk until they have found a solution to their dispute. So you could say that in the dispute resolutions in the Saami society there is never a winner or a loser, it's not that any one wins the case or anyone loses the case, it is settled in a way to make sure that you have continued balance and harmony in the society.

8. Since we are dealing particularly with traditional cultural expressions here, I'd like to give an example of how our customary laws are distinctive from other traditional intellectual property regimes. The Saami joik, a song, is very often about the nature, about the animals and so on, but it can also be about the person. You say that you "joik" a person. When that happens that song is perceived by us as a part of identity of that person, so the holder of the song and the holder of the rights, to the extent you can talk about rights in the Saami society, to this song would be the person, the object of the song and not the composer. So if you apply some kind of intellectual property regime to the Saami songs about persons it would not be enough to get the consent, rather it would be totally wrong to seek the consent from the composer, the one who needs to agree to further use of that song would be the object of the song.

9. Regarding misappropriation and misuse, most TK for us is intrinsically connected to our traditional livelihoods and very culture-specific, in my case that is reindeer herding. They are not subject to exploitation by others and I don't know any examples of reindeer herding traditional knowledge being exploited for commercial purposes. I don't really see how it could be done either. And, as I said, we have not many plants that could be commercially exploited. The biggest problem we have in TK is actually that we are about to lose it and much of the traditional knowledge gets lost with all the people when they die and even though I said we try to pursue our livelihood essentially in the same way as before, we cannot deny that the modernization of the reindeer herding has resulted in a loss of the substantial part of traditional knowledge and we are trying to prevent that now through documenting it, talking to all the people.

10. Another problem with traditional knowledge for us is the lack of respect for it in conventional research and so on. Today, since we are sharing our areas with other people there are quite a lot of regulations with reindeer herding and so on among other things about how many reindeer there can be in certain areas and we often feel that this research and the decisions taken are based only on conventional research and disregard our traditional knowledge on this issue which of course is substantial. That's been our business for thousands of years to make sure that the reindeer has food, and even though we can see that there are a lot of reindeer and they are fat and otherwise living a good life, there is this guy in a grey suit somewhere a hundred kilometers away from our areas that has been studying some satellite photographs telling that there is not enough grazing or pasture for the reindeer, and this is a substantial problem for us.

11. Two of the biggest problems we have with these issues are those related to our cultural expressions. There are many instances of the Saami dress being used and copied by non-Saami people, and as I said for us it represents a part of our identity, tells us who we are, so obviously this is very problematic for us. Regarding the songs, the joik I have also mentioned, there are several indications where they have been copied and used by others without acknowledgement or remuneration being paid back to the community or the actual composer. Same concerns handicrafts and so on. There are example of our shoes, that combine traditional knowledge and cultural expressions - they are designed but they are also made to resist both cold and water and snow still being light and flexible when you move, being manufactured for commercial purposes. Mostly the design, they witness the part of them being actually able to use in a rougher climate.

12. I've skipped the community response but obviously I've tried to lobby for lost art, to prevent this kind of misappropriation, and the biggest problem we have here is actually with the tourist industry, particularly in Finland, which uses elements of the Saami culture often in an offensive way and always without any real acknowledgement - building fake Saami villages with actors portraying to be Saami persons, drunk, with hay in their hair and so on. And in certain areas, particularly in the Romaniemi area in Northern Finland, where you also have the Santa Claus park that many of you might have heard of, this has gone so far that the only people you will see wearing traditional Saami dresses would be tourist guides. The Saami people living in the area there are too ashamed and they will not wear them themselves because they will be subject for ridicule.

13. Many points have been raised on the need and expectations of indigenous peoples from this IGC. I will raise a point that has not been discussed so much. Indigenous peoples have often stressed the defensive protection as an aspect of the what this committee could do, but it is actually also true that if we could have control, exercise greater control over culture, it could also assist us financially when we have things that we want to market and can market and that would help us to achieve something that I have as a dream for the Saami people. I think that most indigenous peoples have that dream that we can sustain ourselves without a system of transfer of money that we live under today, and then that we can be truly self-determining if we control our resources to the extent that we can, that we can have the financial possibility to design our society the way that we want it. Of course it's a parallel issue to us of exercising control over the minerals and forests in our area, but I see a clear comparison with control of natural resources in the system they have introduced in Canada when it comes to minerals and the deep sea fishing in New Zealand. And of course it's also important for the Saami artists to be able to sustain themselves in the evolving the Saami culture.

14. Regarding defensive protection, I also would like to raise some issue that has not been raised that much before. For me the biggest risk in the fact that non-Saami persons and companies utilize elements of the Saami culture is that it deludes the borderline between the Saami and the non-Saami societies. As you might have noticed for outsiders it might not be so easy to distinguish between a Saami and another person coming from these areas. So when this is the case, if you have respect from the surrounding society for our rights and our values, it's very important that they can see a distinction between the two people and of course that distinction disappears when non-Saami people start to wear these kind of dresses and in other ways use these elements of the Saami culture and that makes it difficult for surrounding society to respect their rights. I would like to emphasize that in Sweden and Norway the reindeer herding is the sole right of the Saami people. Non-Saami people can not pursue reindeer husbandry. But that is not the case in Finland, and I think that's the reason why we see a difference between these countries when it comes to respect for the Saami culture and actually in one of the very first IGCs there was a questionnaire where countries were asked if they had *sui generis* system for the protection of traditional knowledge, and the Swedish government actually quite insightful said: "well, not really but we have this law that makes reindeer husbandry a sole right of the Saami people", and its actually true that it could be viewed as a *sui generis* protection of the our culture. And I invite the IGC to look further at such solutions.

15. To conclude with my recommendations, we need to have a better protection of elements of indigenous culture that are in the so-called public domain. I appreciate the document 8/4 and 8/5 that are clear improvement from the last workshop but I still don't think they have managed to strike a balance on this sensitive issue. As I said for us it's not always the problem only with the offensive use but the use itself by others can be a serious problem for indigenous peoples and definitely for the Saami people.

16. Secondly many people have mentioned the customary law and I will not say any more. I would just recall that there has been a decision made by this Committee to do a study on this and I think if they're ever going to reach the goal we want to reach there has to be an increased attention to this issue. I know there are financial implications but I think this has to be addressed as a matter of priority.

17. And thirdly and finally, many indigenous representatives have repeatedly pointed out that even if this body should get everything right, which I guess is not likely, they will still not get all the way word for word indigenous peoples needs. We need a holistic approach to this. There is a need for cooperation with other UN system organizations, most notably the Office of the High Commissioner for Human Rights and the Permanent Forum on Indigenous Issues, and I know that the Permanent Forum decided on its last session to authorize a seminar where the relevant UN system organizations get together to discuss this, to commence the work on the holistic approach to these issues and I very much encourage WIPO and the IGC to work with the Permanent Forum in this regard.

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