



International Indian Treaty Council

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United Nations Expert Mechanism on the Rights of Indigenous Peoples
Esteemed EMRIP members and Secretariat

Respectful Greetings,

I am writing to you to express a formal request, on behalf of the International Indian Treaty Council and our affiliates from North, Central, South America, the Pacific, Arctic and Caribbean regions, based on the EMRIP's new mandate. It calls on the EMRIP to *"Upon request, assist Member States and/or indigenous peoples in identifying the need for and providing technical advice regarding the development of domestic legislation and policies relating to the rights of indigenous peoples, as relevant, which may include establishing contacts with other United Nations agencies, funds and programmes;"* [Resolution adopted by the Human Rights Council on 30 September 2016, A/HRC/RES/33/25, operative para. 2 c).

Operative Paragraph 27 of the World Conference on Indigenous Peoples Outcome Document adopted by the UN General Assembly committed States *"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."* Articles 11 and 12 of the UN Declaration on the Rights of Indigenous Peoples also call for return of Indigenous Peoples' cultural property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

In the view of Indigenous Peoples of the world, the items in question, such as our Yaqui Maaso Kova which continues to be held by the Swedish Museum of World Cultures, sacred items and human remains held in repositories around the world, are not artifacts or collection pieces. They are sacred living elements of our cultures upon which our holistic health, spiritual life and identity depends. Their continued display and storage in museums and universities, their sale by auction houses and purchase by private collectors, is an open wound for Indigenous Peoples. We look forward to the restoration of respectful relations through a new mechanism that can facilitate the just return of these sacred items.

The EMRIP's 2015 Study on the Right to Cultural Heritage included a recommendation that *"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..."*.

We appreciate the active and direct engagement of the EMRIP to date, within their capacity, in advancing the development of this new mechanism since this study was completed including in the recommendations in the Study on Cultural Heritage, participation in IITC's side events and Consultations at the UNPFII, and submitting statements to UNESCO's 4th and 5th Subsidiary Committee meetings of UNESCO's 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (September 2016 and May 2017).

While we recognize the continuing interest in this matter by the EMRIP, the UN Permanent Forum on Indigenous Issues, and, more recently, UNESCO, we face continuing challenges and obstacles in advancing this new mechanism and in achieving the return of our sacred items and human remains. Challenges include lack of a means to locate where our missing sacred items are being housed and held. We also continue to bear the burden of proof to convince the holders that these sacred items were removed from our lands without our consent, despite the well-known history of colonization and theft which are the context for their acquisition.

We appreciate the participation of UNESCO at the 2017 session of the EMRIP to further these discussions. We also appreciate UNESCO's invitation to our organization as well as to the EMRIP to participate as official observers in the 4th and 5th Subsidiary Committee meetings of UNESCO's 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in September 2016 and May 2017. We were disappointed that, due to financial constraints, no member of the EMRIP was able to join us in Paris during these sessions where we presented proposals for action by UNESCO including:

- 1. Co-organizing a seminar with EMRIP and Indigenous Peoples' representatives to discuss the development and implementation of the new mechanism, as called for by the recommendations of the 15th session of the Permanent Forum on Indigenous Issues;¹**
- 2. Establishing and hosting a data base listing Indigenous Peoples sacred cultural items held in State repositories and encouraging States and museums to post information as also recommended by the Permanent Forum;**
- 3. Adopt a new regulation requiring proof of Free Prior and Informed Consent from appropriate Indigenous Tribal/Cultural entities before sale or international transport of ceremonial items or human remains is permitted.**

¹ 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, which was reported at the 2016 session 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. [

IITC also joined with the EMRIP in recommending, at the UNPFII 17th session, that a paragraph on the repatriation of Indigenous Peoples' cultural heritage be included in the new UNESCO policy on Indigenous Peoples that was under discussion. We are very gratified that the recognition of the right to repatriation was included in the final draft of the policy which was endorsed by the UNESCO in October 2016 as follows:

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].

Now that UNESCO clearly recognizes the right to repatriation based on the UN Declaration on the Rights of Indigenous Peoples there is a real opportunity to advance implementation of the mechanism, based on the 3 recommendations above.

Our specific request is that EMRIP add to its schedule for 2018 and 2019 the capacity to participate, based on its new mandate as official observers in the next two Subsidiary Committee meetings and meetings of the State parties of UNESCO's 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The dates for these sessions, which will presumably take place in 2018 and 2019, are not yet posted on the Treaty web page, however UNESCO could be contacted by the EMRIP to determine the dates. IITC will also do so.

I have enclosed our joint submissions to the EMRIP's Cultural Heritage Study in 2015 to demonstrate once again the global scope and concern of this issue for Indigenous Peoples of many countries. Participation in the upcoming Subsidiary Committee and State Party sessions of the 1970 Convention in Paris over the next two years will allow EMRIP's to engage with a number of the state parties without the added expenses of travel to each country concerned. Considerable advances can be achieved toward the development of the mechanisms, including the organization of the Symposium as called for the by UNPFII15.

I have enclosed an information sheet with some of the background and latest updates regarding this critical human rights concern to our affiliates (list enclosed), on whose behalf we are submitting this request, and a great many other Indigenous Peoples.

We will look forward to your kind consideration of this vital request to the EMRIP which has a direct impact on the rights of Indigenous Peoples in many countries. We will remain hopeful that you can add participation at UNESCO's Treaty body sessions as presented above to EMRIPs agenda and workplan for the coming two years.

With best regards,

A handwritten signature in cursive script that reads "Andrea Carmen".

Andrea Carmen, Executive Director
International Indian Treaty Council