

Indigenous Peoples' Rights and UNESCO World Heritage Sites

March 2022

**Submission to the UN Special Rapporteur on the Rights
of Indigenous Peoples for his report to the 77th Session
of the UN General Assembly
Jointly submitted by:**



Contents

I. Impacts of World Heritage designation on Indigenous peoples and their rights.....	1
A. Positive impacts.....	1
B. Negative impacts.....	3
II. Inclusion and exclusion of Indigenous peoples in World Heritage processes.....	6
A. Existing protocols.....	6
B. Practical experiences.....	9
III. Conceptual factors undermining Indigenous peoples' rights in World Heritage processes.....	11
A. Inappropriate separation between "natural" and "cultural" heritage.....	11
B. Problematic application of the concept of "Outstanding Universal Value".....	11
IV. Examples of good practices.....	13
V. Recommendations.....	15
VI. Endnotes.....	17



I. Impacts of World Heritage designation on Indigenous peoples and their rights

A. Positive impacts

1. As an instrument for the conservation and protection of natural and cultural heritage sites, which affords sites recognized as "World Heritage sites" an additional level of protection beyond domestic laws and regulations, the World Heritage Convention ("the Convention") can play, and in some cases undoubtedly has played, a positive role for Indigenous peoples by helping to protect their lands and territories, as well as their cultural heritage and traditional ways of life, from development pressures such as extractive industry activities or threats posed by major infrastructure projects. World Heritage sites can also create business and employment opportunities for Indigenous peoples, for instance in the tourism sector or directly in the management of sites and related conservation activities. In some cases, World Heritage sites have been nominated at the initiative of Indigenous peoples themselves, with a view to protecting ancestral lands or creating new livelihood opportunities.¹ If designed and managed with the inclusion and full and effective participation of Indigenous peoples, and with respect for their collective rights, World Heritage sites can thus serve to support Indigenous peoples' livelihoods and self-determined development.

2. Moreover, the international attention and oversight that comes with World Heritage status can potentially be used to promote improved Indigenous participation in the management and governance of sites, enhanced benefit-sharing, or redress for past violations of Indigenous rights. For instance, in evaluating World Heritage nominations and monitoring the state of conservation of World Heritage sites, the World Heritage Committee ("the Committee"), its advisory bodies IUCN and ICOMOS and/or the UNESCO World Heritage Centre (the Convention's secretariat) have increasingly called on

States Parties in recent years to enhance the role of Indigenous peoples in decision-making processes, consider their needs and interests, and respect their rights.²

3. For the Mirarr people, the traditional owners of large parts of Kakadu National Park in northern Australia, the World Heritage status of the park has been an important tool in their fight to protect their traditional lands from uranium mining. A World Heritage Site since 1981, Kakadu National Park is managed jointly by the traditional owners and the Director of National Parks. It is a so-called “mixed” (cultural/natural) World Heritage site, listed because of its natural values as well as Aboriginal cultural values. Inside the National Park, but technically not a part of it, are two uranium deposits (Jabiluka and Koongarra) and one uranium mine (Ranger). None of these sites were originally part of the World Heritage Area. The Ranger uranium mine went into production in the 1980s against the wishes of the traditional owners. Industry plans to mine the Jabiluka deposit were approved by the Australian Government in the second half of the 1990s, but were strongly opposed by the Mirarr and conservation groups. The Mirarr appealed to the World Heritage Committee to intervene, arguing that mining at Jabiluka would threaten Kakadu’s cultural and natural values. The enormous international attention generated not least by the World Heritage status of Kakadu ultimately led to an agreement between the mining company (Rio Tinto) and the Mirarr, which guarantees that no mining activity will be carried out at Jabiluka without the written consent of the traditional owners.³ “It is without doubt that the international prominence of the Kakadu World Heritage debate delivered the Mirarr significant leverage in their negotiations with Rio Tinto. The World Heritage Committee proved an effective international stage to highlight the impacts of the imminent destruction of country and culture in a remote but significant corner of the globe.”⁴ In 2011, the Mirarr succeeded in their efforts to incorporate the Koongarra area into the World Heritage Site in order to prevent uranium mining in that area. Currently the

World Heritage status of Kakadu serves as a tool for the Mirarr in the context of the closure and rehabilitation process of the Ranger uranium mine. Mining and processing of uranium at Ranger ceased in 2021 and the Mirarr are pointing to the international significance of Kakadu in their efforts to ensure that the highest level of rehabilitation is undertaken at Ranger, in line with industry best practice, to ensure long-term maintenance of cultural values and ecological integrity.⁵

4. In the Far East of Russia, the Indigenous Udege, Nanai and Orochi peoples of the Bikin River Valley have advocated for and welcomed the 2018 inclusion of the Bikin National Park in the World Heritage List as a natural site (as an extension to the Central Sikhote-Alin World Heritage site) as part of their efforts to protect their traditional territory from unwanted development, logging, mining and poaching.⁶ While the site is only listed for its natural values, “the legislative framework [for Bikin National Park] includes strong and explicit provisions on the protection of rights of the indigenous peoples to use natural resources within substantial zones of the national park.”⁷ This is also noted in the Committee decision by which Bikin National Park was inscribed, according to which Indigenous peoples are permitted to use natural resources for traditional economic activities, as a way of life and for subsistence in 58.1% of Bikin National Park.⁸

5. The example of the Laponian Area, a “mixed” World Heritage site in Sweden that was inscribed in 1996 for its natural features as well as the significance of the local Sami reindeer herding culture, shows that the recognition of Indigenous cultural values as part of a site’s “Outstanding Universal Value” (OUV) not only ensures a continued consideration of those values in conservation strategies, but can also assist Indigenous peoples in their efforts to gain a greater role in decision-making processes and site management. The Sami were able to use the World Heritage appointment as a tool to strengthen their position and give them a vital role in the management of the area. More importantly, they were able to use the World Heritage framework

to change the structure of the normative cultural and natural heritage discourse practiced in the area up until then.⁹ In 2012, after years of negotiations involving the Sami reindeer herders, government agencies and local municipalities, a new management organization for the Laponian Area was established (“Laponiajuottjudus”), which is composed in its majority by Sami representatives and functions by consensus decision-making, allowing an integrated management of cultural and natural values.¹⁰

B. Negative impacts

6. The establishment and management of protected areas worldwide has often resulted in Indigenous peoples’ dispossession and alienation from their traditional lands and resources, forced evictions, restrictions on the traditional use of resources, loss of livelihoods and access to sacred sites, 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.¹¹ Violations of Indigenous peoples’ rights in the management of World Heritage sites are therefore often a

continued legacy of the protected areas in question, many of which were declared as national parks or nature reserves a long time before they were listed as World Heritage sites. However, the designation as World Heritage sites has in many cases aggravated or consolidated Indigenous peoples’ loss of control over their lands and resources, led to additional restrictions on traditional land-use practices, and further undermined their livelihoods. Many human rights violations against Indigenous peoples have occurred as a direct result of the implementation of the World Heritage Convention and in the context of World Heritage processes. The “Call to Action” of the International Expert Workshop on the World Heritage Convention and Indigenous Peoples (Copenhagen, 2012) states:

“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



Kakadu Traditional Owners Jeffrey Lee and Stewart Gangali outside the UNESCO building in Paris after Koongarra was added to the Kakadu World Heritage area. Credit: Justin O’Brien

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; [...]"¹²

7. Throughout the history of the Convention, Indigenous peoples have frequently raised concerns about violations of their rights in its implementation, not only at the domestic level in the nomination and management of specific World Heritage sites, but also at the international level in the practice of the World Heritage Committee, the Advisory Bodies, and the UNESCO World Heritage Centre (the Convention's Secretariat).¹³ Human rights concerns include, *inter alia*, frequent disrespect for Indigenous peoples' right to self-determined development and participatory rights in the identification, nomination and inscription of sites; marginalization of Indigenous peoples in the management and governance of sites; violations of Indigenous peoples' rights to access and use their lands, territories and resources in the management of sites; harassment and criminalization of Indigenous people engaging in traditional resource use; violations of Indigenous peoples' right to share equitably in tourism benefits; and lack of consultation with Indigenous peoples by monitoring and site evaluation missions.
8. A recurrent, key problem is the nomination and inscription of World Heritage sites without the meaningful participation and free, prior and informed consent (FPIC) of the Indigenous peoples in whose territories they are located. As a consequence, but also due to the lack of directives and guidelines on these aspects, there is insufficient or no regard for Indigenous peoples' land and resource rights, livelihoods, cultural heritage and values in the nomination documents and in the justifications for inscription adopted by the World Heritage Committee ("Statements of Outstanding Universal Value"), with significant implications for conservation strategies and site management.¹⁴
9. In many World Heritage areas, Indigenous

peoples are primarily considered as threats, or potential threats, to conservation objectives. Often tight restrictions and prohibitions are imposed on Indigenous land-use practices such as hunting, gathering, farming or pastoralism, in violation of Indigenous peoples' cultural and subsistence rights. These restrictions and prohibitions have had severe consequences for some Indigenous peoples' food security, health and well-being and can in some cases be directly linked to the World Heritage status of the sites and the recommendations and requests of the World Heritage Committee, UNESCO and the Advisory Bodies.

10. The World Heritage List contains several protected areas from which indigenous peoples have been forcibly removed,¹⁵ and in some cases this was also done with the intention 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".¹⁶ Although the *Operational Guidelines for the Implementation of the World Heritage Convention* ("Operational Guidelines")¹⁷ recognize that "human activities, including those of... indigenous peoples, often occur in natural areas... [and] may be consistent with the Outstanding Universal Value of the area where they are ecologically sustainable" (para. 90), there continues to be a "misconception that World Heritage nomination requires community presence and rights to be extinguished for site recognition [as a natural World Heritage site]. This may, in part, also result from the fact that State-governed IUCN Category 2 protected areas ('National Parks') are often presented as a preferred management model for World Heritage sites, without fully exploring alternatives, and such a category in the national legislation of many countries excludes resident communities".¹⁸
11. There are also several examples in the history of the World Heritage Convention, including its recent history and ongoing implementation, where the Committee, the Advisory Bodies and the World Heritage Centre have encouraged the "voluntary

relocation" of Indigenous peoples from specific World Heritage areas. Recent (and ongoing) examples include Salonga National Park (Democratic Republic of Congo, DRC) and the Ngorongoro Conservation Area (Tanzania).

12. In the case of the Ngorongoro Conservation Area (NCA), UNESCO, the Committee and the Advisory Bodies have for many years identified the livelihood activities and growing population of the NCA's pastoralist residents as major threats to the OUV of the site and repeatedly encouraged Tanzania to promote the "voluntary relocation" of the Indigenous communities to areas outside of the NCA.¹⁹ Based upon their recommendations and requests, the Tanzanian government has imposed multiple restrictions on cattle grazing and a complete ban on agriculture (including home gardens) in the NCA. These prohibitions have led to serious food insecurity, hunger and starvation among the NCA's residents and form part of the strategy to encourage their "voluntary relocation".²⁰ Additionally, the Tanzanian government has recently undertaken a review of the NCA's current Multiple Land Use Model (MLUM) and is considering the adoption of a new MLUM and accompanying resettlement plan that would radically rezone the NCA, significantly reduce the land available for pastoralism and remove over 70,000 of the NCA's Indigenous residents.²¹ In early 2022, there were reports that the government was preparing to begin evicting people forcibly by the end of February 2022, leading to panic among the NCA residents.²²
13. In the case of Salonga National Park, UNESCO's and IUCN's state of conservation reports and the decisions of the Committee have repeatedly identified "Indigenous hunting, gathering and collecting" as a threat to the Park²³ and encouraged the "voluntary relocation" of Indigenous communities from the Park.²⁴ Although the Committee expressed concern at its 44th session (in 2021) about reports of human rights violations against local communities during law enforcement operations and called upon the State Party to take urgent

action to strengthen its efforts to resolve this issue in accordance with relevant international standards, the Committee's decision on Salonga National Park adopted at the 44th session (as well as the related UNESCO/IUCN state of conservation report) once again reinforce the idea that the Yaelima Indigenous communities are a threat to the Park and should thus be relocated.²⁵ UNESCO and IUCN continue to list "Indigenous hunting, gathering and collecting" among the threats to the site²⁶ and the WHC's decision requests the DRC to "pursue and accelerate the current process aimed at best preparing the relocation" of communities living within the Park, cautioning only that relocations should follow the principle of FPIC.²⁷ The International Indigenous Peoples' Forum on World Heritage (IIPFWH) therefore urged the Committee and IUCN to "recognize that the right of access by Indigenous Peoples to traditional lands, territories and resources contributes effectively to nature conservation, the preservation of biodiversity, as well as the reduction of poverty in rural areas", to "stop promoting the 'voluntary' relocation of Indigenous Peoples from their ancestral lands", and to "stop identifying 'Indigenous hunting, gathering and collecting' as a threat to the Park."²⁸

14. A recent example of a site inscribed on the World Heritage List without the FPIC of affected Indigenous peoples is the Kaeng Krachan Forest Complex (KKFC) in Thailand. Over the more than ten years in which the nomination of the KKFC was developed, the Karen Indigenous communities of the KKFC were never able to meaningfully participate in the nomination process, and no efforts were made to reflect and recognize their relationship with the land and their cultural values within the OUV of the site. On the contrary, some of the actions during the nomination process amounted to an intentional destruction of Karen cultural heritage. The nomination process was accompanied by serious human rights abuses against the Karen communities, including violent forced evictions of community members from their

Karen people fighting to protect their rights and community in the Kaeng Krachan Forest Complex. Credit: Asia Indigenous Peoples Pact



ancestral land, burning of Karen houses, unlawful arrests and prosecutions, and even murder and enforced disappearance of human rights defenders. These human rights violations were in many ways linked to the efforts to gain World Heritage status for the KKFC under natural criteria. Based on a misconception that the presence and traditional resource use of the Karen was incompatible with World Heritage status and may jeopardize listing as a “natural” site, the Karen were essentially treated as a threat to the natural values of the area rather than partners in their protection.²⁹ In approving the nomination, the World Heritage Committee ignored the pleas of the Karen, as well as those of UN human rights mechanisms, IUCN and others, that the inscription be deferred until the human rights concerns had been resolved, the Karen had been able to meaningfully participate in the nomination process, their land rights had been recognized, their traditional livelihoods protected, and a truly collaborative management system established (see below).

II. Inclusion and exclusion of Indigenous peoples in World Heritage processes

A. Existing protocols

15. Until very recently (2015), no guidelines or protocols existed at the international level regarding the participation of Indigenous peoples in the processes of the World Heritage Convention. However, following the adoption of the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2007, international human rights mechanisms and Indigenous peoples themselves repeatedly urged the World Heritage Committee, UNESCO, the Advisory Bodies and States to align the implementation of the Convention with the standards affirmed in the UNDRIP.³⁰ In 2015 and 2019, the Committee finally added several provisions on Indigenous peoples and human rights to the Convention’s Operational Guidelines. Among other things, the Operational Guidelines now encourage States Parties “to adopt a human-rights based approach, and ensure gender-balanced participation of a wide variety of stakeholders and rights-holders, including... indigenous peoples, ... in the identification, nomination, management and protection processes of

World Heritage properties” (para. 12). They also provide that States Parties should implement management activities for World Heritage sites in close collaboration with Indigenous peoples, “by developing, when appropriate, equitable governance arrangements, collaborative management systems and redress mechanisms” (para. 117), and encourage States Parties to mainstream the principles of the *UNESCO policy on engaging with indigenous peoples* (as well as the World Heritage Sustainable Development Policy (WH-SDP)³¹) into their activities related to the World Heritage Convention (para. 14bis).

16. With respect to the preparation of World Heritage nominations, States parties “are encouraged to prepare nominations with the widest possible participation of stakeholders and shall demonstrate, as appropriate, that the free, prior and informed consent of indigenous peoples has been obtained, through, *inter alia*, making the nominations publicly available in appropriate languages and public consultations and hearings” (para. 123). Additionally, the Operational Guidelines provide with respect to States Parties’ so-called “Tentative Lists” (inventories of sites that States intend to nominate in the future) that “In the case of sites affecting the lands, territories or resources of indigenous peoples, States Parties shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before including the sites on their Tentative List” (para. 64).

17. In 2021, the World Heritage Committee added three new paragraphs/prompts (on “Stakeholders”; “Indigenous Peoples”; and “Participation”) to the *Format for the nomination of properties for inscription on the World Heritage List*,³² in order to align the Format with the provisions on Indigenous peoples’ participation and free, prior and informed consent in the Operational Guidelines adopted in 2015 and 2019. States Parties preparing nomination dossiers are now required to:

- identify affected Indigenous peoples;
- demonstrate the extent of consultation and collaboration with Indigenous peoples in the management of the nominated property;
- demonstrate the extent of their participation in the nomination process; and
- “demonstrate whether their free, prior and informed consent to the nomination has been obtained, through, *inter alia*, making the nomination publicly available in appropriate languages and public consultations and hearings”.

18. Additionally, a paragraph/prompt was included in the *Request Format for a Preliminary Assessment of a Potential Nomination to the World Heritage List*,³³ asking States Parties to “explain how [affected Indigenous peoples] are represented, and in how far they have participated in the preparation of the Tentative List and the Preliminary Assessment request” and to demonstrate “that the free, prior and informed consent of indigenous peoples has been obtained, through, *inter alia*, making the planned nomination publicly available in appropriate languages and public consultations and hearings”.

19. While the introduction of these new guidelines and protocols on Indigenous peoples’ participation and FPIC is positive, it remains to be seen how appropriate they are for safeguarding Indigenous peoples’ rights. Their implementation at the local and national level will by nature vary between countries depending on the national and local circumstances, and careful monitoring will be needed to ensure that it is in accordance with international standards and best practices. There are already too many unacceptable examples of States not complying with their international human rights obligations when it comes to respecting the rights of Indigenous peoples in the implementation of the Convention. It also remains to be seen how exactly the new guidelines and protocols on Indigenous peoples’ participation and FPIC will be applied at the international oversight



level, what kind of proof or evidence will be accepted to “demonstrate” Indigenous peoples’ free, prior and informed consent, and whether they will be implemented by the World Heritage Committee in an objective, non-selective and rigorous manner.

20. At the international oversight level, there are several gaps and shortcomings that stand in the way of an objective and rigorous implementation by the Committee. They prevent Indigenous peoples from meaningfully participating in the Convention processes and decision-making at the international level and enable States Parties to undermine and circumvent the regulations regarding their FPIC and participation at the national level.

- The evidence of Indigenous peoples’ FPIC to World Heritage nominations affecting them is not mentioned in para. 132 of the Operational Guidelines (on the necessary documentation for a nomination to be considered as “complete”³⁴); it is thus unclear whether the Secretariat can treat nominations lacking such evidence as “incomplete” and send them back to the submitting State Party(ies) upon receipt.³⁵
- Nomination dossiers received by the Secretariat are not made publicly available before the World Heritage Committee takes a decision on the nomination (in the following year). They are only made available to the Committee Members and the relevant Advisory Bodies (see Operational Guidelines, para. 140).³⁶ This means that affected Indigenous peoples are not able to review the submitted nomination documents for accuracy and cannot challenge the information provided therein, including claims regarding their participation and consent.³⁷ This has ramifications not only for the decision-making of the World Heritage Committee, but also for the evaluations of the nominations by the advisory bodies IUCN and ICOMOS.
- The procedures of the Advisory Bodies and the World Heritage Centre for

the evaluation of nominations and monitoring the state of conservation of World Heritage sites are inadequate for consistently ensuring that Indigenous peoples are effectively consulted by on-site evaluation and monitoring missions and do not meet the standards of a human rights-based approach. For instance, the “ICOMOS Procedure for the Evaluation of Cultural Properties”³⁸ does not mention the necessity of consulting with affected Indigenous peoples during evaluation missions. It only mentions that, in addition to site managers, “[o]ther relevant institutions, such as UNESCO Chairs, universities and research institutes may also be consulted during the evaluation process”. The ICOMOS procedure also states that dates and programmes of ICOMOS evaluation missions “are agreed in consultation with States Parties, who are requested to ensure that ICOMOS evaluation missions are given a low profile so far as the media are concerned”, an approach that may lead to Indigenous peoples not even being aware of field missions to their territories.³⁹ Furthermore, the Operational Guidelines do not contain any provisions that would require the Advisory Bodies or the World Heritage Centre to consult with Indigenous peoples during reactive monitoring missions. As a result, the history of the World Heritage Convention is full of examples where Indigenous peoples were not consulted by UNESCO missions to their territories; in many cases, Indigenous peoples’ representative organizations were not even aware of missions taking place.

- The rules of procedure of the World Heritage Committee prevent Indigenous peoples from participating effectively in the Committee’s decision-making on issues affecting them in line with Article 41 of the UNDRIP. Throughout the Committee’s 44th Session (July 2021), representatives of Indigenous organizations and NGOs were given the floor only after the Committee had already adopted its decisions on the various agenda items, and were thus

completely excluded from the decision-making process. Their speaking time was in most cases restricted to just one minute. (The UN Special Rapporteur on the rights of indigenous peoples was also not allowed to speak on the nomination of the Kaeng Krachan Forest Complex before the Committee had adopted its decision. We consider that this fundamentally violates the provisions of the UNESCO Constitution, according to which the purpose of the Organization is, *inter alia*, to further universal respect for human rights and fundamental freedoms.⁴⁰ It also violates the Relationship Agreement between the United Nations and UNESCO⁴¹ and the provisions of the UN Charter on the co-operation between the United Nations and its specialized agencies for the achievement of the purposes set forth in Article 55 of the Charter, including the promotion of universal respect for human rights and fundamental freedoms.⁴²)

- At the international level, no official mechanism exists through which Indigenous peoples can effectively participate in the Convention processes affecting them. In 2001, the Committee rejected a proposal by Indigenous organizations to establish a “World Heritage Indigenous Peoples Council of Experts” as a consultative body to the Committee.⁴³ In 2017, Indigenous delegates attending the Committee’s 41st session decided to create the International Indigenous Peoples’ Forum on World Heritage (IIPFWH) as a standing global body aiming to engage with the Committee during its meetings, in order to represent the voices of Indigenous peoples. While the IIPFWH is presented by UNESCO as a “major step in engaging indigenous peoples from around the world in the field of World Heritage”,⁴⁴ its establishment has so far not resulted in an enhanced role of Indigenous peoples in the Convention’s processes. The IIPFWH does not fulfill any official functions under the Convention and does not receive funding from the Committee or UNESCO. During the Committee’s 44th Session, the IIPFWH, too, was not given the floor on

any agenda items before the Committee had already adopted its decisions.

- The decision-making by the World Heritage Committee is to a problematic extent driven by politics and the economic interests of Committee members rather than the purposes of the World Heritage Convention, UNESCO and the United Nations. Particularly the inscription of sites on the World Heritage List and the declaration of sites as “World Heritage in Danger” have become highly politicized affairs often marked by aggressive lobbying, political maneuvering and deal-making.⁴⁵ This decision-making culture allows the vested economic and political interests of individual States Parties to override the conservation purposes of the Convention, human rights principles, and the expert assessments and recommendations of the Committee’s technical advisory bodies.

B. Practical experiences

21. Despite the recent adoption by the Committee of policies and operational guidelines encouraging States Parties to follow a human rights-based approach and to respect Indigenous Peoples’ rights in the implementation of the Convention, the management of many World Heritage sites continues to be marked by a lack of respect for Indigenous Peoples’ relationship to the land, a lack of protection of their traditional livelihoods and disregard for their cultural heritage. Human rights violations against Indigenous Peoples continue to occur unabated in many World Heritage sites.
22. This is evidenced, for instance, by the recently published “Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF’s conservation work”.⁴⁶ This report reviewed a series of allegations of human rights abuses in protected areas supported by the WWF, including instances of murder, rape, torture, physical beatings, unlawful arrests and detention, invasion of homes, and destruction and theft of personal property, all allegedly committed by eco-

guards and other law-enforcement agents acting under the authority of governments, which were described in a series of articles published in the media in 2019. Notable is the high proportion of World Heritage sites among the protected areas implicated in the report: of the eight protected areas included in the review, five are listed as World Heritage sites (Lobéké National Park, Cameroon; Salonga National Park, Democratic Republic of Congo [DRC]; Dzanga-Sangha Protected Area, Central African Republic; Chitwan National Park, Nepal; Kaziranga National Park, India), and another two are tentatively listed for future World Heritage designation (Boumba Bek and Nki National Parks, Cameroon).

23. What is not analyzed in the Independent Panel Report, is how the decisions and recommendations of the World Heritage Committee, the Advisory Bodies and UNESCO may have contributed to the human rights violations against Indigenous peoples that are described in the report, for instance

by encouraging “voluntary relocations” of Indigenous peoples or by identifying Indigenous peoples’ traditional resource use as a threat to properties reviewed in the report (as in the case of Salonga National Park, see above). All of the World Heritage sites implicated in the Independent Review are listed as purely “natural sites”, without an appropriate recognition of Indigenous peoples’ relationship to the land in the Outstanding Universal Value and in disregard of Indigenous peoples’ holistic view of their cultural and natural heritage.

24. A disturbing example that illustrates the blatancy of the Committee’s politicized decision-making, as well as its continued lack of regard for the rights of Indigenous peoples and for its own human rights obligations as an intergovernmental organization, is the WHC’s inscription, at its 44th session, of the Kaeng Krachan Forest Complex (KKFC) as a natural World Heritage site, in blatant disregard of serious and persistent human rights violations against

the Karen Indigenous communities in the KKFC; considerable concerns among the Karen that World Heritage status may have negative consequences for their land rights and traditional livelihoods; and the failure of the Thai government to meaningfully involve the Karen in the nomination process and obtain their FPIC. In inscribing the KKFC, the Committee ignored the recommendation of its advisory body IUCN,⁴⁷ as well as the strong pleas from Karen organizations, UN human rights mechanisms, and international NGOs,⁴⁸ that the decision be deferred until the human rights concerns had been resolved and the Karen had provided their consent. The decision to inscribe the KKFC was taken even though the WHC was fully aware, from official communications by UN human rights experts, that the “human rights violations [were] of a continuing nature”, that “ongoing criminalisation and harassment of Karen community members and human rights defenders in 2021 undermine[d] the possibility to conduct good faith consultations”; and that “inclusive and effective participation of indigenous peoples, equitable governance arrangements, collaborative management systems and redress mechanisms ha[d] not been established.”⁴⁹

25. In approving the nomination, the WHC disregarded not only its own policies and commitments regarding Indigenous peoples, but, with Thailand newly-elected to the Committee, also its own prior decisions concerning the nomination, in which it had requested Thailand to “address in full the concerns that have been raised... concerning Karen communities within the KKFC” and “achieve a consensus of support for the nomination of the property that is fully consistent with the principle of FPIC”.⁵⁰ Although IUCN had made it abundantly clear that “the Committee’s requests have not been fulfilled yet”,⁵¹ the decision by which the KKFC was inscribed declares that it was “made on the understanding that the State Party has addressed the issues..., thus fulfilled the requirements of the Operational Guidelines”.⁵² Neither the UN Special Rapporteur on the rights of indigenous peoples nor Indigenous organizations were allowed to address the

Committee and challenge this “understanding” before the decision was adopted, although several Committee members explicitly requested that the Special Rapporteur be given the floor so that the Committee could make an informed decision.⁵³ The IIPFWH remarked in an intervention after the decision was adopted:

“The decision represents one of the lowest points in the history of the Convention and indeed in the history of UNESCO. It tramples on the most fundamental principles and purposes of UNESCO, as well as those of the United Nations Charter... This decision is not the result of sound expert judgment based on the purposes of this Convention, good heritage practice and the principles of the [WH-SDP]. It is the result of highly politicized lobbying and horse-trading based on the economic interests of Committee members.”⁵⁴

26. The KKFC is the latest in a long list of World Heritage sites that were inscribed without the meaningful participation and consent of affected Indigenous peoples.⁵⁵ Other recent examples include the Western Ghats (India) and the Sangha Trinational (Congo/Cameroon/Central African Republic), which were inscribed as natural World Heritage sites in 2011 despite the fact that in both cases, serious objections were raised about the lack of any meaningful participation of Indigenous peoples living in the respective areas. In both cases, there was a blatant lack of respect for the free, prior and informed consent of the concerned communities, as the affected Indigenous peoples had not even seen the submitted nomination documents, which had not been made publicly available.⁵⁶

27. Another recent example is Lake Bogoria National Reserve (Kenya), also listed in 2011 (less than two years after the African Commission on Human and Peoples’ Rights’ landmark ruling in the *Endorois* case). Following the inscription, the African Commission adopted a resolution expressing deep concern that the Committee inscribed Lake Bogoria on the World Heritage List without obtaining the FPIC of the Endorois through their own representative institutions, as well as the fact that “there are numerous



Baka women and children in Akambi village north of Lobéké National Park. Photo: CEFAID

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 and whose management frameworks are not consistent with the principles of the UN Declaration on the Rights of Indigenous Peoples".⁵⁷

III. Conceptual factors undermining Indigenous peoples' rights in World Heritage processes

A. Inappropriate separation between "natural" and "cultural" heritage

29. The recurrent violations of Indigenous peoples' rights in many World Heritage sites and the exclusion of Indigenous peoples from nomination, management, monitoring and reporting processes are not only due to lack of regulations, mechanisms and political will to ensure the meaningful participation of Indigenous peoples in World Heritage conservation and adopt a human-rights based approach, but also a result of the Committee's problematic interpretation and application of the concepts of 'heritage' and 'outstanding universal value' (OUV),⁵⁸ disregarding Indigenous peoples' holistic cosmology that is intrinsically linked to (the values of) heritage. Based on the Convention's differentiation and artificial division between cultural heritage and natural heritage, the Committee maintains a distinction between 'cultural' and 'natural' World Heritage sites that is highly problematic where Indigenous peoples' territories and heritage are concerned. As noted by EMRIP:

"Heritage policies, programmes and activities affecting indigenous peoples should be based on full recognition of the inseparability of natural and cultural heritage, and the deep-seated interconnectedness of intangible cultural heritage and tangible cultural and natural heritage."⁵⁹

30. The vast majority of the Indigenous sites on the World Heritage List are listed as natural sites, without any recognition of associated Indigenous heritage values in the justification for inscription (Statement of OUV) and in disregard of the fact that "[f]or indigenous peoples, cultural and natural values are inseparably interwoven

and should be managed and protected in a holistic manner".⁶⁰ Reference to "man's[sic] interaction with his natural environment" and to "exceptional combinations of natural and cultural elements" that were previously included in the inscription criteria for natural World Heritage sites were removed by the Committee in 1992, which has made it impossible to appropriately acknowledge Indigenous peoples' relationship with their lands, territories and resources in the OUV of natural World Heritage sites.⁶¹ Layton and Titchen remarked in 1995:

"We deplore the deletion of references to human agency from the natural heritage criteria. The deletions appear to revive the outmoded concept of wilderness areas purified of human action... We fear that in promoting the idea of wholly natural landscapes, UNESCO may inadvertently deny the continuing traditional use of the natural resources contained within World Heritage properties by indigenous peoples and unwittingly collude in the displacement of indigenous peoples from areas included in the World Heritage List."⁶²

31. While it is possible to nominate sites as "mixed" cultural/natural sites, there are significant practical and financial implications that may discourage States Parties from doing so. States often prefer to nominate nature-protected areas as natural rather than mixed sites because mixed nominations are considered too complex.⁶³ Nominating a site as a mixed site essentially involves preparing two nominations (one for natural criteria and one for cultural criteria), each of which is evaluated separately (by IUCN and ICOMOS respectively) and each of which may be accepted without reference to the other.

B. Problematic application of the concept of "Outstanding Universal Value"

32. The principal purpose of the World Heritage Convention is the identification and long-term protection of cultural and natural heritage sites of "Outstanding Universal Value" (OUV). A main problem

for Indigenous peoples is the fact that the concept of OUV, although not defined in the Convention, has come to be interpreted in ways that make it difficult or impossible in the context of many sites for Indigenous peoples' cultural heritage and values to be recognized as part of the sites' OUV. Under the current regulations, Indigenous cultural values, including interconnections between nature and culture, only become part of the justification for inscription when they are assessed to be of OUV in their own right, which is not a realistic possibility in the context of many sites. 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 Committee requires such relationships or associations to be "unique" or "exceptional", a standard that is difficult to meet in many cases.⁶⁴ 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.⁶⁵ When they are not seen as 'exceptional' or 'unique' by conservation agencies, ICOMOS and/or the Committee, or not 'intact' or 'authentic' enough, Indigenous cultural values are disregarded when the OUV of World Heritage sites is established. A 2011 joint submission of Indigenous organizations to the Permanent Forum on Indigenous Issues stated:

"We are concerned that the concepts of 'outstanding universal value', 'integrity' and 'authenticity' are interpreted and applied in ways that are disrespectful of Indigenous peoples and their cultures, inconsiderate of their circumstances and needs, preclude cultural adaptations and changes, and serve to undermine their human rights."⁶⁶

33. This lack of respect for Indigenous peoples' own values attached to their lands and territories not only raises serious questions regarding the validity of the meanings attributed to the respective sites by UNESCO, but can also have significant adverse effects on Indigenous peoples'

28. What distinguishes the inscription of the KKFC from the many other cases in which World Heritage sites were inscribed without the FPIC of Indigenous peoples is 1.) the fact that it happened after the Committee's adoption of the Sustainable Development Policy (WH-SDP) and the operational guideline affirming Indigenous peoples' right to free, prior and informed consent (para. 123 of the Operational Guidelines); and 2.) that it happened in the face of an unprecedented level of engagement by international human rights mechanisms and mandate-holders urging the Committee to defer inscription.



livelihoods and living cultural heritage, as the justification for inscription may heavily affect conservation strategies and management priorities. According to the Operational Guidelines, the Statement of OUV adopted at the time of inscription provides “the basis for the future protection and management of the property” (para. 155), and States must ensure that human use within World Heritage sites “fully respects the OUV of the property” (para. 119). If Indigenous peoples’ perspectives, cultural values and customary roles are not recognized and reflected when the OUV of a site is defined, this can significantly limit their future role in site management and decision-making and can also affect their substantive rights.⁶⁷

IV. Examples of good practices

35. Although most World Heritage sites in Indigenous peoples’ territories are inscribed on the World Heritage List as “natural sites”, with no recognition of the Indigenous cultural values as part of the OUV, and are managed and governed in ways that are not consistent with the provisions of the UNDRIP, it is important to note that there are also some World Heritage sites that are managed by Indigenous peoples themselves or through co-management frameworks that provide for consensus decision-making between conservation agencies and Indigenous peoples, and where Indigenous peoples’ rights are generally respected and fulfilled in conservation strategies. Examples include Kakadu National Park (Australia),⁶⁹ the Laponian Area (Sweden),⁷⁰ Sᑭang Gwaay (Canada),⁷¹ and Taos Pueblo (USA).⁷²

36. And although the vast majority of World Heritage sites in Indigenous peoples’ territories have been nominated without the participation and FPIC of the Indigenous peoples concerned, there have been a number of World Heritage nominations in recent years that were driven by Indigenous peoples’ own aspirations and prepared with their full and effective participation.

37. An example is Pimachiowin Aki (Canada), listed in 2018 as a mixed cultural/natural site and a living and lived-in Aboriginal cultural landscape, in which effective First Nation-led stewardship is important to the continuity of the natural and cultural values as an integrated whole. The World Heritage site includes portions of the traditional lands of four Anishinaabe First Nations, who played the leading role in preparing the nomination and defining the approach to protection and management of the site. The boundaries of Pimachiowin Aki are an outcome of community-led land-use planning. The aspiration of the First Nations in nominating the site to the World Heritage List was both to protect ancestral lands and resources and to create new livelihoods. The nomination was a collaborative effort between the First Nations and the Ontario and Manitoba provincial

governments. Protection and management of Pimachiowin Aki are achieved through Anishinaabe customary governance grounded in Ji-ganawendamang Gidakiiminaan, contemporary provincial government law and policy, and cooperation among the four First Nations and the two provincial government partners in the context of a consensual, participatory governance structure and management framework.⁷³ In inscribing Pimachiowin Aki to the World Heritage List, the Committee expressed its deep appreciation to the First Nations and the State Party for presenting a nomination “which is a landmark for properties nominated to the World Heritage List through the commitment of indigenous peoples.”⁷⁴

38. Another example is the Budj Bim Cultural Landscape (Australia), located in the traditional Country of the Gunditjmara people in south-eastern Australia, which was inscribed in 2019 as a living cultural landscape in recognition of the significance of the complex aquaculture system developed by the Gunditjmara for trapping, storing and harvesting eel. The nomination

was prepared by the traditional owners themselves.⁷⁵ All of the Budj Bim Cultural Landscape is Aboriginal-owned and/or managed and is managed to respect the customary and legal rights and obligations of the Gunditjmara Traditional Owners. The site is protected and managed through an adaptive and participatory management framework of overlapping and integrated customary, governance, legislative and policy approaches. The Gunditjmara Traditional Owners apply customary knowledge and scientific approaches through two management regimes; a co-operative arrangement with the Victorian Government for Budj Bim National Park; and Indigenous ownership of the Budj Bim and Tyrendarra Indigenous Protected Areas. This is supported by local planning schemes.⁷⁶

39. Writing-on-Stone/Áísínai’pi (Canada), a sacred landscape and rock art site in the northern Great Plains, was listed in 2019 as a cultural landscape that provides exceptional testimony to the living cultural traditions of the Blackfoot people. The Statement of OUV notes that the Blackfoot

34. EMRIP noted in its 2015 study on Indigenous peoples’ rights to their cultural heritage:

“To be included on the World Heritage List, sites must be of ‘outstanding universal value’, a concept which can lead to management frameworks that prioritize the protection of those heritage aspects at the expense of the land rights of indigenous peoples. As a result, the protection of world heritage can undermine indigenous peoples’ relationship with their traditional lands, territories and resources, as well as their livelihoods and cultural heritage, especially in sites where the natural values are deemed to be of outstanding universal value but the cultural values of indigenous peoples are not taken into account.”

EMRIP therefore issued the following advice:

“The World Heritage Committee should adopt changes to the criteria and regulations for the assessment of ‘outstanding universal value’ so as to ensure that the values assigned to World Heritage sites by indigenous peoples are fully and consistently recognized as part of their outstanding universal value.”⁶⁸



Members of the International Indigenous Peoples’ Forum on World Heritage during the 43rd session of the World Heritage Committee (Baku, 2019). Credit: Stefan Disko

“are fully participating in the management of Writing-on-Stone/Áísínai’pi, while ensuring appropriate management practices and continuous access for traditional and cultural practices”⁷⁷ and the nomination dossier contains a detailed description of Blackfoot engagement throughout the nomination process and a statement of support from the Chiefs of the Blackfoot Confederacy.⁷⁸ The role of the First Nation representatives in collaboration with the provincial and federal government to recognize the area as an important sacred site is an example of good faith negotiations and genuine partnership.

40. The Australian Government’s Cape York Peninsula World Heritage project, a possible future World Heritage nomination, can also serve as a good practice example in some respects. The Queensland Government has for many years been committed to progressing a nomination of parts of Cape York Peninsula for inscription on the World Heritage List. While this is an initiative that is largely driven by State and regional authorities rather than Indigenous peoples, both the Australian and the Queensland governments have made clear that they will only proceed with the nomination if there is Traditional Owner consent:

“The Australian Government is committed to a world heritage nomination for appropriate areas of Cape York Peninsula, subject to Traditional Owner consent... The Australian Government’s commitment to Traditional Owner consent respects the rights of Indigenous people and the nomination will only proceed for those areas where Traditional Owners have given their consent. [...] The boundaries of a potential Cape York world heritage nomination will depend on where the natural and cultural heritage values of outstanding universal value are identified and where Traditional Owner consent has been given.”⁷⁹

The Queensland Government is developing and implementing a ‘rights-based’ approach to National and World heritage nominations in Queensland... There can be no better demonstration

of free, prior and informed consent for World or National Heritage listing than a nomination which is prepared and submitted by the First Nations people who speak for that Country. For this reason, the Queensland Government is engaging First Nations groups on Cape York Peninsula who are interested in nominating their Country. [...] The Queensland Government remains committed to progressing a nomination of parts of Cape York Peninsula for inscription on the World Heritage list, subject to the free, prior and informed consent of the First Nations people... [...] Areas of Cape York will only be included on the National Heritage List if nominations have the consent of the relevant First Nations peoples and the place meets National Heritage criteria.”⁸⁰



V. Recommendations

- a) The World Heritage Committee, UNESCO and the Advisory Bodies should provide the necessary assistance to establish, in cooperation with Indigenous experts from the different regions of the world, an inclusive process to determine the measures needed for the International Indigenous Peoples’ Forum on World Heritage (IIPFWH) to play an effective role in advising the Committee, UNESCO and the Advisory Bodies on decisions affecting Indigenous peoples and their rights.
- b) “The World Heritage Committee should adopt changes to the criteria and regulations for the assessment of ‘outstanding universal value’ so as to ensure that the values assigned to World Heritage sites by Indigenous peoples are fully and consistently recognized as part of their outstanding universal value.”⁸¹
- c) The Committee should (re-)insert references to cultural aspects and human interaction with the natural environment into the “natural criteria” (Operational Guidelines, para. 77, vii-x), and stop labelling World Heritage sites in Indigenous peoples’ territories as purely “natural sites”.⁸²
- d) The requirement for States Parties to document and demonstrate the free, prior and informed consent of Indigenous Peoples affected by World Heritage nominations (Operational Guidelines, para. 123) should be made part of the “completeness check” by the World Heritage Centre (Operational Guidelines, para. 132).⁸³
- e) The World Heritage Committee should request the World Heritage Centre to develop, in a transparent manner and with the effective participation of Indigenous experts, technical/practical guidance for government agencies on obtaining, documenting and demonstrating Indigenous peoples’ free, prior and informed consent in the context of the World Heritage Convention. In addition, guidance should be developed for the Advisory Bodies on how to determine whether the requirement of
- f) A provision should be added to the Operational Guidelines ensuring that all nomination documents are published on UNESCO’s website upon receipt by the World Heritage Centre, so that all relevant rights-holders, stakeholders and the general public have an opportunity to review and comment on the information before the Committee takes a decision.⁸⁴
- g) The World Heritage Committee should revise its Rules of Procedure to ensure that Indigenous peoples’ representatives and relevant UN human rights mandate-holders are able to effectively participate in any discussions and decision-making processes affecting Indigenous peoples and to speak prior to the Committee taking a final decision on issues affecting these peoples, in accordance with the provisions of the UNDRIP.
- h) The General Assembly of States Parties to the World Heritage Convention should urgently take concrete measures to ensure that the Convention is implemented in accordance with international human rights standards, including the UNDRIP. To this end, it should request the World Heritage Committee to install the UN Office of the High Commissioner for Human Rights (OHCHR) as a standing advisory body for human rights compliance and should enable the OHCHR, through the UN Special Procedures System, to undertake human rights impact assessments of properties inscribed on the World Heritage List and nominated for inscription.⁸⁵
- i) States Parties must enable country visits by UN Human Rights Council Special Procedures mandate holders to investigate possible human rights violations in World Heritage sites and make recommendations on how the human rights issues should be addressed.
- j) The General Assembly of States Parties should request the Committee to amend

the Operational Guidelines to stipulate that World Heritage nominations affecting the lands, territories or resources of Indigenous peoples must have a human rights impact assessment conducted by the OHCHR where this is requested by the Indigenous peoples concerned. Failure to comply with this requirement or a negative assessment of the human rights situation by the OHCHR should prevent the property from being inscribed on the World Heritage List.

k) The General Assembly should request the Committee to revise the Periodic Reporting process to include a requirement for States Parties to provide reports on the human rights situation in the World Heritage properties within their jurisdiction, to be assessed by the World Heritage Centre and the Advisory Bodies. Properties with a negative assessment should be considered for inscription on the List of World Heritage in Danger.



Gathering of a reindeer herd in the Laponian Area, November 2012. Credit: Carl-Johan Utsi

VI. Endnotes

1 Recent examples are Pimachiowin Aki (Canada), listed in 2018, and Budj Bim Cultural Landscape (Australia), listed in 2019. See below for more information.

2 For examples of corresponding Committee decisions etc., see The Indigenous World 2022 (forthcoming, chapter on “The World Heritage Convention” – available upon request); The Indigenous World 2020, pp. 731-732; The Indigenous World 2016, pp. 522-524; and S. Disko, H. Tugendhat, and L. García-Alix (2014) “World Heritage Sites and Indigenous Peoples Rights – An Introduction”. In: S. Disko and H. Tugendhat (eds.) World Heritage Sites and Indigenous Peoples’ Rights. Copenhagen: IWGIA, Forest Peoples Programme and Gundjeihmi Aboriginal Corporation, pp. 3-37, at p. 20.

3 See the report of the International Expert Workshop on the World Heritage Convention and Indigenous Peoples (Copenhagen, 2012), pp. 51-52.

4 J. O’Brien (2014) “No Straight Thing: experiences of the Mirarr Traditional Owners of Kakadu National Park with the World Heritage Convention”. In: World Heritage Sites and Indigenous Peoples’ Rights (see footnote 2), pp. 313-338.

5 See <https://www.mirarr.net> and <https://www.iucncongress2020.org/motion/123>.

6 See <https://www.iwgia.org/en/russia/3270-indigenous-land-in-russia-declared-world-heritage>; and P. Sulyandziga (2017) “Parks and Arbitration”. World Policy Journal, Vol. XXXIV, No. 4.

7 See <https://whc.unesco.org/document/168753>.

8 Decision 42 COM 8B.9 (2018).

9 C. Green and J. Turtinen (2014) “Indigenous Peoples and world heritage sites: Normative heritage discourses and possibilities for change”. Proceedings of the International indigenous development research conference, Ngä Pae o te Māramatanga: p. 64.

10 See L. Heinämäki, T. Herrmann and C. Green (2017) “Towards Sámi Self-determination over Their Cultural Heritage: The UNESCO World Heritage Site of Laponia in Northern Sweden”. In A. Xanthaki, S. Valkonen, L. Heinämäki and P. Nuorgam (eds.), Indigenous Cultural Heritage:

Rights, Debates and Challenges. Leiden: Brill, pp. 78-103.

11 For examples, see World Heritage Sites and Indigenous Peoples’ Rights (see footnote 2).

12 International Expert Workshop on the World Heritage Convention and Indigenous Peoples, Copenhagen, 20-21 September 2012, “World Heritage and Indigenous Peoples – A Call to Action. Addressing the urgent need to make the implementation of UNESCO’s World Heritage Convention consistent with the United Nations Declaration on the Rights of Indigenous Peoples”.

13 For an overview of key concerns, see IWGIA and Forest Peoples Programme (2015) “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” (Submission to EMRIP).

14 S. Disko and M. Ooft (2018) “The World Heritage and Sustainable Development Policy – a turning point for indigenous peoples?” In: P.B. Larsen and W. Logan, World Heritage and Sustainable Development. Milton Park: Routledge, 101-119.

15 Some examples are Bwindi Impenetrable National Park (Uganda), Kahuzi-Biega National Park (DR Congo), Thungyai - Huai Kha Khaeng Wildlife Sanctuaries (Thailand), Kaeng Krachan National Park (Thailand), Lake Bogoria National Reserve (Kenya), Serengeti National Park (Tanzania), Chitwan National Park (Nepal), Nouabalé-Ndoki National Park (Congo), Yellowstone National Park (USA), Yosemite National Park (USA). See M. Dowie (2009) Conservation Refugees: The Hundred-Year Conflict between Global Conservation and Native Peoples. Cambridge: MIT Press; A.F. Vrdoljak, C. Liuzza and L. Meskell (2021) “UNESCO, World Heritage, and Human Rights Compliance”. Duke Global Working Paper Series, No. 44; and World Heritage Sites and Indigenous Peoples’ Rights (see footnote 2).

16 S. Titchen, UNESCO World Heritage Centre (2002) Presentation at the conference “Cultural Heritage and Sacred Sites: World Heritage from an Indigenous Perspective”, New York, 15 May 2002.

17 Doc. WHC.21/01 (31 July 2021).

18 P.B. Larsen, G. Oviedo and T. Badmann (2014) “World Heritage, Indigenous Peoples, Communities and Rights: An IUCN Perspective”. In: World Heritage Sites and Indigenous Peoples’ Rights (see footnote 2), pp. 189-223.

19 For details, see W. Olenasha (2014) "A World Heritage Site in the Ngorongoro Conservation Area: Whose World? Whose Heritage?" In: World Heritage Sites and Indigenous Peoples' Rights (see footnote 2), pp. 189-223; IWGIA, The Indigenous World 2020, p. 733; and The Indigenous World 2022 (forthcoming, chapter on "The World Heritage Convention" – available upon request).

20 See PINGO's Forum et al. (2012) "Hunger in a World Heritage Site? Where Is the World?" (Press Release); N.J. Ndaskoi (2021) "Report of the Fact Finding Mission Conducted in Ngorongoro Conservation Area". Arusha: PINGOS Forum.

21 See A. Currier and A. Mittal (2021) The Looming Threat of Eviction: The Continued Displacement of the Maasai Under the Guise of Conservation in Ngorongoro Conservation Area. Oakland: Oakland Institute.

22 IWGIA (2022) "Urgent Alert: Threats of forced eviction of the Maasai indigenous pastoralists of the Ngorongoro Conservation Area (NCA) and and Ngorongoro District in Tanzania"; and Oakland Institute (2022) "Over 70,000 Maasai in Loliondo, Tanzania Face Renewed Eviction Threat to Make Way for Safari Tourism and Trophy Hunting".

23 See https://whc.unesco.org/en/soc/?action=list&id_search_properties=280; and <https://whc.unesco.org/en/soc/3846>. Also see the report of the 2007 UNESCO/IUCN Reactive Monitoring mission to Salonga National Park.

24 See, e.g., the reports of the 2007 and 2020 UNESCO/IUCN Reactive Monitoring missions, both available at <https://whc.unesco.org/en/list/280/documents/>. Also see the Decisions 31 COM 7A.7, para. 5 (2007); 42 COM 7A.50, para. 5 (2018), and 43 COM 7A.10, para. 6 (2019) of the World Heritage Committee. The Statement of Outstanding Universal Value of the property, adopted retrospectively in 2012, identifies "pressure and human occupation by the Yaelima... (with accompanying impacts, such as fire, deforestation for the sowing of food crops, logging for heating purposes, honey gathering and the building of pirogues)" as a management problem requiring long-term attention.

25 See Decision 44 COM 7A.44 (2021) in combination with Doc. WHC/21/44.COM/7A, pp. 117-122, and the reports of the 2020 and 2007 UNESCO/IUCN monitoring missions (see footnote 24).

26 See UNESCO, "State of Conservation: Salonga National Park", <https://whc.unesco.org/en/soc/4048> and https://whc.unesco.org/en/soc/?action=list&id_search_properties=280.

27 Decision 44 COM 7A.44, para. 8j (2021).

28 Statement under agenda item 7A.44, July 19, 2021 (statement on behalf of REPALAC, Network of Indigenous Peoples and Local Communities for the Sustainable Management of the Forest Ecosystems of Central Africa).

29 IWGIA, Asia Indigenous Peoples Pact (AIPP), IIPFWH, Indigenous Peoples Rights International (IPRI); Network of Indigenous Peoples in Thailand (NIPT); Karen Network for Culture and Environment, Western Region (KNCE) et al., "Joint Statement on the persistent human rights abuses occurring in the context of the World Heritage nomination of the Kaeng Krachan Forest Complex (Thailand) – A Submission to UNESCO's World Heritage Committee", 30 June 2021.

30 For a compilation of relevant recommendations of international human rights bodies and Indigenous Peoples' organizations, see IWGIA and Forest Peoples Programme, "Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage" (see footnote 13), paras. 6-8; and the study on Indigenous peoples' rights to their cultural heritage by the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), UN Doc. A/HRC/30/53.

31 Policy for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention, adopted by the General Assembly of States Parties to the Convention at its 20th session (2015).

32 Doc. WHC.21/01 (31 July 2021), Annex 5, p. 111, paras. 5.a, 5.a (ii), and 5.a (iii).

33 Doc. WHC.21/01 (31 July 2021), Annex 3, p. 95, para. 7.c ("Engagement of indigenous peoples and local communities"). The Preliminary Assessment is a necessary step between the inclusion of a site on the Tentative List and the submission of the nomination. All nominated sites must first undergo a Preliminary Assessment by the Advisory Bodies before a full nomination dossier can be submitted by the State Party.

34 Only nominations dossiers that are "complete" are considered by the Committee for inscription

on the World Heritage List, see Operational Guidelines, para. 128.

35 This is an essential part of the procedure for operationalizing FPIC that was recommended by the International Expert Workshop on the World Heritage Convention and Indigenous Peoples (Copenhagen, 2012). For explanations, see the report of the expert workshop, pp. 17, 23, 52. The workshop's "Call to Action" states (in para. 2): "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."

36 The World Heritage Committee has on several occasions rejected proposals that submitted nomination documents be made publicly accessible. For more information, see the joint statement by Endorois Welfare Council, Saami Council and IWGIA at the eighth session of EMRIP, 22 July 2015.

37 Unless the submitting States Parties publish the nominations voluntarily, which they often do not do. For example, in the case of the Kaeng Krachan Forest Complex, inscribed in 2021 without the FPIC of the Indigenous peoples concerned (see below), the nomination documents were not published by the State Party.

38 Annex 6 of the Operational Guidelines, Doc. WHC.21/01 (31 July 2021), pp. 118-20.

39 IUCN's procedure for the evaluation of nominations is better than that of ICOMOS as it refers to "extensive consultations with stakeholders" during field evaluations (ibid., pp. 121-25). IUCN has also added a dedicated space for "community and rights issues" in its field mission report template, where questions regarding consultation and consent, tenure rights, management and decision-making rights and livelihood and benefit-sharing rights are to be addressed. The instructions to evaluators note that indigenous organizations and relevant human rights organizations may need to be encountered independently if rights concerns are raised.

40 Adopted by the UNESCO General Conference in 1972, the World Heritage Convention, its objectives and decision-making bodies form part of a wider UNESCO framework; Article 8.1 of the Convention expressly states that the "World Heritage Committee is hereby established within UNESCO" (see Doc. WHC-02/CONF.201/7 on

the relationship between the World Heritage Committee and UNESCO). According to Art. I, para. 1 of UNESCO's Constitution, "[t]he purpose of the Organization is to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language, or religion, by the Charter of the United Nations. Conventions adopted under the auspices of UNESCO must be designed and implemented with a view to realizing this purpose (Art. I, para. 2c). See Vrdoljak, Liuzza and Meskell, "UNESCO, World Heritage, and Human Rights Compliance" (see footnote 15).

41 Agreement between the United Nations and the United Nations Educational, Scientific and Cultural Organization (1946), Arts. II and IV.

42 See Arts. 55-63, and 70 of the UN Charter.

43 See the report of the Committee's twenty-fifth session, Doc. WHC-01/CONF.208/24, p. 57.

44 See UNESCO's questionnaire response submitted to the 18th session of the UN Permanent Forum on Indigenous Issues. Also see <https://whc.unesco.org/en/activities/496/>

45 See, e.g., World Heritage Watch (2021) The Potsdam Papers: Results of the Potsdam Consultation on the Future of the World Heritage; and E. Bertacchini, C. Liuzza, L. Meskell and S. Donatella (2016) "The politicization of UNESCO World Heritage decision making". Public Choice 167, pp. 95-129.

46 The report of the Independent Panel of Experts, entitled "Embedding Human Rights in Nature Conservation - From Intent to Action" (2020), is available at https://wwf.panda.org/wwf_news/wwf_independent_review_/.

47 IUCN, "IUCN World Heritage Evaluations 2021, Addendum", WHC/21/44.COM/INF.8B2.ADD, pp. 38-40.

48 For details, see IWGIA et al., "Joint Statement", 30 June 2021 (see footnote 29). Also see the letter from Karen community members to the WHC of May 24, 2021, "Thai authorities disregard for human rights by arresting and prosecuting members of the Karen community and excluded them from participating in the World Heritage site proposal".

49 See <https://spcommreports.ohchr.org>, Special Procedures joint communications of 20 April 2020 (AL OTH 23/2020) and 30 June 2021 (AL OTH 209/2021).

50 Decisions 39 COM 8B.5 (2015), and 40 COM 8B.11 (2016). Similarly, Decision 43 COM 8B.5 (2019).

51 IUCN, "IUCN World Heritage Evaluations 2021, Addendum", WHC/21/44.COM/INF.8B2.ADD, p. 39.

52 Decision 44 COM 8B.7, para. 5.

53 For a video recording of the debate, see <https://www.youtube.com/watch?v=TAW9Ip0YUOU&t=3879s>.

54 A recording of the intervention is available at <https://www.youtube.com/watch?v=TAW9Ip0YUOU&t=8071s>.

55 See World Heritage Sites and Indigenous Peoples' Rights (see footnote 2).

56 EMRIP (2015), Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, UN Doc. A/HRC/30/53, p. 13.

57 ACHPR Res. 197 (2011), "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".

58 Disko and Ooft, "The WH-SDP – a turning point for indigenous peoples?" (see footnote 14).

59 EMRIP (2015) Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. UN Doc. A/HRC/30/53, p. 20.

60 Ibid.

61 S. Disko (2017) "Indigenous Cultural Heritage in the Implementation of UNESCO's World Heritage Convention: Opportunities, Obstacles and Challenges." In: A. Xanthaki et al., Indigenous Cultural Heritage: Rights, Debates and Challenges (see footnote 10), pp. 39-77, at 46-7.

62 R. Layton and S. Titchen (1995) "Uluru: An Outstanding Australian Aboriginal Cultural Landscape". In: B. von Droste, H. Plachter and M. Rössler (eds.) Cultural Landscapes of Universal Value – Components of a Global Strategy. Jena: Gustav Fischer, 174-181, at 179.

63 See P.B. Larsen and G. Wijesuriya (2015) "Nature-culture interlinkages in World Heritage: Bridging the gap", World Heritage, Vol. 75, pp. 4-15, at p. 10; K. Buckley and T. Badman (2014) "Nature+Culture and World Heritage: why it matters!" In C. Cameron and J. Herrmann (eds.), Exploring the Cultural Value of Nature: a World Heritage Context, pp. 105-121, at p. 116; and S. Disko, "Indigenous Cultural Heritage in the Implementation of UNESCO's World Heritage Convention" (see footnote 61), at p. 58.

64 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" (quoted in R. Feneley, 2013, "Indigenous leaders told of 'insulting' UN rule on World Heritage listing". The Sydney Morning Herald, May 28, 2013).

65 For examples, see IWGIA and Forest Peoples Programme, "Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage" (see footnote 13).

66 Endorois Welfare Council et al. (2011) "Joint Statement on Continuous Violations of the Principle of Free, Prior and Informed Consent in the Context of UNESCO's World Heritage Convention".

67 Disko and Ooft, "The WH-SDP – a turning point for indigenous peoples?" (see footnote 14).

68 EMRIP (2015), Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, Doc. A/HRC/30/53, pp. 14-15, 23. Similarly, the 2014 IUCN World Parks Congress recommended: "The World Heritage Convention should fully and consistently recognise 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" (see the "Promise of Sydney").

69 See <https://whc.unesco.org/en/list/147> and <https://www.awe.gov.au/parks-heritage/national-parks/kakadu-national-park/management-and-conservation/park-management>.

70 See <https://whc.unesco.org/en/list/774/> and <https://laponia.nu/om-oss/laponiatjuottjudus/>.

71 See <https://whc.unesco.org/en/list/157/> and T. Herrmann, L. Heinämäki, and C. Morin (2017) "Protecting sacred sites, maintaining cultural heritage, and sharing power: Co-management of the SGang Gwaay UNESCO World Heritage site in Canada". In L. Elenius, C. Allard and C. Sandström (eds.) Indigenous Rights in Modern Landscapes. Milton Park, Routledge.

72 See <https://whc.unesco.org/en/list/492> and <https://taospueblo.com/about/>.

73 See <https://whc.unesco.org/en/list/1415/> and G. Jones (2014) "The Pimachiowin Aki World Heritage Project: A Collaborative Effort of Anishinaabe First Nations and Two Canadian Provinces to Nominate a World Heritage Site." In: World Heritage Sites and Indigenous Peoples' Rights (see footnote 2), pp. 441-57.

74 Decision 42 COM 8B.11.

75 IWGIA, The Indigenous World 2020, p. 729.

76 <https://whc.unesco.org/en/list/1577/>

77 <https://whc.unesco.org/en/list/1597/>

78 IWGIA, The Indigenous World 2020, p. 729.

79 Australian Government (2012) "A World Heritage Nomination for Cape York Peninsula" (brochure). Available at <https://www.awe.gov.au/parks-heritage/heritage/places/world-heritage-nomination-cape-york-peninsula>.

80 <https://parks.des.qld.gov.au/management/managed-areas/world-heritage-areas/potential/cape-york>.

81 EMRIP (2015) Expert Mechanism advice No. 8: Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, UN Doc. A/HRC/30/53, Annex, para. 29.

82 IWGIA et al., "Joint Statement", 30 June 2021

(see footnote 29). The joint statement notes that "the deletion of these references from the natural criteria in 1992 has led to the classification of Indigenous peoples' lands and territories as 'wilderness areas', enabled the treatment of Indigenous peoples as threats to their own traditional territories, and impeded the recognition of Indigenous peoples' relationship with their lands as an integral part of the OUV of sites."

83 Ibid. Also see the "Call to Action" of the International Expert Workshop on the World Heritage Convention and Indigenous Peoples (Copenhagen, 2012), para. 2.

84 Ibid. Also see the "Call to Action" of the Copenhagen Expert Workshop, para. 3a.

85 This and the following recommendations are adapted from Vrdoljak, Liuzza and Meskell, "UNESCO, World Heritage, and Human Rights Compliance" (see footnote 15).

