

United Nations Expert Mechanism on the Rights of Indigenous Peoples

Eighth session July 20 – 24, 2015

Agenda Item 7: Study and Advice on the Promotion and Protection of the Rights of Indigenous Peoples with respect to their Cultural Heritage

Intervention by the International Indian Treaty Council, presented by Andrea Carmen

Thank you Mr. Chairman.

Among the many important commitments made by the UN General Assembly in the Outcome Document adopted at the World Conference on Indigenous Peoples, and in fact the only one calling for a new process or mechanism, is Operative Paragraph 27 which states: *We affirm and recognize the importance of indigenous peoples' religious and cultural sites and of providing access to and repatriation of their ceremonial objects and human remains in accordance with the ends of the United Nations Declaration on the Rights of Indigenous Peoples. **We commit ourselves to developing, in conjunction with the indigenous peoples concerned, fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels.***

The Outcome Document also reaffirmed in paragraph 3, States' "support for the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, and our commitments made in this respect to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, in accordance with the applicable principles of the Declaration."

The United Nations Declaration contains a number of provisions affirming the cultural rights of Indigenous Peoples that directly pertain to the issues of International Repatriation of Cultural heritage, including ceremonial objects, traditional knowledge and human remains, as addressed above in OP 27. These include preamble paragraphs 5, 7, 8, 9, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and articles 3, 5, 8, 11, 12, 15, 18, 19, 25, 31, 43, 37, 37, 38, 39, 40, 41 and 42 which affirm rights that are violated when cultural and ceremonial items and ancestral remains are removed and/or held by museums, institutions and private collections without the consent of Indigenous Peoples who are rightful caretakers. In addition, many of these preamble paragraphs and articles underscore the importance of cooperation, good faith, and partnership among Indigenous Peoples and States for ensuring the recognition and implementation of these rights, as well as the development of relevant activities and processes by the UN System.

These principles and rights, which constitute the internationally accepted minimum standards, along with various declarations, resolutions and statements from Indigenous Peoples from around the world on this critical theme, must form the basis for implementation of OP 27.

We call the attention of this body to the joint submission submitted by the IITC, the Association of American Indian Affairs International Repatriation Project and other Indigenous organizations and Nations to the UN Expert Mechanism for the Rights of Indigenous Peoples (EMRIP) which is posted on the EMRIP web page under submissions for the current Study on Cultural Heritage of Indigenous Peoples. It provides numerous case studies from several countries and testimonies of the severe cultural, spiritual, emotional and political harm experienced by Indigenous Peoples whose most sacred items are held by museums and other repositories far from their rightful homes and their designated and appropriate caretakers.

One example included in this joint submission is the sacred maaso cova, a ceremonial deer head used in the most important ceremony of my own Yaqui Nation, which was obtained by Anthropologists in Mexico in 1937 and is currently held in the government of Sweden's National Museum of Ethnography in Stockholm. The International Indian Treaty Council and the political and cultural leaders the Yaqui Nation have called for its return in many discussions and communications with the government of Sweden and the officials of the Museum for over 13 years, but the museum has refused to consider its return. This is just one very painful and offensive example among many thousands of such cases impacting Indigenous Peoples around the world. It demonstrates the urgent need for an international process or mechanism, as called for in OP 27, to be established with the participation of States and Indigenous Peoples, including cultural leaders and traditional knowledge holders and fully respecting the cultural protocols and the free prior and informed consent of the Indigenous Peoples impacted.

We are pleased to report important progress in this regard. We greatly appreciate that Assistant Secretary General Lenni Montiel, during the consultation on implementation of the WCIP Outcome Document at the 14th session of the UN Permanent Forum on Indigenous Issues in April 2015, encouraged the establishment of an ad hoc process with the participation of States and Indigenous Peoples to begin to discuss how this process could be advanced. We thank the United States and the Plurinational State of Bolivia for volunteering at that time to participate in this process with the International Indian Treaty Council and other interested Indigenous Peoples and organizations and we encourage other States to do so as well.

The report of the 14th session of the UN Permanent Forum on Indigenous Issues also recognized and provided support for initiation of this process as follows.

“The Permanent Forum welcomes the interest expressed at the interactive dialogue on the follow-up to the World Conference held by the Department of Economic and Social Affairs on 22 April 2015, in which States and indigenous peoples stressed the importance of repatriating ceremonial objects and human remains. The Forum therefore recommends that States and indigenous peoples establish a working group to prepare a manual of good practice with regard to the repatriation of ceremonial objects and human remains, with the support of the United Nations Educational, Scientific and Cultural Organization and other United Nations entities, and submit a progress report to the Forum at its fifteenth session.” [E/2015/43-E/C.19/2015/10 paragraph 8].

We also welcome the EMRIP's recognition of the importance of this issue its Study on the Promotion and Protection of the Rights of Indigenous Peoples with Respect to their Cultural Heritage in section VIB. "Restitution and Repatriation" including the acknowledgement of our written submissions. Paragraph 72 states that "The repatriation of the cultural heritage of indigenous peoples is an important aspect of such restitution. The ancient burial grounds of many indigenous communities have been disrespected and the communities concerned have asked for the repatriation of human remains and sacred and cultural objects, whether held in private or public collections. General Assembly affirmed and recognized the importance of repatriating indigenous peoples' ceremonial objects and human remains."

In conclusion Mr. Chairman, we request that the EMRIP expand upon the references in its current report and, in its advice to the Human Rights Council, express support and encourage broad state participation in this ad hoc working group on International Repatriation which was called for in New York in April of this year. We further request that the EMRIP underscore that the process for implementation of OP 27 must fully respect the rights of Indigenous Peoples as affirmed in the UN Declaration on the Rights of Indigenous Peoples including but not limited to full and effective participation, free prior and informed consent, cultural rights, rights of Indigenous Peoples divided by international borders, and full respect for Indigenous Peoples' own laws and traditional protocols regarding the use and treatment of their sacred items and human remains.

We also request that the EMRIP advise and encourage the members of the Human Rights Council to participate in and support this process by undertaking the following steps:

1. Consider ways to begin implementing the commitments made by States in OP 27 of the WCIP Outcome document, including compiling national inventories of Indigenous Peoples' cultural items and human remains currently held by national entities such as universities and museums which can be made available to Indigenous Peoples at their request.
2. Initiate the development of action plans, in conjunction with Indigenous Peoples and respecting Indigenous Peoples rights and cultural protocols, for repatriating sacred items and human remains, both within their countries and internationally, including cultural items currently held by governmental, public, non-profit as well as business enterprises, including private dealers.
3. Prepare submissions to present at the 15th session of the UNPFII documenting best practices related to international repatriation and the creation of participatory processes and mechanisms to achieve this end developed and implemented in conjunction with Indigenous Peoples.
4. Affirm that Free Prior and Informed Consent of the Indigenous Peoples affected is the foundation and governing principle in all steps and stages of repatriation including determination and confirmation of provenance and disposition of the items once repatriated. Due to the intergenerational nature of this right as well as many unresolved questions as to the conditions under which these items were originally acquired, such consent must be renewed in each new generation by the designated authorities and recognized caretakers of the specific cultural items

Thank you.