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## UN Expert Mechanism on the Rights of Indigenous Peoples 8<sup>th</sup> Session (20-24, 2015)

*Agenda Item 4: Panel discussion on indigenous peoples' human rights in relation to business enterprises*

Statement by the Hopi Tribe, a federally recognized tribe in the United States

Mr. Chair,

The Hopi Tribe vigorously asserts its tribal sovereignty and human rights in relation to business enterprises, particularly with regard to auction houses, repositories, and museums in the national and international arenas to protect objects sacred to the Hopi people. Among them, its sacred “Katsina Friends” were recently at the center of international efforts by the Hopi Tribe to prevent their sale at private auctions in Paris, France. Auction houses, repositories, and museums should engage in tribal consultations and repatriate Indigenous ancestral remains, funerary objects, sacred objects, and objects of cultural patrimony that have been taken without free, prior and informed consent.

For the Hopi Tribe, all ceremonial and religious entities are under the sole caretaking and responsibility for stewardship by initiated Hopi society members. These members are vested with the caretaking and protection of these sacred entities. Hopi Katsina Friends, which were being sold at private auctions in Paris, are religious objects necessary for the use and the continuation of the Hopi religion by present day adherents. They are considered sacred objects and objects of cultural patrimony and cannot be transferred, sold, conveyed and removed from the jurisdiction without permission or the free, prior and informed consent of the Hopi Tribe. These facts are pursuant to Hopi customary law and tradition (Hopi Ordinance #26, Hopi Cultural Preservation Code), and the Native American Graves Protection and Repatriation Act (NAGPRA) that applies to cultural items from federal lands that are in repositories outside the United States.

National laws in the United States involving repatriation and the protection of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, include: the Native American Graves Protection and Repatriation Act (NAGPRA), the Archaeological Resources Protection Act (ARPA), and the National Museum of the American Indian Act (NMAI). These laws were passed after extensive efforts by Native American federally recognized tribes, tribal members, and American Indian organizations to protect Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. These laws were enacted to inform Native Nations of institutional holdings and enforce their repatriation.

International repatriation has been supported in the U.N. Declaration on the Rights of Indigenous Peoples in Articles 11 and 12. Article 12, states, “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.” Further support for international repatriation was provided in Operative Paragraph 27 of the Outcome Document of the High Level Plenary Meeting of the U.N. General Assembly, known as the World Conference on Indigenous Peoples. It states, “We affirm and recognize the importance of indigenous peoples’ religious and cultural sites and of providing access to and repatriation of their ceremonial objects and human remains in accordance with the ends of the United Nations Declaration on the Rights of Indigenous Peoples. **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.**” (Emphasis added.)

In 2015, the Association on American Indian Affairs and the International Indian Treaty Council, along with the Hopi Tribe submitted documentation to the U.N. EMRIP cultural heritage study and provided recommendations to address repatriation in private auction houses, museums, and other repositories. Among the suggestions was to create an Expert Working Group on International Repatriation at the U.N. to investigate these issues. The Hopi Tribe specifically stated in its case example “that the sales were illegal,

that the cultural, sacred, and ceremonial items sold embody core elements of their cultural, spiritual, and religious rights, and that the items were taken illegally from their Tribe and should be repatriated. These sales are examples of the refusal of auction houses to consult with Indigenous Peoples and recognize Indigenous human rights. The sales further illustrate the continued religious and cultural oppression present in world markets against Indigenous Peoples, and the absence of ethical and moral codes pertaining to Indigenous Rights. It is furthermore, a violation of customary norms in international law and human rights pertaining to Indigenous Peoples.”

This document has been referenced by the “Study by the Expert Mechanism on the Rights of Indigenous Peoples’ Promotion and Protection of the Rights of Indigenous Peoples with Respect to their Cultural Heritage.” (A/HRC/EMRIP/2015/2) Item 72 states “The ancient burial grounds of many indigenous communities have been disrespected and the communities concerned have asked for the repatriation of human remains and sacred and cultural objects, whether held in private or public collections. The General Assembly affirmed and recognized the importance of repatriating indigenous peoples’ ceremonial objects and human remains.” In item 10, the UNEMRIP further stated that “Culture is one of the underlying pillars of the United Nations Declaration on the Rights of Indigenous Peoples. The close relationships between the cultural rights of indigenous peoples and their right to self-determination, indigenous peoples may freely pursue their cultural development.” The protection of the cultural rights of the Hopi Tribe are therefore directly connected to their right to self-determination.

The “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” (A/HRC/17/31) further discusses State Duty to Protect Human Rights in Section A “Foundation Principles”. Paragraph 1 asserts that “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” Further, paragraph 2 states “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.” Therefore, States and business entities have a duty to protect against violations of human rights against Indigenous Peoples. As demonstrated earlier, the human rights of the Hopi Tribe have been violated through the sale of their sacred objects and objects of cultural patrimony in auction houses.

These Guiding Principles, the U.N. Declaration on the Rights of Indigenous Peoples, and the Outcome Document of the High Level Plenary Meeting of the U.N. General Assembly, known as the World Conference on Indigenous Peoples all reflect the importance of ensuring that business entities are not violating Indigenous human rights.

The human rights of the Hopi Tribe and other Indigenous Peoples are violated through the sale and transfer of our human remains, funerary objects, sacred objects, and objects of cultural patrimony in auction houses, museums, and other repositories without our free, prior and informed consent. Such practices are not only a violation of human rights and international law, but the traditional and tribal law of the Hopi Tribe. These violations should be addressed by the U.N. Expert Mechanism on the Rights of Indigenous Peoples, as well as the U.N., by forming an Expert Working Group on International Repatriation. These violations should also be formally considered under Item 3 Indigenous Peoples’ Human Rights in Relation to Business Entities and States should adopt mechanisms not only for international repatriation (as expressed in Operative Paragraph 27) in public institutions and museums, but the private art market, which continues to violate the human rights of Indigenous Peoples.