

Establishing the new mechanism for international repatriation of Indigenous Peoples' ceremonial objects and human remains: updates and next steps



Paragraph 27 of the World Conference on Indigenous Peoples Outcome Document adopted by consensus of the United Nations General Assembly on September 22, 2014 included the following commitment: *“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 international human rights framework for this critical issue is based on the inherent rights of Indigenous Peoples as recognized in the UN Declaration on the Rights of Indigenous Peoples. For example, Article 11 affirms that *“States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”* Article 12 further affirms that *“States shall seek to enable the 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”.*

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property also contains provisions of direct relevance. Article 6 calls on the States Parties *“To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized”.* Article 13 calls on the Parties *“to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner”.*

At its 14th session in 2015, the UN Permanent Forum on Indigenous Issues (UNPFII) recommended 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.” At its 15th Session in 2016, the UNPFII called for ongoing coordination between the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and UNESCO to carry out next steps towards establishing a new process or mechanism for international repatriation as called for by the World Conference Outcome Document:

46. The Permanent Forum recognizes the recent formation of an ad hoc working group on international repatriation, with the participation of States, indigenous peoples and specialized agencies of the United Nations system, including the Expert Mechanism on the Rights of Indigenous Peoples, UNESCO, and the Special Rapporteur in the field of cultural rights... as another positive step forward in the implementation of recommendation No. 8 of the Forum at its fourteenth session.

47. The Permanent Forum requests UNESCO to host a joint seminar with the Expert Mechanism on the Rights of Indigenous Peoples and other relevant United Nations mechanisms for the purpose of exploring the development of a new international mechanism on the repatriation of ceremonial objects and human remains. Furthermore, the Forum calls upon all States with national repositories of indigenous cultural items and ancestral remains, including museums and universities, to work with UNESCO to create an international database and inventory of these items accessible to indigenous peoples as a basis for initiating dialogue.

EMRIP also addressed this issue in its 2015 Study on the Promotion and protection of the rights of Indigenous Peoples with respect to their cultural heritage. This Study concluded that *“the right to redress and restitution where violations of the rights of indigenous peoples have occurred is a foundational element to ensuring reconciliation and the future commitment to protecting the rights of*



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indigenous peoples..." (para. 69) and that *"the repatriation of the cultural heritage of indigenous peoples is an important aspect of such restitution..."* (para 71). It submitted the following advice to States: *"States should take effective measures to assess, redress and remedy the effects of past injustices and violations of the rights of indigenous peoples by ensuring the restitution and repatriation of their cultural heritage."* [A/HRC/30/53, August 9, 2015]

In a recent, very important development, on August 9th, 2017 the UNESCO Executive Committee provisionally adopted a new Draft Policy on Engaging with Indigenous Peoples. The final draft affirmed the UN Declaration on the Rights of Indigenous Peoples and included a paragraph on repatriation of human remains and cultural items as follows: *"Indigenous peoples have the right to repatriation of their human remains and States should seek to enable access and/or repatriation of ceremonial objects and human remains in states' possession through fair, transparent and effective mechanisms developed in conjunction with the indigenous peoples concerned"* [para. 77]r]

On October 17th, 2017, at the 202nd session of the UNESCO Executive Board, UNESCO's Programme and External Relations Commission recommended the adoption of a draft decision taking note "with satisfaction" of the new policy as a "living document"; calling on "the Secretariat to produce a document detailing its implementation of application of the UNDRIP to the Organization's mandated areas"; and calling on "Member States to make voluntary financial and in-kind contributions to support the implementation of UNESCO's programmes and activities in line with the UNESCO policy on engaging with indigenous peoples" [(202 EX/9) 19].

Next steps will be full adoption and implementation of this policy by UNESCO including by developing effective mechanisms for international repatriation as called for by the UN Declaration on the Rights of Indigenous Peoples and the WCIP Outcome Document. Recommendations include that UNESCO:

1. **Address implementation of the new Policy's provision pertaining to repatriation of sacred items and human remains as an agenda item of the next 6th session of the Subsidiary Committee of the UNESCO's 1970 Convention with the participation of Indigenous Peoples' representatives;**
2. **Organize seminars with UN EMRIP and Indigenous Peoples to discuss the development of new mechanisms, procedures and protocols for international repatriation;**
3. **Establish and host a new database and encourage States to post information on sacred items in the possession of national museums and other institutions;**
4. **Adopt a new regulation requiring proof of Free, Prior and Informed Consent from appropriate Tribal/Cultural Indigenous entities before sale or international transport of ceremonial items or human remains is permitted (example: CITES for endangered species).**



Representatives of UNESCO, EMRIP, IITC, UNPFII and the University of Helsinki at the International Conference on Indigenous Peoples' Rights to Cultural Heritage, Helsinki Finland, November 17, 2017.

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