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

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**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 PERU

JUNE 6, 2005

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* This document comprises the presentation in the form received from the presenter. Any views expressed in the presentation are not necessarily those of WIPO or any of its Member States.

1. I also would like thank this Committee for giving me the opportunity to present a case in the making in Salapu where six communities have joined their lands together to work towards more interior holistic moral of protecting traditional knowledge. What I'm going to do is first of all I'm going to give a brief introduction to the nature of all of Q'eqchi' traditional knowledge and customary laws and talk a little bit about the conditions and trends that are driving changes with regards to traditional knowledge in our region. Then I would like to present very briefly the moral of the potato park as a background of two cases that we have developed recently. One is the moral agreement between the potato park communities and the international potato centre for the reputation of making potatoes from gene banks of the seed to the potato park communities, and secondly an inter-community agreement for benefit sharing based on customary laws. Finally, I would like to also propose a couple of recommendations.

2. With regard to the nature of Q'eqchi' traditional knowledge, I would like to introduce this concept of collective biocultural heritage because within our concept the intangible parts of the knowledge of the intellectual expression and the tangible part of the resource be it biological, genetic and its spatial, the spatial context where this knowledge happens cannot be separated and those are bound by the spiritual expressions and customary laws that go over in those knowledge systems. Therefore the nature of our Q'eqchi' traditional knowledge can be embedded in this concept by cultural heritage which covers knowledge in the practices of the communities that are very much linked to the traditional resource and territories which include of course biological diversity and cultural and spiritual values and customary laws that are shaped by the ecological context of the communities. In our case, mountains apply a strong role and how customary laws and institutions are used. Now those components are pretty much an interaction and we are as the centre circle show the spiritual aspects of the knowledge are very important.

3. How knowledge is important for us? We are, as you know about Peru, live in a very complex environment with drastic changes in climate and ecology and with the many factors that affect our population, so the adapting management of complex systems is something that we have developed. Our mountains are very changing eco systems of a management or verticality, complementarity, especially diversity as a response to complexity is one of the characteristics of the knowledge and that is why we have, for instance, such a diversity of potatoes and vegetables for the crops. And of course this heritage also provides us food and helps security, provides for jobs and shelters people against poverty. And also it is the basis of our cultural survival because they are continued practice of the culture and projects in to the future. Because of the spiritual values we believe that the spiritual component of the knowledge is linked to an ethical approach to the economy and as you know in most indigenous societies the management of this capital is linked to sustainability. Finally, governments and institutions of managing landscapes by diversity and cultural expressions are known by customary laws.

4. Customary laws have been affected by the Spanish Conquest but nevertheless we, Q'eqchi' communities, continue to practice them and use them and the through research we're doing on customary laws and genetic resources have identified that there are legal principles, and those are reciprocity to our equilibrium, and on those we are developing tools for protecting traditional knowledge and as well for developing models of benefit sharing.

5. As it has been mentioned, Q'eqchi' customary laws are those awaiting a set of rules and they were lasting in community life. This includes also management knowledge and how we administer genetic resources. And in this case though most people, most community

members, know that these rules of application are in the hands of traditional authorities. But here we make a difference; we also recognize the existence of Q'eqchi'an indigenous law which is a body of law that includes customary laws and derivatives of customary laws as having qualified by Q'eqchi'an communities. So there are communities where when people do their by-laws they use derivatives of customary laws and also derivatives or elements of Peruvian law and at the same time development has incorporated customary laws within their legal body.

6. In terms of a good relationship with the knowledge management systems, those norms influence the practices that define custodianship and the nature of collective ownership. They define or influence rights or responsibilities, access, dissemination or preservation of knowledge and especially how knowledge is passed on between generations.

7. Many variables influence how people choose customary laws or formal means of law, I mean there're statutory law and those are now the focus of my study that we are doing with international environment and development focusing on viability of potatoes. Also cultural practices, especially in Peru, relate to agriculture and international laws. That means that derivatives of customary law are within the national law and the management of the biocultural heritage has adapted to the evolution of Q'eqchi'an customary law and indigenous law. And finally, State authorities apply or choose to use customary laws or indigenous laws when the statutory law doesn't work.

8. Regarding conditions of strengths, I'm going to just focus on external conditions and trends and those are well known rights, particularly those associated with misappropriation and misuse of traditional knowledge and also loss of land rights. There is also cultural diversity and the need to protect human rights, I think it's essential to ensure that indigenous cultures survive for the benefit in general. Population growth and the creation of the environment, power relations and particularly in our case the race of new technologies, biotechnologies, as they have the capacity to either be useful or damage, they also can strengthen and weaken knowledge systems and indigenous cultures.

9. Some of the cases we had with biopiracy are well known, the Markar case, Sanyatako, etc., which is a human gene related case, as well as and music, designs.

10. I would like to end on that background that what we are proposing is to use the landscape and the components of the landscape some more for protecting traditional knowledge. The potato park is a community conserved area located in Cusco where six communities have joined their land together, roughly 13 - 15,000 hectares, around 7,500 inhabitants, and as you see it is a microcenter for origin of diversity of potatoes. In the park, we have more than 1,200 different varieties of potatoes. It's a critical eco system and because of all those conditions lots of people are dependent on biocultural resources. The red points show the diversity of potatoes in the Andes and we are right at the centre.

11. The objectives of potato park are to establish as originators a form of protection for the collective bio cultural heritage of Q'eqchi'an people that goes beyond the IP system and respects and responds to the distinctive characteristic of the landscape which is a mountain landscape and knowledge system and culture. So we want to bring together the tangible, intangible and the spatial aspect that makes this knowledge system work into one model of protection. We use the landscape management as positive protection and different IP tools within the park as defensive protection mechanisms so in a way that this project responds to needs and aspirations associated with communities' cultural and spiritual values and

wellbeing and promotes the role of Q'eqchi'an people in biodiversity, particularly in a wide diversity, because this is a part that is focusing on potatoes and establishes a more equitable sharing of benefits derived from the use of the collective biocultural heritage based on principles of equity associated to customary laws.

12. The project seeks to link knowledge culture and spiritual values, customary laws, and biological resources and landscapes to ensure the maintenance and integrity of Q'eqchi'an knowledge systems and it focuses on protecting and promoting the collective biocultural heritage in order to enhance the livelihood options for the six communities that make the park. The key components are landscape management based on customary laws and the economy collectives which are giving added value to the biodiversity and genetic resources and provide for the use of IP tools such as collective trademarks and geographical indicators. In terms of managing the landscape one thing that perhaps we could highlight is that the management of knowledge is a function of the management of landscape and the maintenance of spiritual values and cultural identity. We also have a biodiversity knowledge register, and this is adapting a traditional Hispanic Andean binary system of recording and collecting information. We use this as a basis of developing a database because this is closely related to a systemology of their knowledge system. The database is linked to a multimedia technology and to intercultural educational curricula in the schools in the park.

13. The first case I want to talk briefly about is the repatriation agreement that the six communities have signed with the International Potato Center (CIP). As you know, collections happened in the 60's. In those times there was no prior informed consent but nonetheless even though the CBD and FAO treaties have been coming into force very little has been done in terms of recognizing the rights of indigenous and local communities. So in 2002 a delegation of communities of the potato park went to Lima and asked SEEP for the repatriation of the collective material and also they requested that these record changes include a restitution of the rights of the knowledge of resources, and that benefits from past uses be given to the park communities.

14. We signed an initial memorandum of understanding and we started to collect gene materials from, and began to develop an agreement that recognized the rights and responsibilities of the potato park communities CIP. So, in last December, after two years we finally signed the agreement. This agreement unlocks the potato gene bank and repatriates biological diversity to the communities and to the natural environment for local and law benefit, recognizes the rights of Q'eqchi'an communities. Protection is established in the provision of the agreement and so the knowledge remains under custody of local communities and not under intellectual property rights in any form. With this we are challenging the change of privatizing genetic resources and indigenous knowledge. We are linking this with this agreement on benefits that can be extended to the landscape and we can have a more holistic approach to acts of benefit sharing agreements and more importantly it creates opportunities for others in poverty alleviation through biodiversity and conservation and use, and restitutes rights that were laws when the collections of the materials took place.

15. Regarding customary laws, there is an inter-community agreement to see how the benefits the potato seed park can be shared among communities and this is going to be our next seed potato park agreement. And it focuses on equitable benefit sharing and free flow resources. So communities are encouraged to exchange genetic materials freely by requiring that all derivatives must be free as well. For this we use the local register because it established rights of the knowledge and resources and we have a community protocol that commits all uses to the principle of no patents on life. We have a more comprehensive

program of repatriation and benefits that are coming from CIP, and we are now in the process of construction of storage rooms for the material that has been repatriated, greenhouses, a restaurant for potato, making potatoes and eco museum. And with the inter-community agreement that is being developed, we think that there is no adequate national or international legal policy protection for biocultural heritage so there is a lack of holistic and adapted cultural laws to protect traditional knowledge in this fashion.

16. In the case of Peru, for instance, we have a national law against limited protection to traditional knowledge because of its rigid precision on purpose while the potato park approach is more flexible, comprehensive, inclusive and holistic. We believe there is a need to consider the communities' own approach to protecting and managing the knowledge innovation systems and this must reinforce the holistic nature of knowledge management and customary systemship and ways of transmitting knowledge. Knowledge protections should serve purposes of ensuring poverty alleviation and survival of indigenous peoples of distinctive cultures and safeguarding traditional knowledge for mankind as a whole and those incentives of maintaining and preserving traditional knowledge should be linked to broader conception of equity and respect for indigenous peoples' rights.

17. We think that the IGC should recognize the holistic nature of traditional knowledge in rituals and practices of indigenous peoples and particularly the customary laws that are shared within the particular sociological context. So far the IGC policy objectives and principles focus on the protection of the intellectual companies without adding its holistic character of traditional knowledge and don't take into account the links between traditional knowledge material and special cultural elements which play, as you have seen in this case, a critical role in sustaining local knowledge systems. The current objectives should be guided by the holistic concept of collective biocultural heritage.

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