

UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) 10th session, 10-14 July 2017
Agenda Item 9, Intersessional Activities and Follow-up to Thematic Studies and Advice
On the Rights to Cultural Heritage and Health
Intervention by the International Indian Treaty Council, presented by Andrea Carmen

Thank you Mr. Chairman. 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.

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 in advancing the development of this new mechanism since this study was completed. 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 in this session of the EMRIP to further these discussions. We also appreciate their invitation to our organization 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 in Paris 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;**
- 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. Adopting and enforcing a new type of export certificate and regulation requiring proof of FPIC from appropriate Indigenous Tribal/Cultural entities before sale or international transport of ceremonial items or human remains is permitted.**

IITC also joins with the EMRIP in recommending that a paragraph on the repatriation of Indigenous peoples' cultural heritage be included in the new UNESCO policy on Indigenous Peoples currently under discussion. We have presented a proposed text for this new paragraph, based on already adopted

language from UNESCO's recommendations for museums adopted in November 2015, to both the EMRIP and UNESCO, and request that it be endorsed in the report of this session.

The items in question, such as our Yaqui Maaso Kova which continues to be held by the Swedish Museum of World Cultures, are not artifacts or collection pieces. They are sacred living beings on which our holistic health, spiritual life and cultural identity depends. Their continued display or storage in museums and other repositories, 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.

Choeque Utesia, thank you very much.

IITC proposal for the additional paragraph on Repatriation for the new UNESCO Policy on Indigenous Peoples:

"In instances where the cultural heritage of indigenous peoples is represented in museum collections or other State repositories, Member States should take appropriate measures to encourage and facilitate dialogue and the building of constructive relationships between those museums and other repositories and indigenous peoples concerning the management of those collections and items, and, where appropriate, return or restitution in accordance with applicable laws and policies. Member States should ensure that museums and other repositories housing cultural heritage of Indigenous Peoples implement principles of applicable international instruments upholding and affirming the rights of Indigenous Peoples in this regard." [based on paragraphs 18 and 22, UNESCO Recommendation concerning the Protection of Museums and Collections, their Diversity and Role in Society, adopted at the 38th Session of the General Conference, November 17, 2015]