Indigenous Panel

“Protection of Different Forms of Traditional Knowledge/Traditional Cultural Expressions: Perspectives of Indigenous Peoples and Local Communities”
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Lucia is from the Kaingáng People: 60,000 people living in 4 states in the south and southeast of Brazil. 3rd largest Indigenous People of Brazil. IBGE 2010 CENSUS.

1972 - Direct Management Model Creation of the Indigenous Handicrafts Program (Artíndia) by Administrative Rule 94N on December 13, 1972 (ordinance of creation) Separate administrative unit, subordinate to the General Department of Indigenous Heritage (DGRI), and technical support from the General Department of Studies and Research (DGEP) Purpose "to stimulate indigenous handicrafts, supervising the execution of programmes of this nature in order to safeguard the cultural heritage of the 'forest dwellers' and improve their artistic values and means of cultural expression".
1986 Directive 1096/86 approves the Manual of Commercialization of Indigenous Handicrafts, with the aim of regulating the purchase and sale of handicrafts. 1994 Artíndia Program "donates" 3,500 artifacts from Indigenous Peoples of the northern region to the Museum of the Indian and 2,500 pieces from the central-western region to the Artíndia Shop in Cuiabá, selected by coordinator Vera Santos.
1998
The Environmental Crimes Law, Law no. 9.605 of 12/02/1998, suspends commercialization of handicrafts with parts of wild animals

1980-2003
Artíndia Program experienced resounding success in the 1980s until the mid-1990s, when it maintained 7 shops in operation, including three located at airports in Rio de Janeiro, Brasilia and Recife

2003
Fire at the Central Warehouse located at the Funai headquarters in Brasilia destroys practically all the stock for sale, the collections of ethnographic pieces and the photographic collections

2008
On an exceptional basis, resources were allocated from the 2008-2011 PPA to replenish the stock
2009 Restructuring of FUNAI, Ordinance 1.733, transfers management of the remaining Stores to the MI, under the direct responsibility of the Indigenous Income and Own Resources Management Service (SEGER)

2013 Transfer of the balance of stocks to the Indian Museum's Usina unit

2020 Accounting and organization of the stock at the Plant

2021 Consultation with the Regin system of the Board of Trade of the State of Rio de Janeiro (Jucerja), which granted the request for viability to exercise the activities of the Shop at the premises of the Museum of the Indian Museum

The request for State Registration (IE) linked to the CNPJ of the Museu do Índio was denied
2021 (continued)

SEFAZ Resolution No. 720/2014, defines the obligation of IE for all "entity of the Direct or Indirect Public Administration of the Union (...), which exercises economic activities of sale of goods that it acquires or produces"

Consultation with Dages about the viability of including the activity of the Store in the CNPJ of the Museum of the Indian.

Dages informs that any inclusion of secondary economic activity "requires that this alteration first occur in the CNPJ of the Funai Headquarters (matrix), which may be in dissonance with the Funai Statute".
2022

Legal, structural and operational problems of the Artíndia Store reveal the unfeasibility of the direct management model. Study cycle focused on the feasibility of signing a strategic and symbiotic partnership with a civil society organisation (CSO).

2022 (continued) Seger identifies potential legal instruments of partnership: collaboration term, fomentation term and cooperation agreement (Law No. 13.019, of July 31, 2014 -MROSC); public-private partnership (Law No. 11.079, of December 30, 2004); management contract (Law No. 9.637, of May 15, 1998), concession, permission, among others.
The first proposal for the hiring of consulting services was born with the purpose of
(i) elaborate the economic modeling of the Store as a social business for partnership;
(ii) propose a form of corporate composition and governance that respects the rights and protagonism of Indigenous Peoples, and specificities of the Indigenous Heritage Income (RPI)
(iii) policy of acquisition and management of the cultural heritage of the Indigenous Peoples
(iv) elaborating the legal architecture of the Artíndia Store
(v) preparing draft contracts
(vi) elaborating and monitoring the Public Call for Proposals

At first four thematic axes were identified: (i) legal-administrative; (ii) tax; (iii) indigenous, cultural and environmental; (iv) economic
ARTÍNDIA'S STORE REVITALIZATION PROCESS REQUIRES:

CONSULTATION WITH INDIGENOUS PEOPLES;
FULL AND EFFECTIVE PARTICIPATION OF INDIGENOUS PEOPLES;
NATUREZA COLECTIVE NATURE OF TK AND TCEs;
SELF DETERMINATION;
PROTAGONISM;
CAPACITY BUILDING AND AWARENESS RAISING

Huni Kuin woven bag
WIPO - IGC PROCESS

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was created on 2000.

MANDATE - FUTURE
USE OF TERMS
• Consistent with international legal frameworks of rights recognized to indigenous peoples and local communities

OBJECTIVES
• Effective and adequate protection for TK and TCEs;
• Preventing the misgranting of intellectual property rights on TK and TCEs;
• Recognize that indigenous peoples and local communities are owners and possessors of TK and TCEs
**PROTECTION CRITERIA**
- Collective and dynamic nature of TKs and TCEs;
- Imprescriptible, inalienable and unavailable rights;
- Part of the heritage and cultural identity of indigenous peoples and local communities

**BENEFICIARIES**
- Indigenous Peoples and Local Communities
SCOPE OF PROTECTION
• The concept of public domain can only be applied to TKs and TCEs provided that free, prior and informed consent and fair and equitable benefit sharing with indigenous peoples and local communities are implemented.

ADMINISTRATION OF RIGHTS
• In consultation with and with the full and effective participation of indigenous peoples and local communities.
EXCEPTIONS AND LIMITATIONS
• No reduction of rights recognized to indigenous peoples and local communities

TERM OF PROTECTION
• TK AND TCES ARE COLLECTIVE, INALIENABLE AND IMPRESSCRIPTIBLE

Menkrangnotí mother of pearl disc earring
DURATION OF PROTECTION

FORMALITIES

• Respect the oral traditions of indigenous peoples and local communities

SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS

Xikrin occipital disc
TRANSITIONAL MEASURES

RELATIONSHIP WITH INTERNATIONAL AGREEMENTS
- UNDRIP;
- Ilo Convention 169;
- Unesco Conventions;
- Biodiversity Convention.
Asurini braided hoop

NATIONAL TREATMENT
TRANSBOUNDARY COOPERATION

CAPACITY BUILDING AND AWARENESS RAISING
• Linguistic diversity and equity of participation of indigenous women

Braided bracelet Kuben-Krân-Krên
INDIGENOUS PEOPLES PERSPECTIVE AND LEGAL CHALLENGES TO PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS AND TRADITIONAL KNOWLEDGE

RESPECT FOR THE INTERNATIONAL SYSTEM OF RIGHTS OF INDIGENOUS PEOPLES: (NO REDUCTION OF RIGHTS); SELF DETERMINATION; THE COLLECTIVE, INALIENABLE AND IMPREScriptible NATURE OF TK AND TCES; SECURING THE INDIGENOUS PEOPLE'S RIGHTS TO TERRITORY; FULL AND EFFECTIVE PARTICIPATION OF INDIGENOUS PEOPLES AT ALL LEVELS; TO PROVIDE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES WITH LEGAL, POLITICAL AND ADMINISTRATIVE RESOURCES FOR: IMPLEMENTATION OF THE RIGHT OF CONSULTATION TO PREVENT MISAPPROPRIATION OF TRADITIONAL CULTURAL EXPRESSIONS, TRADITIONAL KNOWLEDGE; CONTROL IN THE USE OF TRADITIONAL CULTURAL EXPRESSIONS, TRADITIONAL KNOWLEDGE BEYOND TRADITIONAL AND CUSTOMARY CONTEXT; GUARANTEE FREE, PREVIOUS AND INFORMED CONSENT AS WELL AS THE FAIR AND EQUITABLE SHARING OF BENEFITS DERIVED FROM THE USE OF TRADITIONAL CULTURAL EXPRESSIONS AND TRADITIONAL KNOWLEDGE.
Hixkaryána feather earring

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Wajãpi woven sling