

Report on the Workshop on Sámi Intangible Cultural Heritage

Karasjok 13-15 November 2019



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SÁMEDIGGI
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Content

Summary	2
Background to the workshop	5
Planning and format of the workshop	5
Recommendations on workshop planning	6
Content of the workshop	8
What is UNESCO and what does it do?	8
UNESCO's conventions and programmes	8
UNESCO's international lists	8
What is WIPO and what does it do?	10
Sámi engagement with WIPO and UNESCO	11
Accredited non-governmental organizations under the Intangible Heritage Convention	13
Possible benefits for Sámi of engaging with UNESCO and WIPO	14
Nordic, Arctic and international fora	14
Intangible heritage, intellectual property and sustainable development	15
UNESCO and WIPO	15
What's the difference between intangible heritage (ICH) and traditional knowledge (TK)?	15
What is the difference between traditional knowledge (TK) and traditional cultural expressions (TCEs)?	17
Can intellectual property protection be applied to intangible cultural heritage or traditional knowledge?	18
What is the difference between ownership of IP rights and stewardship of ICH?	18
What is the difference between safeguarding ICH under the Convention and protection of TK through intellectual property law?	19
Where is the boundary between over-commercialisation and sustainable development?	19
Cases discussed in the workshop that related to ICH, TK and commercialization	20
Tangible and intangible heritage	21
What is the difference between tangible and intangible heritage?	21
What is the difference between ICH safeguarding and conservation of tangible heritage?	23
How can inventorying and nominations (or the development of a tentative list) benefit the Sámi?	25
How can creativity and innovation be encouraged, while the heritage is safeguarded?	27
Broader contexts	28
Land rights, nature and culture	28

Cultural rights and human rights	28
Recommendations on future engagement with UNESCO and WIPO	30
Further resources	32
Intangible cultural heritage and UNESCO	32
Intellectual property and WIPO	32
Notes	33
Attachments	36

This report is made based on a workshop on Sámi Intangible Cultural Heritage arranged by the Sámi Parliament and Arts Council Norway in Karasjok, November 2019. The Workshop was facilitated by UNESCO consultants Harriet Deacon and Rieks Smeets, working with Intangible Cultural Heritage.

COVER PHOTO: Niila Omma adorns a horn. Photo: Ina Omma

Summary

This workshop aimed to assist the Sámi community to discuss the challenges and opportunities of engaging with the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO) for the purposes of safeguarding Sámi intangible cultural heritage (ICH) within the community and/or protecting their traditional knowledge (TK). Discussions in the workshop aimed to consider how Sámi might benefit from doing so. The workshop was held at the Sámi Parliament in Karasjok, Norway, from 13-15 November 2019.

Reflections on the workshop process might assist in the development of other workshops among the Sámi in this field, workshops in Norway for minority groups and also in adapting some workshops to the needs of specific communities within the global capacity-building programme under the UNESCO 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (hereafter, the Intangible Heritage Convention). Significant benefits can be gained from adequate preparation involving community stakeholders and facilitators, use of local case studies that are compared and contrasted with other cases, selection of a broad range of expert participants and community involvement in programme delivery. Programme duration can thereby also be reduced, if discussions are focused and specific.

Although UNESCO and WIPO function at the international level as forums for developing and enabling the implementation of agreements between member states, Sámi can engage as individual experts, indigenous representatives, and/or as members of accredited NGOs with international bodies such as Intergovernmental Committees. Sámi representation at WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (hereafter, the IGC), has, to date, been deeper than at UNESCO's Intangible Heritage Committee, partly because more specific avenues for indigenous engagement were created under the IGC. UNESCO has, however, now placed increasing emphasis on engagement with indigenous peoples. More sustained Sámi engagement with UNESCO's Intangible Heritage Convention at the international level can be achieved through interventions such as accreditation of Sámi Duodji NGO(s) and by making new proposals for indigenous representation along the lines of the International Indigenous Peoples' Forum on World Heritage (IIPFWH). Deeper engagement with the international organs of the Intangible Heritage Convention can assist in raising awareness about Sámi ICH, sharing expertise with others, and raising the profile of indigenous peoples and their ICH under the Convention.

Communities can also engage with UNESCO Conventions or Programmes, especially in their implementation at the national (or regional) level, through the preparation of inventories, tentative lists, or nominations to international heritage lists of the World Heritage and Intangible Heritage Conventions, and the Memory of the World Programme. Some Sámi heritage has already been inscribed or considered for inscription on these international lists. The management of Sámi heritage places and objects can support efforts for safeguarding Sámi ICH, as long as careful attention is paid to the close relationship between tangible and intangible heritage, cultural and natural heritage. Implementing the Intangible Heritage Convention can involve community consultation processes around identification of ICH, and inventorying at the national level, alongside the possible development of a strategic plan for management of Sámi ICH across Sápmi. This potentially benefits Sámi in raising awareness about and promoting enactment and transmission of their ICH. It can highlight links between approaches to cultural heritage management, land rights, human rights and cultural rights in Sápmi.

ICH safeguarding measures can promote community-led sustainable development across Sápmi, if carefully implemented and monitored. The work of Sámi Duodji NGO(s), along with strategic discussions among Sámi on how to balance sustainable development, ICH commercialization and safeguarding, is particularly resonant with the recent focus within the Intangible Heritage Committee on identifying and developing good practices that address the risk of decontextualization and over-commercialization of elements. In this regard, WIPO's capacity building programmes and policy advice may also in future help Sámi work with national governments to develop more appropriate IP policies that can help protect Sámi ICH or TK.

Background to the workshop

Sámi representatives have already been participating in the Intergovernmental Committee of the Intangible Heritage Convention and the WIPO IGC, and in programmes of these organizations. Sámi have also already been engaged in several inscriptions on and nominations to the UNESCO World Heritage List and the Memory of the World Register which relate to their heritage.

UNESCO capacity-building workshops assisting state agencies, NGOs, research institutions and communities in the implementation of the UNESCO Intangible Heritage Convention have been conducted across all UNESCO regions since 2011. These are sometimes funded, as this workshop was, by member states themselves. Increasing numbers of capacity-building workshops have been held in Europe in recent years. In Norway (Trondheim), two workshops were funded by Arts Council Norway on 12-16 May 2014 and 19-23 Oct 2015 (facilitated by the authors of this report). The topics of these workshops were the implementation of the Convention in general (a training of trainers' workshop), and inventorying and nominations, respectively. A Sámi representative attended the workshop in Trondheim 2014, and some attended a workshop on safeguarding and nominations under the Intangible Heritage Convention in Finland in 2018.

Given this background, the Sámi Parliament in Norway requested a workshop specifically designed around the needs of the Sámi community. The workshop aimed to assist the Sámi community to discuss the challenges and opportunities of engaging further with UNESCO and WIPO for the purposes of safeguarding their ICH or protecting their TK within the community, and to consider how they might benefit from doing so. The workshop was held at the Sámi Parliament in Karasjok, Norway, from 13-15 November 2019.

The Karasjok workshop was planned jointly by the Arts Council Norway and the Sámi Parliament. Arts Council Norway is the government agency responsible for implementation of the Convention in the country, since a reorganization of the sector in 2011. Since the early 1990s the Sámi Parliament in Norway (established since 1989 with the main location in Karasjok), has borne responsibilities that include the development of the Sámi language in Norway, the promotion and protection of Sámi culture, and the protection of Sámi cultural heritage sites.

The workshop had a strong international dimension because the homeland of the Sámi, Sápmi, cuts across the northern reaches of Norway (where the majority of Sámi live), Sweden, Finland and Russia. Sámi Parliaments have also been established in Sweden (since 1993) and Finland (since 1996). The interests of the Sámi are also represented by the Saami Council (founded in 1956), a voluntary non-governmental Sámi organization, with member organizations in Norway, Sweden, Finland and Russia. It has a Culture Unit that aims to 'strengthen both traditional and modern Saami culture'.¹

Planning and format of the workshop

In the UNESCO global capacity-building programme, most workshops are conducted with government officials, researchers and NGOs, and representatives from a variety of local communities. The 2019 Karasjok workshop was unusual in being oriented towards the needs of a specific community (the Sámi) only. To achieve suitable tailoring of content, two people from the Sámi Parliament's administration (Siri Wernberg and Silja Somby) worked closely with the

facilitators and Hildegunn Bjørgen of Arts Council Norway in planning the workshop, deciding what issues would be covered and what examples relating to the Sámi would be used in the workshop.

The organizers were able to bring together a wide range of participants for the workshop (see Annex 1, List of Participants), in the fields of education, culture, sport and handicrafts, museums and archives, language and governance representation. Representatives also came from Sámi organizations in Sweden and Finland, including Sámi Duodji organizations and Sámi parliaments. No representatives of the Sámi community in Russia were present in the workshop. Experienced participants at the workshop presented on key areas of the programme, and considerable time was devoted to discussion and group work. The sessions were translated into English and Sámi. The quality, breadth and level of expertise among the participants made for rich discussion.

Unlike workshops in the UNESCO capacity-building programme, which focus on implementing the Intangible Heritage Convention, the Karasjok programme (see Annex 2, Workshop Programme) covered the work of both UNESCO and WIPO. It also paid greater attention to other UNESCO Conventions, and to programmes such as Memory of the World, generally not discussed in great detail in the conventional UNESCO capacity-building programme workshops for the 2003 Convention. Because of the range of expertise represented in the workshop, and the focus on community needs and interests, a wide range of subjects such as community activism, human rights, land rights, language, education, the role of museums and archives, and repatriation were also discussed in the sessions. Because the Karasjok workshop was short - only three days in duration - it served as a way of linking, energizing or focusing existing debates in these areas, rather than as a comprehensive review of all these topics.

Sámi-related case studies discussed in the workshop included the cultural sites ‘Rock Art of Alta’ (a World Heritage site), and ‘Várjjat siida’ (considered for nomination to the World Heritage List), the archive of the Skolt Sámi village of Suonjel/Suenjel (Memory of the World), the registration of a Sámi sun symbol as a trademark in Norway and (in general terms), issues pertaining to the cooperation and the confidential agreement between Disney and the Saami Council and the Sami Parliaments on the movie ‘Frozen 2’. These Sámi cases and experiences of the participants, for example with repatriation, were compared and contrasted with other cases prepared by the facilitators, on the tension between preservation and safeguarding of traditions around the Zuni war gods, disputes over commercial misappropriation of indigenous Cowichan sweaters during the Vancouver Olympics, misappropriation and licensing of the Zia sun symbol, and the Swedish nomination of the Land of Legends programme to the Representative List. In the discussion groups on case studies, one held in English and the other in Sámi language, participants chose to what extent they wished to discuss Sámi examples only, or refer to these other cases.

Recommendations on workshop planning

Reflections on the workshop process might assist in the development of other workshops among the Sámi in this field, workshops in Norway for minority groups and also in adapting some workshops within the UNESCO capacity-building programme under the Intangible Heritage Convention to the needs of specific communities.

It was highly beneficial to tailor workshop content to community needs. However, since all materials for the capacity-building programme are necessarily generic, this took additional time in planning with assistance from community members. It was particularly time-consuming because it had to be

both much more focused and also much broader in scope than conventional UNESCO capacity building workshops. As facilitators, we had to reformulate most of the materials and write new material, so preparation time approached 15 days per person.

Workshop discussions benefited from the wide range of expertise among participants (some of whom were also presenters). Paying significant attention to the selection of participants was extremely beneficial for the quality of the debate.

While the short duration of the workshop made it difficult to discuss issues in much depth, it contributed to the intensity and commitment of participants, whose busy schedules and long distances to travel might have made a five-day workshop impossible.



WORKSHOP: Group photo from the ICH workshop in Kárášjohka/Karasjok November 13th-15th 2019.
Photo: Sámediggi/Sami parliament, Norway.

Content of the workshop²

What is UNESCO and what does it do?

UNESCO is an intergovernmental organization established in 1946. At present, it has 193 Member States and 11 associate members. Its main aim is to mobilize education, the sciences, culture and communication to foster peace, sustainable development and intercultural dialogue, and to contribute to the eradication of poverty and other inequalities.

UNESCO's conventions and programmes

There are six main UNESCO Conventions in the area of culture:³

1. Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
2. Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
3. Convention on the Protection of the Underwater Cultural Heritage (2001)
4. Convention concerning the Protection of the World Cultural and Natural Heritage (1972)
5. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), and
6. Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)

Three UNESCO Conventions on culture and heritage contribute to the promotion of cultural diversity: the World Heritage Convention, Intangible Heritage Convention and the Convention on the Diversity of Cultural Expressions.

1. The World Heritage Convention (1972) aims at the conservation of cultural and natural sites (properties) of outstanding universal value. 193 States ratified that Convention as of October 2019. This is the best known of all UNESCO's Conventions, in particular because of its World Heritage List.⁴
2. The Intangible Heritage Convention (2003) aims at the safeguarding of the intangible heritage of communities, groups and individuals everywhere in the world. The number of States Parties to this Convention in October 2019 was 178.⁵
3. The Convention on the Diversity of Cultural Expressions (2005) aims to promote cultural diversity by strengthening the chain of creative endeavour, from production to the distribution/dissemination, access and enjoyment of cultural expressions. In October 2019 it had 145 States Parties.⁶

UNESCO also established the 'Memory of the World' Programme in 1992, which set up an international Register of important documentary collections in 1995. This programme aims to help preserve and make accessible the world's documentary heritage, with due recognition of cultural mores and practicalities.⁷

UNESCO's international lists

Several international lists of cultural heritage places, practices and documentary archives have been established under UNESCO Conventions and Programmes. States Parties to the World Heritage Convention may nominate natural or cultural properties to the World Heritage List, after inscribing them on a 'tentative list' at the national level. The main criterion for inscription on the World Heritage List is 'outstanding universal value'. Norway has eight sites inscribed on the World

Heritage List, including the Rock art of Alta (inscribed in 1985). The Laponian area was nominated by Sweden, and inscribed on the list.⁸ An extension of that site ‘The Laponian Area - Tysfjord, the fjord of Hellmobotn and Rago’ has been mentioned for Norway on the Tentative List since 2002.⁹ A recommendation made in 2012 by the Sami Parliament to also include ‘Várjjat siida’ in the Tentative List, was not endorsed at the national level.¹⁰ Discussions on this possible nomination are however ongoing.

After inventorying of an ICH element at the national level, States Parties to the Intangible Heritage Convention may nominate ICH elements present on their territory for inscription on one of the two Lists of the Convention: the Urgent Safeguarding List (the List of ICH in Need of Urgent Safeguarding – Article 17) or the Representative List (the Representative List of the ICH of Humanity – Article 16).

Inscription on the Intangible Heritage Convention’s Lists is justified primarily by the value of the ICH to the communities, groups and individuals who practise and transmit that heritage, as defined by them. The main objective of the Urgent Safeguarding List, obviously, is safeguarding. The Representative List has several objectives; among these are promoting the visibility of ICH, raising awareness of its significance and encouraging dialogue which respects cultural diversity. States Parties may also nominate programmes, projects and activities for inclusion in the Register of Good Safeguarding Practices that the Committee created in conformity with Article 18. The Register was meant to be a major instrument for the exchange of information among States Parties and tradition bearers concerning the safeguarding of ICH.

As of December 2019, 549 ICH elements from 127 countries were inscribed on the ICH lists:

- Representative List: 463 (in 124 countries)
- Urgent Safeguarding List: 64 (in 34 countries)
- Register of Good Safeguarding practices: 22 (in 18 countries)

Although a number of World Heritage sites relate to Sámi cultural heritage, at present no ICH inscriptions pertain to Sámi ICH. The proposed element ‘Nordic Clinker Boat Traditions’, which includes Sámi traditions, is not yet inscribed.¹¹

Member States of UNESCO may nominate documentary archives to the Memory of the World List. Criteria for inclusion on the list include the following:

- Authenticity
- World-wide significance (unique and irreplaceable)
- Individual criteria:
 - Time
 - Place
 - People
 - Subject and theme
 - Form and style
 - Social/spiritual/community significance

So far, 527 inscriptions have been made on the Memory of the World List, 52% of them coming from Europe and North America. Norway has six inscriptions: Henrik Ibsen: a Doll’s House; Roald Amundsen’s South Pole Expedition (1910-1912); Sophus Tromholts Collection (containing some

Sámi portraits); The Castbergian Child Laws of 1915; The Leprosy Archives of Bergen; and the Thor Heyerdahl Archives. The first set of documentary heritage listed for Finland was the Archive of the Skolt Sámi village of Suonjel/Suenjel (2015).¹² Sweden has proposed Karl Tirén's yoik archives to be inscribed, but the Sámi parliament of Sweden is still to be consulted on this.

What is WIPO and what does it do?

WIPO is an intergovernmental organization established in 1967.¹³ It has 193 member states. Its mandate is to act as a global forum for intellectual property (IP) services, policy, information and cooperation. Its mission is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all. WIPO provides a global policy forum, where governments, intergovernmental organizations, industry groups and civil society come together to address evolving IP issues.

Intellectual property, very broadly, means the legal rights that can be associated with any intellectual activity in the industrial, scientific, literary and artistic fields that has a tangible expression or output. Intellectual property rights can take different forms, for example: Copyright and related rights, Patents and confidential information (trade secrets), Industrial designs (sometimes known as 'design patents'), Trademarks, Collective and Certification marks, and Geographical indications. The aim of intellectual property protection is twofold:

1. to reward creators by giving them a limited monopoly over use of their creations and ensuring they are acknowledged as creators, and
2. to promote creation and innovation so as to contribute to economic and social development in society as a whole.

Intellectual property rights are therefore usually assigned in the first instance to individual creators or companies that own their work. The rights can be sold or reassigned to companies or other individuals. When the time limits expire, the creations can in most jurisdictions be freely used, copied and distributed by others.

There is no international instrument (law, agreement, treaty etc.) protecting intellectual property of all kinds in all countries of the world. Countries make their own laws about intellectual property protection at the national level, usually regulating copyright, trademarks, industrial designs, patents and other fields of intellectual property through separate legal frameworks. Intellectual property rights are usually restricted to the countries (and sometimes the region) where they are granted. There are however a number of international instruments (some administered by WIPO) that set minimum standards for national laws and regulate some aspects of intellectual property rights protection internationally. Therefore, some intellectual property rights can be protected across international borders, and much conventional intellectual property law is 'harmonized' across countries.

Conventional intellectual property law does not generally recognize collective ownership and communal authorship of cultural expressions and provides only time-limited protection. Legal systems thus have to be designed specifically (called 'sui generis' legal frameworks) to protect communal rights in traditional knowledge (TK). WIPO's IGC (Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore), established in 2000, is facilitating the negotiation of international agreements on the protection of IP rights in traditional knowledge and genetic resources. No final agreement has yet been reached on these texts.

Sámi engagement with WIPO and UNESCO

While UNESCO and WIPO function as forums for developing and enabling the implementation of agreements between states, various provisions are made for consultation with and involvement of indigenous peoples, NGOs and community representatives. The Sámi can engage with UNESCO and WIPO as indigenous peoples' representatives,¹⁴ as community representatives, as representatives of NGOs, and as citizens of their respective countries.

Different avenues for Sámi engagement are available in UNESCO and WIPO. Sámi representation at WIPO has, to date, been stronger and more sustained than at UNESCO. This is partly because specific avenues were created some years ago for indigenous engagement at WIPO in regard to the work of the IGC, where indigenous peoples and local communities are the focus of the texts under negotiation on protection of TK or traditional cultural expressions (TCEs). WIPO provides a number of avenues for indigenous participation in the IGC, supported by a Voluntary Fund. These avenues include the Indigenous Caucus (where aspects of the text are discussed) and an Indigenous Panel (held in plenary at the beginning of every session). WIPO advises national governments on IP policies, where requested, which can include advice on protection of IPR in TK and TCEs. WIPO's Traditional Knowledge Division (TK Division) offers an Indigenous Fellows programme hosting indigenous experts for six months at a time. The South Sámi Rebecka Forsgren was an indigenous fellow at WIPO's Traditional Knowledge Division in 2019-20. WIPO conducts capacity building on IPR protection, including for indigenous and local communities.¹⁵ A Sápmi business cluster representative was selected for the capacity-building programme fostering indigenous women's businesses, held in November 2019 during the same week as the ICH workshop.



UNESCO: Spiritual opening performed by indigenous leaders at the official inauguration of the International Year of Indigenous Languages at the Unesco headquarters in Paris, January 2019. Photo: Sámediggi/Sami parliament Norway.

Indigenous peoples at WIPO's IGC 33 (June 2017) called for closer cooperation between WIPO and UNESCO on protection of indigenous culture. UNESCO has begun to create more specific avenues for engagement with indigenous peoples in recent years, naming indigenous peoples as a 'priority group'. In 2011, the International Labour Organization (ILO), Office of the United Nations High Commissioner for Human Rights (OHCHR) and United Nations Development Programme (UNDP) launched the United Nations Indigenous Peoples' Partnership, which currently also includes the United Nations Children's Fund, the United Nations Population Fund and UNESCO. The UNESCO Medium-Term Strategy for 2014-2021 commits it to implement the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) across all relevant programme areas; policy development on engagement with indigenous peoples has been underway since 2011. UNESCO, which contributed several times to the UN-wide celebration of the International Day of the World's Indigenous Peoples and served in 2019 as the United Nations lead agency for the International Year of Indigenous Languages, has a policy on engaging with indigenous peoples, and participates in the sessions of the UN Permanent Forum on Indigenous Issues.¹⁶

The Secretariat of the Intangible Heritage Convention has published an introductory brochure on 'Living Heritage and Indigenous Peoples' and set up a website addressing how indigenous peoples can engage with the Convention.¹⁷ While the texts of the Intangible Heritage Convention mention indigenous peoples in several places, however, there is no specific provision for consulting them at the international level. The term 'indigenous' occurs once in the Convention itself, in its Preamble, which states:

Recognizing that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and recreation of the ICH While the Convention asserts no rights unique to indigenous communities the implication of the statement quoted above means is that whenever the term 'community' is used in the Convention or its ODs, it includes indigenous groups and peoples.

The Operational Directives (ODs) mention 'indigenous peoples' three times; these three references all occur in its most recent, sixth chapter and in similar contexts (ODs 174, 194 and 197). OD 174, for example, says:

States Parties are encouraged to ensure that their safeguarding plans and programmes are fully inclusive of all sectors and strata of society, including indigenous peoples, migrants, immigrants and refugees, people of different ages and genders, persons with disabilities and members of vulnerable groups, in conformity with Article 11 of the Convention.

Sámi representatives have attended Intergovernmental Committee meetings of the Intangible Heritage Convention as part of the Norwegian delegation. They could help to raise the profile of indigenous peoples within the work of the Convention by suggesting ways for indigenous peoples and perhaps also local communities to engage directly with the Committee or the Secretariat.

This effort could find inspiration in the way indigenous peoples are represented under the UNESCO World Heritage Convention.¹⁸ The International Indigenous Peoples' Forum on World Heritage (IIPFWH) was created by indigenous delegates at the 41st session of the UNESCO World Heritage Committee in Krakow, Poland, in July 2017. The IIPFWH functions as a platform dedicated to strategizing and advocating towards the goal of full respect for indigenous rights within World Heritage Conventions and processes. Inspired by indigenous representation within contexts such as the UN Convention on Biological Diversity (CBD)¹⁹ and the UN Framework Convention on Climate

Change (UNFCCC),²⁰ the IIPFWH is a standing global body aiming to engage with the World Heritage Committee during its meetings, in order to represent the voices of indigenous peoples with regards to the World Heritage Convention.²¹

Accredited non-governmental organizations under the Intangible Heritage Convention

Sámi could also engage with the work of the UNESCO Convention through accreditation of Sámi NGOs. Accredited non-governmental organizations (NGOs) provide advice to the Committee of the Intangible Heritage Convention and serve on the Evaluation Body assessing nomination files and proposals, as well as requests for international (financial) assistance. The criteria for accreditation are set out in paragraph 91 of the Operational Directives of the Convention, stating that NGOs shall:

- a) have proven competence, expertise and experience in safeguarding (as defined in Article 2.3 of the Convention) intangible cultural heritage belonging, inter alia, to one or more specific domains;*
- b) have a local, national, regional or international nature, as appropriate;*
- c) have objectives that are in conformity with the spirit of the Convention and, preferably, statutes or bylaws that conform with those objectives;*
- d) cooperate in a spirit of mutual respect with communities, groups, and, where appropriate, individuals that create, practice and transmit intangible cultural heritage;*
- e) possess operational capacities, including:*
 - (i) a regular active membership, which forms a community linked by the desire to pursue the objectives for which it was established;*
 - (ii) an established domicile and a recognized legal personality as compatible with domestic law;*
 - (iii) having existed and having carried out appropriate activities for at least four years when being considered for accreditation.*

The Committee is currently reviewing the role of accredited NGOs in their advisory capacity to the Committee. This role may be expanded to come extent, and distinctions may be made between NGOs whose activities are purely local or national, and those who have international scope.

Accredited NGOs can also play a role in networking with and representing other NGOs at Committee meetings. Since 2010, accredited NGOs (in which group European NGOs are currently over-represented) have organized themselves in an ICH NGO Forum. This was initially an informal platform for communication, networking, exchange and cooperation. Since 2012, the ICH NGO Forum has observed the debates of the Committee and prepares and delivers an NGO statement in each session. The ICH NGO Forum is now coordinated by an elected steering committee representing the six regions corresponding to the Electoral Groups of UNESCO.²²

Requests for accreditation can be submitted at any time using Form ICH-09.²³ Requests submitted before 30 April in any year will usually be examined by the Committee in November of the same year, and then if recommended, submitted for the decision of the General Assembly at its next meeting.²⁴ Application for accreditation of the Sámi Duodji organization(s) as NGO(s) under the UNESCO Intangible Heritage Convention should make it clear that this is a community-led organization which is fundamentally oriented towards ICH safeguarding and the avoidance of over-commercialization.

Possible benefits for Sámi of engaging with UNESCO and WIPO

Implementing the Intangible Heritage Convention and participating in its international forums and lists potentially benefits Sámi communities through:

- enhanced enactment and transmission of the ICH;
- enhanced well-being and progress towards sustainable development of Sámi and their social and natural environment;
- enhanced respect and understanding about Sámi ICH locally, nationally and internationally;
- reaffirmation and/or recognition by relevant authorities of Sámi guardianship over their ICH;
- engagement with a worldwide network active in the domain of heritage to share ICH expertise and information internationally;
- enhanced promotion and sharing of good safeguarding practices internationally, e.g. through the regional or international Registers of Good Safeguarding Practices; and
- enhanced profile for indigenous peoples and their ICH under the Convention.

Benefits of becoming an accredited NGO under the Intangible Heritage Convention include possibilities to network with other NGOs, participate in the NGO Forum and in the evaluation of nomination files and requests from other communities. This can help NGOs develop a stronger understanding of how implementing the Convention can safeguard ICH in different circumstances. Accreditation at the international level can also give NGOs a higher profile at the national level.

Continued engagement within WIPO, especially through the IGC, offers many of the general benefits that engagement with UNESCO provides, including enhanced opportunities for recognition, respect and understanding, and development. The IGC provides opportunities for networking and information sharing around strategies adopted by other indigenous groups. In particular, policy discussions at the international and regional or national level and capacity-building opportunities offered by WIPO's TK Division can assist the Sámi community to develop and use appropriate IP protections for their ICH. WIPO's policy advice may also help Sámi work with national governments to develop appropriate IP policies that can help protect Sámi TK and TCEs.

Nordic, Arctic and international fora

UNESCO and WIPO are not the only external fora in which Sámi can (and do) engage internationally. The Saami Council represents the Sámi in the Arctic Council, established in 1996 as an intergovernmental forum promoting cooperation, coordination and interaction among the Arctic States, Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, in particular on issues of sustainable development and environmental protection in the Arctic.²⁵ The Arctic Arts Summit has been held since 2017, supported by the Norwegian Ministry of Culture to try and broaden the discussion on Arctic development in the Arctic Council by including arts and culture alongside questions of resource management, geopolitics and environmental issues.²⁶

Other important forums for Sámi international cooperation and engagement²⁷ include the Nordic Council,²⁸ the European Union, the Northern Dimension,²⁹ the Council of the Baltic Sea States (CBSS),³⁰ and the Barents Euro-Arctic Council (BEAC).³¹ Sámi representatives are also active participants in indigenous fora at the UN,³² which include the work of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) on implementing UNDRIP, the Special Rapporteur on the rights of indigenous peoples and the Permanent Forum on Indigenous Issues (UNPFII). The Saami Council has consultative status on the United Nations (UN) Economic and Social Council (ECOSOC),³³ one of the six principal organs of the United Nations, responsible for coordinating the economic and social fields of the UN.

Thus, many avenues exist for Sámi engagement, whether as an indigenous people and/or as semi-autonomous Nordic communities, with UNESCO and WIPO, or in national, Nordic, Arctic and other bodies and organizations. However, time and resources for such efforts are necessarily limited. Sámi decisions on engagement with WIPO and UNESCO will likely be guided partly by the purpose and structure of activities in these organizations, the standing or voice of Sámi representatives in them, and (in the context of this report) how engagement of various kinds could help the Sámi in safeguarding or protecting their ICH, languages and tangible heritage.

In the next section of this report, we will cover some of the themes discussed in the workshop that pertain to how engagement of various kinds could help the Sámi in safeguarding or protecting their ICH, languages and tangible heritage. We first discuss the relationship between ICH, IP and sustainable development, and then the relationship between tangible and intangible heritage, before referring briefly to the broader contexts of natural heritage, land rights, human and cultural rights.

Intangible heritage, intellectual property and sustainable development

UNESCO and WIPO

UNESCO's Intangible Heritage Convention lies within the field of culture, which is a key part of UNESCO's overall mandate. By contrast, WIPO's mandate is in the field of IP law and policy. The UNESCO Intangible Heritage Convention explicitly subordinates the Convention to any international IP instrument in article 3(b):

Nothing in this Convention may be interpreted as ... affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties.

While the Convention does not therefore create new IP rights in ICH, or provide remedies for misuse or explicitly allocate ownership of ICH to any parties, it does recognize the need to support the stewardship of bearer communities over their ICH, and for these communities to benefit from its practice, transmission and safeguarding.³⁴ Article 13 of the Convention encourages States Parties to take legal measures at the national level to promote safeguarding: these measures can include IP protection. For example, in Operational Directive 173(b), States Parties to the Convention are requested to take into account in their policies the IP rights of communities, groups and individuals over their ICH.

What's the difference between intangible heritage (ICH) and traditional knowledge (TK)?

The Convention's article 2 provides a broad definition of ICH:

For the purposes of this Convention, the 'intangible cultural heritage' means 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 recognize 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.

For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development

Intangible cultural heritage (ICH) is created, enacted and transmitted by people: they hold the ‘knowledge and skills’ required for that enactment and they enact or perform the ‘practices, representations and expressions’ using their bodies. It is these people – according to the first sentence of the definition presented above – who should recognize what belongs to their cultural heritage. Others cannot decide for a community that a given expression or practice belongs to their cultural heritage. ICH elements change over time, responding to new situations, but they are often also practiced in a wide variety of ways at any one time, even by the same people.

The definition of ICH in the Convention includes associated ‘instruments, objects, artefacts and cultural spaces. People may need instruments or objects to perform their ICH and some practices may yield material products. The enactment or the transmission of specific elements of ICH may be linked to specific places.



BEAR SKELETON: Traces of the ancient ritual of burying holy animals can still be found in Sami areas. This is a cave with a buried bear skeleton. Parts of the ritual is still practised today.
Photo: Sámediggi/Sami parliament, Norway.

Expressions and practices, knowledge and skills that are not recognized by the community concerned as belonging to its cultural heritage, or that are quite recent (i.e. not yet transmitted from generation to generation) or ‘frozen’ (brought to a standstill, prevented from further change) do not comply with the definition of ICH in the Convention. For ICH to be taken into consideration for the purposes of

the Convention (e.g. for nominations to the international Lists), it must also be compatible with international human rights instruments, be respectful of others (whether individuals or groups of people or even States) and be compatible with the requirements of sustainable development.

In WIPO, the terms ‘traditional knowledge (TK)’ and ‘traditional cultural expressions (TCEs)’ are used rather than the term ‘ICH’. Taking TK and TCEs together (sometimes referred to as TK in general) is roughly equivalent to the concept of ICH as set out in article 2.1 of the Convention.

There are a number of nuances and differences between the concepts of TK in general and ICH.

First, ICH as defined in the Convention (article 2.1), is limited to cultural practices ‘passed down through the generations’ valued by a community or group and practised today, or at least within living memory. The concept of TK, by contrast, is usually defined more broadly, including ICH as well as ‘intellectual heritage’.³⁵

Second, under the Convention, ‘communities, groups and individuals concerned’ may include any self-identified groups of people, not just ‘indigenous and local communities’, the terminology used in the WIPO context. The concept of ‘communities, groups and individuals’ under the Convention arguably goes beyond the idea of ‘indigenous peoples and local communities’ to include a wide range of groups that may not necessarily be defined in terms of ethno-linguistic identity or geographical location.

What is the difference between traditional knowledge (TK) and traditional cultural expressions (TCEs)?

TK is sometimes used in a general sense (covering both TK and TCEs), as indicated above, and sometimes a distinction is made between TK and TCEs. The distinction is made between these two concepts partly because in conventional intellectual property rights regimes, different kinds of legal protection are available for these different kinds of creative endeavour (e.g. patent protection for TK, and copyright and design protection for TCEs). When the term ‘TK’ is used in the narrower sense, it refers to the ‘knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations’. The 2003 Convention introduces five domains of ICH in article 2.2: two of these, ‘knowledge about nature and the universe’ and ‘traditional craftsmanship’, correspond roughly to TK in the narrow sense. This could include Sámi knowledge about managing the environment, fishing, reindeer herding and weather forecasting or divining practices.

TCEs refer to ‘tangible and intangible forms in which traditional knowledge and cultures are expressed, communicated or manifested’, including ‘traditional music, performances, narratives, names and symbols, designs and architectural forms’.³⁶ TCEs are roughly equivalent to expressions (tangible manifestations) emerging from the other domains of ICH mentioned in article 2.2, such as oral, performing arts, social practices including foodways, rituals and festive events. Sámi duodji, or handicrafts, could fit into either category. Those that have some functional purpose could be considered TK, while those with artistic value might (also) be considered TCEs.

At present, the distinction between TK and TCEs is primarily a matter of interest within the negotiations in the WIPO IGC. Outside of this, it has less relevance as there is no specific intellectual property protection provided to either category, either at the international level or in Sápmi.

Can intellectual property protection be applied to intangible cultural heritage or traditional knowledge?

Intellectual property rights are clearly relevant to intangible cultural heritage, because the practice and transmission of ICH is based on intellectual activity (such as ideas, skills, knowledge and know-how) and can result in a tangible output. One of the main problems facing communities trying to use IP law to protect their TK and TCEs, including in the countries covered by Sápmi territory, is that existing international agreements generally do not cover TK. As noted above, conventional IP rights regimes, such as copyright, patents and design protection, cannot easily be used to protect cultural expressions generated communally, or whose authors are unknown, and which have been passed down through the generations, changing and adapting to new contexts.

In some cases, conventional IP protection can be used in a general way, for example to help indigenous peoples market their products (using trademarks such as Sámi Duodji and geographical indications, currently not available for craft in Norway and the EU), and control access to and use of documentation about ICH (using copyright). Intellectual property rights in the tangible outputs or expressions of ICH practice, such as traditional musical performances recorded on video, traditionally made products, or descriptions of traditional medicines or healing processes, can also be protected in some cases. This can help communities to benefit from their ICH, and to safeguard it, and/or to prevent others from misappropriating or misrepresenting it.³⁷

What is the difference between ownership of IP rights and stewardship of ICH?

Under the Convention's article 2.1, communities identify what their ICH is, and what it means to them.³⁸ Because they safeguard it, they are stewards of its viability. States Parties to the Convention are encouraged to help prevent misappropriation and misuse of ICH or its dispossession from communities, and to ensure that communities benefit from its safeguarding.³⁹ Communities may in fact share their ICH with other groups, however, and it is difficult to assign formal 'ownership' over cultural practices. The Convention, and national legislation, thus does not generally give communities (or indeed states nominating elements to the international lists) any rights over the ICH that they can enforce in a court of law. Inclusion on one of the UNESCO intangible heritage lists (or indeed a national ICH inventory) will therefore not give Sámi any additional protection in law for their ICH.

The nature of ownership in IP rights differs from the nature of community stewardship over cultural practice. Exclusive ownership of IP rights (for example the Sámi Duodji trademark) may be conferred on a specific person or legal entity (such as a community organization) for a specific period, and it may be enforceable in court. Trademarks are registered for 10 years at a time in Norway, and if they are used commercially and continue to fulfil the conditions for registration they can be renewed every decade indefinitely for a small fee. This is an example of what is called 'positive protection' - the granting and exercise of rights that empower communities to promote their TK and TCEs, control its uses and benefit from its commercial exploitation. Another kind of IP protection – called defensive protection – does not confer ownership of IP rights on the community but simply aims to stop third parties from acquiring them, for example by preventing erroneous grants of patents, or preventing cultural symbols or words from being registered as trademarks by third parties.

The issue of what kinds of 'ownership' over cultural expressions such as ICH should be reinforced or created has been central to the debates in both WIPO and in UNESCO, especially when the Convention was first under discussion.⁴⁰ Conferring IP rights on specific beneficiaries in respect to cultural practice can 'fix' otherwise fluid entities such as ICH practice and community membership, and potentially disrupt the normal process of change and creativity.⁴¹ This has been one of the main

concerns of the Convention and the ICH Committee,⁴² and it is acknowledged to some extent in the WIPO discussions, especially around traditional cultural expressions or TCEs.

What is the difference between safeguarding ICH under the Convention and protection of TK through intellectual property law?

The aims of intellectual property protection differ from those of ICH safeguarding under the Convention. Intellectual property protection for traditional cultural expressions and traditional knowledge aims at preventing their misappropriation or misuse, helping for example to ensure that the holders of traditional knowledge can control its use or exploitation. ICH safeguarding is aimed at ensuring continued practice and transmission of ICH, thus supporting sustainable development by ensuring that communities concerned benefit socially and – in some cases – economically from their ICH. Safeguarding ICH can include any measures that achieve this goal. Safeguarding ICH could therefore include preventing misappropriation through registration and enforcement of IP rights, but would not necessarily require any kind of IP protection to be in place. The kind of IP protection chosen would need to assist in the maintenance of practice and transmission of ICH to be considered a safeguarding measure.

Where is the boundary between over-commercialisation and sustainable development?

The practice and commercial use (but not over-commercialization) of certain ICH elements may contribute to sustainable social and economic development, as recognized in the Preamble to the Convention. Sustainable development in a community or region may also enhance the viability of its ICH practices. From the definition of ICH in the Convention (article 2.1), the status of ICH as heritage is rooted in the fact that it has meaning and value for the communities concerned, giving them a ‘sense of identity and continuity’, rather than value for consumers of ICH-related products. Yet, in many cases, the practice and transmission of an ICH element have been integrated into the economic activity of the communities or groups concerned for decades, or even centuries. For example, traditional knowledge and craft may constitute the livelihood of a group of practitioners, as in the case of Sámi duodji. Economic values associated with ICH may help to sustain it over time, in the same way that social values do, if people practicing the ICH benefit from its entry into the market.⁴³ When trying to revitalize an element, new forms of economic value can be introduced, in particular, if its practice and transmission require a considerable investment in terms of time or means.

Where ICH practice loses its meaning, value or association with the communities concerned through commercialization, however, this may be termed ‘over-commercialization’. For example, cultural objects may be repurposed as decorative items and mass produced in a factory, perhaps not even by community members but by machines or people in another country. These products may then also be sold as ICH from a specific community, when they are no longer linked to them, which may be considered misappropriation. When rituals or traditional performances are staged, and possibly performed by outsiders to the practice or community concerned, this could be described as misappropriation through decontextualization.

The Convention’s texts, or indeed its Committee decisions, do not give any practical guidance on how to identify the boundary between sustainable economic development and ‘over-commercialization’ of intangible heritage elements, however. The 2019 Intergovernmental Committee meeting in Bogota (Colombia) thus requested the Secretariat ‘to publish the recommendations of the Evaluation Body on the safeguarding measures and good practices that address the risk of decontextualization and over-commercialization of elements in a guidance note for communities and States Parties’.⁴⁴ This will hopefully provide some clarity on the question at the

international level. In the meantime, the Sámi community can develop their own approaches to deciding what might constitute over-commercialization of their ICH within the community, and where it is being misappropriated by others. In the workshop, tools such as the Wheel Chart of Sustainability,⁴⁵ and projects such as Alpfoodway⁴⁶ and HIPAMSIndia,⁴⁷ were mentioned as possible reference points.

Cases discussed in the workshop that related to ICH, TK and commercialization

One of the examples discussed in the workshop was the trademark registration in Norway in 2009 of a sun rune or symbol originally used on a Sámi drum used for spiritual and practical purposes. Although the drum had been forcibly removed from the Sámi community in the seventeenth century and is currently part of the collection of the GRASSI Museum in Leipzig, the sun symbol came into more widespread use in recent years. This was partly through the work of an award-winning Sámi writer and yoik artist, Nils-Aslak Valkeapää, who used it on the cover of his book, *Solen min far*, published in 1991. Sámi craftspeople also used the sun symbol on their craft products. Seeking to protect their trademark registration, lawyers representing the owner of the trademark (a company making Sámi jewelry in northern Norway), started asking Sámi craftspeople to stop using the sun symbol as a decorative element on their goods. Sámi activism and intervention with the trademark office in Norway has now resulted in the trademark renewal being denied. In this case, over-zealous enforcement of trademark (IP rights) prevented Sámi people from safeguarding their ICH by using the symbol, and practicing, or revitalizing, the heritage associated with the drums. However, the Sámi were able to object to the renewal of the trademark registration. This case has given rise to discussions about the appropriate means of protecting Sámi from misappropriation of culturally significant symbols such as those on their drums, including through IP rights protection.

The Sámi Duodji collective trademark was another case discussed in the workshop. In 1982, the Nordic Saami Council registered the Sámi Duodji trademark in Sweden; it is not yet registered in other countries, so it is used there as an unregistered trademark. The Sámi Duodji mark identifies Sámi handicraft products. According to the guidelines developed for its use, it should:

- communicate to buyers that the product is made by a Sámi.
- protect Sámi handicraft from being copied and from unfair competition.
- promote a continuous improvement of the quality of Sámi handicraft.
- show that Sámi handicraft is a living tradition.

While using a trademark can assist Sámi craftspeople to market their products and achieve appropriate prices for goods handmade within the Sámi community, the use and/or registration of a trademark does not automatically protect Sámi ICH.⁴⁸ The trademark indicates the origin of a product (e.g. made by Sámi under specific conditions indicated above), It does not prevent copying or use of designs and patterns as such. It is very difficult to prevent others copying patterns and designs that have been transmitted among the Sámi for centuries.

Managing a trademark takes time and effort. Consumers have to be educated about the mark, so that they understand its meaning. The trademark is managed in Finland, Russia, Norway and Sweden by different Sámi associations, so administration can be complex and has to be coordinated. The trademark registration (which currently only covers Sweden in any case) does not provide automatic protection: the owners of the mark (the Nordic Saami Council) have to enforce the mark themselves, identifying infringers, contacting them to ask them to stop using the mark and/or taking them to court if they continue doing so. Enforcement cannot be pursued outside of Sweden (trademarks have territorial applicability).

The Sámi Duodji mark applies only to traditional handicrafts and not to modern innovations. Although some modern innovations may probably be classified as ICH, because ICH changes over time (see article 2.1 of the Convention), they are not covered by the mark. An additional trademark has thus been proposed to indicate Sámi origin of a broader range of products (not only traditional duodji). This will help to ensure that these other products can be identified by consumers as new Sámi products that are based on ICH practices.

The Sámi Duodji discussion emphasized the fact that in order for trademarks to be useful in safeguarding ICH, they need not only to be carefully designed to assist community members in practicing and transmitting the underlying ICH (including making innovations), but also strategically registered and managed, and enforced only where the cost and administration makes it worthwhile. Trademark use has to be accompanied by consumer education and marketing. It is very difficult to prevent misuse of the Sámi name in commercial handicraft products (such as bracelets) that are sold in Europe or elsewhere. The most effective way to address this problem is probably to strengthen the Sámi Duodji brand, and increase consumer awareness about it, rather than to increase enforcement.

The Sámi cases were compared with others, including the registration and use of Cowichan trademarks and official marks in Canada, which the Cowichan Band had difficulty enforcing at the time of the Vancouver Olympics.⁴⁹ Communities struggling to control use of their symbols by legal means can encourage third parties to follow an ethical approach, for example by donating money to a community fund, or paying a license fee even where the community does not hold IP rights over the mark. This was illustrated by the Pueblo of Zia's approach to managing use of their sun symbol.⁵⁰

Tangible and intangible heritage

What is the difference between tangible and intangible heritage?

Intangible, or non-material, heritage such as knowledge, practices, or skills often has tangible (physical) elements associated with it (such as places, buildings, objects, materials, costumes, instruments). Most tangible heritage has intangible knowledge, practices, or skills associated with it too. The distinction between the two 'kinds' of heritage is thus often irrelevant to the communities safeguarding their cultural heritage. The distinction became important at the policy level historically, most explicitly within UNESCO, because heritage conservation efforts in western countries originally focused primarily on places and objects.

The World Heritage Convention of 1972 classifies World Heritage properties as cultural, natural or mixed (cultural and natural) sites. That Convention defines 'cultural heritage' (in Article 1) as follows:

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Article 2 of the 1972 Convention defines ‘natural heritage’ in the following way for the purposes of the Convention:

natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Since 1992, the World Heritage Committee has also inscribed a number of properties classified as ‘cultural landscapes’ on the World Heritage List, defined as ‘the combined works of nature and man’.



CEAVCCAGEAÐGI: Ceavccageadgi/Mortensnes – the holy stone, Ceavccageadgi, is one of numerous locations at this area filled with graves and other sacred sites dating back millenials of years.

Photo: Sámediggi/Sami parliament, Norway.

In some cases, communities and external experts perceive the significance of tangible heritage differently. For example, the indigenous World Heritage site Uluru-Kata Tjuta in Australia was first added to the World Heritage list in 1987, when the international community recognised its spectacular geological formations, rare plants and animals, and outstanding natural beauty. In 1994,

the park's cultural landscape – the unique relationship between the natural environment and the belief system of Anangu, one of the oldest societies on earth – was foregrounded instead. Now managed in conjunction with indigenous communities, access to the park by visitors has been limited to retain traditional values.⁵¹

In the Intangible Heritage Convention, the main emphasis has been placed on skills, knowledge and social practices, while introducing 'associated' objects and places. However, the Convention does acknowledge in articles 2.1, 13 and 14 the importance of safeguarding access to associated spaces or instruments for practicing ICH. All intangible heritage is enacted somewhere; most ICH elements can be enacted anywhere as long as there are sufficient practitioners and other community members present. There are also ICH elements that depend on specific location(s) or material object(s) for their enactment, whether man-made, natural or a combination of both.

What is the difference between ICH safeguarding and conservation of tangible heritage?

Tangible heritage conservation is focused on preserving material traces of the past – objects, archives and buildings – in order to retain their significance in the present, while safeguarding focuses on maintaining the conditions for communities to practice and transmit their ICH and maintain its value and meaning to them. Both tangible heritage conservation and ICH safeguarding thus involve retaining the significance of the heritage, significance in tangible heritage conservation is often defined by experts (for example, its scientific or historical value, although community-defined value is also increasingly acknowledged). In ICH safeguarding, significance is understood as value and meaning to the communities concerned, and not as external expert-defined value.

Conservation of an old building or object may require safeguarding of traditional skills to repair and maintain it. Old buildings may lose their significance if they cease to be used for certain social functions, such as ritual or performance, which involve ICH – although they may acquire new significance for old or new communities concerned. In some cases, too, safeguarding may include ensuring the availability or conservation of places, tools and materials, or other material conditions, required for ICH enactment or transmission. Archives and museum collections can help communities to revitalize lost ICH practices. In other cases, objects created for ICH rituals may need to be destroyed or allowed to decay in order to fulfil their purpose for the community. Communities may wish that objects kept in museum collections are managed in particular ways and displayed in certain contexts or kept away from public view. There is thus sometimes a tension between tangible heritage conservation and ICH safeguarding if there is a lack of dialogue between institutions, conservation professionals and community members, and/or failure to accommodate community safeguarding needs.

The links and tensions between tangible heritage conservation and intangible heritage safeguarding underline the importance of aligning the work of ICH safeguarding with museum, archive, and heritage site management and policy. This is particularly evident for Sámi in the discussions around repatriation (as well as reindeer herding and mining rights, see below). Since 2014, Norsk Folkemuseum (the Norwegian Museum of Cultural History) and the Cultural Historical Museum of the University of Oslo have cooperated with six consolidated Sámi museums in Norway in the Bååstede Project, with the aim of returning parts of their Sámi collection to the Sámi museums. These discussions are ongoing. Sámi museums need support to accommodate, conserve and exhibit these objects, and link them again to Sámi ICH activities, and the education of young people for the transmission of the associated knowledge and skills.⁵² The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is developing some principles and processes around repatriation of indigenous cultural items at the international level, which could inform discussions in Norway about

Sámi repatriations. EMRIP is a subsidiary body established by the United Nations Human Rights Council (UNHRC) in 2007. Its mandate is to provide the UNHRC with expertise and advice on the rights of indigenous peoples as set out in UNDRIP.



BÅÅSTEDDE: President of the Sami parliament, Norway Aili Keskitalo (left) together with representatives from the RidduDuottarMuseat receive a horn hat as the first object from the repatriation project “Bååstede”. The project is a recognition of the desire of the Sami people to exercise control of their own cultural heritage. It will also be an important part of vitalization of traditions and practices. An official signing of “Bååstede” repatriation project took place in Guovdageaidnu/Kautokeino in 2019. Photo: Sámediggi/Sami parliament, Norway.

In articles 11 and 12, UNDRIP recognizes that indigenous peoples have the rights to ‘maintain, protect and develop the past, present and future manifestations of their cultures’, to the ‘use and control of their ceremonial objects’ and to the ‘repatriation of their human remains’. It further recognizes that states shall seek to enable access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned (article 12.2). UNHCR Resolution A/HRC/42/L.24,⁵³ adopted on September 26, 2019, ‘Encourages the development of a process to facilitate the international repatriation of indigenous peoples’ sacred items and human remains through the continued engagement of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO), EMRIP, the Special Rapporteur on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues (UNPFII), States, indigenous peoples and all other relevant parties in accordance with their mandates.’ EMRIP thus plans to work with organizations like UNESCO and WIPO to develop guidance about how best to ensure that indigenous peoples can have better control over their tangible and associated intangible heritage.

How can inventorying and nominations (or the development of a tentative list) benefit the Sámi?

Inventorying

The 2003 Convention places few binding requirements on the states that ratify it. The most salient one concerns the obligation of the States Parties to draw up inventories of the ICH present in their territory. Article 12.1 states that: '[T]o ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory.' The same article also imposes regular updating of these inventories, while article 12.2 requires the States Parties to inform the Committee in their periodical reports about their inventories and inventorying processes.

Nothing is indicated in the Convention – or in the Operational Directives - about methods or criteria that could or should be used in inventorying ICH. Diversity is expected ('in a manner geared to its own situation'), although certain constraints can be found in other articles of the Convention. Article 11(b), for instance, states that '[e]ach State Party shall [...] identify and define the various elements of the ICH present in its territory, with the participation of communities, groups and relevant non-governmental organizations.'

In 2017, the Secretariat of the Convention, at the request of the Committee, prepared a *Guidance note on inventorying intangible cultural heritage*. That *Note* contains, inter alia, a number of 'guiding principles.'⁵⁴ These emphasize, for instance, that in principle all ICH present in a country should be inventoried, that in inventorying process at every step (identification, documentation, determination of viability, preparation of entries, updating of information) the communities concerned should be fully involved and that their free, informed and prior consent is required – again - at every step. It interprets the phrase 'identification with a view to safeguarding' as an obligation to indicate for inventoried ICH at least its state of viability, and related risks and threats. Not all ICH needs to be inventoried, and sacred or secret information need not be included.

Endangered as well as viable ICH is to be inventoried. In addition to serving as a possible tool in safeguarding, the *Guidance Note* indicates as obvious purposes for inventorying awareness raising about ICH, creating respect for it and understanding between communities, groups, and individuals. These goals largely coincide with the purposes of the 2003 Convention. Needless to say that States may add objectives of their own. There is no obligation to have one national inventory; when there is more than one inventory, these may have different purposes, cover different domains or communities, be initiated by different stakeholders, etc. The *Guidance Note* points at the importance of inventorying processes within and for communities.

'Whoever is involved in preparing the inventories, and whoever takes the initiative to inventory intangible cultural heritage, it is ultimately the prerogative and responsibility of States Parties to the Convention to recognize one or more inventories as inventories of the ICH present within their borders. Inventorying under the Convention is thus both a top-down and a bottom-up process.'⁵⁵ States Parties need to find a balance between both approaches, for instance by seeing to it that competent bodies or consultative mechanisms participate in the preparation of the drawing up of inventories and that communities concerned participate as fully as possible in the inventorying of their own ICH. Many States evaluate and modify their inventorying processes on a regular basis.

In 2017, the Arts Council Norway established an inventory, called 'National Inventory of Intangible Heritage' or 'Knowledge bank of living traditions and traditional knowledge in Norway.'⁵⁶ In 2019 a North Sámi version and an English version of this inventory was launched. The website of the

inventory states that it ‘will ensure a representative selection of elements, which also include elements relating to indigenous people, national minorities, and other marginalized groups.’ Of the 43 elements that are presented in it, two directly concern Sámi ICH: Márkomeannu and Sydisdans. Nothing in the Convention would prevent, if the Sámi community desired it, the establishment of a separate or discrete inventory for Sámi ICH, while continuing to have elements of Sámi heritage included in a specific section of the Inventory of ICH in Norway. It would be up to the Sámi community as a whole to decide whether any such Sámi inventory, if established, would cover Norwegian territory only, or the whole of Sápmi.⁵⁷

Because community participation and consent is essential to any safeguarding activity, including inventorying, it is very important to establish the purpose, process and desired results of any inventorying activity. Discussions in various Sámi forums (including the Sámi Parliaments) regarding Sámi culture and its conservation or safeguarding are ongoing. These kinds of discussions can cover what aspects of Sámi culture and language are important to the community, where heritage objects, places, or documents are located, or ICH practised, what problems exist regarding conservation, repatriation or safeguarding, and what should be public or private, and why. These discussions, especially if they are coordinated and the decisions collated, could be very valuable in developing a growing consensus regarding inventorying ICH and discussing possible nomination processes at the international level, for making decisions about digital access to Sámi archives and museums, and developing educational materials on Sámi culture for Sámi people and others.

Beneficial outcomes of inventorying could include greater awareness about and visibility of Sámi ICH, further consolidation of Sámi identity in particular in the eyes of outsiders, greater efforts within the community to safeguard and develop their ICH, possibly in cooperation with Sámi living in other countries. An inventory of Sámi heritage could assist both in identifying opportunities for IP protection and ICH safeguarding.

Nominations to the ICH Lists

As mentioned above, the Convention established two international Lists for ICH, the Urgent Safeguarding List and the Representative List. Inscription on the international ICH lists brings considerable exposure, which may help to highlight the need for safeguarding within the community, increase funding or exposure at the national level, and boost tourism and handicrafts income in Sápmi. However, international visibility can also bring with it greater risks of over-commercialization, misappropriation and misuse of Sámi ICH by third parties, than might be expected from inclusion on a national or regional inventory. For this reason, it is important to plan for and mitigate any unintended negative effects of inscription on the international lists.

The fifth criterion for inscription on both Lists states that elements nominated for inscription must be included in an inventory drawn up in conformity with Articles 11 and 12 of the Convention. In section 5 of the nomination forms ICH-01 and ICH-02, information about the inventory in which the nominated element was included, must be indicated.

A few countries introduced limited registers or lists of ICH elements that already figure in an official inventory, that they intend to nominate in the near future for inscription on one of the Lists of the 2003 Convention. The creation of so-called ‘Tentative Lists’ is standard practice under the World Heritage Convention; under the 2003 Convention they are not required, and rare. Switzerland, for instance, did introduce such a system.⁵⁸ The *Guidance Note* requests States to ensure that such registers do not introduce any hierarchy between elements of ICH.

The 2003 Convention (for example, in article 1) strongly promotes international cooperation between its States Parties, in particular on the sub-regional and regional level and in particular for shared heritage. International cooperation, according to Article 19, includes the exchange of information and experience, joint initiatives such as multinational nominations and the establishment of a mechanism of assistance to States Parties.

The idea behind the encouragement of international cooperation for shared heritage is (i) that safeguarding measures (including inventorying) for shared heritage are expected to be more effective when holistic approaches are applied and that (ii) the cooperation between both tradition bearers and authorities from the two or more States concerned will contribute to dialogue and understanding.⁵⁹ International cooperation concerning shared intangible heritage is not easy to achieve but all the more beneficial for communities and groups concerned when neighboring countries have different ways of identifying communities, regulating issues related to minorities and migration, or of identifying and inventorying ICH present on their territories.

States Parties can announce their intention to nominate shared heritage by making use of a special mechanism. In order to encourage multinational nominations for such heritage, and to further international cooperation, the Committee established a webpage on which the States parties can present elements that they consider as being shared with other States and that they are – in principle – willing to nominate together with other concerned states for inscription on one of the Lists of the Convention.⁶⁰

How can creativity and innovation be encouraged, while the heritage is safeguarded?

The intention of the Intangible Heritage Convention is not to validate an external, expert-defined authentic or historically accurate way of enacting or transmitting ICH elements. Such actions may lead to the ‘freezing’ of ICH. The Convention acknowledges that ICH, or living heritage, is ‘constantly recreated by communities and groups in response to their environment, their interaction with nature and their history’ (Article 2.1). In the Ethical Principles for Safeguarding Intangible Cultural Heritage, principle 8 states that ‘The dynamic and living nature of intangible cultural heritage should be continuously respected. Authenticity and exclusivity should not constitute concerns and obstacles in the safeguarding of intangible cultural heritage.’

Communities and groups themselves thus decide what aspects of their ICH should be transmitted from generation to generation unchanged, and what aspects can or should be altered to meet new needs, reflect innovation and respond to new circumstances. This is a complex discussion, especially in cases where the cultural heritage has been threatened or destroyed by external forces in the past and is now being revitalized or revived. Of course, not everyone in the community will necessarily take the same position. Different views can be accommodated in broader or narrower descriptions of the ICH, and explanations about debates regarding the desirability, or not, of innovations. Consultations about the meaning and value of ICH within the community, heritage skills repertoires, what aspects should be included in transmission efforts, areas of change and innovation, can thus be wide-ranging and inclusive, seeking out a range of views and debates that can be represented in descriptions of the element in inventories, for example.

Broader contexts

Land rights, nature and culture

The capacity of communities to safeguard their ICH or TK depends in many cases on their control over or access to their environment. Places within the natural environment can also in themselves have great cultural significance for communities, as discussed above. This is particularly relevant to the practices of reindeer herding, place-naming, traditional medicine and fishing or hunting among the Sámi. Reindeer husbandry in Norway is for example threatened by mining, defence activities, wind power development and hut-building encroaching on reindeer pastures in an unregulated way.⁶¹ Traditional medicines could also be threatened by loss of information, disclosure of secret information or use of the data to create commercial products without benefiting the Sámi. These challenges are difficult to address using cultural safeguarding frameworks alone, although sometimes declaring a property as a culturally protected site could reduce the threat from mining.

One agreement encouraging safeguarding of the traditional knowledge and practices of indigenous and local communities, is the 1992 Convention on Biological Diversity (CBD). Most countries in the world have ratified the CBD. It calls upon Contracting Parties, as far as possible and as appropriate, to:

respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity (Article 8(j)).

The Nagoya Protocol under this Convention requires Contracting Parties to ensure that where genetic resources and associated traditional knowledge are accessed and used for commercial reasons by third parties, access and benefit sharing agreements are reached with the free, prior and informed consent of indigenous peoples and local communities.

Cultural rights and human rights

In Norwegian law, the Sámi enjoy some autonomy in regard to language and culture, supported by the national government. In the Norwegian government the main responsibility for Sámi affairs, including the allocation of funds, sits with the Department of Sámi and Minority Affairs in the Ministry of Local Government and Modernisation. However, the Ministry of Culture also has responsibilities for assisting the ‘Sámi people to preserve and develop its language, culture and way of life’ under article 108 of the Norwegian Constitution, among others through Arts Council Norway. Strengthening the arts and culture of the Sámi is an important element in the Government’s commitment to strengthening cultural diversity and reversing the previous policy of assimilation. A Sámi Act was passed in 1987 to implement the provisions of the Constitution and set up the Parliament,⁶² whose responsibilities include the development of Sámi languages in Norway,⁶³ the promotion and protection of Sámi culture, and the protection of Sámi cultural heritage sites. These duties were enshrined in the Cultural Heritage Act.⁶⁴ The Norwegian White Paper on Culture specifically mentions the importance of maintaining Sámi languages.⁶⁵

The legal context for Sámi differs to some extent in Norway, Sweden, Finland and Russia, and the support and control of Sámi cultural and educational institutions (such as museums, archives, schools) also varies in these countries. Specific legislation has been passed in Sweden and Finland regarding the rights of the Sámi, for example to protect Sámi naming traditions (the Lund Recommendation in Sweden), reindeer herding (the 1971 Reindeer herding Act in Sweden) and the right to develop their own language and culture (the Finnish Constitution).⁶⁶ Much less recognition, support and leeway is given to Sámi in Russia.

Cultural rights and human rights are closely connected. Many indigenous communities, including the Sámi, reference legal instruments pertaining to human or cultural rights when claiming political recognition, territorial rights and/or cultural rights within States or across national borders. They include:

- European Convention on Human Rights (Council of Europe)
- Faro Convention on the Value of Cultural Heritage for Society (Council of Europe)
- Universal Declaration of Human Rights (UDHR)
- International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR)
- ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries
- Convention on Biological Diversity (CBD)
- Declaration on the Rights of Indigenous Peoples (UNDRIP)

One of the most important of these for the present discussion is UNDRIP, already mentioned above. The Nordic-Baltic countries now strongly support UNDRIP and its emphasis on the right to self-government and participation.⁶⁷ Article 31.1 relates to cultural heritage and reads as follows:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

It is helpful to remember that these international and national instruments for protecting human rights, indigenous rights, the natural environment, tangible or intangible heritage, and traditional knowledge often have different aims, and define their subject matter and stakeholders differently. Thus, they can be used to promote community strategies for heritage conservation or safeguarding, but often need to be used in very specific ways in order to do so.

The right of Sámi to maintain, control, protect and develop their cultural heritage is particularly important to exercise in the light of a history of oppression and assimilation. Sámi practices, including the use of drums by shamans, and the making and wearing of horn hats,⁶⁸ were denigrated, driven underground and prohibited by missionaries and various local governments from the seventeenth to the twentieth centuries. Reclaiming or repurposing this heritage requires considerable discussion and debate within the community, some of whom may even now reject their own heritage as irrelevant or wrong.

Recommendations on future engagement with UNESCO and WIPO

Sámi representatives already engage with many other UN agencies, local, national and international bodies including the Sámi Parliaments in Norway, Sweden and Finland. A number of avenues for engagement with UNESCO and WIPO have already been opened, as the Sámi send representatives to the WIPO IGC, as WIPO Indigenous Fellows. Some Sámi places and archives have already been inscribed on the World Heritage List and Memory of the World. Sámi representatives have attended sessions of the UNESCO 2003 Convention's Intergovernmental Committee as well but have no specific status in regard to that body, for example as NGO representatives, at this stage.

How could the Sámi most strategically engage with UNESCO and WIPO in the future, and what benefits might come from that? Decisions about how, where and when to engage with these bodies will of course be taken within the Sámi community and its representative bodies, so as facilitators our role is simply to set out some possible options to consider, based on the information provided above.

1. **Continued discussions within the community about the identification, definition of and awareness-raising about Sámi ICH.** This could perhaps result in:
 - a. **The establishment of an ICH inventory**, whether for all Sámi ICH, or for Sámi ICH in Norway. This could, if desired, be linked in some way to the Norwegian national inventory of ICH, or simply recognized by the state as one of the official inventories of ICH in Norway.
 - b. Proposal of element(s) of Sámi ICH for **nomination to one of the international ICH lists**, perhaps as a multinational nomination of shared heritage.
2. **Development of a strategic plan promoting the practice, transmission and safeguarding of Sámi ICH.** This plan might propose ways of gathering information about threats to practice and transmission of the ICH, and coordinating safeguarding work, for example through a pan-Sámi body tasked with ICH safeguarding. Measures to be considered might include IPR protection of TK and TCEs.
3. **Development of a strategic plan around commercialization of Sámi duodji and other forms of Sámi ICH**, discussing how community support to artists, intellectual property protection, and marketing can help safeguard the ICH. This may include an ethical code of conduct for use of the word Sámi in trade.
4. **Application for accreditation of the Sámi Duodji organization(s) as NGOs** under the UNESCO Intangible Heritage Convention. The application form should make it clear that this is a community-led organization which is fundamentally oriented towards safeguarding and the avoidance of over-commercialization.
5. Stronger engagement, if desired, with the UNESCO Intangible Heritage Convention by lobbying for an **indigenous people's forum** of some kind, to advise the Committee or the Secretariat, along the lines of the one established for the World Heritage Convention.
6. **Continued engagement within WIPO** in the IGC using all available channels, where resources permit.
7. **Requesting WIPO Traditional Knowledge Division to provide support for policy development at the national and regional level**, for example enabling more effective positive and/or defensive protection of Sámi-related symbols through consultations with community representatives, policymakers and intellectual property offices in Norway, Sweden and Finland.
8. **Inscription of Sámi-related sites on the World Heritage List and Sámi-related archives on the Memory of the World**, as desired, with community participation and consent – this, and discussions about the relationship to ICH safeguarding, might help to revitalize connections

between objects held in museums, documentation and the revitalization of knowledge and maker skills in the community. The close relationship between tangible and intangible heritage, cultural and natural heritage, should be considered in management planning and/or when developing nominations of tangible heritage.

Further resources

Intangible cultural heritage and UNESCO

- Website of the Intangible Heritage Convention <https://ich.unesco.org/en>
- Website of the international Lists of ICH under the Convention <https://ich.unesco.org/en/lists> and <https://ich.unesco.org/en/dive>
- Website of the Capacity-Building programme for the Convention and training materials <https://ich.unesco.org/en/capacity-building>
- Website of the ICH NGO Forum <http://www.ichngoforum.org/>
- Website of Nordic Safeguarding Practices <https://safeguardingpractices.com/>

Intellectual property and WIPO

- WIPO, Traditional Knowledge and Intellectual Property (also in Arabic, Chinese, French, Russian, and Spanish): http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief1.pdf
- WIPO, Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (also in Arabic, Chinese, French, Russian, and Spanish): http://www.wipo.int/edocs/pubdocs/en/tk/933/wipo_pub_933.pdf
- WIPO Intellectual Property Handbook http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf
- WIPO, Customary Law and Traditional Knowledge (also in Arabic, Chinese, French, Russian, and Spanish): http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief7.pdf
- WIPO, Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition (also in Russian): http://www.wipo.int/export/sites/www/dcea/en/pdf/tk_guide_e.pdf
- Terri Janke, Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions: http://www.wipo.int/edocs/pubdocs/en/tk/781/wipo_pub_781.pdf

Notes

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- ¹ Saami Council website, accessed at <http://www.saamicouncil.net/en/organization/ossodagat/kulturossodat/>
- ² In this section of the report, we have freely made use of texts from the UNESCO Capacity-Building materials, which can be accessed at <https://ich.unesco.org/en/content-of-training-materials-00679>
- ³ For a complete list of UNESCO standard-setting instruments, see http://portal.unesco.org/en/ev.php-URL_ID=13649&URL_DO=DO_TOPIC&URL_SECTION=-471.html
- ⁴ UNESCO World Heritage Centre website, see <https://whc.unesco.org/>
- ⁵ UNESCO ICH website, see <https://ich.unesco.org/>
- ⁶ UNESCO Diversity of cultural expressions website, see <https://en.unesco.org/creativity/>
- ⁷ UNESCO Memory of the World website, accessed at <https://en.unesco.org/programme/mow>
- ⁸ The Laponian area world heritage site, see <https://whc.unesco.org/en/list/774>
- ⁹ See <https://whc.unesco.org/en/statesparties/no>
- ¹⁰ See Wikipedia page for the site, accessed at https://sv.wikipedia.org/wiki/V%C3%A1rjjat_siida
- ¹¹ For details of this nomination see <https://www.kysten.no/unesco-ich-nordic-clinker-boat-nomination>
- ¹² The Skolt Sámi archives, see <http://www.unesco.org/new/en/communication-and-information/memory-of-the-world/register/access-by-region-and-country/fi/>
- ¹³ WIPO website, accessed at <https://wipo.int/portal/en/>
- ¹⁴ While there is no official definition of ‘indigenous’, the United Nations system has developed a shared understanding of this term based on the following considerations:
- historical continuity with pre-colonial and/or pre-settler societies;
 - strong link to territories and surrounding natural resources;
 - distinct social, economic or political systems;
 - distinct language, culture and beliefs;
 - form non-dominant groups of society;
 - resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.
- ¹⁵ WIPO Indigenous peoples and local communities portal, accessed at <https://www.wipo.int/tk/en/indigenous/> See also WIPO Traditional Knowledge Division capacity building resources <https://www.wipo.int/tk/en/index.html#training>
- ¹⁶ UNESCO website on engagement with indigenous peoples, accessed at <https://en.unesco.org/indigenous-peoples>.
- ¹⁷ Living Heritage and Indigenous Peoples website, accessed at <https://ich.unesco.org/en/indigenous-peoples>
- ¹⁸ World Heritage and Indigenous Peoples website, accessed at <https://whc.unesco.org/en/activities/496/>
- ¹⁹ International Indigenous Forum on Biodiversity (IIFB), accessed at <https://iifb-indigenous.org/> and <https://www.cbd.int/traditional/general.shtml>
- ²⁰ Facilitative Working Group of the Local Communities and Indigenous Peoples Platform (LCIPP), accessed at <https://unfccc.int/LCIPP#eq-1> and <https://unfccc.int/LCIPP-FWG>
- ²¹ International Indigenous Peoples’ Forum on World Heritage (IIPFWH) website, accessed at <https://iipfwh.org/>
- ²² ICH NGO Forum website, accessed at <http://www.ichngoforum.org/>
- ²³ Form ICH-09, accessed at <https://ich.unesco.org/en/forms>
- ²⁴ UNESCO website on accreditation under the ICH Convention, accessed at <https://ich.unesco.org/en/accreditation-of-ngos-00192>
- ²⁵ Arctic Council website, accessed at <https://arctic-council.org/en/>
- ²⁶ The 2019 Summit was held in Sápmi, see Arctic Arts Summit 2019 website, accessed at <https://www.ulapland.fi/EN/Events/Arctic-Arts-Summit-2019>
- ²⁷ A good overview of international engagement options for the Sami can be found in David Lewis, ‘The Saami and Sápmiland as an example of the application of Indigenous Rights within the European Union’, Masters thesis, European Affairs Programme Law Section, Lund University, 2003.
- ²⁸ The Nordic Council is the official body for formal inter-parliamentary co-operation among the Nordic countries with representatives from Denmark, Finland, Iceland, Norway, and Sweden as well as from the autonomous areas of the Faroe Islands, Greenland, and the Åland Islands. See https://en.wikipedia.org/wiki/Nordic_Council.
- ²⁹ The Northern Dimension is a joint policy between the European Union, Russia, Norway and Iceland - regarding the cross-border and external policies geographically covering North-West Russia, the Baltic Sea and the Arctic regions, including the Barents region. See https://en.wikipedia.org/wiki/Northern_Dimension.

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- ³⁰ The Council of the Baltic Sea States (CBSS) is a regional intergovernmental organisation with 11 member states including Norway and Russia, as well as the European Union, working on three priority areas: Regional Identity, Safe & Secure Region and Sustainable & Prosperous Region. See https://en.wikipedia.org/wiki/Council_of_the_Baltic_Sea_States.
- ³¹ Barents Euro-Arctic Council (BEAC) is the forum for intergovernmental cooperation on issues concerning the Barents region, with Norway, Sweden, Finland and Russia among the member states. See https://en.wikipedia.org/wiki/Barents_Euro-Arctic_Council.
- ³² See 'Indigenous Peoples at the UN' website, accessed at <https://www.un.org/development/desa/indigenouspeoples/about-us.html>
- ³³ UN ECOSOC website, accessed at <https://www.un.org/ecosoc/en/home>
- ³⁴ For example see the Convention's Ethical Principles (2015) accessed at https://ich.unesco.org/doc/src/2003_Convention-Ethical_principles-EN.docx
- ³⁵ See WIPO, 2016. Glossary: Key terms related to intellectual property and genetic resources, traditional knowledge and traditional cultural expressions. Accessed at <http://www.wipo.int/tk/en/resources/glossary.html>
- ³⁶ WIPO Glossary <http://www.wipo.int/tk/en/resources/glossary.html#49>
- ³⁷ WIPO's Traditional Knowledge Division has a number of publications and resources providing information about this, accessed at <https://www.wipo.int/tk/en/index.html#training>
- ³⁸ Communities that are stewards of ICH, like ICH elements themselves, may change over time, of course, and be defined in different ways externally, as has happened in Sápmi.
- ³⁹ For example, see Operational Directives 102(d), 185(b)(ii) and 186(b)(ii).
- ⁴⁰ See Kurin, R., 2004. Safeguarding intangible cultural heritage in the 2003 UNESCO Convention: A critical appraisal. *Museum International*, 56 (1-2), 66-77.
- ⁴¹ See for example Farah, P. and Tremolada, R., 2015. Conflict between intellectual property rights and human rights: A case study on intangible cultural heritage. *Oregon Law Review*, 94 (1), 125-177. Coombe, R.J., Ives, S. and Huizenga, D., 2014. Geographical indications: the promise, perils and politics of protecting place-based products. In: M. David and D. Halbert, eds., *Sage Handbook on Intellectual Property*. London: Sage Publications, 207-223.
- ⁴² For example, UNESCO, 2012. Intergovernmental Committee of the Intangible Heritage Convention, Examination of the reports of States Parties on the implementation of the Convention and on the current status of elements inscribed on the Representative List. Paris, 3-7 December. Paris: UNESCO, ITH/12/7.COM/6. Decision 7.COM 6.
- ⁴³ Ethical Principle 7 of the Convention encourages stakeholders to ensure that: 'The communities, groups and individuals who create intangible cultural heritage should benefit from the protection of the moral and material interests resulting from such heritage, and particularly from its use, research, documentation, promotion or adaptation by members of the communities or others.'
- ⁴⁴ UNESCO, Decisions of the Intergovernmental Committee, 14.COM (2019), Decision 14.COM 10.14. Accessed at <https://ich.unesco.org/doc/src/LHE-19-14.COM-Decisions-EN.docx>
- ⁴⁵ Wheel Chart of Sustainability tool, accessed at <https://www.aineetonkulttuuriperinto.fi/en/article/kestavan-kehityksen-kompassi-ja-aineeton-kulttuuriperinto>
- ⁴⁶ Alpfoodway website, accessed at <https://www.alpine-space.eu/projects/alpfoodway/en/home>
- ⁴⁷ HIPAMIndia website, accessed at <http://hipamsindia.org/>
- ⁴⁸ Mattila, T. 2018. Needs of the Sámi people for intellectual property protection from the viewpoint of copyright and trademarks – especially with regard to duodji-handicrafts and the Sámi dresses. Accessed at <http://julkaisut.valtioneuvosto.fi/handle/10024/161206>
- ⁴⁹ See Case Studies, Annex 3.
- ⁵⁰ See for example <https://www.ip-watch.org/2018/12/11/indigenous-knowledge-misappropriation-case-zia-sun-symbol-explained-wipo/>
- ⁵¹ Uluru-Kata Tjuta website, accessed at <https://parksaustralia.gov.au/uluru/discover/>
- ⁵² Mulk, Inga-Maria 2009. Conflicts Over the Repatriation of Sami Cultural Heritage in Sweden, *Acta Borealia*, 26:2, 194-215, DOI: 10.1080/08003830903372092
- ⁵³ See <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/284/44/PDF/G1928444.pdf?OpenElement>.
- ⁵⁴ UNESCO, 2019. Guidance note for inventorying Intangible Cultural Heritage, accessed at <https://ich.unesco.org/doc/src/46568-EN.pdf>
- ⁵⁵ From Section 8 of the *Guidance Note*.
- ⁵⁶ See Norway ICH Inventory, accessed at <https://www.immaterieellkulturarv.no/>; in the Setesdal nomination file the inventory was referred to as 'Intangible Cultural Heritage in Norway'.
- ⁵⁷ For such an inventory to be recognized under the Convention, for example for the purposes of a nomination file, it would need to be recognized by the States Parties concerned, and reported on in their Periodic Reports.

⁵⁸ See Swiss ICH inventory, accessed at <https://www.houseofswitzerland.org/swissstories/history/swiss-traditions-unesco-cultural-heritage>

⁵⁹ It goes without saying that a heritage element that is found scattered over different locations within one and the same country will also benefit from a holistic approach to safeguarding. For this reason the concept of serial sites, which may be mono-national as well as transboundary, was developed under the World Heritage Convention.

⁶⁰ <https://ich.unesco.org/en/mechanism-to-encourage-multinational-files-00560>

⁶¹ See for example The Reindeer Husbandry website, accessed at <https://reindeerherding.org/sami-norway>

⁶² Norway, Sami Act 1987, accessed at <https://www.regjeringen.no/en/dokumenter/the-sami-act/id449701/>

⁶³ There are 3 official Sámi languages (North, Lule and South Sami) in Norway, but there are 3 additional Sami languages that could potentially be declared as official languages – Pite, Ume and Eastern Sami.

⁶⁴ Norway, Act concerning the Cultural Heritage 1978, amended 2018, accessed at <https://lovdata.no/dokument/NLE/lov/1978-06-09-50>

⁶⁵ Norway Ministry of Culture, Meld. St. 8 (2018–2019) Report to the Storting (white paper): The Power of Culture, accessed at <https://www.regjeringen.no/contentassets/9778c28ab1014b789bbb3de0e25e0d85/en-gb/pdfs/stm201820190008000engpdfs.pdf>

⁶⁶ For an overview of legal frameworks, see Lewis, David A.G. 2003. The Saami and Sápmiland as an example of the application of Indigenous Rights within the European Union. Dissertation, Master of European Affairs Programme, Lund University.

⁶⁷ Nordic-Baltic Statement on the Rights of Indigenous Peoples, 29 September 2017. Accessed at <https://www.norway.no/en/missions/wto-un/nig/statements/hr/hrc/hrc36/nordic-baltic-statement/>

⁶⁸ See for example the work of Harlin, Eeva-Kristiina 'Foremothers: Repatriation and rehabilitation of lost cultural heritage', accessed at <https://www.hf.uio.no/ikos/english/research/center/museum-studies/events/2018/repatriation-and-rehabilitation-of-lost-cultural-heritage.html>

Attachments

List of participants

Workshop programme

Note of case studies



KULTURRÅDET
Arts Council
Norway



SÁMEDIGGI
THE SÁMI PARLIAMENT

Participant list:

The RiddoDuottarMuseat Museums - Sámiid Vuorká-Dávvirat
The Finnish Sami parliament
The Swedish Sami parliament
Center of Northern Peoples/ Davvi álbmogiid guovddáš
The Yoik Association / Juoigiid Searvi
Sami Handicraft Association / Sámi Duodji
Sami Writers Association / Sámi Girječálliid Searvi
Sami Artist Union / Sámi Dáiddárráđđi
Sami University College / Sámi allaskuvla
Ministry of Local Government and Modernization
The Indigenous Film Centre Skábma / Álgoálbmogiid filbmaguovddáš Skábma
Sami Sports Association / Sámiid Valaštallan lihttu
DAT Sami Publisher
Sami reindeer husbandry and high school/Sámi joatkkaskuvla ja boazodoalloskuvla
The Duodji Institute/Duodjeinstituhtta
The Coastal Sami Competence Centre/Mearrasiida
The Norwegian Folk Art and Craft Association
MIS of Sápmi



PROGRAMME:

WORKSHOP ON SAMI INTANGIBLE CULTURAL HERITAGE (ICH),

13-15 November 2019 - Sami Parliament, Karasjok, Norway



DAY 1 13/11	Session content
09:00 – 10:00	Session 1 - Opening <ul style="list-style-type: none">• Official welcome, etc.• Introductions• Purpose of the workshop
BREAK	Coffee and snacks
10:30 - 12:30	Session 2 - About the Convention <p>Introductory overview by Sami participants of interaction with UNESCO and the Convention to date.</p> <p>Brief overview:</p> <ul style="list-style-type: none">• The 2003 Convention: its purposes (including promoting practice, transmission and safeguarding of ICH and – nowadays – serving as a tool for sustainable development) and mechanisms (organs, inventories, lists and education).• Relationship to other UNESCO conventions (1972: World Heritage Convention, 2005: Cultural Diversity Convention), Memory of the World Programme, and the work of WIPO on traditional knowledge and cultural expressions <p>Questions and discussion</p>
LUNCH	Sami parliament kantina
14:00 -17:00 15:30 BREAK (coffee and snacks)	Session 3 - Implementing the Convention <p>Introductory overview by Sami participant(s) of key issues facing Sami ICH</p> <p>Group work and discussion: Implementing the Convention: examples and discussion of key issues and challenges</p> <ul style="list-style-type: none">• Linking tangible and intangible heritage management• Community involvement and consent• Distribution of responsibilities among implementing stakeholders

	<ul style="list-style-type: none"> • Sustainable development / (over-) commercialization • Freezing and institutionalization • Transboundary cross-border collaboration, successes, claims and disputes <p>Brief overview: Developing policies at the national or regional level for integrated tangible and intangible heritage: good practices, challenges and examples</p> <p>Questions and discussion</p>
DINNER	Sami parliament kantina

Day 2 14/11	Session content
09:00 – 12:30 10:30 BREAK (coffee and snacks)	<p>Session 4 - Communities and the Convention</p> <p>Brief overview: In what ways can/do indigenous and local communities and NGOs participate in the implementation of the Convention at national and international level? Where are the opportunities and challenges, present and future, in doing so?</p> <ul style="list-style-type: none"> • Role of communities in the ICH Convention and in its subsidiary texts and in the organs • Role of NGOs in the ICH Convention • Accreditation of NGOs <p>Questions and discussion</p>
LUNCH	Sami parliament kantina
14:00 -17:00 15:30 BREAK (coffee and snacks)	<p>Session 5 - Intellectual property protection and ICH safeguarding</p> <p>Introductory overview by Sami participants of how the Sami have been working at the international level with WIPO plus key opportunities and challenges facing Sami regarding IP rights and ICH safeguarding.</p> <p>Group work and discussion: How can intellectual property protection help with ICH safeguarding?</p> <ul style="list-style-type: none"> • Role of UNESCO / WIPO / national laws • Discussion of examples: • Legal ownership versus traditional stewardship over culture: gaps in legal protection • Misappropriation and misuse of indigenous knowledge, symbols and designs <p>Public domain versus publicly available: managing information in inventories and archives.</p>
DINNER	Sami parliament kantina

Day 3 15/11	Session content
09:00 – 12:30 10:30 BREAK (coffee and snacks)	<p>Session 6 - Nominations at the international level</p> <p>Brief overview: What are the benefits and challenges of implementing the Convention?</p> <ul style="list-style-type: none"> • Various stakeholders, different roles • The nominations system - procedures and forms • Questions and discussion about (international) nominations in relation to Sami ICH including Memory of the World, and World Heritage • Beyond nominations: other mechanisms for safeguarding, e.g. inventories, education (formal and informal), general measures and measures targeting specific elements <p>Questions and discussion</p>
LUNCH	Sami parliament kantina
13:30 -16:00 14:45 BREAK (coffee and snacks)	<p>Session 7 - How can implementation of the ICH Convention help the Sami?</p> <p>General discussion: How to use the Convention, and engagement at UNESCO/WIPO forums, at national, regional and international level for the benefit of Sami community members, the Sami Parliament, NGOs etc.</p> <p>Questions and close</p>
DINNER	Sami parliament kantina

Workshop facilitators:

	<p>Harriet Deacon</p> <p>has a PhD in History and a MSc in Management of Intellectual Property. Since 2010, she has consulted to UNESCO on implementation of the 2003 Convention on Intangible Heritage. She has published on intangible heritage, intellectual property and cultural rights.</p>
	<p>Rieks Smeets</p> <p>has a PhD in descriptive linguistics. Having served from 2001 as secretary-general of the Dutch national commission for UNESCO, he became in 2003 chief of the intangible cultural heritage section at UNESCO Headquarters. He has assisted organizations in the preparation of files that nominate elements of intangible heritage for inscription on UNESCO lists.</p>



Workshop on Sami Intangible Cultural Heritage

Karasjok, 13-15 November 2019

Case studies

UNESCO's Living Heritage Entity developed a global capacity-building strategy that includes a comprehensive, long-term engagement with Member States to create institutional and professional environments for safeguarding intangible cultural heritage. It addresses the following needs and priorities:

- Redesign of institutional infrastructures dealing with ICH
- Revision of cultural and related policies and legislation
- Development of inventory methods for ICH with full participation of communities concerned
- Development of effective safeguarding measures for ICH in general and for specific elements
- Capacity-building among civil servants, representatives of communities, NGOs and other experts for safeguarding ICH
- Participation in international cooperation mechanisms, including the preparation of nomination files and requests for financial assistance

UNESCO develops content and training materials and draws upon its world-wide network of trained expert facilitators to deliver capacity-building services in countries around the world.

For more details on the global capacity-building programme:

<https://ich.unesco.org/en/capacity-building>

The content of the capacity-building materials:

<https://ich.unesco.org/en/content-of-training-materials-00679>

To access the capacity-building materials:

<https://ich.unesco.org/en/access-to-capacity-building-materials-00830>

A great number of case studies have been developed as part of the capacity-building programme. Some of these are presented below; edits have been made to them to tailor the discussion for this workshop.

Session 3

Tangible and intangible heritage of the Zuni people: Safeguarding ICH and conserving related objects in the USA

Safeguarding means ensuring the viability of the ICH, i.e. ensuring its continued enactment and transmission within and by the community concerned (see Article 2.3). Safeguarding measures for ICH differ from measures required for the protection and conservation of tangible heritage, although measures to conserve associated products or places (such as musical instruments or a sacred grove) might in some cases be part of a safeguarding plan for an ICH practice.

However, as this case study indicates, community opinions and consent must be sought for actions concerning objects associated with living ICH practices; when this is not done in the proper way, the viability of the related practices themselves may be at stake. Conventional conservation or museum display of ritual objects may disrupt certain ICH practices. In this case study, a community used negotiations and national legislation to regain control over their ritual objects and thus ensure the continued enactment of certain rituals.

Ahayu:da war gods

Ahayu:da, war gods of the Zuni people of the south-western USA, are carved wooden figures, usually 2 or 3 ft (approx. 0.6 or 0.9 m) tall. The twin gods represented by the Ahayu:da carvings are created each year at the winter solstice as part of a blessing ceremony. The younger twin, Ma'a'sewi, is created by the Bear clan and the older twin, Uyuwewi, is created by the Deer clan. The carvings feature an abstract face, body and hands and are surrounded by feathers, prayer sticks and other offerings at the base of the body. Ahayu:da are linked to the initiation of new bow priests, a powerful political and religious group within the Zuni community. The carvings are believed to protect the Zuni community and ensure the prosperity of all people.

Ahayu:da are kept in open-air sacred shrines on the *mesas* surrounding the Zuni Pueblo and tended by bow priests. The shrines are not accessible to the uninitiated. When new figures are added each year, the earlier carvings must remain. The exposure of the older Ahayu:da carvings to the elements, and their eventual decomposition, strengthens the new Ahayu:da carvings. Thus, the appropriate treatment for these ritual objects is not conservation of the fabric but leaving them to decay naturally in open shrines.

Zuni request for repatriation of Ahayu:da carvings in museum collections

When, beginning in the late nineteenth century, some of these carvings were removed and placed in museum collections or sold on the open market, their ritual function was disrupted. Museum exhibitions in the 1970s made the Zuni aware that many Ahayu:da had been removed. By 1978, religious leaders of the Zuni began a concerted campaign to repatriate all Ahayu:da to shrines in the Zuni Pueblo. They felt that the removal of the Ahayu:da was the reason for the suffering in the world at the time, and wished to set things to rights.

Repatriation of the masks was facilitated by the recognition in federal law that Ahayu:da in museum or private collections were communally owned tribal religious objects that cannot be removed from the shrines where they are placed.

Repatriation negotiations

Some institutions holding Ahayu:da masks were concerned about setting legal precedents for the repatriation of objects in their collections or breaking up a large collection by losing key items. Others were focused on ensuring the professional conservation of the carvings, at least until such time as a museum could be established on the Zuni Pueblo. Some of the repatriation negotiations took longer than others: the Denver Art Museum, for instance, returned the carvings they held within two years, but negotiations with the Smithsonian Institution in Washington D.C. lasted over nine years.

Several of the Ahayu:da masks acquired by the Smithsonian were copies that had never been used during blessing ceremonies. They had been specifically made by Zuni for the anthropologist Matilda Coxe Stevenson to take back to the Smithsonian. During repatriation negotiations in the 1970s and 1980s, the Smithsonian expressed the opinion that these carvings in their collection were legally obtained copies. But Zuni leaders felt that Ahayu:da copies were of similar ritual significance to the other carvings and so should not be displayed in exhibitions. They thus sought the repatriation of all Ahayu:da that were kept by the Smithsonian together with some other items of current religious significance. The Zuni were happy for other religious artefacts that were no longer commonly used by them to remain at the Smithsonian. Both sides agreed that the collection required curation that took account of Zuni cultural sensitivities.

By 1992 the Zuni had successfully negotiated the return of sixty-nine Ahayu:da carvings: fifty-four from museums, ten from private collections, three from private art galleries and two from public auctions. The Native American Graves Protection and Repatriation Act (NAGPRA), passed in 1990, facilitated further repatriations. Eventually, more than a hundred Ahayu:da masks were returned. The Zuni were able to restore the carvings to shrines and allow them to continue their gradual decay, thus restoring their ritual function and meaning. There had been some concern among Zuni and museum staff that repatriated carvings could be stolen again from unprotected shrines. Security measures were thus put in place and the carvings at all Zuni shrines were documented to prevent further thefts.

Questions to consider

1. What is the difference between tangible and intangible heritage?
2. What kinds of conflicts arose between safeguarding intangible heritage and conserving tangible heritage in this case?
3. Why do you think these conflicts arose?
4. How were these conflicts resolved?

For further information:

Ferguson, T. J. 1990. 'The Repatriation of Ahayu:da Zuni War Gods: An Interview with the Zuni Tribal Council on April 25, 1990'. *Museum Anthropology*, Vol. 14, No. 2, pp. 7–14.

Johnson, G. 2002. 'Tradition, Authority and the Native American Graves Protection and Repatriation Act'. *Religion*, Vol. 32, No. 4 (October), pp. 355–81.

Merrill, W. L. et al. 1993. 'The Return of the Ahayu:da: Lessons for Repatriation from Zuni Pueblo and the Smithsonian Institution'. *Current Anthropology*, Vol. 34, No. 5 (December), pp. 523–67.

Yu, P. K. 2008. 'Cultural Relics, Intellectual Property and Intangible Heritage'. *Temple Law Review*, Vol. 81. See also <https://prezi.com/mcfj9o5qsvni/case-study-repatriation-of-the-ahayuda/>

Session 5

Cowichan sweaters and the Vancouver Olympics¹

The Cowichan sweater is a traditional Indigenous hand-knitted item crafted by several Coast Salish bands living in British Columbia (Canada). Its main producers are knitters from the Cowichan Nation. In Cowichan Nation's Quw'utsun' Cultural Centre, knitters create, hold workshops on, and sell their sweaters. Many Cowichan people rely on knitting as a main or supplementary income.

Knitting is considered by Cowichan to be a continuation of their long-standing blanket-weaving tradition. Some of the two-colour tone patterns of these blankets, like radiating diamonds and zig-zags, are used in the modern-day Cowichan sweater. Knitting is an important part of Cowichan cultural tradition. As Cowichan knitter Sarah Modeste explains, "I think knitting links ... [the younger generation] to their culture. You lose that, and life is difficult." Contemporary knitters use a combination of historic and contemporary tools and techniques. Each sweater has a unique design and shape, but all are knitted in the round, with double-pointed needles. The sweaters thus have no seams except for the zipper or buttons that run directly down the middle. The sweaters use two or three natural wool colours, including white, blackish brown, and grey, and have shawl-style collars. The sweaters have several horizontal bands of designs, often including a geometric pattern. Although each pattern may not have a specific significance, patterns do carry personal and symbolic meanings for many knitters.

Vancouver hosted the Olympic Games in 2010. The city implemented an Aboriginal Participation and Collaboration program as a part of their bid, submitted with the support of the Four Host First Nations.² Following a campaign by a local newspaper, Cowichan knitters initially got behind the idea of creating sweaters for the official Olympic uniform. However, in 2009, the Hudson's Bay Company (HBC) revealed their clothing line for the Vancouver Winter Olympics, including a mass-manufactured Cowichan-inspired sweater as a part of the official merchandise. HBC had paid \$100 million to be the official Canadian Olympic merchandiser for all the Games held between 2005 and 2012, thus associating the company with the Olympic brand and its values.



Figure 1 *This sweater was handmade by the Cowichan artisan Dora Wilson: it features the Thunderbird design.*

Photo: ExTrance, 2017

https://en.wikipedia.org/wiki/Cowichan_knitting#/media/File:Cowichan_Sweater.jpg

² This case study (written by the facilitators for this workshop) is based on "Knitting for our lives': the appropriation of Cowichan sweaters by the Hudson's Bay [Company] during the 2010 Vancouver Olympics", a paper by Regan Shrumm. The original paper is published in *Articulate* (vol.2, no.2) Spring 2017, University of Victoria and available at <https://reganshrumm.files.wordpress.com/2017/05/knitting-for-our-lives-the-appropriation-of-cowichan-sweaters-by-the-hudsons-bay-during-the-2010-vancouver-olympics.pdf>

HBC said it had considered using traditional Cowichan knitters to produce its sweaters, but “they were unable to meet Hudson's Bay Company requirements ... for consistency, speed to market and volume for delivery”.³ The garment was instead made in China.



Figure 2: *The Hudson's Bay Company sweater for the 2010 Olympics*

<http://www.vancouversun.com/Olympic+sweater+Cowichan+just+inspired+Hudson+Company+says/2085909/story.html>

The HBC sweater raised concerns about misappropriation. Chief Hwitsum of the Cowichan Nation said, “Choosing a knit sweater that is both similar in colour scheme and design to our traditional Cowichan Indian sweater disrespects the fact [that] our sweater is a unique piece of art recognized around the world and is a registered exclusive trademark of the Cowichan people.”

After being threatened with legal action and silent protests, HBC agreed a compromise with the Cowichan Nation that gave Cowichan knitters an opportunity to sell their sweaters at the downtown Vancouver HBC store, alongside the imitations. In addition, HBC provided signage explaining the history of the Cowichan and their sweaters, but only in the downtown Vancouver store. However, HBC did not formally apologise to the Cowichan Nation, and subsequently created another Cowichan-like sweater for the 2012 London Summer Olympics.

The Cowichan knitters benefited from greater public awareness of their tradition through the Olympic promotion, but were not able to reap any significant benefit from the fact that Olympic merchandise sold by HBC referenced their traditions. Small Indigenous knitting businesses in this region lacked sufficient capital to expand, and benefit from economies of scale. Some consumers were misled as to the origin of the HBC sweater, or other imitations, believing them to have been made by Indigenous peoples. The difficulty of maintaining fair prices for local Cowichan knitting traditions in a context of increased mass production and copying of their designs threatens the continuity of these practices. Some Cowichan felt that references to Canadian national identity in the HBC sweaters (e.g. maple leaves and elk iconography) in fact underplayed their problematic relationship with the Canadian government, past and present.

Shrumm argues that ‘Cowichan knitters are the dominant owners of the sweater’ and should ‘hold the ultimate rights, including cultural, financial, and representational right of these sweaters, which are clearly connected to Indigenous traditions within the Cowichan Nation’s cultures’. However, rights to the making of Cowichan sweaters (or other traditional cultural expressions) are not recognised in Canadian law. It is very difficult to protect clothing designs (e.g. the shape of the sweater, how it is made) through conventional intellectual property law, even for fashion designers.

³ Vancouver Sun

<http://www.vancouversun.com/Olympic+sweater+Cowichan+just+inspired+Hudson+Company+says/2085909/story.html>

0792175 - GENUINE COWICHAN

0906290 - GENUINE COWICHAN

0792174 - GENUINE COWICHAN & DESIGN



The Cowichan Nation (Band Council) has registered three different kinds of trademarks: official marks, design marks (figurative marks) and certification marks.⁴ ‘COWICHAN’ and ‘GENUINE COWICHAN’ were registered as official marks in 1994. ‘GENUINE COWICHAN’ was also registered in 1996 as a certification mark for clothing, certifying the goods were ‘hand-knitted in one piece’ ‘by members of the Coast Salish Nation’ ‘in accordance with traditional tribal methods’.⁵ A logo for GENUINE COWICHAN was registered in 1992 as an official mark and in 1997 as a certification mark for clothing. “Official marks” are special types of marks that can be

registered for free by Canadian public authorities (including ‘Aboriginal bands and native organizations’). They cover all classes of goods and services, and prevent third parties from using the name or logo commercially, in perpetuity without the need for re-registration. These trademarks protect against misrepresentation in the branding or labelling of goods, but do not prevent third parties making and selling similar sweaters commercially.

Questions to consider

1. What were the advantages and disadvantages for the Cowichan from sales of their sweater design by HBC during the Vancouver Olympic Games?
2. What benefits does the system of ‘official marks’ offer indigenous peoples in Canada?
3. Did the Cowichan have a strong case against HBC in court? Did ownership of registered trademarks such as ‘genuine Cowichan’ offer any solutions?
4. What else could the Cowichan, the organisers of the Games or others have done to address the problem?

A secret tapestry is made available to the public

© WIPO and UNESCO, 2015

Note: minor changes made by the facilitators for this workshop, 2019

Disclaimer: the facts in this case study are entirely fictitious. Any resemblance with actual facts is mere coincidence.

Facts of the case

1. The National Museum of Ethnography in the country Bobin holds a collection of ethnographic material from communities and groups from all over the world, including indigenous peoples.
2. In recent years, the museum began digitizing its collection to create an online archive in order to reach out to wider audiences and to promote the conservation of their ethnographic collections, respect for cultural diversity, and the safeguarding of intangible cultural heritage. Anyone with internet access can access this online archive for free.

⁴ For more about the use of IP by indigenous groups in Canada see <https://www.sfu.ca/ipinch/outputs/blog/canadian-intellectual-property-regime/>

⁵ For more information see <https://www.ic.gc.ca/app/opic-cipo/trdmrks/srch/home?lang=eng>

3. In most cases, the museum has received permission to make digital copies of the objects, but in some cases the museum staff was unable to contact the relevant rights holders. In such cases they decided not to make materials available online.
4. In the 1970s, a tapestry had been given by the Xin community that lives in the North of Bobin, to an anthropologist employed by the museum. The imagery on the tapestry depicts the sprouting of plants in spring. Community members believe that as long as the tapestry is kept in good condition and not displayed in public outside their spring festival, they will have good crops; otherwise the spirits will be angry which may have a negative impact on their crops.
5. The community was struggling to keep the tapestry in good condition as it aged, so they agreed that the tapestry should be kept by the museum under the following conditions: (a) that it would be conserved, (b) that authorized members of the community could access it as required during the spring festival, and (c) that it would not be put on public display.
6. The tapestry was woven on a traditional loom, using traditional techniques, by three women in the community, the last of whom died 80 years ago. The highly stylized designs are unique to the Xin, and have been passed down from generation to generation, but each time they are woven into cloth, the weavers create their own interpretation of the design. Today, the Xin weaving tradition is practiced by small numbers of women of all ages.
7. A year ago, without properly checking its records or trying to contact the community members, the museum made a reproduction of the tapestry available online. The entry on their digital archive was linked to the digital copies of the anthropologist's field notes in their library, explaining the significance of the tapestry to the community concerned and the consequences of displaying it outside of the spring festival. The metadata on the digital copy of the tapestry explains under what conditions the Xin had given their consent to the conservation of the tapestry within the museum.
8. The museum's website encourages viewers to create new artworks based on the open access collection. A contemporary artist, known for his deliberately provocative work, used the online archive to create a large graffiti painting, copying the tapestry's patterns. He called his artwork the 'death of springtime'.

Information about copyright law in Bobin

Copyright is an intellectual property right that is granted, without the need for registration, to the author(s) of any original creative work that is expressed in a fixed form. It protects artistic expressions in the form of artworks, paintings, songs, books etc., but not ideas as such. Copyright gives author(s) exclusive rights to the use, publication and distribution of the work for a limited time. In Bobin, works are protected by copyright for a period of 50 years from the year of the death of the author(s) of the work.

From an intellectual property perspective works no longer protected by copyright are considered to be part of the public domain, and people are free to access and use them as they wish. Some indigenous groups challenge the inclusion of their traditional cultural works in the public domain as use of these works remains subject to cultural restrictions even after the term of copyright has expired, but the copyright law in Bobin does not currently provide for any exceptions in this regard. There is no specific law protecting intellectual property rights in traditional knowledge or traditional cultural expressions in Bobin.

In some countries, especially those based on civil law systems, such as in Bobin, copyright comes with another set of rights, known as 'moral rights'. Moral rights granted in Bobin to all authors

include the right to be named as author, and to prevent the work from being altered without permission. In the legal system of Bobin, there is no time limit on the exercise of moral rights.

Questions to consider

1. Does anyone own the copyright in the tapestry, or is it in the public domain? What does this mean?
2. Does the Xin community have intellectual property rights over the tapestry because they are 'owners' or stewards of the ICH associated with the tapestry?
3. What ethical guidelines might the museum have violated in making the digitized tapestry available online?
4. Did the museum have the legal right to make a digitized copy of the tapestry available online?
5. Did the artist infringe any intellectual property or other rights of other parties? If yes, whose intellectual property or other rights did the artist violate? Did he do anything wrong, ethically?
6. Now that the tapestry has been made public, what can be done?
7. What can the community and/or the museum do to prevent such a situation from happening again?

Session 6

Land-of-Legends programme, for promoting and revitalizing the art of storytelling in Kronoberg Region (South-Sweden)

(Included in the Register of Good Safeguarding Practices in 2018)

<https://ich.unesco.org/en/BSP/land-of-legends-programme-for-promoting-and-revitalizing-the-art-of-storytelling-in-kronoberg-region-south-sweden-01392>

History of the programme

In Sweden, as elsewhere, factors such as industrialization, urbanization and the wide spread use of modern and social media have led to the disappearance of traditional venues and modes of transmission for storytelling, with practices of telling stories to exchange experiences, to entertain and to convey knowledge and values dying out.

In the late 1980's, a number of librarians and teachers in the Kronoberg region realized that the total loss of the tradition of storytelling was imminent, also in their region. They – some of them experienced storytellers – first engaged in small-scale activities before they organized a festival (May 1990, Ljungby) in which practitioners, enthusiasts and experts from various places in Sweden participated. The viability of storytelling in Sweden was analyzed, and participants discussed problems, needs and ideas for revitalizing their art in ways that would be attractive, meaningful and sustainable in modern society

In November 1990, the Storytelling Network of Kronoberg was created with the following objectives:

- to raise awareness about the endangered viability of storytelling
- to develop measures for revitalizing storytelling, initially in the Kronoberg region.

The Network initiated the Land-of-Legends (Sagobygden) programme that consists of a wide range of activities that from 1999 onwards have been coordinated by the staff of the newly created Museum of Legends (Sagomuseet, in Ljungby), and by other members of the Network. The Network develops, tests, implements and supervises a steadily growing range of activities, including the exploration of new functions, new audiences and new ways of transmission for storytelling. Remedial use of storytelling and its use and transmission in education are, for instance, successfully promoted. The purpose is to reinforce and promote storytelling as a living art, while also exploring the links with other forms of living heritage.

The network succeeded with the Museum as its active core, in mobilizing continuous support among the local population and authorities in three contiguous municipalities of the Kronoberg region. Over time, international contacts have been developed and several aspects of the programme have served as a model for activities elsewhere.

Activities carried out under the programme

1. Storytelling Festival

The Ljungby Storytelling Festival, which is organized every summer; is attended by storytellers, academic experts and story-lovers from the region, and elsewhere in Sweden (including storytellers from minority communities), and from abroad. They come to perform and listen, to follow or give seminars about storytelling and safeguarding approaches, or workshops for training new storytellers. The Festival, with an average of 50 artists and instructors and up to 1500 active visitors, is a forum for sharing approaches in renewing storytelling traditions.

2. Promoting the tradition locally

- Some 80 Legendary Places linked to specific stories are marked in the Region, 40 of them by wooden story cabinets. Storytelling is practiced around the cabinets, often accompanied by traditional music.
- Storytelling activities are organized in cafés, in schools and at business events.
- The Museum introduces about 14,000 people annually, including school classes and tourists, to the tales and legends of the Region.
- Storytelling camps for teenagers are organized.

3. Using storytelling in education

- Methods and materials were developed for use of storytelling
 - in the Museum;
 - in classes to contribute to solving problems such as dyslexia, or bullying;
 - with immigrant children - to help them improve their knowledge of the Swedish language, to understand Swedish ways of life, and to help them talk about their own experiences.
- Contributions are made to academic courses for future teachers who intend to use storytelling in their basic and secondary school teaching.

4. Remedial activities

- Methods and textbooks were developed for storytellers and staff of nursing homes for assisting people affected by dementia and otherwise mentally challenged persons.
- The staff of the Museum also uses storytelling to help people cope with difficult collective and personal experiences. In 2005, when a storm hit Sweden, in particular the Land of Legends, the forest fell and many lives changed radically. An appeal was launched: "Talk, write, and paint about the storm". The responses resulted in a publication, a CD, radio programmes and storytelling performances that provided possibilities for affected people to share and overcome their experiences.

Questions to consider

1. In what ways has the Land-of-Legends programme tried to revitalize storytelling in this region, in line with the Convention?
2. How has the tradition been adapted to address contemporary needs and contexts?
3. How could these ideas or approaches be used in your context, if at all?