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INTELLECTUAL PROPERTY AND GENETIC RESOURCES,
TRADITIONAL KNOWLEDGE AND FOLKLORE**

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**WIPO PANEL ON, “INDIGENOUS AND LOCAL COMMUNITIES’
CONCERNS AND EXPERIENCES IN PROMOTING, SUSTAINING
AND SAFEGUARDING THEIR TRADITIONAL KNOWLEDGE,
TRADITIONAL CULTURAL EXPRESSIONS AND GENETIC
RESOURCES”**

EXPERIENCES FROM KENYA

APRIL 24, 2006

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

BACKGROUND INFORMATION

The Maasai community is straddled between Kenya and Tanzania. They are semi-nomadic pastoralists and they keep different species of livestock that forms the foundation for their traditional occupations and livelihood. There are several Maasai sections based on their socio-territorial set-ups, traditional occupations and cultural practices. Some of the sections include, the Il-Laikipiak, Il Purko, Il damat, Il- Loitai(Loita), I Sambur(Samburu), Il Tiamus(Njemps), Il Kisongo, Il Parakuyo etc

In Kenya they live on the southern and north central parts of the country, while in Tanzania, the majority of the Maasai are found in North Tanzania. Their population in Kenya is estimated to be approximately 1 million- if different sections are put together.

Although the Maasai are one of the most well researched ethnic groups in the Kenya by academicians, anthropologists and planners and visited by tourists and collectors, they still remain among the misunderstood and misinterpreted communities by government, development agencies and other agencies working in the areas. Some research studies have only managed to strengthen and deepen stereotypes and misunderstandings about the Maasai as a people and their pastoralist way of life.

The social organization of the Maasai is based on clan and age-set system and this is what informs and forms their social and traditional decision making and institutions governance and systems. Their continued interaction with nature/environment also has enabled them to establish skills and customary laws that ensure that natural resources are utilized in a sustainable manner. This has been violated by greed for land and other natural resources to feed the ever growing demand for indigenous resources including the rangelands that the Maasai depend for their livelihood. The dry lands or rangelands was once thought to be wastelands or barren lands by bureaucrats are now changing to be the best research and top tourists destinations!

The Maasai is a patriarchal community and decision-making is male- dominated. The hierarchy and power are defined by seniority of age. The Women, however form an important springboard for the generation, transmission and sharing of indigenous knowledge to the future generations. The women play clearly defined roles in communal and social functions such as rituals, blessings and peace-building among others.

The Maasai are now faced with more serious challenges than ever before! There is increasing pressure to change their land tenure systems and as such livelihood, culture and future. The diminishing natural resource base, food insecurity and poverty have eroded their self-confidence and self-determination. By and Large, these interwoven realities threaten the intricate social, cultural and economic fabric that has made the Maasai unique.

The Maasai and other pastoralists need to develop their capacities to enable them address these challenges. One of such glaring challenges is the preservation, promotion and protection of their cultural heritage given the reality of diminishing land, commercialization & commoditization of their heritage by others.

This paper explores the strategies being used by the a section of the Maasai, the Il-Laikipia Maasai to overcome the challenges and protect their heritage.

1. Nature of traditional knowledge/ traditional cultural expressions and group rights

The Maasai community has over time developed and evolved intricate traditional knowledge, skills and natural resource management practices and cultural rituals derived from interaction with the rangelands ecosystems characterised by diverse fauna and Flora.

It is this broad and deep traditional knowledge and related skills that have enabled the Maasai to build a traditional livelihood in the dry lands of East Africa, an area mostly considered by most, including the Governments, as harsh, waste lands and unproductive. The Maasai have survived the harsh terrains, developed and continued to improve unique knowledge, life skills and practices in the management of livestock and human health, natural resources and their total/whole environment.

The soul and life of the Maasai is based on livestock and livestock products. For instance, during the circumcision ceremonies cow hide and milk are used in special rituals that are important in transforming one from child hood to adulthood. When land expropriation is on the increase, it means that livestock keeping will continue to be on threat or on the decline, to me more specific.

The Maasai cultural identity is critically intertwined with the land, nature and livestock. This is what creates the foundations on what informs their traditional expressions, knowledge, skills and practices. The Maasai have, over time develop indigenous knowledge, practices and skills through their continued and sustainable interaction with nature. Some of these skills includes but note limited to;

- Indigenous Technical and Traditional knowledge on livestock management, for instance certain plants have been and continue to be used by the community in the treatment of livestock ailments.
- Indigenous knowledge and skills in the management of the human health – herbal plants are used for the preservation of Milk –“Olorien” *Olea Africana/Africa Olive*. Is used for the treat of the gourds and milk would fresh for long period. Certain plants are also used for special ceremonies and ritual and for treatment of certain ailments.
- The Maasai life is marked and concluded with specific Tradition, rituals and ceremonies depending on seasons, age and communal self organization.
- Performance arts/ethnomusicology forms an important part of the Maasai community. Different age sets, women, girls and children have their own songs, riddles, folklore, and performance art is used to mark important ceremonies and also used as part of communal entertainment.
- The Maasai culture and identity have enabled them to acquire skills in indigenous environmental conservation and natural resource management skills such differed grazing and burning of the grass and vegetations to allow regenerations.
- The Maasai identity is strengthened and nourished with Artefacts made of beads, tree – roots etc.
- Symbols of authority and leadership among the Maasai community is:
 - Three legged stool
 - Club(Orinka)
 - Maasai stick – used in specific in ceremonies and rituals

- Indigenous spirituality is also part and parcel of the Maasai community forms – The Rituals performed under specific trees species for thanksgiving, to pray for rains or at times to pray for barren women to enable them bare children.
- Name places – the Maasai named different areas and places according to their experiences in these areas such Nairobi, a cold place, Enkare Nanyoikie (Nanyuki) – a red water based on the fact that during rainy seasons the water turned red due to reddish clay that was washed into the river. This names have since been corrupted and actually have used as a strategy to dispossess the maasai of the ancestral lands through the systematic replacing Maasai names with anglicised ones, thus killing the linkage of the place and the original owners.

2. Customary law and practices

The Maasai traditional leadership and governance are not written but based on their clan systems and age set systems. The foundation and bottom-line of these customary laws and institutions is to oversee, manage and govern natural resources for good of the entire community and thus guarantees the surety for collective rights, use and ownership by all.

The natural resources and rights attached to them are controlled by the senior elders and reinforced by the long attached with nature. The age set leaders are anointed every 10 years after they have undergone long and deep scrutiny by the elders. This process is not public and a number of ceremonies will be performed to mark the occasion.

Individuals in certain circumstances have been able to utilise individual skills to benefit themselves, however, having individual expertise and skills does not give one express right to dominate or exploit the community. No one person can alienate the community even it is an individual performance! Culture is a collective resource and individuals may bear particular responsibilities in relation to use or management of indigenous skills, performances of a specific nature, however, the exercise of authority lies with the community through its defined traditional institutions of governance.

3. Misappropriation and misuse

The Maasai heritage in its all forms is facing serious problems and challenges. In most circumstances, the indigenous governance systems are not recognised by the Government as most of these cultural practices are considered to be primitive and do contribute to underdevelopment of the Maasai people. However, it is not considered so when non Maasai have expropriated and used the same culture and used it for economic gains. The Maasai culture is a resource and it is being used by un-authorized non Maasai for their own benefits. Some forms and examples on the misuse of the Maasai culture include;

- Commoditization and commercialization of cultural expressions without Prior Informed Consent (PIC) of the Maasai people
- Desecration of spiritual sites and shrines and used for tourists attractions or cultivated without consultation of the community
- Expropriation of ancestral land used for individual purposes and wildlife conservations excluding the Maasai

- Demarcation of the forest traditionally used by the Maasai as such they can no longer access use of the medicinal plants
- Individualization of land rights as opposed to collective rights and ownership: the sub division of the Maasai land in Kajiado and Narok has facilitated and encouraged encroachment of the Maasai land by cities and conservation and Maasai remain without benefits
- Change of name places that were originally Maasai has continued to deny the Maasai the rights they had to these places and does, also, contribute to
- Use of Maasai individuals and communities in Multi media commercial product advertisements without due consultations. These advertisements have continued to depict Maasai as savages and as tourist attraction. The Maasai is presented posing with wildlife as they are part of the wildlife. The recent use of the Maasai name by the land Rover company: Land Rover Freelander Maasai is another abuse of Maasai name
- The continued encouragement of non-use of mother tongue at schools as helped to discourage children
- Researchers/research institutions have taken knowledge from the community and commercialised the knowledge without any benefits to the Maasai
- The use of Maasai in the film making
- The Maasai artefacts have been taken to Museums and for other uses without the knowledge of the community

4. Community responses

The Maasai community has organised itself to fight for their rights. The land rights are paramount to the cultural identity and livelihood of the Maasai. Some of the community interventions on the misuse of their culture include:

- Community organization and civic engagement. In Certain areas the Maasai community has been able to organise themselves into conservations associations so as to benefit from tourism
- Lobby and advocacy initiatives to be able to protect and conserve what is left
- Land case – ancestral land the community is mobilising resources to sue for ancestral land forcefully taken away from them during colonial times
- Cultural preservation projects: Maasai cultural heritage has started a project to preserve and protect Maasai culture and music
- Cultural education through school to educate the children on the cultural values and identity

5. Needs and expectations

The Maasai community needs support in the following areas:

- Capacity development in the area of enabling them to protect their heritage and intellectual rights, preservation of spiritual site for future use – through patenting
- The community needs to be supported to start community projects that actually enable them to patent the project and also benefit from their culture
- Controlled -Internet facilities that enables other to learn and benefit from our knowledge without abusing it

- The community needs legal framework at the national and international level to protect their knowledge and performances against misuse.
- Training in Internal laws of intellectual rights

6. Lessons for the Intergovernmental Committee

There is a strong relationship between the dispossession of Maasai ancestral lands and their culture identity and the heritage of a people. When land disappears it goes with all the knowledge and long term relationship that the Maasai have been able to acquire. That right of the Maasai practicing their Traditional and cultural expressions is an important means by which they reaffirm and continuously develop a cultural identity and space in society.

The Maasai community has a rich heritage and diverse skills and it has been used for so long without authority from the community and without any benefits accruing to the community or if any it is insignificant to the level of damage done to the identity of the community.

Tourism and Researchers are conduits for misuse, misappropriation and expropriation of indigenous Maasai culture and identity at the expense of the people. The community expects international laws and practices to respect their institutions of governance and cultures.

The Maasai livelihood which is pastoralism is both a productive system, a culture and a form of identity and the national policy frameworks do not in most circumstances favour the pastoralists.

Certain cultural practices are harmful to the Maasai people such as female genital mutilation and early forced marriages, but they should not be criminalised but the community need long term practical strategies to understand and intervene, as these practices form part of an identity.

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