

# Traditional knowledge and the Rights of Indigenous Peoples in the context of Intellectual Property



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Expert Mechanism on the Rights of  
Indigenous Peoples

# Expert Mechanism on the Rights of Indigenous Peoples



# Composition

Independent Experts from 7 socio-cultural regions:

- Africa
- Asia
- Central and South America, and the Caribbean;
- Arctic
- Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia
- North America
- Pacific

# EMRIP Mandate: HRC Resolution 6/36

- The Expert Mechanism provides the Human Rights Council with thematic advice, in the form of studies and research, on the rights of Indigenous peoples as directed by the Council.
- The Expert Mechanism may also suggest proposals to the Council for its consideration and approval.

# Thematic Studies

- 2011 Study on indigenous peoples and the right to participate in decision making
- 2012 Study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples
- 2015 Study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage
- 2018 Study on Free, Prior and Informed Consent



# Amended Mandate: HRC Resolution 33/25

- UN Declaration on the Rights of Indigenous Peoples should be as the main normative framework
- Enhanced cooperation and interaction with other UN mechanisms, Mandate Holders and National Human Rights Institutions
- Country-specific activities: facilitating dialogue between indigenous peoples, States, the private sector, and other stakeholders; technical assistance, awareness-raising and capacity building activities.



## Amended Mandate:

EMRIP shall:

- **provide** the Human Rights Council **with expertise and advice** on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples
- **assist** Member States, **upon request**, in achieving the ends of the Declaration through the promotion, protection and fulfillment of the rights of indigenous peoples

# Country engagement

- 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.



# Assistance and advice

- Provide Member States, upon their request, with **assistance and advice for the implementation of recommendations** made at the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms

# Facilitation of dialogue

- Upon the request of Member States, indigenous peoples and/or the private sector, engage and **assist** them **by facilitating dialogue**, when agreeable to all parties, in order to achieve the ends of the Declaration

# EMRIP study on cultural heritage

- Intellectual property protection could make it possible to protect traditional remedies and indigenous crafts and music against misappropriation and enable communities to control and benefit collectively from their commercial exploitation.
- Indigenous peoples reject the “public domain” status of traditional knowledge and traditional cultural expressions and argue that it opens them up to misappropriation and misuse.



# EMRIP study on cultural heritage

- The process in which laws governing the use of traditional knowledge, cultural expressions and genetic resources are developed needs to conform with the rights guaranteed under the Declaration, particularly article 31.
- WIPO and its Intergovernmental Committee should ensure that indigenous peoples fully participate in the current negotiations and that their free, prior and informed consent is sought and obtained before any new international instruments for the protection of traditional knowledge is adopted.



# EMRIP study on cultural heritage

- United Nations institutions should continue to develop guidelines and other norms and practices aimed at the protection and inclusion of traditional cultural heritage, including the role of traditional knowledge, in enhancing community resilience and sustainable development.

# EMRIP study on the role of languages and cultures

- There is a need for the recognition of the continuing value to communities and society of indigenous peoples' traditional knowledge, including spiritual, cultural and linguistic knowledge. This will require long-term financial investments in measures for the reclaiming and relearning and sharing of this knowledge. The resources spent on this should be, at a minimum, commensurate with the monies and efforts previously spent to destroy such knowledge.

# EMRIP studies on FPIC

- International organizations working in the field of cultural heritage must integrate and respect the rights proclaimed in the Declaration in their work. This includes obtaining the free, prior and informed consent of indigenous peoples before any decision affecting their lands is taken.
- UN agencies should reference the UN Declaration on the Rights of Indigenous Peoples, and especially the norm of free, prior, and informed consent, with respect to the ownership, use, and protection of indigenous peoples' intellectual property and other resources.



# 11<sup>th</sup> Session, 9 – 13 July 2018

- Study on Free, Prior and Informed Consent
- Panel discussion on Cultural Heritage, Indigenous Languages and Traditional Knowledge

# 2019 International Year of Indigenous Languages

**1**  
of the **7,000**  
**existing**  
**languages**  
in the world dies  
every **two**  
**weeks**



- Data bases should lean on indigenous languages, which contain the key for understanding of the traditional knowledge of Indigenous Peoples.



INTERNATIONAL YEAR OF  
Indigenous Languages

# Expert Seminar on Cultural Heritage

University of Helsinki, 16-17.11.2017

<https://www.helsinki.fi/en/conferences/indigenous-heritage-2017>



- Recommendation to WIPO:

Continue practice of organizing regional awareness raising seminars for indigenous peoples, striving to secure the regional balance, in order for them to better understand and use the advantages of the current intellectual property system.

# Peoples and Access to Information

[http://nuorikarjala.ru/download/Study\\_updated\\_en.pdf](http://nuorikarjala.ru/download/Study_updated_en.pdf)

- Information relevant to indigenous peoples should exist in indigenous languages.
- The indigenous peoples consider ensuring access to information in native languages and expanding areas of language use as part of the language issues solution.
- There is lack of use of indigenous languages in data bases.



# National and Sub-national Data Bases

- Institute of Language, History and Literature of the Karelian Research Center of the Russian Academy of Sciences: Phonogram Archive
- Data base on intangible culture of Indigenous Peoples in Khanty-Mansy autonomous region
- Russian Catalogue on intangible Cultural Heritage
- Data base on biodiversity and traditional knowledge in Altay

# Regional and global data bases

- Arctic Council's traditional knowledge policy: Indigenous Peoples as Permanent Participants
- World Bank's Global Indigenous Knowledge Platform



# Indigenous Peoples are right holder





# Thank you!

- <https://www.ohchr.org/en/issues/ipeoples/emrip/pages/emripindex.aspx>
- [expertmechanism@ohchr.org](mailto:expertmechanism@ohchr.org)