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The inclusion of Indigenous Peoples in efforts to protect cultural rights and cultural heritage

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Excellencies, Panelists, and Participants:

Thank you all, and particularly to Special Rapporteur Karima Bennoune, and OHCHR, for the opportunity to address “the inclusion of Indigenous Peoples in efforts to protect cultural rights and cultural heritage”. I recently served for two terms on the Council’s Expert Mechanism on the Rights of Indigenous Peoples (“EMRIP”) and had the opportunity to consider these issues, which also form my academic and community work.

There are at least 500 million Indigenous Peoples living in member states across the world. They are differently situated but share many commonalities, including historic deprivations of cultural rights that remain unremedied. Additionally, today, land-based Indigenous cultures are threatened by development, climate change, racial discrimination and violence in many parts of the world.

I will point out several of these challenges, as well as the promise of the [Declaration on the Rights of Indigenous Peoples](#), to mainstream and address Indigenous Peoples’ cultural rights, giving life to international covenants in indigenous contexts.

Last month, [a mass grave containing the remains of 215 children](#) – some as young as 3 years old – was discovered on the grounds of the former Kamloops Indian Residential School in British Columbia, Canada. The discovery was shocking and devastating, as these were indigenous children taken from their families decades ago, their fates never known until this very day – but it was also not altogether surprising.

From the 1850’s to late 1990’s, in many parts of the world – whether N. America, the Arctic, Pacific, Eastern Europe, or elsewhere – church and state worked together to deploy a “residential school program” as part of a systemic effort to eradicate Indigenous cultures. The slogan in the U.S., for example, was “Kill the Indian to Save the Man” as part of the federal assimilation policy.

Children were taken from their families, punished for speaking their languages, and often abused, starved, or even killed, while ostensibly gaining instruction in industrial arts and labors. The idea was to replace Indigenous languages, cultures, and lifeways with those of colonizers and settlers.

States have begun to account for these histories. As noted in the EMRIP study on [“Recognition, Reconciliation, and Reparations,”](#) Canada held a Truth and Reconciliation Commission in the early 2000s and is now in the process of advancing recommendations. Clearly, however, there is work to be done.

The residential schools reveal how the right to culture is linked to language, health, family, the right to live free from violence, and to the right to life itself. One goal of the residential schools was to stop Indigenous Peoples from passing on their languages. Today estimates suggest that, worldwide, one language dies every two weeks— and thousands have died already. These are local and Indigenous languages, and their loss impedes not only individual rights to expression and thought, but also collective rights to identity and culture.

For society more broadly, recent data shows how language diversity is linked to biological diversity, such that the entirety of humankind is suffering these losses. In 2019, the [High Commissioner noted](#) for example that Indigenous Peoples’ traditional knowledge contains the keys to conservation and adaption during a time of climate crisis.

Indeed the climate crisis, as well as political pressures, have exacerbated Indigenous Peoples’ forced relocation, especially where states have failed to protect their land rights. In many places, Indigenous Peoples cannot enjoy the right to culture without the right to land. This is because indigenous subsistence-based economies; religious practices; health and medicine; music, art, and textiles; are all tied to the natural landscape. [Displacement threatens cultural practices](#) with extra pressures on children, women, and persons with disabilities.

The pandemic has revealed the ways in which existing structural inequities leave Indigenous Peoples particularly vulnerable to the ravages of COVID. In a [recent country engagement](#), the EMRIP considered how lack of access to health care in one’s own language – or at all – makes it difficult for Indigenous Peoples to receive accurate information, treatment, and vaccines. Similarly the failure to delineate and protect

Indigenous Peoples territories and lands in many countries has left Indigenous Peoples vulnerable to incursions, with particular concern for groups in voluntary isolation in the Amazon.

Fortunately the UN has an excellent roadmap for addressing these challenges. In 2007, the General Assembly adopted the [Declaration on the Rights of Indigenous Peoples](#). The Declaration recognizes not only individual rights to life, health, and equality, but also to survive as distinct peoples with collective rights to self-determination, land, language, religion, and of course culture. The current challenge is to realize the aims of the Declaration, and there are UN bodies working on this issue from different perspectives.

To highlight several promising developments, I note that EMRIP has recently produced a report entitled “[Repatriation of ceremonial objects, human remains, and intangible cultural heritage under the UN Declaration on the Rights of Indigenous Peoples](#).” Under the Declaration, Indigenous Peoples have a right of their own, not derivative of states, to recover their cultural properties and human remains. This reflects a worldwide shift in recognizing minority and Indigenous Peoples’ interests in spiritual, religious, and cultural objects that were taken from them during periods of colonization and then held in far away museums or bought and sold by collectors.

Fortunately, some states, Indigenous Peoples and museums are setting good examples. In a recent EMRIP country engagement, the Swedish National Museum of World Culture and Yaqui Indigenous Peoples of Mexico and the US made an historic [agreement in principle to repatriate a sacred object of the Yaqui](#), after decades of stalemate. They achieved breakthrough by developing a fuller sense of the historical record, coming to see the legitimacy of each others' laws and customs, and viewing the 1970 Convention on Cultural Property, in light of the UN Declaration on the Rights of Indigenous Peoples.

Before I close I would like to note opportunities to advance protection of Indigenous Peoples intangible cultural properties in the World Intellectual Property Organization. [WIPO’s Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions](#) is a multi-stakeholder text based negotiation process. It complements efforts of Indigenous Peoples to protect their own intangible properties as in Article 31 of the Declaration. Examples include the [Khoi San people of South Africa](#) who negotiated a 'benefit-sharing' agreement in which industry acknowledges their traditional knowledge in cultivating

Rooibos tea. [Maya women in Guatemala](#) have advocated to amend copyright law to protect village and family-based landscape designs often copied in the fashion industry.

In closing, I would like to encourage the entire UN system to participate in the [International Decade of Indigenous Languages](#), declared by the General Assembly for 2022-2032. With UNESCO as the lead agency, this is an opportunity to mainstream Indigenous Peoples' rights to use, revitalize, and transmit their languages to future generations. By supporting Indigenous Peoples' cultural rights, we can both enhance cultural diversity broadly and perhaps help those small voices of Kamloops to be heard again. Thank you.