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Expert Mechanism on the Rights of Indigenous Peoples
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Wednesday 22 July: *Item 7: Study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage*

Joint statement on the continued lack of protection of the rights of indigenous peoples with respect to their cultural heritage in the context of UNESCO's World Heritage Convention

Joint statement of: Endorois Welfare Council, Saami Council & International Work Group for Indigenous Affairs (IWGIA)

Thank you Mr. Chair.

This is a joint statement of the Endorois Welfare Council, the Saami Council and the International Work Group for Indigenous Affairs on the continued lack of protection of the rights of indigenous peoples in the context of UNESCO's World Heritage Convention.

We would like to begin by expressing our appreciation for the new EMRIP Study on cultural heritage and the important recommendations contained in Advice No. 8, and in particular those related to UNESCO and the World Heritage Convention.

We want to use this opportunity to inform the Expert Mechanism about some of the developments that occurred at the 39th Session of the World Heritage Committee in Bonn earlier this month. Among the issues under discussion at that session was a proposal to include a provision on the participation of indigenous peoples in the nomination of World Heritage sites into the *Operational Guidelines for the Implementation of the World Heritage Convention*.¹ A representative of the Permanent Forum on Indigenous Issues, Oliver Loode, attended the session to participate in that discussion and we want to commend him for his engagement, which was very important.

Following the discussion, the World Heritage Committee decided to include, for the very first time, language related to indigenous peoples into the Operational Guidelines. The Guidelines now recognize that indigenous peoples can be “partners in the protection and conservation of World Heritage”, and encourage States “to demonstrate, as appropriate, that the free, prior and informed consent of indigenous peoples has been obtained” when they nominate sites for World Heritage listing.² We consider that this is a positive first step in the process towards making the implementation of the World Heritage Convention consistent with international human rights law relating to indigenous peoples.

However, it is also clear that the adopted provisions are highly inadequate, as they leave obtaining indigenous peoples' free, prior and informed consent at the discretion of the nominating States. It is not a mandatory requirement and procedural obligation, as it should be, but just something that States are encouraged to do. It is clearly not something that the World Heritage Committee will insist on. For instance, in the case of the nomination of Kaeng

Krachan Forest Complex in Thailand, which was discussed at the recent session in Bonn, the Committee voted against adopting a provision that would have required Thailand to ensure the free, prior and informed consent of the affected Karen communities.³ The Committee member who proposed the deletion of this provision stated that [Quote] “we are here at a prestigious committee of culture and heritage, we are not in Geneva on the Human Rights Council”!⁴ Only one member of the World Heritage Committee spoke up against this notion, and the provision was deleted from the decision.⁵

The World Heritage Committee also explicitly rejected a proposal to “make all complete nominations publically accessible” once they are received by UNESCO.⁶ Unless a given State publishes the nomination documents voluntarily, they are only accessible to the Members of the World Heritage Committee, not to affected indigenous peoples or the public at large. We believe that this is highly incompatible with indigenous peoples’ right to free, prior and informed consent as well as States’ commitments and obligations to ensure public participation and access to information in the context of environmental decision-making.⁷

Mr. Chair, the given examples clearly demonstrate the World Heritage Committee’s continued lack of respect for human rights standards related to indigenous peoples. Moreover, the discussions at the recent session in Bonn revealed strong resistance by many States Parties against adopting safeguards for the rights of indigenous peoples in the context of the World Heritage Convention.⁸ Several States even contested the very concept of “indigenous peoples”, including some States that have endorsed the UN Declaration on the Rights of Indigenous Peoples, such as France or Senegal.

A main reason for this lack of consistency and coherence appears to be a significant lack of awareness and understanding of indigenous peoples’ issues among the representatives of States at the World Heritage Committee, as well as other UNESCO meetings. We believe that this lack of understanding of indigenous peoples’ issues in the realm of UNESCO is a matter that requires targeted action by the UN mechanisms concerned with indigenous issues. It should also be addressed through the system-wide action plan to be developed by the UN Secretary-General.⁹

Mr. Chair, as EMRIP is aware, UNESCO is currently in the process of developing a UNESCO Policy on Indigenous Peoples – we are looking forward to hearing about the progress of this Policy at the UNESCO side event this afternoon. The World Heritage Committee has made the adoption of this Policy a prerequisite for further discussions by the Committee on whether changes to its Operational Guidelines are needed to address indigenous peoples’ concerns.¹⁰ We therefore very much welcome the recommendation in Expert Mechanism Advice No. 8 that “UNESCO should strengthen its efforts to finalize its Policy on Indigenous Peoples, in cooperation with indigenous peoples and the three United Nations mechanisms with specific mandates regarding the rights of indigenous peoples”.

In closing, we would like to encourage the Expert Mechanism to cooperate with the Permanent Forum and the Special Rapporteur in order to strengthen their engagement with UNESCO, and also with States’ representatives at UNESCO, with a view to enhancing awareness of indigenous peoples’ rights and helping to ensure that the UNESCO Policy on Indigenous Peoples is in line with the UNDRIP. In order to achieve this, we strongly recommend that EMRIP, the Permanent Forum and the Special Rapporteur play an active role in the 39th session of UNESCO’s General Conference in November this year.

Thank you, Mr. Chair.

Endnotes

¹ See the working documents **WHC-15/39.COM/11** and **WHC-15/39.COM/11.Annex.1** containing proposals for revisions to the Operational Guidelines proposed by the World Heritage Centre and the Advisory Bodies (IUCN, ICOMOS and ICCROM) for the World Heritage Committee's consideration at its 39th session in Bonn. In relation to indigenous peoples, the following revisions were proposed:

40. Partners in the protection and conservation of World Heritage can be those individuals and other stakeholders, especially local communities, indigenous peoples, governmental, non-governmental and private organizations and owners who have an interest and involvement in the conservation and management of a World Heritage property.

123. Participation in the nomination process of local ~~people~~ communities, indigenous peoples, governmental, non-governmental and private organizations and other stakeholders in the nomination process is essential to enable them to have a shared responsibility with the State Party in the maintenance of the property. States Parties are encouraged to prepare nominations with the widest possible participation of a wide variety of stakeholders and to demonstrate that their free, prior and informed consent has been obtained, through, inter alia making the nominations publically available in appropriate languages and public consultations and hearings, ~~including site managers, local and regional governments, local communities, NGOs and other interested parties.~~

² See document **WHC.15 /39.COM /19.Annex.1** (Annex to Decision 39 COM 11) containing the revised text of the Operational Guidelines as adopted by the Committee:

40. Partners in the protection and conservation of World Heritage can be those individuals and other stakeholders, especially local communities, indigenous peoples[*], governmental, non-governmental and private organizations and owners who have an interest and involvement in the conservation and management of a World Heritage property.

[* Declaration on the Rights of Indigenous Peoples, 2007]

123. Participation in the nomination process of local communities, indigenous peoples, governmental, non-governmental and private organizations and other stakeholders is essential to enable them to have a shared responsibility with the State Party in the maintenance of the property. States Parties are encouraged to prepare nominations with the widest possible participation of stakeholders and to demonstrate, as appropriate, that the free, prior and informed consent of indigenous peoples has been obtained, through, inter alia making the nominations publically available in appropriate languages and public consultations and hearings.

³ See the **Draft Decision 39 COM 8B.5** (prepared by IUCN, the World Heritage Committee's Advisory Body on natural sites) contained in **WHC-15/39.COM/8B**:

The World Heritage Committee...

2. Refers the nomination of the **Kaeng Krachan Forest Complex, Thailand**, back to the State Party, ... in order to allow it to: a) Address in full the concerns that have been raised by the Office of the United Nations High Commissioner for Human Rights concerning Karen communities within the Kaeng Krachan National Park including the implementation of a participatory process to resolve rights and livelihoods concerns and to achieve a consensus of support for the nomination that is fully consistent with the principle of free, prior and informed consent;

For details on the concerns raised by the OHCHR see IUCN's Advisory Body Evaluation of the nomination (contained in document **WHC-15/39.COM/INF.8B2**). Concerns include, *inter alia*, violent forced evictions of Karen communities from their land within the nominated site and a lack of meaningful consultation with affected Karen communities on the World Heritage nomination. Also see: <http://www.iphrdefenders.net/urgent-alerts-iphrd/484-concerns-and-recommendations-on-the-proposed-establishment-of-kaeng-krachan-forest-complex-kkfc-as-a-natural-world-heritage-site-in-thailand> (Letter from the Karen Network for Culture and Environment and others, sent to IUCN in September 2014).

⁴ Statement by the representative of Vietnam in the plenary debate. A video recording of the debate is available at <http://whc.unesco.org/en/sessions/39com/records/> (see the file: "Jul 3, 2015 - 9:30 AM"; the discussion of the Kaeng Krachan Forest Complex begins at 1:50:6 and the relevant statement of Vietnam starts at 2:24:58).

⁵ The final version of **Decision 39 COM 8B.5**, as adopted by the Committee, reads as follows (see Doc. **WHC-15/39.COM/19**):

2. Refers the nomination of the **Kaeng Krachan Forest Complex, Thailand**, back to the State Party, ... in order to allow it to: a) Address in full the concerns that have been raised by the Office of the United Nations High Commissioner for Human Rights concerning Karen communities within the Kaeng Krachan National Park including the implementation of a participatory process to resolve rights and livelihoods concerns and to reach the widest possible support of local communities, governmental, non-governmental and private organizations and other stakeholders for the nomination;

⁶ This proposal was put forward by an intersessional ad-hoc working group of the World Heritage Committee attended by representatives of 13 Committee members (see document **WHC-15/39.COM/13A**, heading "Process to review nominations" on page 6). The proposal was then discussed in a sessional working group on the revision of the Operational Guidelines that met during the 39th Session of the Committee in Bonn. Whereas the ad-hoc working group had proposed that the Secretariat should "make all complete nominations publically accessible through the World Heritage Centre's website", the sessional working group and then also the full Committee decided on the following text:

"The Secretariat will also make available the electronic format of the text of the nominations to the Members of the Committee on the World Heritage Centre's website."
(See document **WHC.15/39.COM/19.Annex.1**, para. 140).

⁷ See the *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (25 June 1998, <http://ec.europa.eu/environment/aarhus/>), which a significant number of States Parties to the World Heritage Convention, including some members of the World Heritage Committee, have ratified. The Aarhus Convention establishes and/or affirms a number of rights of the public with regard to the environment, including the right to have access to environmental information, the right to participate in environmental decision-making, and the right to challenge decisions that have been made without the informed participation of the public. Art. 3.7 of the Convention obliges States Parties to "promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment."

The lack of public access to the nomination documents under consideration by the World Heritage Committee is also incompatible with **Principle 10 of the Rio Declaration on Environment and Development** (1992), UN Doc. A/Conf. 151/5/Rev. 1, and the **Outcome Document of the Rio+20 Conference on Sustainable Development** (*The future we want*), which underscores 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 paras. 43-44).

⁸ Notes on the relevant discussions in the working group on the Operational Guidelines that met during the World Heritage Committee's 39th Session in Bonn are available from IWGIA upon request.

⁹ See the **Outcome document of the World Conference on Indigenous Peoples**, UN Doc. A/RES/69/2, para. 31, requesting the UN Secretary-General to develop a UN System-wide Action Plan for a coherent approach to achieving the ends of the Declaration on the Rights of Indigenous Peoples. Documentation on the system-wide action plan can be found at: <http://undesadspd.org/IndigenousPeoples/InterAgencySupportGroup/UNSystemwideactionplan.aspx>.

¹⁰ See World Heritage Committee **Decision 39 COM 11** (Bonn, 2015), para. 10:

The World Heritage Committee...

10. Also welcomes the inclusion of paragraphs which address issues related to indigenous peoples and World Heritage and reiterates its decision to re-examine the recommendations of the International Expert Workshop on the *World Heritage Convention* and Indigenous Peoples (Copenhagen, 2012) following the results of the discussions to be held by the Executive Board on the UNESCO policy on indigenous peoples;