



COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion  
and Protection of Human Rights  
Working Group on Indigenous Populations  
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**Item 5b: Review of the draft principles and guidelines on the protection of the heritage of indigenous peoples.**

**Intervention by Les Malezer  
Foundation for Aboriginal and Islander Research Action**

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Mr Chairman,

We would like to again congratulate Mr Yokota and the Saami Council, represented by Matthias Ahren, for their excellent work in developing this report (E/CN.4/Sub.2/AC.4/2005/3) including the annexed draft guidelines.

In giving our congratulations I would like to apologise to Mr Ahren for the fact that I did not adequately respond in detail to his earlier request for our views, in their process of preparing this documentation. It is with some embarrassment that our presentation contains now a number of comments on the annex.

However this embarrassment does lead me to comment on our emphasis on the merits of these joint papers, developed between the expert members of the Working Group and Indigenous organisations. Clearly the arrangement leads to better outcomes and more accurate accounts of Indigenous Peoples' interests.

Mr Chairperson, as an attachment to this presentation I am attaching a two page note on suggested adjustments to the Draft Guidelines contained in the Annex. I do not intend to read all of these as much of it is simply structural or textual changes of no major significance. However I would like to make some overview comments of issues arising from these draft guidelines. These comments are made in order of the sections of the guidelines.

Firstly, we consider that the UNESCO conventions warrant mention in the opening paragraphs on international human rights standards, and in particular, some further consideration should be given to the World Heritage Convention, where territories are being protected from destruction, and the interests of Indigenous Peoples are often caught up in the protection regime of the World Heritage list.

We appreciate the recognition in the underlying criteria, acknowledgement that Indigenous women play an important role as custodians of Indigenous cultural heritage. Given the excellent information provided during this session's discussion on Traditional Knowledge, emphasising the central role of Indigenous women, there should be more elaboration on the roles of Indigenous women. In fact, at the end of this presentation we will propose that additional documentation on Indigenous Women and Heritage Protection, as an elaboration on these draft guidelines or standards, would be appropriate.

Mr Chairman, in Section I we raise the question whether heritage protection should ultimately rely upon States enacting national legislation. It would be much more preferable that the authority for heritage protection arises out of treaties or agreements established between Indigenous Peoples and the State. We also recommend an inclusion which raises the value of constitutional or fundamental guarantee by the State of the cultural survival of Indigenous Peoples. The call for constitutional and legislative reforms by States was already included in the Programme of Action for the First Decade of the World's Indigenous Peoples.

We have made suggestions for strengthening the dispute resolution provisions, recognising that financial costs for Indigenous Peoples are at the highest when our cultural heritage is being threatened by foreign development proposals. The adequacy of the State justice system should also be under some scrutiny.

Regarding the use of inventories we are concerned that States should not be able to opt to establish a cultural heritage register to deal with development proposals. Such depositories should be opposed.

Finally, Mr Chairperson, we recommend under the Section on Capacity Building and Awareness Raising should carry a responsibility to promote the identity of Indigenous Peoples who are often the invisible peoples in the States population base. We emphasise that cultural diversity is to be welcomed, promoted, respected and protected.

We support the recommendations contained in the working paper. In addition we believe that a *World Conference on Indigenous Peoples' Cultural Heritage* should be convened around Year 2008 as part of the 2<sup>nd</sup> Decade and with the purpose to have Indigenous Peoples adopt the standard under the authority of that conference.

Thank you, Mr Chairperson.