



Submission to the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP):

***Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage in the context of the implementation of UNESCO's World Heritage Convention***

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## I. Introduction

1. UNESCO's 1972 *Convention concerning the Protection of the World Cultural and Natural Heritage* ("World Heritage Convention"), with 191 States Parties one of the most widely ratified international instruments, aims at ensuring the identification and proper long-term protection of cultural and natural heritage sites of "outstanding universal value" (OUV). It embodies the idea that some places are so special and important that their protection is not only the responsibility of the States in which they are located but also a duty of the international community as a whole.
2. The Convention's governing body, the World Heritage Committee, keeps a list of sites that it considers as having OUV ("World Heritage List") and seeks to ensure that these sites are adequately protected and safeguarded for future generations. Sites can only be listed following a formal nomination by the State Party in whose territory they are situated. The Committee distinguishes between "cultural" World Heritage sites and "natural" World Heritage sites. There are also "mixed" (cultural and natural) World Heritage sites, which contain both cultural and natural heritage that the Committee considers as having OUV.
3. A large number of World Heritage sites incorporate or affect the lands, territories or resources of indigenous peoples. While most of these are classified as "natural" sites, there are also several "cultural" and "mixed" World Heritage sites that are located in indigenous peoples' territories.<sup>2</sup> However, as will be further discussed below, indigenous peoples have on many occasions criticized the differentiation between cultural heritage and natural heritage as artificial and problematic in the case of World Heritage sites located in indigenous peoples' territories, due to the fact that for indigenous peoples natural and cultural values are inseparably interwoven.
4. This submission relates to the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage in the context of both cultural and natural World Heritage sites, including mixed (cultural and natural) sites.
5. As noted by the IUCN World Conservation Congress in 2012, "the World Heritage Convention can and has played a leadership role in setting standards for protected areas as a whole and... World Heritage sites with their high visibility and public scrutiny have the potential to act as 'flagships' for good governance in protected areas".<sup>3</sup> It is clear that the Convention also has the potential to play a leadership role in the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. This would be in line with UNESCO's Constitution, according to which the furthering of universal respect for human rights is one of the fundamental purposes of the Organization (Article 1).
6. However, for this potential to be realized, several shortcomings in the implementation of the Convention need to be addressed, some of which are outlined in Section II below. Because of these shortcomings, indigenous peoples have repeatedly emphasized the need for the Convention's procedures and Operational Guidelines to be revised, in a way that is consistent with the UN

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<sup>2</sup> Concerning the latter (cultural and mixed sites located in indigenous peoples' territories) it should be noted that the cultural aspects deemed to be of OUV are not necessarily related to the indigenous peoples' cultural heritage. For instance, the Ngorongoro Conservation Area, a "mixed" World Heritage site in Tanzania, was listed under cultural criteria because of its archaeological values, not the significance of Maasai cultural heritage.

<sup>3</sup> World Conservation Congress Resolution WCC-2012-Res-047-EN (2012), "Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention", Preamble.

Declaration on the Rights of Indigenous Peoples (UNDRIP), to ensure respect for the rights of indigenous peoples in World Heritage sites and in the processes of the Convention.

“We Indigenous Peoples and Nations... Call on the World Heritage Committee, UNESCO and States to revise the World Heritage conventions operational guidelines to ensure the rights and territories of Indigenous Peoples are respected in the nomination, designation, management and monitoring of world heritage sites incorporating or affecting their lands, territories, resources, ice, oceans and waters, and mountains and forests and to ensure that Indigenous Peoples’ right to free, prior and informed consent is obtained in world heritage decision making processes;”

*Alta Outcome Document, Global Indigenous Preparatory Conference for the World Conference on Indigenous Peoples, 10-12 June 2013, Alta, Norway.*

“[W]e call for the adoption of the following measures and actions: 1. That the World Heritage Committee urgently establish an open and transparent process to elaborate, with the direct, full and effective participation of Indigenous peoples, changes to the current procedures and operational guidelines and other appropriate measures to ensure that the implementation of the World Heritage Convention is consistent with the United Nations Declaration on the Rights of Indigenous Peoples and a human rights-based approach.”

*Call to Action, International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012. Available at:*  
[http://www.iwqia.org/iwqia\\_files\\_news\\_files/0678\\_Call\\_to\\_Action\\_plus\\_Annexes.pdf](http://www.iwqia.org/iwqia_files_news_files/0678_Call_to_Action_plus_Annexes.pdf)

“[We] continue to insist that the World Heritage Committee review and revise its current procedures and Operational Guidelines, in order to ensure that the implementation of the World Heritage Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples and that Indigenous peoples’ rights are respected, protected and fulfilled in World Heritage areas;”

*Joint Submission on the Lack of implementation of the UN Declaration on the Rights of Indigenous Peoples in the context of UNESCO’s World Heritage Convention, endorsed by over 70 Indigenous organizations and NGOs, submitted to the World Heritage Committee in May 2012. Available at:*  
<http://www.forestpeoples.org/sites/fpp/files/publication/2012/05/joint-submission-unpfii.pdf>

7. Similar recommendations have been made by international human rights bodies such as the African Commission on Human and Peoples’ Rights,<sup>4</sup> the UN Permanent Forum on Indigenous Issues<sup>5</sup> and the UN Special Rapporteur on the Rights of Indigenous Peoples,<sup>6</sup> as well as conservation organizations such as the IUCN World Conservation Congress.<sup>7</sup>

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<sup>4</sup> See ACHPR Res. 197, “Resolution on the protection of indigenous peoples’ rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site”, 5 November 2011, para. 2.

<sup>5</sup> See Permanent Forum on Indigenous Issues, Report on the twelfth session (2013), Doc. E/2013/43, para. 23; and Report on the tenth session (2011), Doc. E/2011/43, paras. 40-42.

<sup>6</sup> See the 2012 report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya to the UN General Assembly, Doc. A/67/301, paras. 33-42; and his letter to the Director of the World Heritage Centre, 18 November 2013 (contained in UN Doc. A/HRC/25/74, p. 127).

<sup>7</sup> See WCC Resolution 5.047 (“Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention”), adopted in Jeju, Korea, September 2012. Also see the “Promise of Sydney” adopted at the 2014 IUCN World Parks Congress, in particular the “Innovative Approaches” on World Heritage and on “Respecting indigenous and traditional knowledge and culture”, both available at [http://worldparkscongress.org/about/promise\\_of\\_sydney\\_innovative\\_approaches.html](http://worldparkscongress.org/about/promise_of_sydney_innovative_approaches.html).

8. The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) in 2012 made the following important recommendation:

“The Expert Mechanism...

Reiterates that UNESCO must enable and ensure effective representation and participation of indigenous peoples in decision-making related to the World Heritage Convention and that robust procedures and mechanisms should be established to ensure that indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites; [...]

Encourages the World Heritage Committee to establish a process to elaborate, with the full and effective participation of indigenous peoples, changes to the current procedures and operational guidelines and other appropriate measures to ensure that the implementation of the World Heritage Convention is consistent with the United Nations Declaration on the Rights of Indigenous Peoples and that indigenous peoples can effectively participate in the World Heritage Convention’s decision-making processes.”

*UN Expert Mechanism on the Rights of Indigenous Peoples, Report to the Human Rights Council, UN Doc. A/HRC/21/52, 17 August 2012 (“Proposal 9: World Heritage Committee”).*

9. In June 2013, thanks to an effort by the UNESCO World Heritage Centre (the Convention’s Secretariat), the World Heritage Committee held a preliminary discussion on the possibility of adding provisions related to indigenous peoples and their rights to the Operational Guidelines. This discussion, in a working group during the Committee’s 37<sup>th</sup> session in Phnom Penh, revealed significant reservations and opposition from some States, including some Committee members, to adding provisions related to indigenous peoples to the Operational Guidelines.<sup>8</sup> Astonishingly, despite the UN General Assembly’s adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007, some government representatives raised doubts about the concept and definition of ‘indigenous peoples’, including representatives of governments that voted for the adoption of the UNDRIP and have repeatedly expressed their commitment to advancing recognition and respect for the rights of indigenous peoples as enshrined in the Declaration. The World Heritage Committee decided, however, to re-examine the issue “following the results of the discussions to be held by the Executive Board on the UNESCO Policy on indigenous peoples”.<sup>9</sup>

## II. Specific concerns regarding the implementation of the World Heritage Convention

### a) Problematic differentiation between cultural heritage and natural heritage

10. Indigenous peoples have on many occasions criticized the differentiation between cultural heritage and natural heritage as artificial and problematic in the case of World Heritage sites located in indigenous peoples’ territories, because the lives, cultures and spiritual beliefs of

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<sup>8</sup> See IWGIA’s statement at the Expert Mechanism’s sixth session (2013) under agenda item 4: Follow-up to thematic studies and advice, available at [www.docip.org/greenstone/collect/cendocdo/index/assoc/HASH98d2/cc72caee.dir/EM13lola051.pdf](http://www.docip.org/greenstone/collect/cendocdo/index/assoc/HASH98d2/cc72caee.dir/EM13lola051.pdf).

<sup>9</sup> Decision 37 COM 12.II, para. 7. The UNESCO Policy, once adopted, is supposed to provide “guidance to staff and committees in order to effectively implement the UNDRIP in all components of UNESCO’s work”. See UNESCO’s 2014 report to the Permanent Forum on Indigenous Issues on the achievement of the goal and objectives of the Second International Decade of the World’s Indigenous People, p. 3 (available at <http://www.un.org/esa/socdev/unpfii/documents/2014/unesco.pdf>).

indigenous peoples are inseparable from their lands, territories and natural resources. They have highlighted that cultural and natural values for indigenous peoples are deeply interconnected and should be managed and protected in a holistic manner.

“One of the specific challenges for indigenous peoples is the World Heritage Convention’s differentiation between ‘cultural’ heritage on the one hand and ‘natural’ heritage on the other. This distinction can be problematic for World Heritage sites located on indigenous peoples’ lands and territories because their lives and spiritual beliefs are inseparable from their lands, territories and natural resources. Hence, indigenous peoples’ natural and cultural values are deeply interconnected by their holistic view of land. Decision-making and management of sites must therefore also be holistic, with no artificial separation of culture, nature and human rights.”

*“Interview with Myrna Cunningham, Chair of the United Nations Permanent Forum on Indigenous Issues”. In: World Heritage No. 62 (February 2012), Paris: UNESCO, pp. 52.*

“Rainforest Aboriginal people (and, in fact, indigenous Australians generally) see the trend by western managers to manage a region’s values according to two distinct categories (ie. Natural and cultural values) as artificial and inadequate. Rainforest Aboriginal people adopt a holistic view of the landscape, asserting that a region’s natural and cultural values are in fact inseparably interwoven within the social, cultural, economic, and legal framework of Bama custom and tradition. They are also concerned at the tendency, particularly at the day-to-day level of management, by western managers to treat cultural heritage considerations as secondary to those afforded to natural values.”

*Review Steering Committee (1998), “Which Way Our Cultural Survival? Review of Aboriginal Involvement in the Management of the Wet Tropics World Heritage Area” (Report for the Wet Tropics Board of Management), [http://www.wettropics.gov.au/rah/rah\\_pdf/REVIEW.pdf](http://www.wettropics.gov.au/rah/rah_pdf/REVIEW.pdf), p. 12.*

“THE INDIGENOUS PEOPLES FORUM HEREBY PETITIONS THE WORLD HERITAGE COMMITTEE AND ALL STATES PARTIES TO THE WORLD HERITAGE CONVENTION, TO: ...

2. RECOGNISE the holistic nature of Indigenous natural and cultural values and traditions...”

*World Heritage Indigenous Peoples Forum assembled in Cairns, Australia, November 2000, Submission to the World Heritage Committee. UNESCO Doc. WHC-2001/CONF.208/13, pp. 16-17.*

“[T]he statement of significance must be changed so that the outstanding universal value of the site reflects the Indigenous values and recognizes Dehcho cultural heritage as a vital, living part of the ecosystem of the park reserve. The dichotomy between ‘natural’ and ‘cultural’ is a false distinction for the Dehcho First Nations, who hold a holistic view of the Dene people as inseparable from the land. Any new designation or expansion of the World Heritage site should therefore include the tremendous cultural values and ecological significance of the area for, and as determined by, the Dehcho First Nations rather than be based only on ‘natural’ features that focus on the physical environment and not its vibrant, dynamic and living cultural heritage.”

*Laura Pitkanen and Jonas Antoine. 2014. “Protecting Indigenous Rights in Denendeh: The Dehcho First Nations and Nahanni National Park Reserve”. In: S. Disko and H. Tugendhat (eds.), World Heritage Sites and Indigenous Peoples’ Rights (IWGIA Document No. 129), pp. 436-437.*

“It is thus also inappropriate to try to subdivide the heritage of indigenous peoples into separate legal categories such as ‘cultural’, ‘artistic’ or ‘intellectual’, or into separate elements such as songs, stories, science or sacred sites. This would imply giving different levels of protection to different elements of heritage. All elements of heritage should be managed and protected as a single, interrelated and integrated whole. [...]

‘Heritage’ includes all expressions of the relationship between the people, their land and the other living beings and spirits which share the land... All of the aspects of heritage are interrelated and cannot be separated from the traditional territory of the people concerned...”

*Erica-Irene Daes. Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Chairperson of the Working Group on Indigenous Populations. 1993. Study on the protection of the cultural and intellectual property of indigenous peoples, UN Doc. E/CN.4/Sub.2/1993/28, paras. 31, 164.*

11. The differentiation between cultural and natural values is especially problematic in World Heritage sites where the “natural” values are deemed to be of OUV, whereas the indigenous cultural values are not. The Convention’s Operational Guidelines make it very clear that the focus and emphasis in any World Heritage site must be on the protection of those heritage values that are considered as having OUV. Therefore, the inscription under natural criteria only, without simultaneous recognition of the indigenous cultural values of a given site, leads to management frameworks that prioritize the protection of isolated “natural” values, which often comes at the expense of indigenous peoples, their livelihoods, and the protection, exercise and development of their cultural heritage and expressions. It is obvious that this can have far-reaching human rights implications.

“Indigenous peoples remain concerned that the vast majority of indigenous sites on the World Heritage List are inscribed as ‘natural sites’ and therefore the connections and relationships between these sites and living indigenous peoples, their communities, and their desire to protect and assert custodianship over these sites, may not be taken into account in the justification for inscription... If their values of sites are ignored and not taken into account, this can have far-reaching human rights implications, including violation of their rights.”

*“Interview with Myrna Cunningham, Chair of the United Nations Permanent Forum on Indigenous Issues”. In: World Heritage No. 62 (February 2012), Paris: UNESCO, pp. 53-54.*

“[T]he justification for inscription... affects management priorities and frameworks, and if the indigenous peoples’ own values are not properly taken into account, this can have major implications for them. For example, if a site is inscribed and protected as a natural site, without recognizing the existence and role of the indigenous inhabitants, this can lead to all kinds of restrictions on their land-use practices and undermine their ways of life. It can lead to a loss of control over their lands and can have significant consequences for their ability to maintain and strengthen their cultures and traditions and develop their societies in accordance with their own aspirations and needs.”

*Stefan Disko. 2010. “World Heritage Sites in Indigenous Peoples’ Territories: Ways of Ensuring Respect for Indigenous Cultures, Values and Human Rights”. In: D. Offenhäuser et al. (eds.), World Heritage and Cultural Diversity. Bonn: German UNESCO Commission, p. 169.*

“Priority given to protecting ‘natural universal values’ over ‘cultural’ ones turns the Pemon into ‘threats’ to the site, not only distorting their role in managing their land but also closing opportunities for engagement with the World Heritage system. Relisting Canaima as a mixed cultural/natural site could represent an improvement by allowing the World Heritage Convention to become more meaningful for the Pemon in the future.”

*Iokiñe Rodríguez. 2014. “Canaima National Park and World Heritage Site: Spirit of Evil?” In: World Heritage Sites and Indigenous Peoples’ Rights (IWGIA Document No. 129), p. 509.*

“Despite... serious concerns regarding the consultation of local and indigenous peoples, ... the World Heritage Committee at its 36th session in June 2012... inscribed the TNS [Sangha Trinational] as a natural World Heritage site, losing the opportunity to celebrate both the

natural and cultural aspects of the landscape. The result is that indigenous cultural values do not form part of the recognised outstanding universal value of the site, and the Pygmies' rights to hunt and gather are not part of the TNS World Heritage site philosophy and will thus always be considered secondary to the natural values."

*Victor Amougou-Amougou and Olivia Woodburne. 2014. "The Sangha Trinational World Heritage Site: The Experiences of Indigenous Peoples." In: World Heritage Sites and Indigenous Peoples' Rights (IWGIA Document No. 129), pp. 113-114.*

12. At the heart of the problem is the fact that the concept of OUV, although not defined in the World Heritage Convention, has come to be interpreted in ways that make it difficult or impossible in the context of most sites for indigenous peoples' cultural heritage to satisfy the criteria. While it is possible under the existing Operational Guidelines for Indigenous peoples' relationship with their lands and territories, including spiritual associations, to be recognized as having OUV, the World Heritage Committee requires such relationships or associations to be "unique" or "exceptional", a standard that is difficult to meet in most cases.<sup>10</sup> The Committee also maintains a standard of "authenticity" for cultural heritage sites, which is applied in ways that preclude World Heritage recognition of indigenous peoples' cultural heritage in many places. The recent ICOMOS evaluations of the World Heritage nominations of Pimachiowin Aki (Canada) and the Ngorongoro Conservation Area (Tanzania) are illustrative of these concerns:

"Where cultural traditions persist [in the Pimachiowin Aki nominated area] is in connection with the intangible relationship between the Anishinaabeg and the land and in their oral traditions and oral histories in which landscape has a central role. Such a relationship is not unique and persists in many places associated with indigenous peoples in North America and other parts of the world... What has not been demonstrated is how this strong association between the Anishinaabeg and the land in the area nominated can be seen to be exceptional – in other words of wider importance than to the Anishinaabeg themselves."

*ICOMOS Evaluation of the nomination of Pimachiowin Aki (Canada), 2013, UNESCO Doc. WHC-13/37.COM/INF.8B1.*

"[T]here are numerous pastoralist communities from Tanzania to Sudan... Notwithstanding cultural and regional differences, all of these groups share, in various ways and to various extents, a great number of cultural characteristics... Many pastoralist societies have a strong sense of cultural identity and conservatism, warrior-like age groups, extensive use of herbalism, dislike for bush meat, etc. The Maasai, although extremely interesting in terms of their cultural traditions, are therefore, in ICOMOS's view, neither a unique nor an exceptional testimony to such pastoralist traditions. Furthermore they are not confined to the Conservation Area and include neighbouring groups in Tanzania and in Kenya... ICOMOS does not... consider that the evidence available for the Maasai cultural traditions, in terms of their inter-action with the landscape, justifies consideration of their inclusion in the List."

*ICOMOS Evaluation of the nomination of the Ngorongoro Conservation Area (Tanzania), 2010, UNESCO Doc. WHC-10/34.COM/INF.8B1*

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<sup>10</sup> It should also be noted that some indigenous peoples have strongly objected to this standard/requirement. In the case of the nomination of Pimachiowin Aki (Canada), it was made clear in the nomination documents that out of respect for other indigenous peoples "the First Nations do not wish to see their property as being 'exceptional' as they [do] not want to make judgements about the relationships of other First Nations' with their lands and thus make comparisons" (see UNESCO Doc. WHC-13/37.COM/INF.8B1, p. 39). Pimachiowin Aki representatives noted that they objected to a process that "requires indigenous people to make inappropriate claims of superiority about our cultures in comparison to other nations and communities in order to grant us special recognition" (<http://www.smh.com.au/national/indigenous-leaders-told-of-insulting-un-rule-on-world-heritage-listing-20130527-2n7ac.html>).



“The Maasai are described in the nomination dossier as pastoralists and nomads... [T]he reality is now that the much larger community of Maasai (some 64,000 people) presently inhabit a number of densely populated villages and only a small percentage spend part of the year in isolated ‘bomas’ (traditional houses with enclosures for animals protected by fences of cut thorn branches) scattered in the Conservation Area. Furthermore, they no longer live and move across the whole Conservation Area... The villages are apparently permanent, as evidenced by the types of structures (brick buildings) and the presence of schools and medical clinics... [T]he Maasai have recently begun keeping camels, although this is not traditional. Agriculture is also playing an increasingly important role for the Maasai people within the area, related to shortfalls in food and revenue derived from the more traditional livestock husbandry. The largely settled communities now rely for food on agricultural produce as well as on resources from their animals... For the Maasai pastoral landscape, authenticity relates to how well the overall landscape manifests the traditional pastoral and ceremonial system of the Maasai. ICOMOS considers that here the issue is that their distinctive pastoralism has now been substantially changed into agro-pastoralism through the impact of population growth and other factors... ICOMOS does not consider that at the present time the conditions of integrity and authenticity have been met for the Maasai pastoral landscape.”

*ICOMOS Evaluation of the nomination of the Ngorongoro Conservation Area (Tanzania), 2010, UNESCO Doc. WHC-10/34.COM/INF.8B1*

13. Because of the separation between cultural and natural values, the frequent exclusion of indigenous peoples from decision-making, and the ways in which the concept of OUV is being applied, there are many World Heritage sites where the recognized OUV does not reflect or coincide with the indigenous heritage values, and may even be harmful to the protection of those values. This raises the question how the heritage values ascribed to a place can be considered as ‘universal’, if they are not inclusive and respectful of the local indigenous peoples’ own values and may even run counter to those values.

“The Outstanding Universal Value of the Kenya Lake System as adopted by the World Heritage Committee does not readily coincide with or reflect the indigenous values of the area. This is because the processes for nominating the site (including the ‘tentative listing’) were not done in consultation with the indigenous community... As a result, the Statement of Outstanding Universal Value... only represents the wildlife management and conservation values as appreciated by the nominating body, the State Party, Kenya, through its KWS [Kenya Wildlife Service] agent. The universality of value of the designated sites is therefore called into question by the failure of the consultation mechanism used by the Kenyan government and its agencies.”

*Korir Sing’Oei Abraham. 2014. “Ignoring Indigenous Peoples’ Rights: The Case of Lake Bogoria’s Designation as a UNESCO World Heritage Site”. In: World Heritage Sites and Indigenous Peoples’ Rights (IWGIA Document No. 129), p. 181.*

“The local communities’ disenfranchisement and marginalization from decision-making processes [in the Ngorongoro Conservation Area] begs the questions of whose world and whose heritage are being safeguarded and protected under this label [‘World Heritage’], and whether the concept of ‘mankind as a whole’ that is embedded in the World Heritage Convention includes the pastoralists living in the Ngorongoro Conservation Area.”

*William Olenasha. 2014. “A World Heritage Site in the Ngorongoro Conservation Area: Whose World? Whose Heritage?” In: World Heritage Sites and Indigenous Peoples’ Rights (IWGIA Document No. 129), p. 217.*

14. The outcome documents of the recent World Parks Congress in Sydney (12-19 November 2014) recommend that the conceptual and management gap between natural and cultural World Heritage sites be eliminated in favor of a holistic approach, and that indigenous peoples' cultural values be consistently recognized as universal in the context of the World Heritage Convention.

"Recommendations for change... By 2020 the conceptual and management gap between natural and cultural World Heritage Site designations is eliminated, and a comprehensive approach taken towards the conservation of natural and biocultural heritage and knowledge systems in all designated sites."

*IUCN World Parks Congress, Sydney 2014, The Promise of Sydney: A strategy of innovative approaches and recommendations for respecting indigenous and traditional knowledge and culture in the next decade, Recommendation 7.*

"The World Heritage Convention should fully and consistently recognize Indigenous Peoples' cultural values as universal, and develop methods for recognition and support for the interconnectedness of natural, cultural, social, and spiritual significance of World Heritage sites, including natural and cultural sites and cultural landscapes."

*IUCN World Parks Congress, Sydney 2014, The Promise of Sydney: A strategy of innovative approaches and recommendations for enhancing World Heritage in the next decade, Recommendation 6.*

**b) Lack of regulations to ensure meaningful participation and free, prior and informed consent of indigenous peoples in the nomination and designation of World Heritage sites**

15. The Operational Guidelines contain no provisions that would ensure the meaningful participation of indigenous peoples in the nomination and designation of World Heritage sites affecting them. The Guidelines merely state that "States Parties are encouraged to prepare nominations with the participation of a wide variety of stakeholders, including site managers, local and regional governments, local communities, NGOs and other interested parties" (para. 123).<sup>11</sup> There are numerous World Heritage sites that have been listed without the meaningful participation and consent of the indigenous peoples in whose territories they are located. Indigenous peoples and human rights organizations have therefore on many occasions urged the World Heritage Committee to adopt new guidelines to ensure that indigenous peoples' free, prior and informed consent is obtained when sites incorporating or affecting their lands, territories or resources are identified, nominated or inscribed as World Heritage sites.

"We Indigenous Peoples and Nations... Call on the World Heritage Committee, UNESCO and States to revise the World Heritage conventions operational guidelines... to ensure that Indigenous Peoples' right to free, prior and informed consent is obtained in world heritage decision making processes;"

*Alta Outcome Document, Global Indigenous Preparatory Conference for the World Conference on Indigenous Peoples, 10-12 June 2013, Alta, Norway.*

"There are numerous examples of Indigenous sites on the World Heritage List that have been inscribed without the free, prior and informed consent of the Indigenous peoples concerned.

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<sup>11</sup> A similar provision exists for the preparation of "Tentative Lists" (States Parties' inventories of those sites situated on their territory which they consider suitable for inscription on the World Heritage List and may nominate in the future). See para. 64 of the Operational Guidelines.

In many cases Indigenous peoples were not even consulted when their territories were designated as World Heritage sites, although this designation can have far-reaching consequences for their lives and human rights, their ability to carry out their subsistence activities, and their ability to freely pursue their economic, social and cultural development in accordance with their right of self-determination.”

*Joint Statement on Continuous violations of the principle of free, prior and informed consent in the context of UNESCO’s World Heritage Convention, endorsed by over 70 Indigenous organizations and NGOs, submitted to the World Heritage Committee in May 2011. Available at: [http://www.iwgia.org/iwgia\\_files\\_news\\_files/0314\\_UNPFII\\_2011\\_Joint\\_Statement\\_on\\_FPIC\\_and\\_world\\_Heritage.pdf](http://www.iwgia.org/iwgia_files_news_files/0314_UNPFII_2011_Joint_Statement_on_FPIC_and_world_Heritage.pdf)*

“Noting with concern that there are numerous World Heritage sites in Africa that have been inscribed without the free, prior and informed consent of the indigenous peoples in whose territories they are located...”

*African Commission on Human and Peoples’ Rights, Resolution 197 (“Resolution on the protection of indigenous peoples’ rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site”), 5 November 2011.*

“Indigenous peoples have expressed concerns over their lack of participation in the nomination, declaration and management of World Heritage sites ... [T]here is still no specific policy or procedure which ensures that indigenous peoples can participate in the nomination... of these sites. The Operational Guidelines for Implementation of the World Heritage Convention, which set out the procedure for the inscription of properties on the World Heritage list..., are silent on the issue of participation by indigenous peoples... Furthermore, States are not specifically required to provide any information on the indigenous peoples and local communities living in or around a site they nominate for World Heritage designation... [T]he templates provided in the operational guidelines for nominating sites do not contain fields requiring States to... provide information about whether affected peoples have been asked about and agree with the nomination...”

*UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya, Report to the United Nations General Assembly, UN Doc. A/67/301, 13 August 2012, paras. 33-40.*

“I would also like to encourage the Committee to consider other reforms to address concerns regarding the nomination and management of World Heritage sites that have been raised in years past in a variety of fora, including with respect to:

- 1) Ensuring meaningful representation and participation of indigenous peoples in the nomination of World Heritage sites; [...]
- 5) Consulting indigenous peoples with a view towards obtaining their free, prior and informed consent regarding the establishment of World Heritage sites that may affect their land, natural resources and other rights;”

*Letter of UN Special Rapporteur on the rights of indigenous peoples, James Anaya, to the Director of the World Heritage Centre, 18 November 2013. Contained in UN Doc. A/HRC/25/74, p. 127.*

“URGES the World Heritage Committee to: [...] review and revise its procedures and Operational Guidelines, in consultation with indigenous peoples and the UN Permanent Forum on Indigenous Issues, to ensure ... that no World Heritage sites are established in indigenous peoples’ territories without their free, prior and informed consent;”

*IUCN World Conservation Congress, Jeju, Korea, September 2012, Resolution 5.047 (“Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention”)*

“[W]e call for the adoption of the following measures and actions: [...] That the World Heritage Committee not inscribe any further sites incorporating or affecting Indigenous peoples’ lands, territories or resources on the World Heritage List without proof or evidence that the free, prior and informed consent of the Indigenous peoples concerned has been obtained. In support of this:

a) The World Heritage Centre must not accept any World Heritage nomination affecting Indigenous peoples as complete without proof or evidence of the free, prior and informed consent of the Indigenous peoples’ concerned. The Operational Guidelines need to be revised to that effect;”

*Call to Action, International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012. The Call to Action also includes an Annex containing proposed amendments to the Operational Guidelines on this issue. Available at [http://www.iwqia.org/iwqia\\_files\\_news\\_files/0678\\_Call\\_to\\_Action\\_plus\\_Annexes.pdf](http://www.iwqia.org/iwqia_files_news_files/0678_Call_to_Action_plus_Annexes.pdf)*

“[W]hen deciding whether or not a property belonging to an indigenous community is to be proposed for inscription on the World Heritage List, a State should take into primary account the opinion of the community concerned. Even more, consistently with Article 19 UNDRIP, States should propose an indigenous property for inscription on the World Heritage List only after consulting and cooperating ‘in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent’ to the inscription, the decision to propose such an inscription being a legislative or administrative measure. Similar considerations are valid, *mutatis mutandis*, for the issue of management of indigenous properties after their inscription on the List...

[A]t present the consideration devoted to indigenous peoples’ rights in the context of the operation of the World Heritage Convention is far from being adequate. [...] [I]ndigenous peoples should be directly involved in every stage of any process of implementation of the World Heritage Convention which may have an impact on their internationally recognized human rights.”

*International Law Association, Committee on the Rights of Indigenous Peoples. 2012. Rights of Indigenous Peoples: Final Report, pp. 18-19.*

### **c) Frequent lack of consideration of indigenous peoples’ rights during the nomination and inscription process**

16. Current wording in the Operational Guidelines is inadequate for ensuring that concerns regarding the rights of indigenous peoples are identified and considered when sites are inscribed on the World Heritage List. States are not specifically required to provide information on the indigenous peoples living in or around a site they nominate for World Heritage designation and the potential impact World Heritage listing might have on indigenous peoples and their rights.<sup>12</sup> They are also not required to provide information on the existing legal framework relating to the rights of indigenous peoples, past evictions or relocations of indigenous peoples from the nominated area, unresolved indigenous claims and other outstanding rights issues.

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<sup>12</sup> States are merely required to provide information on the “number of inhabitants within the property”, give an historical account of the property’s “interaction with humankind” and “indicate the major categories of land ownership” (see Annex 5 of the Operational Guidelines, Nomination Format).

“States are not specifically required to provide any information on the indigenous peoples and local communities living in or around a site they nominate for World Heritage designation, or review the kind of impact a site might have on the rights of these groups. In this connection, the templates provided in the operational guidelines for nominating sites do not contain fields requiring States to describe the potential impact a site might have on indigenous peoples or to provide information about whether affected peoples have been asked about and agree with the nomination...”

*UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya, Report to the United Nations General Assembly, UN Doc. A/67/301, 13 August 2012, paras. 33-40.*

“There has been a marked increase in World Heritage Committee references to and recommendations on indigenous peoples, communities and rights issues, including requesting State Parties to address and resolve outstanding matters or commending them for having done so. In response, State Parties are increasingly presenting detailed information in this respect, just as wording is increasingly apparent in guidance material. Yet, there are also inconsistencies, in part stemming from the lack of a comprehensive approach to indigenous peoples, communities and rights concerns... [T]he approach to incorporating these issues needs to be far more systematic. This needs to be revisited in the Operational Guidelines as well as other guidance documents. The current (2011) UNESCO manual for ‘Preparing World Heritage Nominations’, for example, includes no specific wording on either rights or community tenure issues... Core nomination guidance therefore does not yet fully reflect the importance attached to community concerns and rights by the World Heritage Committee and the Advisory Bodies in a comprehensive manner. While some countries have advanced such work, stimulated by domestic policies or international standards, there is a need for upstream guidance to facilitate State Party engagement on the issues. Although some aspects have been strengthened, the fact that others are lacking reflects the deficiency of specific consideration of these issues in the Operational Guidelines.”

*Peter Bille Larsen, Gonzalo Oviedo and Tim Badman. 2014. “World Heritage, Indigenous Peoples, Communities and Rights: An IUCN Perspective”. In: World Heritage Sites and Indigenous Peoples’ Rights (IWGIA Document No. 129), pp. 74-75.*

“World Heritage recognition may be a leverage point to revoke or repair prior infringements, restore relationships with land and resources, and pursue socially beneficial management and economic relations. What is clear is that unless infringements and concerns regarding rights that took place prior to World Heritage processes are addressed in explicit terms during the evaluation of nominations, the real potential to resolve and repair the rights deficit will be lost, and there could be the risk that rights concerns are further deepened.”

*Peter Bille Larsen, Gonzalo Oviedo and Tim Badman. 2014. “World Heritage, Indigenous Peoples, Communities and Rights: An IUCN Perspective”. In: World Heritage Sites and Indigenous Peoples’ Rights (IWGIA Document No. 129), pp. 78-79.*

“[We] recommend that States parties nominating sites in Indigenous peoples’ territories be required to provide information on the existing legal framework relating to the rights of Indigenous peoples (including laws, regulations, domestic and international jurisprudence and relevant pending court cases), in order to enable the Committee and its advisory bodies to assess whether the management and decision-making framework for the nominated area meets the requirements of the UN Declaration on the Rights of Indigenous Peoples.”

*Joint Submission on the Lack of implementation of the UN Declaration on the Rights of Indigenous Peoples in the context of UNESCO’s World Heritage Convention, endorsed by over 70 Indigenous organizations and NGOs, submitted to the World Heritage Committee in May 2012.*

“I would also like to encourage the Committee to consider other reforms to address concerns regarding the nomination and management of World Heritage sites that have been raised in years past in a variety of fora, including with respect to: [...]

3) Safeguarding land and resource rights of indigenous peoples, both officially recognized and unrecognized, during the nomination process;”

*Letter of UN Special Rapporteur on the rights of indigenous peoples, James Anaya, to the Director of the World Heritage Centre, 18 November 2013. Contained in UN Doc. A/HRC/25/74, p. 127.*

#### **d) Frequent lack of consideration and recognition of indigenous cultural heritage in nomination documents**

17. Considering the frequent exclusion of indigenous peoples from World Heritage nomination processes, it is not surprising that there is also often a lack of consideration of indigenous peoples’ cultural heritage and cultural values in nomination documents. A second reason for this is the problematic way in which the concept of “outstanding universal value” is being applied, which often impedes proper consideration of indigenous peoples’ heritage and cultural values attached to a site. When a State Party does not consider the indigenous cultural heritage of an area to have “outstanding universal value”, or sees no necessity for taking this possibility into account, indigenous heritage values are not given the attention and emphasis they deserve and require in terms of their protection. There are even cases where States Parties chose not to include indigenous peoples’ cultural heritage in their proposals (proposed justification for inscription), although the World Heritage Committee explicitly encouraged them to consider this possibility due to the evident significance of the respective cultural heritage.<sup>13</sup>

18. No requirements exist under the Operational Guidelines for States to identify and consider locally important heritage values (that are not deemed to be of OUV) in nomination documents, or for ensuring their adequate protection in the management of World Heritage sites. The exclusive focus on the protection of heritage aspects of “outstanding universal value” is problematic, because it frequently comes at the expense of locally important heritage, including indigenous peoples’ heritage.

“[T]he guidelines... make it very clear that the emphasis is on establishing the criteria for universal value and on managing for the conservation of these values. This runs contrary to best practice in heritage management, which insists that all the cultural values of a place – not just its primary values – should be acknowledged and catered for and that the management planning should include the conservation of all these values. [...] Now this can be very difficult and complex. Sometimes there may be a potential conflict between the universal values which the World Heritage Convention seeks to protect, and other locally important cultural values. For example, in the Great Barrier Reef World Heritage site traditional people assert the right to hunt a gravely endangered species – the dugong. It is an important traditional food for them and it is not their hunting practice which has caused its near extinction. At Lake Mungo National Park, indigenous people want important, fragile and scientifically very significant early human remains left in the eroding dunes. In the Tasmanian Wilderness World Heritage

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<sup>13</sup> See e.g. the case of the Sangha Trinational, nominated (and subsequently listed) as a natural site in 2012 although the World Heritage Committee in 2011 had noted the “rich tapestry of cultural and spiritual values associated with the property” and requested the relevant States Parties (Congo / Cameroon / Central African Republic) to “Evaluate the potential application of cultural criteria to the nominated property (i.e. nomination as a mixed property), taking into account the rich indigenous cultural heritage of the area” (Decision 35 COM 8B.4).

site, settler descendants who used the area for 200 years for hunting, riding and recreation want to continue their traditional practices. There is no easy solution to these issues, but my point is that the beginning of solving them is acknowledging all the heritage values and then working towards a resolution rather than attempting to assert the primacy of World Heritage values by ignoring or denying other valid elements of cultural significance. [...]

[I]t is essential that issues relating to community participation and indigenous practices be considered and dealt with from the beginning of the World Heritage listing process. The Committee and the Advisory Bodies have found that the time of investigation of World Heritage values and the bringing forward of proposals for listing is the time when they can bring the most influence to bear on the future management of the proposed World Heritage place, and this has already been used to good effect to ensure proper planning provision for the protection of universal values. It is at this time that an explicit process for the involvement of stakeholders and the identification of all heritage values should be put in place. All stakeholders should be identified as part of this process, issues of land ownership and use should be discussed and, most importantly, all the cultural and natural values of the area to be listed [not only the universal values] should be a mandatory part of the listing submission.”

*Sharon Sullivan. 2004. "Local Involvement and Traditional Practices in the World Heritage System". World Heritage Papers 13: Linking Universal and Local Values. Paris: UNESCO, pp. 52-54.*

“While references to participation and local values have become more common, the approach to incorporating these issues needs to be far more systematic. This needs to be revisited in the Operational Guidelines as well as other guidance documents.”

*Peter Bille Larsen, Gonzalo Oviedo and Tim Badman. 2014. "World Heritage, Indigenous Peoples, Communities and Rights: An IUCN Perspective". In: World Heritage Sites and Indigenous Peoples' Rights (IWGIA Document No. 129), p. 74.*

## **e) Significant lack of transparency in some of the Convention's processes**

19. Some of the World Heritage Convention's processes are marked by a serious lack of transparency and access to information that is inconsistent with the right of indigenous peoples to participate in decision-making affecting them, as well as with State obligations to ensure public participation in environmental decision-making<sup>14</sup> and internationally agreed principles related to the promotion of sustainable development.<sup>15</sup> There is not even a requirement for World Heritage nomination documents to be made publicly available before the World Heritage Committee takes a decision whether to inscribe a nominated site or not. Many World Heritage sites affecting indigenous peoples have been inscribed without the respective nomination documents having been made public.

“[W]e remain deeply concerned about the working processes through which the UNESCO World Heritage Convention is implemented and the lack of transparency of the existing procedures... There is not even a requirement for World Heritage nominations to be made publicly available before the World Heritage Committee takes a decision.”

*Joint Submission on the Lack of implementation of the UN Declaration on the Rights of Indigenous Peoples in the context of UNESCO's World Heritage Convention, endorsed by over 70 Indigenous organizations and NGOs, submitted to the World Heritage Committee in May 2012.*

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<sup>14</sup> See the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

<sup>15</sup> See *The future we want* (UN Conference on Sustainable Development, 2012), para. 43.

“The fact that there is no requirement under the *Operational Guidelines* for World Heritage nominations and other key documents such as state of conservation reports and monitoring mission reports to be made publicly available before the World Heritage Committee takes a decision is of serious concern to indigenous peoples.<sup>16</sup> It has in many cases prevented indigenous peoples from reviewing such documents and providing their perspectives to the Committee, despite the fact that the proposals contained in these documents may have far-reaching implications for their rights and interests. This remarkable lack of transparency in the processing of World Heritage nominations, as well as other processes of the World Heritage Convention, has been strongly criticized by indigenous organizations as inconsistent with the right of indigenous peoples to participate in decision-making affecting them, as well as with sustainable development principles and State obligations to ensure public participation in environmental decision-making.”

*Stefan Disko, Helen Tugendhat and Lola García-Alix (2014), „World Heritage Sites and Indigenous Peoples’ Rights: An Introduction”. In: World Heritage Sites and Indigenous Peoples’ Rights (IWGIA Document No. 129), pp. 25-26.*

“I would also like to encourage the Committee to consider other reforms to address concerns regarding the nomination and management of World Heritage sites that have been raised in years past in a variety of fora, including with respect to: [...]

2) Ensuring transparency throughout the World Heritage site nomination and implementation processes;”

*Letter of UN Special Rapporteur on the rights of indigenous peoples, James Anaya, to the Director of the World Heritage Centre, 18 November 2013. Contained in UN Doc. A/HRC/25/74, p. 127.*

“In light of the theme of the 40th Anniversary, “World Heritage and Sustainable Development: the Role of Local Communities”, I would like to add my voice to the recent request from indigenous organizations that World Heritage nominations and monitoring mission reports be made publicly available as soon as they are received by UNESCO, so that affected indigenous peoples, local communities and other rights- and stakeholders have sufficient time to review the documents and provide input and comments in advance of any decision being taken by the World Heritage Committee. I draw attention in this connection to the Outcome Document of the recent United Nations Conference on Sustainable Development in Rio, The future we want, in which Governments underscored that broad public participation and access to information are essential to the promotion of sustainable development, and that sustainable development requires the meaningful involvement and active participation of all major groups, including indigenous peoples [see *The future we want*, para. 43].”

*UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya, Video message to the International Expert Workshop on the World Heritage Convention and Indigenous Peoples 20-21 September 2012, Copenhagen, Denmark (<http://unsr.jamesanaya.org/videos/video-mensaje-world-heritage-convention-and-indigenous-peoples>)*

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<sup>16</sup> While nomination documents are never disclosed by UNESCO before a site is inscribed..., in 2013 and 2014 the World Heritage Committee encouraged States Parties to authorize UNESCO to make reports relating to the state of conservation of their World Heritage sites publicly accessible in order to contribute to improved transparency in the reactive monitoring process (see Decisions 37 COM 7C and 38 COM 7). Although most reports are now published, this is not a requirement and some reports by State Parties, as well as some of the monitoring mission reports, continue to be withheld from the public, in particular those of a contentious character.



“That the World Heritage Committee and UNESCO urgently establish the necessary procedures to remedy the existing lack of transparency and accountability in the implementation of the World Heritage Convention, including in the identification, monitoring and management of World Heritage sites and in the processing of World Heritage nominations.

a) Such procedures must ensure, inter alia, that World Heritage nominations, monitoring mission reports and State Party reports are made publicly available as soon as they are received by the UNESCO World Heritage Centre, so that affected Indigenous peoples, communities and other rights- and stakeholders have sufficient time to review these documents and provide input and comments in advance of any decision being taken by the World Heritage Committee;”

*Call to Action, International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012.*

“There has been a major increase in both concern and expectations from indigenous peoples, local communities and religious groups about how positive results can be achieved for protecting indigenous lands and territories, intangible cultural heritage, livelihoods and sacred natural sites, especially those sites with special spiritual or cultural significance... [T]he lack of adequate policies in the World Heritage Convention and a lack of appropriate requirements for participation, transparency and consent in the Operational Guidelines of the Convention, based on a rights-based approach in line with international norms, requires clear action.”

*IUCN World Parks Congress, Sydney 2014, The Promise of Sydney: A strategy of innovative approaches and recommendations for enhancing World Heritage in the next decade, para. (5).*

“All countries and relevant organisations, in line with the Aarhus Convention, establish mechanisms to ensure access to information, meaningful participation in decision-making and justice at all levels regarding protected and conserved areas.

*IUCN World Parks Congress, Sydney 2014, The Promise of Sydney: A strategy of innovative approaches and recommendations to enhance the diversity, quality and vitality of governance in the next decade, Recommendation 9.*

#### **f) Inadequate involvement of indigenous peoples in the management of many World Heritage sites**

20. There are some World Heritage sites that are managed by indigenous peoples’ themselves or jointly managed by indigenous peoples and government agencies. It should also be noted that the Operational Guidelines contain a provision making clear that “traditional protection and management” can provide an adequate level of protection to ensure the safeguarding of World Heritage sites (para. 97). However, there are numerous World Heritage sites in indigenous peoples’ territories where indigenous peoples are completely excluded from management and decision-making and that are managed in ways that are harmful to indigenous peoples and their livelihoods and highly inconsistent with the standards affirmed in the UN Declaration on the Rights of Indigenous Peoples. The Operational Guidelines contain no provisions that would ensure that indigenous peoples are meaningfully involved in the management and decision-making of World Heritage sites affecting them. The Guidelines merely state that States Parties are “encouraged to ensure the participation of a wide variety of stakeholders” in the protection of World Heritage sites (para. 12) and that local communities can be “partners” in the protection and conservation of World Heritage (para. 21).

“Noting with concern that there are numerous World Heritage sites in Africa... whose management frameworks are not consistent with the principles of the UN Declaration on the Rights of Indigenous Peoples;”

*African Commission on Human and Peoples’ Rights, Resolution 197 (“Resolution on the protection of indigenous peoples’ rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site”), 5 November 2011.*

“SHARING the African Commission’s concerns... ‘that there are numerous World Heritage sites in Africa... whose management frameworks are not consistent with the principles of the UN Declaration on the Rights of Indigenous Peoples’; ...

The World Conservation Congress...

URGES the World Heritage Committee to... review and revise its procedures and Operational Guidelines... to ensure that indigenous peoples’ rights and all human rights are upheld and implemented in the management and protection of existing World Heritage sites...

CALLS UPON State Parties to the World Heritage Convention to ensure respect for the rights of indigenous peoples in the management and protection of existing World Heritage sites...”

*IUCN World Conservation Congress, Jeju, Korea, September 2012, Resolution 5.047 (“Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention”)*

“Indigenous peoples have expressed concerns over their lack of participation in the nomination, declaration and management of World Heritage sites, as well as concerns about the negative impact these sites have had on their substantive rights, especially their rights to lands and resources... [T]here is still no specific policy or procedure which ensures that indigenous peoples can participate in the nomination and management of these sites. The Operational Guidelines... are silent on the issue of participation by indigenous peoples. The guidelines provide only that States parties to the Convention are encouraged to ensure the participation of a wide variety of stakeholders in the identification, nomination and protection of World Heritage properties.”

*UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya, Report to the United Nations General Assembly, UN Doc. A/67/301, 13 August 2012, paras. 33-35.*

“There are... sites on the World Heritage List where indigenous peoples have no role in management and they are regularly marginalized in decision-making, consequently affecting their lands, cultures and everyday lives in significant ways.”

*“Interview with Myrna Cunningham, Chair of the United Nations Permanent Forum on Indigenous Issues”. In: World Heritage No. 62 (February 2012), Paris: UNESCO, p. 54.*

“Indigenous peoples must be fully consulted and directly involved in the... decision-making and management of World Heritage sites within or affecting their lands, territories and resources, through representatives chosen by themselves in accordance with their own procedures and institutions...

[W]e call for the adoption of the following measures and actions: ... That States ensure the equitable and effective participation of Indigenous peoples in the administration and management of World Heritage sites within Indigenous peoples’ lands and territories and support Indigenous peoples’ own initiatives to develop administration and management systems.”

*Call to Action, International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012.*

**g) Restrictions and prohibitions on Indigenous land-use activities in some World Heritage sites (sometimes directly related to the World Heritage status)**

21. In many nature-protected areas, including many areas inscribed on the World Heritage List, tight restrictions are imposed on indigenous land-use practices such as hunting, gathering, farming or animal husbandry, in violation of indigenous peoples' cultural and subsistence rights. Moreover, in some World Heritage areas restrictions and prohibitions on indigenous land-use practices have come as a direct result of World Heritage status.<sup>17</sup> There are also several sites on the World Heritage List where Indigenous people were forcibly removed or pressured to leave following the establishment of the protected area, and in some cases this was even done with the hope of facilitating inscription on the World Heritage List as a 'natural site'.

"In some cases, indigenous peoples are treated as threats to their own territories, especially in instances where management systems of these sites are imposed, based on Western norms and perspectives unrelated to their own governance systems... There are also instances where indigenous peoples have been pressured to leave or been forcibly removed following the establishment of World Heritage protected areas."

*"Interview with Myrna Cunningham, Chair of the United Nations Permanent Forum on Indigenous Issues". In: World Heritage No. 62 (February 2012), Paris: UNESCO, pp. 53-54.*

"ACKNOWLEDGING that injustices to indigenous peoples have been and continue to be caused in the name of nature conservation, and that indigenous peoples have suffered dispossession and alienation from their traditional lands and resources as a result of the establishment and management of protected areas, including many areas inscribed on the World Heritage List;"

*IUCN World Conservation Congress, Jeju, Korea, September 2012, Resolution 5.047 ("Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention")*

"During the 1960–1970 period, 580 Batwa families (3,000 – 6,000 people) were evicted from the *Kahuzi-Biega Forest* in the Democratic Republic of Congo in order to create a 6,000 km<sup>2</sup> gorilla reserve. Land should have been given in compensation to the Batwa, but this did not happen. Now the Batwa are forbidden to hunt in the park, and forbidden to collect park products. They have no food resources or medicinal plants, and the forest is no longer their place of worship. The Batwa have been culturally and psychologically shattered by the loss of their forests. The local authorities do not allow the Batwa to return to the forest of Kahuzi-Biega, as they claim they pose a high risk to the ecosystem. However, this is only a pretext, as traditionally the Batwa have never hunted gorillas, nor do they destroy the forest by cutting down trees... The Batwa who were driven out of the Kahuzi – Biega forests are now extremely poor, even destitute. Most have no property, and it is very difficult for them to obtain their basic needs."

*African Commission on Human and Peoples' Rights (ACHPR). 2000. Report of the African Commission's Working Group on Indigenous Populations/Communities. Adopted by the ACHPR at its 28th Ordinary Session, DOC/OS(XXXIV)/345, pp. 12-13.*

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<sup>17</sup> It should be noted that the Operational Guidelines recognize that "no area is totally pristine and that all natural areas are in a dynamic state, and to some extent involve contact with people. Human activities, including those of traditional societies and local communities, often occur in natural areas. These activities may be consistent with the Outstanding Universal Value of the area where they are ecologically sustainable." (para. 90).

“We, CSOs representing the interests of pastoralists in Tanzania are deeply disturbed by widely circulating news that people have died of hunger and a face a multiplicity of other hunger related complications in Ngorongoro Conservation Area... Food [in]security and human rights violations are unfortunately also linked to the international significance that has been attached to Ngorongoro Conservation Area. The present hunger situation can, in the immediate be attributed to a harsh and hurriedly made decision by the Government in 2009 to re-impose the ban on cultivation without coming with an alternative means of livelihood and food security for the local community in the Conservation Area. International conservation actors such as UNESCO and IUCN cannot deny culpability in the present hunger situation since they are known to have pressurized the Government to re-impose the ban on cultivation owing to a perceived deterioration of the integrity of the Ngorongoro Conservation Area as World Heritage Site.”

*PINGO's Forum et al. 2012. Press Release by pastoralists civil society organizations on state of hunger and starvation in the Ngorongoro Conservation Area (NCA).*

“I would like to present the following recommendations to the World Heritage Committee for your consideration... That the subsistence economic activities of indigenous peoples needed for their survival that are taking place in World Heritage Sites not be undermined or illegalized and adequate social services be provided to indigenous peoples living in these sites.”

*Statement of the UN Permanent Forum on Indigenous Issues at the 34th Session of the UNESCO World Heritage Committee, Brasilia, 2010 (delivered by Victoria Tauli-Corpuz).*  
<http://xa.yimg.com/kq/groups/20674633/27593986/name/UNPFII+Statement+WHC+Final.docx>

“We also know that there are situations when Indigenous peoples have been actually physically removed from protected areas as a way of justifying inscription of an area on the World Heritage list as a place of natural importance devoid of what is perceived as the negative impact of local inhabitants. There are also examples of Indigenous peoples being restricted from practicing traditional hunting, gathering, land use and trading practices as they are said to disturb the ecological balance particularly of natural world heritage areas.”

*Sarah Titchen, Chief of the Policy and Statutory Implementation Unit of the UNESCO World Heritage Centre, presentation at the Conference “Cultural Heritage and Sacred Sites: World Heritage from an Indigenous Perspective”, May 2002, New York (transcript from audiotape),*  
<http://www.dialoguebetweennations.com/n2n/pfii/english/SarahTitchen.htm>

## **h) Inadequate benefit-sharing with indigenous peoples in many World Heritage sites**

22. As major tourist attractions, World Heritage sites can generate significant economic benefits. Although this can provide opportunities for indigenous peoples in terms of economic development, it is also a reality that in many World Heritage sites indigenous peoples do not equitably share in the economic benefits. While the Operational Guidelines contain no provisions on the equitable sharing of benefits, the World Heritage Committee does frequently adopt decisions encouraging or requesting States Parties to take measures towards the equitable access and sharing of benefits in specific World Heritage sites.<sup>18</sup>

“I would also like to encourage the Committee to consider other reforms to address concerns regarding the nomination and management of World Heritage sites that have been raised in years past in a variety of fora, including with respect to: [...]

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<sup>18</sup> See, e.g., Decision 33COM 7B.9, para. 7 (Ngorongoro Conservation Area, Tanzania), or Decision 38COM 8B.8, para. 5 (Mount Hamiguitan Range Wildlife Sanctuary, Philippines).

4) Ensuring that indigenous peoples derive benefits from World Heritage sites located where they live or that impact them;

*Letter of UN Special Rapporteur on the rights of indigenous peoples, James Anaya, to the Director of the World Heritage Centre, 18 November 2013. Contained in UN Doc. A/HRC/25/74, p. 127.*

“[W]e call for the adoption of the following measures and actions... That States ensure that the benefits arising from the use of Indigenous peoples’ lands, territories and resources as World Heritage sites are defined by and genuinely accrue to the Indigenous peoples concerned, in a fair and equitable manner.”

*Call to Action, International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012.*

“To ensure the credibility of the World Heritage Convention we must shift the focus from listing to providing leadership in protected area conservation. We must improve the outlook for all World Heritage sites to ensure that they maintain their Outstanding Universal Value, and also ensure their equitable management and shared benefits for the local communities and indigenous peoples that depend upon them.”

*IUCN World Parks Congress, Sydney 2014, The Promise of Sydney: A strategy of innovative approaches and recommendations for enhancing World Heritage in the next decade.*

#### **i) Frequent lack of consultation of indigenous peoples in the evaluation and monitoring of sites**

23. On many occasions, objections have been raised by indigenous peoples regarding a lack of consultation of indigenous peoples in the evaluation of World Heritage nominations and in the monitoring of the state of conservation of inscribed World Heritage sites. The evaluation of World Heritage nominations is carried out by the World Heritage Committee’s Advisory Bodies IUCN (natural heritage) and ICOMOS (cultural heritage) and entails both field missions and desk reviews. The state of conservation of World Heritage sites is monitored by the World Heritage Centre and the Advisory Bodies and can also involve field missions. The World Conservation Congress, IUCN’s highest decision-making body, has recently adopted a resolution aimed at ensuring that the principles of the UNDRIP are respected in IUCN’s work as an Advisory Body and that affected indigenous peoples are fully informed and consulted in the evaluation and monitoring of sites. IUCN is in the process of implementing measures to improve its working methods to better reflect community and rights concerns. ICOMOS, which has not officially endorsed the UNDRIP, has not taken such steps so far.<sup>19</sup> The “ICOMOS Procedure for the Evaluation of Cultural Properties” contains a provision requesting States Parties to “ensure that ICOMOS evaluation missions are given a low profile so far as the media are concerned” (Operational Guidelines, Annex 6), which is not helpful in ensuring that all relevant rights-holders are fully informed and can make their voices heard if they so wish.

“Cases of indigenous peoples’ and local communities’ rights not being identified during the evaluation process undertaken by IUCN have appeared throughout the years... Accessing appropriate and sufficient information on rights issues and making consultations around the nomination process and documentation as inclusive as possible is challenging... It has been suggested that evaluation arrangements could, in the most extreme cases, be easily ‘stage

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<sup>19</sup> It should be noted however that the ICOMOS General Assembly in November 2014 adopted a resolution on “advancing rights-based approaches to heritage conservation” which requests “Continued consideration of rights-based approaches in the work of ICOMOS in relation to its role as an Advisory Body to the World Heritage Convention” (Res. 18GA 2014/36).

managed' by State Parties interested in avoiding problematic areas, including possible human rights violations; this might manifest itself in community meetings and consultations organized and selected by State officials etc. Furthermore, it is also a concern that key rights-holders may be unaware of the nomination process, suggesting the need for more proactive outreach to indigenous peoples' and local communities' representatives if genuine participation is sought. This is particularly clear at natural sites often involving large distances, poor infrastructure and weak communication means. Despite the difficulties and complexity, there is a clear need for evaluation processes to include greater and more systematic consultation of indigenous peoples, and to include specific assessment of the degree to which consultation has been undertaken by State Parties."

*Peter Bille Larsen, Gonzalo Oviedo and Tim Badman. 2014. "World Heritage, Indigenous Peoples, Communities and Rights: An IUCN Perspective". In: World Heritage Sites and Indigenous Peoples' Rights (IWGIA Document No. 129), pp. 76-77.*

"States, the World Heritage Committee, UNESCO, and the Advisory Bodies must effectively involve Indigenous peoples in all stages of monitoring and evaluation of the state of conservation of World Heritage sites in their territories..."

*Call to Action, International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012.*

"The African Commission on Human and Peoples' Rights... Urges IUCN to review and revise its procedures for evaluating World Heritage nominations as well as the state of conservation of World Heritage sites, with a view to ensuring that indigenous peoples are fully involved in these processes, and that their rights are respected, protected and fulfilled in these processes and in the management of World Heritage areas..."

*African Commission on Human and Peoples' Rights, Resolution 197 ("Resolution on the protection of indigenous peoples' rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site"), 5 November 2011.*

"The World Conservation Congress... REQUESTS the [IUCN] Council and Director General to... develop clear policy and practical guidelines to ensure that the principles of the United Nations Declaration on the Rights of Indigenous Peoples are respected in IUCN's work as an Advisory Body to the World Heritage Committee, and to fully inform and consult with indigenous peoples when sites are evaluated or missions are undertaken on their territories;"

*IUCN World Conservation Congress, Jeju, Korea, September 2012, Resolution 5.047 ("Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention")*

"Global standards for Indigenous Peoples rights... including the UN Declaration on Rights of Indigenous Peoples, should be adopted and implemented in the World Heritage Convention, including through a revision of its Operational Guidelines to ensure respect for the Rights of Indigenous Peoples, and the full and effective involvement of Indigenous Peoples, local communities and religious groups in the Convention's evaluation and monitoring processes..."

*IUCN World Parks Congress, Sydney 2014, The Promise of Sydney: A strategy of innovative approaches and recommendations for enhancing World Heritage in the next decade, Recommendation 5.*

24. Representatives of the World Heritage Centre and the Advisory Bodies have pointed to the limitations of their financial resources as an important constraint for carrying out consultations with all affected indigenous peoples in the evaluation and monitoring of sites, especially in

geographically large World Heritage areas. Other important constraints include time constraints during field missions and political challenges such as a frequent lack of cooperation by the relevant Governments.

“UNESCO representatives raised the issue of the limitations of their technical, human and financial resources for carrying out consultations with all affected indigenous peoples for all sites that have been nominated, as well as the political challenges they often face in this regard, including a lack of cooperation by Governments.”

*UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya, Report to the United Nations General Assembly, UN Doc. A/67/301, 13 August 2012, para. 39.*

“Cost concerns linked to field evaluation [of natural sites]...

The main costs associated with the mission are borne by the IUCN (unlike monitoring missions) notably in terms international and national travel as well as accommodation. Yet, IUCN does not cover ‘exceptional expenses’ such as boat or helicopter hire. Furthermore it is expected that host country ‘covers the costs associated with the participation of representatives of national and local authorities and institutions as well as national experts that are designated to join the field mission’. In effect, both the ‘exceptional costs’ and the ‘associated costs’ are critical to:

- Enable the evaluator(s) to reach remote areas where community and rights issues may be significant...
- Enable independent travel...
- Ensure free movement...
- Identify and select independent national experts and translators to accompany the evaluation...
- Enable adequate resources for the effective participation of indigenous and community authorities and national indigenous/ community experts where appropriate”

*Peter Bille Larsen. 2012. IUCN, World Heritage and Evaluation Processes Related to Communities and Rights – An independent review prepared for the IUCN World Heritage Programme, June 2012.*

“Ms Buckley [Vice-President of ICOMOS] underlined the fact that the work done by the Advisory Bodies during the evaluation was very constrained in terms of the timelines, and must follow the Operational Guidelines. In many cases, there is also political pressure... [...] Mr Oviedo [IUCN’s Senior Advisor for Social Policy] underlined that World Heritage nomination and evaluation processes ‘can be very constructive spaces for addressing Indigenous peoples’ and community rights’ and that the Advisory Bodies’ evaluations were ‘a critical opportunity to identify and resolve outstanding challenges both in terms of legacy and nomination processes.’ He cautioned, however,... that the Advisory Bodies ‘face very real time and financial constraints. There is only so much that we can do.’ [...]

Both Dr Rössler [World Heritage Centre] and Mr Oviedo pointed out that the whole system was State Party-driven, including the field missions carried out by the Advisory Bodies and the World Heritage Centre. Mr Oviedo explained that the agenda of the field visits was frequently imposed by State Parties and that the field evaluators often had to rely on State Parties to tell them who to talk to during the missions. While the Advisory Bodies and the Centre normally insist on stakeholder meetings, the State Parties often control who participates in these meetings, Dr Rössler said. The evaluators then have to find other ways of meeting key stakeholders or obtaining information from them.”

*Stefan Disko and Helen Tugendhat. 2013. Report: International Expert Workshop on the World Heritage Convention and Indigenous Peoples (20-21 September 2012, Copenhagen), pp. 26-27; 57. Available at: <http://whc.unesco.org/document/122252>*

## **j) Difficulties in bringing concerns effectively to the attention of the World Heritage Committee**

25. Indigenous peoples have also expressed concerns that there is no effective way to bring concerns regarding the nomination and management of World Heritage sites directly to the attention of the World Heritage Committee. Voices from indigenous peoples, community groups and non-governmental organizations (NGOs) have no formal place in World Heritage Committee meetings and may only be heard at the discretion of the chairperson. While anybody can send information regarding pending nominations or the state of conservation/management of World Heritage sites to the World Heritage Centre and/or the Advisory Bodies, the modalities for this are relatively obscure and intransparent, and not well known. Moreover, the Centre and the Advisory Bodies may or may not take the information received from indigenous peoples into account in their reports to the Committee, and there are questions regarding the neutrality of the Advisory Bodies, whose own interests as conservation organizations may not always match the interests of indigenous peoples.
26. Indigenous peoples and human rights bodies have therefore repeatedly called for the establishment of an appropriate mechanism through which indigenous peoples can provide advice to the Committee, effectively bring concerns to its attention and effectively participate in its decision-making processes. Already in 2000 a Forum of Indigenous Peoples assembled at the World Heritage Committee meeting in Cairns, Australia proposed the establishment of a “World Heritage Indigenous Peoples Council of Experts” (WHIPCOE) as an additional advisory body to the Committee. However, this proposal was rejected by the Committee in 2001.

“The significant role that civil society plays in protecting and conserving heritage sites is undeniable, yet the World Heritage Convention does not assign any official role to outside organizations and groups. States Parties, the three advisory bodies and the UNESCO secretariat all enjoy a statutory legitimacy that outsiders do not... Voices from community groups and non-governmental organizations have no official place in World Heritage processes and may only be heard at the discretion of the chairperson of the Committee... The lack of a formal role for civil society in the World Heritage system is, in [former UNESCO Director-General] Matsuura’s view, ‘something the 1972 Convention should have more carefully looked into’.”

*Christina Cameron and Mechtild Rössler. 2013. Many Voices, One Vision: The Early Years of the World Heritage Convention. Farnham: Ashgate, pp. 216-219.*

“We are also deeply concerned that there is no effective way for Indigenous peoples to bring concerns regarding World Heritage nominations directly to the attention of the World Heritage Committee... The existing participation procedures are not in accordance with international standards related to the right of Indigenous peoples to participate in decision-making in matters that would affect their rights. They are also in conflict with international commitments and principles relating to public participation in environmental decision-making...

[We] continue to call on the World Heritage Committee to revisit the initial efforts to establish a World Heritage Indigenous Peoples’ Council of Experts (WHIPCOE) and to revive efforts to establish an appropriate mechanism through which Indigenous peoples can provide advice to the World Heritage Committee, effectively bring concerns to its attention and effectively participate in its decision-making processes;”

*Joint Submission on the Lack of implementation of the UN Declaration on the Rights of Indigenous Peoples in the context of UNESCO’s World Heritage Convention, endorsed by over 70 Indigenous organizations and NGOs, submitted to the World Heritage Committee in May 2012.*



“The Expert Mechanism on the Rights of Indigenous Peoples: ...

(b) Refers to articles 41 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples...;

(c) Reiterates that UNESCO must enable and ensure effective representation and participation of indigenous peoples in decision-making related to the World Heritage Convention...

(e) Encourages the World Heritage Committee to establish... appropriate measures to ensure... that indigenous peoples can effectively participate in the World Heritage Convention’s decision-making processes.”

*UN Expert Mechanism on the Rights of Indigenous Peoples, Report to the Human Rights Council, UN Doc. A/HRC/21/52, 17 August 2012 (“Proposal 9: World Heritage Committee”).*

“The African Commission on Human and Peoples’ Rights... Calls on the World Heritage Committee to consider establishing an appropriate mechanism through which indigenous peoples can provide advice to the World Heritage Committee and effectively participate in its decision-making processes;”

*African Commission on Human and Peoples’ Rights, Resolution 197 (“Resolution on the protection of indigenous peoples’ rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site”), 5 November 2011.*

“The World Conservation Congress... URGES the World Heritage Committee to: ... establish a mechanism through which indigenous peoples can provide direct advice to the Committee in its decision-making processes in a manner consistent with the right of free, prior and informed consent and the right to participate in decision making as affirmed in the *Declaration on the Rights of Indigenous Peoples*;”

*IUCN World Conservation Congress, Jeju, Korea, September 2012, Resolution 5.047 (“Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention”)*

“I would like to present the following recommendations to the World Heritage Committee for your consideration... That the initial efforts to establish a World Heritage Indigenous Peoples’ Council of Experts (WHIPCOE) be revisited and efforts to set up an appropriate mechanism whereby indigenous experts can provide advice to the World Heritage Committee and the World Heritage Center be revived.”

*Statement of the UN Permanent Forum on Indigenous Issues (PFII) at the 34th Session of the World Heritage Committee (WHC), Brasilia, 2010 (delivered by Victoria Tauli-Corpuz). <http://xa.yimg.com/kq/groups/20674633/27593986/name/UNPFII+Statement+WHC+Final.docx> Likewise, Statement of the PFII at the 35th Session of the WHC, Paris, 2011 (Paul Kanyinke Sena), [http://www.iwqia.org/iwqia\\_files\\_news\\_files/0314\\_UNPFII\\_Statement\\_at\\_HC\\_Paris\\_2011.doc](http://www.iwqia.org/iwqia_files_news_files/0314_UNPFII_Statement_at_HC_Paris_2011.doc)*

“UNESCO is urged to establish mechanisms to enable indigenous peoples to participate effectively in its work relating to them, such as the programmes on endangered languages, education, literacy, nomination of indigenous sites in the World Heritage List and other programmes relevant to indigenous peoples.”

*UN General Assembly, Programme of Action for the Second International Decade of the World’s Indigenous People, UN Doc. A/60/270, adopted by the UN General Assembly on 20th December 2004 by Resolution A/RES/59/174.*

“That the World Heritage Committee establish, with the full and effective participation of Indigenous peoples and through an open and transparent process, an advisory mechanism consisting of Indigenous experts, to assist in the implementation of these and other measures

to ensure that all actions related to the World Heritage Convention uphold the rights of Indigenous peoples.

a) While the exact role and functions of this mechanism must be determined in full consultation with Indigenous peoples, the advisory mechanism should play a consultative role to the World Heritage Committee in all processes affecting Indigenous peoples, to ensure that the Indigenous peoples concerned are adequately consulted and involved in these processes and that their rights, priorities, values, and needs are duly recognized, considered and reflected;

b) A key mandate of the Indigenous advisory mechanism should be to identify and appoint appropriate Indigenous experts and representatives to take part in World Heritage processes impacting Indigenous peoples, including the evaluation of nominations, on-site evaluation missions, evaluation of the state of conservation of World Heritage sites and monitoring missions;

c) The UN special mechanisms on Indigenous peoples' rights, including the Expert Mechanism on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues and the Special Rapporteur on the Rights of Indigenous Peoples, should be encouraged to collaborate with the advisory mechanism and assist in the execution of its functions as appropriate and consistent with their respective mandates."

*Call to Action, International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012.*

#### **k) Lack of concerted action to redress past and ongoing violations of indigenous peoples' rights in World Heritage sites**

27. The establishment and management of protected areas worldwide has often resulted in indigenous peoples' dispossession and alienation from their traditional lands and resources and other injustices and human rights violations committed against indigenous peoples. This legacy, from which many indigenous peoples continue to suffer, is also shared by many of the protected areas inscribed on the World Heritage List. Additionally, violations of indigenous peoples' rights have occurred as a direct result of the implementation of the World Heritage Convention and the establishment of World Heritage sites. Considering this legacy and UNESCO's commitment and obligation to further respect for human rights, there is a clear need for effective measures to proactively assess, redress and remedy the effects of past and ongoing violations of indigenous peoples' rights in World Heritage sites.

"The declaration of protected areas on indigenous territories without our consent and engagement has resulted in our dispossession and resettlement, the violation of our rights, the displacement of our peoples, the loss of our sacred sites and the slow but continuous loss of our cultures, as well as impoverishment. It is thus difficult to talk about benefits for Indigenous Peoples when protected areas are being declared on our territories unilaterally. First we were dispossessed in the name of kings and emperors, later in the name of State development and now in the name of conservation."

*"Statement by Indigenous Peoples", Closing Plenary, Fifth World Parks Congress, Durban, 17 September 2003.*

"ACKNOWLEDGING that injustices to indigenous peoples have been and continue to be caused in the name of nature conservation, and that indigenous peoples have suffered dispossession and alienation from their traditional lands and resources as a result of the establishment and management of protected areas, including many areas inscribed on the World Heritage List;...

The World Conservation Congress... URGES the World Heritage Committee to: ... work with State Parties to establish mechanisms to assess and redress the effects of historic and current injustices against indigenous peoples in existing World Heritage sites;”

*IUCN World Conservation Congress, Jeju, Korea, September 2012, Resolution 5.047 (“Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention”)*

“I would also like to encourage the Committee to consider other reforms to address concerns regarding the nomination and management of World Heritage sites that have been raised in years past in a variety of fora, including with respect to: [...]

7) Providing redress for past injustices and violations of indigenous peoples’ rights to which the establishment of World Heritage sites have contributed.

*Letter of UN Special Rapporteur on the rights of indigenous peoples, James Anaya, to the Director of the World Heritage Centre, 18 November 2013. Contained in UN Doc. A/HRC/25/74, p. 127.*

“Concerned about the legacy of past and ongoing injustices, and chronic, persistent human rights violations that have been and continue to be experienced by Indigenous peoples as a result of the establishment and management of protected areas, including many areas inscribed on the World Heritage List;

*Recognizing* the historical and persistent human rights violations and breaches of fundamental freedoms being perpetrated by States and others against Indigenous individuals and peoples as a direct result of the implementation of the World Heritage Convention and actions of the World Heritage Committee; [...]

[W]e call for the adoption of the following measures and actions:

1. ... [C]hanges to the current procedures and operational guidelines and other appropriate measures to ensure... that historical and ongoing infringements of human rights, including those explicitly embraced by the UN Declaration on the Rights of Indigenous Peoples, are identified and addressed through periodic reporting, management and reactive monitoring, as well as by other means. [...]

7. That States and the World Heritage Committee urgently respond to and redress conditions within existing World Heritage sites where human rights violations or conflicts continue to affect Indigenous peoples and communities.”

*Call to Action, International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012.*

“We... recommend that UNESCO and the World Heritage Committee establish a process through which existing World Heritage sites may be reviewed with reference to the requirements of the UN Declaration on the Rights of Indigenous Peoples;”

*Joint Submission on the Lack of implementation of the UN Declaration on the Rights of Indigenous Peoples in the context of UNESCO’s World Heritage Convention, endorsed by over 70 Indigenous organizations and NGOs, submitted to the World Heritage Committee in May 2012.*

### **III. Proposed recommendations**

- 1) The World Heritage Convention’s separation between cultural heritage and natural heritage is inappropriate in the case of World Heritage sites incorporating the lands, territories or resources of indigenous peoples and should be set aside in the context of such sites. For indigenous peoples cultural and natural values are inseparably interwoven and should be managed and protected in a holistic manner.

- 2) The World Heritage Committee should take effective measures to ensure that the protection of World Heritage does not undermine indigenous peoples' relationship with their traditional lands, territories and resources, their livelihoods, and their rights to protect, exercise and develop their cultural heritage and expressions. There are many World Heritage sites where the recognized Outstanding Universal Value (OUV) does not reflect or coincide with the indigenous heritage values, and may even be harmful to the protection of those values. Changes and/or additions to the criteria for the assessment of OUV and the related regulations (comparative analysis, authenticity, integrity) should be adopted to make sure that the values assigned to World Heritage sites by indigenous peoples are fully and consistently recognized as part of their OUV, so that the OUV does not 'trump' the indigenous values and does not harm indigenous peoples' heritage, cultures and livelihoods.
- 3) Following such changes to the criteria for the assessment of OUV, the World Heritage Committee should undertake a comprehensive review of all World Heritage sites, to draw out omissions concerning the values assigned to World Heritage sites by indigenous peoples and adapt the justification for inscription where necessary.<sup>20</sup>
- 4) The World Heritage Committee should establish a process to elaborate, with the full and effective participation of indigenous peoples, changes to the current procedures and Operational Guidelines and other appropriate measures to ensure that the implementation of the World Heritage Convention is consistent with the United Nations Declaration on the Rights of Indigenous Peoples, that indigenous peoples can effectively participate in the Convention's decision-making processes and that indigenous peoples' rights are respected, protected and fulfilled in World Heritage areas.<sup>21</sup>
- 5) In accordance with the UN Declaration on the Rights of Indigenous Peoples (Arts. 19, 32.2, 41, 42) and the Outcome document of the 2014 World Conference on Indigenous Peoples (paras. 3, 20), the World Heritage Committee should adopt changes to the Operational Guidelines to ensure that no sites incorporating or affecting indigenous peoples' lands, territories or resources are inscribed on the World Heritage List without proof or evidence that the free, prior and informed consent of the indigenous peoples concerned has been obtained.<sup>22</sup> World Heritage nomination dossiers and any documents containing supplementary information should be made publicly available as soon as they are received by UNESCO.
- 6) The World Heritage Committee and States should take effective measures to assess, redress and remedy the effects of past injustices and violations of indigenous peoples' rights in World Heritage sites.
- 7) The World Heritage Committee's Advisory Bodies on cultural heritage, ICOMOS and ICCROM, should officially endorse the UN Declaration on the Rights of Indigenous Peoples and apply its principles to their World Heritage work.

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<sup>20</sup> This would be in keeping with World Heritage Committee Decision 29 COM 9 (2005), para. 6a, highlighting "the need to draw out references or obvious omissions concerning the values assigned by local communities and indigenous peoples, as related to World Heritage".

<sup>21</sup> See the Report of the Expert Mechanism on its fifth session, Proposal 9: World Heritage Committee (UN Doc. A/HRC/21/52, p. 7); and the African Commission on Human and Peoples' Rights Resolution No. 197 (2011) on the protection of indigenous peoples' rights in the context of the World Heritage Convention.

<sup>22</sup> For relevant amendments proposed by an International Expert Workshop on the World Heritage Convention and Indigenous Peoples (Copenhagen, 2012), see [http://www.iwgia.org/iwgia\\_files\\_news\\_files/0678\\_Call\\_to\\_Action\\_plus\\_Annexes.pdf](http://www.iwgia.org/iwgia_files_news_files/0678_Call_to_Action_plus_Annexes.pdf), Annex 3.

- 8) States Parties to the World Heritage Convention should be encouraged to provide the resources needed for the Advisory Bodies and the World Heritage Centre to carry out full and effective consultations with affected indigenous peoples in the evaluation and monitoring of sites.
- 9) UNESCO should strengthen its efforts to finalize the UNESCO Policy on Indigenous Peoples, in cooperation with indigenous peoples and the three UN mechanisms with specific mandates regarding indigenous peoples' rights (EMRIP, Permanent Forum on Indigenous Issues, Special Rapporteur on the Rights of Indigenous Peoples).