

Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples
Fourth session, 11-15 July 2011

Item 4: Study on indigenous peoples and the right to participate in decision-making
(Tuesday, 12 July)

Speaker: Stefan Disko

Joint statement on the right of indigenous peoples to participate in decision-making in the context of UNESCO's 1972 World Heritage Convention

Joint statement of: International Work Group for Indigenous Affairs (IWGIA), Centre for Minority Rights Development Kenya (CEMIRIDE), Minority Rights Group International (MRG) and Endorois Welfare Council (EWC)

We are grateful for this opportunity to comment on and contribute to EMRIP's highly important study on indigenous peoples and their right to participate in decision-making. Our comments and suggestions relate to the right of indigenous peoples to participate in decision-making in the context of UNESCO's 1972 World Heritage Convention.

EMRIP's progress report on the study from last year places "Particular emphasis... on free, prior and informed consent for projects or measures that have a substantial impact on indigenous communities, such as... the creation of natural parks, reserved forests, game reserves on indigenous peoples' lands and territories". Obviously the establishment of World Heritage sites in indigenous peoples' territories falls into that category.

The progress report also notes the recent ruling by the African Commission on Human and Peoples' Rights in the Endorois case (*Endorois Welfare Council v Kenya*), and that "underlying the case was the fundamental issue that the Endorois had been excluded from all decision-making regarding the treatment of their lands." The Endorois case is also briefly mentioned in the (draft) Expert Mechanism Advice No. 2.

In the ruling, the African Commission finds that "the land surrounding Lake Bogoria is the traditional land of the Endorois people", that "Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands", and that "the Endorois community has a right to property with regard to its ancestral land..." Moreover, "the African Commission is of the view that any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions."

The ruling explicitly requires the Government of Kenya (among other things) to:

- (a) Recognise rights of ownership to the Endorois and Restitute Endorois ancestral land [around Lake Bogoria].
- (b) Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.
- (c) Pay adequate compensation to the community for all the loss suffered...
- (f) Engage in dialogue with the Complainants for the effective implementation of these recommendations...

Within the context of Kenya's UPR Review, the Government committed itself to implementing the Endorois decision. However, Kenya has not taken tangible actions in pursuit of this commitment but continues to operate as if the Endorois decision does not exist.

A drastic example is the recent nomination of Lake Bogoria as a UNESCO World Heritage site, which was prepared and submitted without consulting the Endorois and without obtaining their free, prior and informed consent. The nomination document does not mention the Endorois ruling, and the rights and needs of the Endorois are not being taken into account.

The Endorois Welfare Council, together with over 70 indigenous organizations and NGOs from all over the world, submitted a joint statement to the World Heritage Committee asking the Committee to defer the nomination in order to provide time for meaningful consultations and collaboration with the indigenous peoples concerned. Additionally, the Permanent Forum on Indigenous Issues called on the World Heritage Committee to "scrutinize current World Heritage nominations to ensure they comply with international norms and standards of free, prior and informed consent".

Nevertheless the World Heritage Committee in June 2011 inscribed Lake Bogoria on the World Heritage List without even discussing the issue of indigenous peoples' participation and consent.

This is an example where the rights of indigenous peoples to participate in decision-making are violated not only at the national level, but directly by an intergovernmental organization that is part of the United Nations system. Unfortunately this is not an isolated case, as there are numerous examples of indigenous sites on the World Heritage List that have been inscribed without the free, prior and informed consent of the indigenous peoples concerned. We are deeply concerned that this occurs under the umbrella of an organization that is supposedly committed to promoting "respect for human rights", "democratic principles" and "dialogue among civilizations and cultures", and that is obliged to respect the UN Declaration on the Rights of Indigenous Peoples.

It should be noted at this point that the World Heritage Committee at its recent session adopted a Decision in which it encourages States Parties to "involve indigenous peoples and local communities in decision making, monitoring and evaluation of the state of conservation of [World Heritage sites]", and to "respect the rights of indigenous peoples when nominating, managing and reporting on World Heritage sites in indigenous peoples' territories". The World Heritage Committee should be commended for this important step in the right direction. However, as the recent inscription of Lake Bogoria without the free, prior and informed consent of the Endorois demonstrates, what is needed is a thorough review of the current procedures and a revision of the Committee's Operational Guidelines aimed at ensuring that the implementation of the Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples.

We call on the Expert Mechanism to give due consideration to this issue in the final report on the study on indigenous peoples and the right to participate in decision-making.

The written submission of this statement includes some concrete recommendations in this regard.

Item 4: Study on indigenous peoples and the right to participate in decision-making

Joint Submission on the right of indigenous peoples to participate in decision-making in the context of UNESCO's 1972 World Heritage Convention

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We are grateful for this opportunity to comment on and contribute to EMRIP's highly important study on indigenous peoples and their right to participate in decision-making. Our comments and suggestions relate to the right of indigenous peoples to participate in decision-making in the context of UNESCO's 1972 World Heritage Convention.

EMRIP's progress report on the study from last year places "Particular emphasis... on free, prior and informed consent for projects or measures that have a substantial impact on indigenous communities, such as... the creation of natural parks, reserved forests, game reserves on indigenous peoples' lands and territories".¹ There can be no doubt that the establishment of World Heritage sites in indigenous peoples' territories falls in that category.

The progress report also notes in paragraph 29 the recent ruling by the African Commission on Human and Peoples' Rights in the Endorois case (*Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 4 February 2010):

"A recent ruling by the African Commission for the first time dealt directly with the rights of indigenous peoples. In that decision, the Commission condemned the expulsion of the Endorois people from their land in Kenya for tourism development, and found that the evictions violated their human rights to property, health, culture, religion and natural resources. While not dealing explicitly with right of participation, underlying the case was the fundamental issue that the Endorois had been excluded from all decision-making regarding the treatment of their lands."²

The ruling in the Endorois case is also briefly mentioned in paragraph 6 of the (draft) Expert Mechanism Advice No. 2 (contained in the Annex of the Final study).³

In the ruling, the African Commission finds that "the land surrounding Lake Bogoria is the traditional land of the Endorois people", that "Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands", and that "the Endorois community has a right to property with regard to its ancestral land..."⁴ Moreover, "the African Commission is of the view that any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions."⁵

The ruling explicitly requires the Government of Kenya (among other things) to:

- (a) Recognise rights of ownership to the Endorois and Restitute Endorois ancestral land [around Lake Bogoria].
- (b) Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.
- (c) Pay adequate compensation to the community for all the loss suffered.
- (d) Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the [Lake Bogoria Game] Reserve.
- (e) Grant registration to the Endorois Welfare Committee.
- (f) Engage in dialogue with the Complainants for the effective implementation of these recommendations...⁶

Within the context of the Human Rights Council's Universal Periodic Review, Kenya has committed itself to implementing the Endorois decision.⁷ However, the Government of Kenya has not taken tangible actions in pursuit of this commitment. Rather, it continues to operate as if the Endorois decision does not exist.⁸

A drastic example is the recent nomination of Lake Bogoria as a UNESCO World Heritage site, which was prepared and submitted without consulting the Endorois and without obtaining their free, prior and informed consent. The nomination document does not mention the Endorois ruling, and the rights and needs of the Endorois are not being taken into account.⁹

The Endorois Welfare Council, together with over 70 indigenous organizations and NGOs from all over the world, submitted a joint statement to the World Heritage Committee asking the Committee to defer the nomination in order to provide time for meaningful consultations and collaboration with the indigenous peoples concerned.¹⁰ Additionally, the UN Permanent Forum on Indigenous Issues called on the World Heritage Committee to "scrutinize current World Heritage nominations to ensure they comply with international norms and standards of free, prior and informed consent".¹¹

Notwithstanding these appeals, the World Heritage Committee on 24 June 2011 inscribed Lake Bogoria on the World Heritage List without even discussing the issue of indigenous peoples' participation and consent.¹²

This is an instance where the rights of indigenous peoples to participate in decision-making are violated not only at the national level, but directly by an intergovernmental organization that is part of the United Nations system. Unfortunately this is not an isolated case, as there are numerous examples of indigenous sites on the World Heritage List that have been inscribed without the free, prior and informed consent of the indigenous peoples concerned. We are deeply concerned that this is possible under the umbrella of an organization that is supposedly committed to promoting "respect for human rights", "democratic principles" and "dialogue among civilizations and cultures".¹³

It should be noted at this point that the World Heritage Committee at its recent session adopted a Decision in which it encourages States Parties to "involve indigenous peoples and local communities in decision making, monitoring and evaluation of the state of conservation of [World Heritage sites]", and to "respect the rights of indigenous peoples when nominating, managing and reporting on World Heritage sites in indigenous peoples' territories".¹⁴ The World Heritage Committee should be commended for this

important step in the right direction. However, as the recent inscription of Lake Bogoria without the free, prior and informed consent of the Endorois demonstrates, what is needed is a thorough review of the current procedures and a revision of the Committee’s Operational Guidelines aimed at ensuring that the implementation of the Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples.¹⁵

Recalling that the UN Declaration on the Rights of Indigenous Peoples requires United Nations bodies and specialized agencies to “promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration” (Art. 42), we recommend that the Expert Mechanism amend the final report on the study on indigenous peoples and the right to participate in decision-making as follows:

Recommendations

1) Include the following paragraph into Expert Mechanism Advice No. 2 (2011):

36bis. UNESCO should enable and ensure effective representation by indigenous peoples in its decision-making, and especially with regard to the implementation and supervision of UNESCO Conventions and policies relevant to indigenous peoples, such as the 1972 World Heritage Convention. In particular, adequate consultation and participation of indigenous peoples should be ensured and their free, prior and informed consent obtained, when their territories are being nominated and inscribed as World Heritage Sites.¹⁶

2) Include a reference to World Heritage sites in paragraph 34 of the progress report:

34. ... Particular emphasis is placed on free, prior and informed consent for projects or measures that have a substantial impact on indigenous communities, such as those resulting from... the creation of natural parks, reserved forests, game reserves and World Heritage sites on indigenous peoples’ lands and territories.

3) Include a reference to the establishment of World Heritage sites in indigenous peoples’ territories in paragraph 96 of the progress report:

96. An appropriate goal is the full and direct participation of indigenous peoples in all international processes and decisions on matters that particularly concern them. These include biodiversity and climate change negotiations, since they often have a disproportionate impact on indigenous peoples and their territories, and the establishment, management and protection of World Heritage sites in indigenous peoples’ territories ...

We thank the Expert Mechanism for its consideration of this important issue.

Annexes

1. Statement of the UNPFII at the 34th Session of the World Heritage Committee (2010)
2. Joint Statement of indigenous organizations at the 10th Session of the UNPFII (2011)
3. Statement of the UNPFII at the 35th Session of the World Heritage Committee (2011)
4. Statement of IWGIA at the 35th Session of the World Heritage Committee (2011)

Endnotes

¹ Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), *Progress report on the study on indigenous peoples and the right to participate in decision-making*, Doc. A/HRC/EMRIP/2010/2, 17 May 2010, para. 34.

² *Ibid.*, para. 29.

³ EMRIP, “Expert Mechanism Advice No. 2 (2011): Indigenous peoples and the right to participate in decision-making”, in *Final study on indigenous peoples and the right to participate in decision-making* (Advance Edited Version), Doc. A/HRC/EMRIP/2011/2, 26 May 2011, Annex, para. 6:

The African Commission on Human and Peoples’ Rights [in the Endorois ruling] has expressed concern about the exclusion of indigenous peoples from decision-making on the treatment of their lands.

⁴ African Commission on Human and Peoples’ Rights, Communication No. 276/2003, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 27th Activity Report of the ACHPR (2009), Annex 5, paras. 156 and 184.

⁵ *Ibid.*, para. 291.

⁶ *Ibid.*, p. 80 (Recommendations).

⁷ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kenya*, Doc. A/HRC/15/8, 17 June 2010 (Commitment 101.114): “The recommendations formulated during the interactive dialogue listed below have been examined by Kenya and enjoy its support: [...] Implement the recommendations and decisions... of the African Commission on Human and Peoples’ Rights, particularly those relating to the rights of indigenous peoples”.

⁸ See Dann Okoth, “Cheers turn to tears for Endorois waiting for land”, *The Standard Online*, 17 June 2011, <http://www.standardmedia.co.ke/specialreports/InsidePage.php?id=2000037356&cid=259&story=Cheers%20turn%20to%20tears%20for%20Endorois%20waiting%20for%20land>:

[M]ore than a year since the ruling, the Government is yet to take any steps in implementing the court decision, leaving the community frustrated... A report put together last month by experts from Cemiride, Institute for Law and Environmental Governance (ILEG), Kenya National Commission on Human Rights, Kenya Land Alliance (KLA) and Katiba Institute says while it is alleged Kenya has committed itself to implement the Endorois decision and within the context of Universal Periodic Reporting of the UN Human Rights Council, the State has not taken tangible actions in pursuit of these commitments... The Government, the report says, also continues to operate as if the Endorois decision does not exist. For example, Kenya Wildlife Service has recently sought the declaration of Lake Bogoria as a Unesco world heritage site without consulting the Endorois.

⁹ For instance, while the African Commission is of the opinion that “the Endorois community has a right to property” with regard to its ancestral land surrounding Lake Bogoria (Endorois ruling, para. 184), that the Government of Kenya “has an obligation under Article 14 of the African Charter not only to respect the ‘right to property’, but also to protect that right” (para. 191), and that the “jurisprudence under international law bestows the right of ownership rather than mere access” (para. 204), the World Heritage nomination document simply states that “The Government of Kenya wholly owns the Kenya Lakes System” (Republic of Kenya, *Nomination Proposal Kenya Lakes System in the Great Rift Valley (Elementaita, Nakuru and Bogoria)*, 2010, p. 86.

¹⁰ Endorois Welfare Council et al., “Joint Statement on Continuous violations of the principle of free, prior and informed consent in the context of UNESCO’s World Heritage Convention”, 2011, www.iwgia.org/iwgia_files_news_files/0314_UNPFII_2011_Joint_Statement_on_FPIC_and_orld_Heritage.pdf. The joint statement was originally delivered at the 10th session of the UN Permanent Forum on Indigenous Issues on 17 May 2011 and subsequently emailed to the Director of the World Heritage Centre (with a request to be distributed among the Member States of the Committee), the Bureau of the World Heritage Committee, as well as the World Heritage Committee’s Advisory Bodies IUCN, ICOMOS and ICCROM. The appeal to defer the nomination of Kenya Lake System was repeated in an oral statement to the World Heritage Committee (on behalf of the co-signers of the joint statement) on 23 June 2011. See http://www.iwgia.org/iwgia_files_news_files/0314_General_Statement_International_ork_Group_for_Indigenou_s_Affairs_IGIA_2.docx.

¹¹ See the Report of the Permanent Forum on its tenth session, UN Doc. E/C.19/2011/14, para. 42. This recommendation of the Permanent Forum was repeated in an oral statement of UNPFII representative Kanyinke Sena to the World Heritage Committee on 22 June 2011.

¹² See World Heritage Committee Decision 35 COM 8B.6, adopted on 24 June 2011.

¹³ See UNESCO Medium-Term Strategy 2008-2013, Doc. 34 C/4, paras. 1-3:

In its strategic direction, UNESCO shall remain unstinting in seeking to bring about a **culture of peace** and to develop and deepen **mutual understanding, reconciliation and dialogue**... Founded on the **principles** of universality, diversity and dignity, UNESCO's actions continue to be guided and shaped by a set of **commonly shared values** that include justice, solidarity, tolerance, sharing, equity, respect for human rights, including women's rights, and cultural diversity, pluralism and democratic principles... In carrying out its mandate, UNESCO will persistently seek to strengthen the mutually supporting pillars of peace, sustainable development and human rights, contributing to poverty eradication and promoting the dialogue among civilizations and cultures.

¹⁴ Decision 35 COM 12E (Global State of conservation challenges of World Heritage properties), adopted on 29 June 2011:

The World Heritage Committee, [...]

15. Recalling that being a signatory to the World Heritage Convention entails certain responsibilities, including a requirement to follow the Operational Guidelines, management of World Heritage properties according to the highest international standards, promotion of good governance and allocation of adequate funding for the protection of World Heritage properties, encourages States Parties to: [...]

e) involve indigenous peoples and local communities in decision making, monitoring and evaluation of the state of conservation of the properties and their Outstanding Universal Value and link the direct community benefits to protection outcomes,

f) respect the rights of indigenous peoples when nominating, managing and reporting on World Heritage sites in indigenous peoples' territories; [...]

¹⁵ Currently, the provisions on 'stakeholder' participation in the Operational Guidelines are entirely inadequate for ensuring respect and fulfillment of indigenous peoples' right to participate in decision-making. For instance, paragraph 12 of the Operational Guidelines merely states:

States Parties to the *Convention* are encouraged to ensure the participation of a wide variety of stakeholders, including site managers, local and regional governments, local communities, non-governmental organizations (NGOs) and other interested parties and partners in the identification, nomination and protection of World Heritage properties.

Similarly, paragraph 64 encourages States parties "to prepare their Tentative Lists with the participation of a wide variety of stakeholders...", and paragraph 123 states that "States Parties are encouraged to prepare nominations with the participation of a wide variety of stakeholders..." See Operational Guidelines for the Implementation of the World Heritage Convention, Doc. WHC. 08/01 (January 2008).

¹⁶ This recommended paragraph is consistent with the recommendations of the UN Permanent Forum on Indigenous Issues submitted to the 34th Session of the World Heritage Committee, Brasilia, 2010 (statement by UNPFII member Victoria Tauli-Corpuz), <http://xa.yimg.com/kq/groups/20674633/27593986/name/UNPFII+Statement+WHC+Final.docx>:

To conclude I would like to present the following recommendations to the World Heritage Committee for your consideration. [...]

3. That the initial efforts to establish a World Heritage Indigenous Peoples' Council of Experts (WHIPCOE) be revisited and efforts to set up an appropriate mechanism whereby indigenous experts can provide advice to the World Heritage Committee and the World Heritage Center be revived.

4. That adequate consultation and participation of indigenous peoples be ensured and their free, prior and informed consent be obtained, when their territories are being nominated by States Parties to be inscribed as World Heritage Sites. [...]

7. That the UN Declaration on the Rights of Indigenous Peoples and the UNDG Guidelines on Indigenous Peoples' Issues be used as frameworks when World Heritage Sites found in indigenous territories are nominated and managed as well as for missions done in these areas.

Annex 1

STATEMENT OF THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES AT THE 34th SESSION OF THE UNESCO WORLD HERITAGE COMMITTEE

Agenda Item 8A - (Establishment of the World Heritage List and of the List of World Heritage in Danger.

Agenda Item 8B - Nominations to the World Heritage List

25 July to 4 August 2010, Brasilia, Brazil

Victoria Tauli-Corpuz

Thank you for inviting the UN Permanent Forum on Indigenous Issues to take part in this 34th Session of the World Heritage Committee. This is the first time that the Forum has participated in a World Heritage Committee session so let me first extend my congratulations to your election as the Chair of this Session.

The UN Permanent Forum on Indigenous Issues (UNPFII) was established by the United Nations Economic and Social Council (ECOSOC) [resolution 2000/22](#) on 28 July 2000. In this resolution the UNPFII was given a mandate to "discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights. The Permanent Forum was called upon to provide expert advice and recommendations on indigenous issues to the UN system through the Council; raise awareness and promote the integration and coordination of relevant activities within the UN system; and prepare and disseminate information on indigenous issues. It is with this mandate that I am here to raise with the WHC the concerns of indigenous peoples raised before us in the previous sessions but more particularly during the 9th session which was held in April 2010.

At this 9th session, two issues were brought to our attention and these are the Ngorongoro Conservation Area (NCA) in Tanzania and the Northwest Hawaiian Islands Marine Monument (NWHIMM) now called referred to as Papahānaumokuākea Marine National Monument. I am aware that these written complaints have also been officially sent to the World Heritage Center and these were referred to in the documents distributed for this 34th Session so I will just highlight the key points on these two issues.

For the Ngorongoro Conservation Area, the concerns are related to the reports and recommendations of the two monitoring missions done by UNESCO and IUCN. The first one was done between 29 April to 5 May 2007 and the second one, from 01-06 December 2008. The reports of these two missions were presented at the 31st Session of the WHC held in Christchurch, New Zealand in 2007 and the at the 33rd Session in 2009 held in Sevilla, Spain, respectively. Both were under the Agenda Item 7: State of conservation of properties inscribed on the World Heritage List and/or on the List of World Heritage in Danger. We received the report entitled "Statement, findings and recommendations from indigenous residents and stakeholders of Ngorongoro Conservation Area to decision-makers, national and international organizations", which contains the concerns and recommendations of the communities at the NCA.

Some of the main concerns contained in this report revolve around the following main points;

- **Relocation** – this process was not fully voluntary and there are problems related to the identification of illegal immigrants and the state of facilities and land tenure in

relocation areas. It is recommended that a new and transparent process of identifying illegal immigrants be undertaken, better preparation of relocation sites, no denial of social services, and ensuring land tenure security.

- **Carrying capacity** – the conclusion reached by the mission in relation to this is contested as the concept of carrying capacity in dynamic rangeland systems under mobile pastoralism is difficult to establish. The communities claim that there are no signs of significant ecological damage to the area from overuse in spite of the fact that there have been 50,000 people living there for many decades. It is recommended that there should be a participatory monitoring management feedback system to report on developments in natural resource management.
- **Participation** – The participation of local communities and local authorities in the NCAA is very inadequate and it is recommended that better representation of these sectors in the NCAA should be developed and that internationally recognized customary rights of peoples and communities.
- **Benefit-sharing** – there is no equitable benefit-sharing with the communities which is in place. Thus, the recommendation is to develop and implement benefit-sharing schemes which will be established in law.
- **Land tenure** - this is still highly contested as the original concept of the NCA is that the land belongs to the people of NCA but now the land ownership rests with the State. It is recommended that a registration process for ownership to the lands should be established.
- **Subsistence agriculture** – the mission reports identified subsistence agriculture as one reason for the NCA being endangered. Yet, the communities assert that this is crucial for their very survival and thus they recommend that clear and legally recognized procedures to allow small-scale subsistence agriculture be established.
- **Threats of eviction of Naiyobi Ward people** – this should be stopped and if there is an eruption from the Lengai Volcano early warning systems be developed and evacuation plans are done in a participatory manner.

In relation to the as Papahānaumokuākea Marine National Monument, the Na Koa Ikaika KaLahui Hawaii, the Koani Foundation and Rowena Akana, an elected trustee of the Office of Hawaiian Affairs (OHA), objected to the nomination of the U.S.A. and the State of Hawaii of Papahānaumokuākea as a UNESCO World Heritage Site. These organizations and individuals claim that the Bush nomination and the site evaluation processes carried out by IUCN and the ICOMOS excluded participation of indigenous peoples. The ones consulted were indigenous individuals who are “cultural advisors” of the U.S. government. Thus, they are calling on the WHC to defer action on the nomination of the NWHI and are asking the Obama government to consult with the petitioners to resolve the issues related to rights of indigenous Hawaiians to access their trust resources in the NWHI.

The petitioners also object to the UNESCO/WHC Pacific Action Plan which was developed without any meaningful participation of indigenous peoples who are customary landowners and who have control over more than 90 percent of the territories of the independent Pacific States. They are recommending that UNESCO/WHC defer the adoption of the Pacific Action Plan until it has adopted a framework policy on indigenous peoples and put in place participatory consultation process.

The UN Permanent Forum cannot form a solid judgement on these issues without holding its

own investigation of the situations under consideration. However, it still would like to reiterate that whenever decisions are taken by States and intergovernmental bodies that affect indigenous peoples there should be proper consultations done and their free, prior and informed consent should be obtained before any development or conservation project is brought into their territories. There is a list of indigenous sites inscribed in the World Heritage List without the adequate participation and involvement of indigenous peoples which the Permanent Forum has received since its first session in 2002.

In light of these and other similar situations, the UN Permanent Forum in its 9th session called upon UNESCO, the Secretariat of the Conference on Biological Diversity and other UN bodies and agencies to support indigenous peoples in their processes of cultural heritage restoration and strengthening. These processes should be guided by indigenous peoples in order to avoid the misuse and distortion of indigenous peoples' cultures, practices and knowledge and to respect their perspectives and aspirations. (E/2010/43, E/C.19/2010/15, Report of the Ninth Session of the UNPFII). This recommendation did not mention specific cases.

To conclude I would like to present the following recommendations to the World Heritage Committee for your consideration.

1. That the practice of inviting a member of the UNPFII to attend the WHC sessions be sustained and that it be given a time slot to raise issues relevant to the various agenda items under discussion.
2. That the allegations raised by the indigenous peoples' organizations related to the Ngorongoro Conservation Area and the NWHIMM be investigated further by the UNESCO, IUCN with the participation of a member of the UN Permanent Forum on Indigenous Issues to verify the information received in terms of how the rights of indigenous peoples are violated and to make proposals on how to address these situations and similar ones which can arise in the future.
3. That the initial efforts to establish a World Heritage Indigenous Peoples' Council of Experts (WHIPCOE) be revisited and efforts to set up an appropriate mechanism whereby indigenous experts can provide advice to the World Heritage Committee and the World Heritage Center be revived.
4. That adequate consultation and participation of indigenous peoples be ensured and their free, prior and informed consent be obtained, when their territories are being nomination by States Parties to be inscribed as World Heritage Sites.
5. That the involuntary displacement or relocation of indigenous peoples from World Heritage Sites be stopped.
6. That the subsistence economic activities of indigenous peoples needed for their survival that are taking place in World Heritage Sites not be undermined or illegalized and adequate social services be provided to indigenous peoples living in these sites.
7. That the UN Declaration on the Rights of Indigenous Peoples and the UNDG Guidelines on Indigenous Peoples' Issues be used as frameworks when World Heritage Sites found in indigenous territories are nominated and managed as well as for missions done in these areas.
8. That the inclusion of indigenous experts be considered when missions are held to review the World Heritage Sites located in their territories.

Thank you very much Mr. Chairperson and we hope we will be able to get responses to our recommendations and will still be invited to participate in the subsequent sessions of the WHC.

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Annex 2

UN Permanent Forum on Indigenous Issues, Tenth Session
New York, 16-27 May 2011

Agenda Item 3(c):

*Follow-up to the recommendations of the Permanent Forum: free, prior and informed consent
(Tuesday, 17 May 2011)*

Joint Statement on Continuous violations of the principle of free, prior and informed consent in the context of UNESCO's World Heritage Convention

Submitted by: Endorois Welfare Council, Kenya; Na Koa Ikaika KaLahui Hawaii; Association OKANI, Cameroon; Ngorongoro NGOs Network (NGONET) Tanzania; Budakattu Krishikara Sangha, Karnataka, Western Ghats, India (representing Indigenous peoples of Kudremuck National Park, Pushpagiri Wildlife Sanctuary, Brahmagiri Wildlife Sanctuary, Talacauvery Wildlife Sanctuary, Padinalknad Reserved Forest, Kerti Reserved Forest); Centre for Minority Rights Development Kenya (CEMIRIDE); Mainyoito Pastoralist Integrated Development (MPIDO), Kenya; Pastoralists Indigenous Non-Governmental Organisations Forum (PINGOs Forum) Tanzania; Aha Kiole Council of Hawaii; Centre pour l'Education, la Formation et l'Appui aux Initiatives de Développement au Cameroun (CEFAID); Indigenous Peoples of Africa Co-ordinating Committee (IPACC); Pothigaimalai Adivasi Kanikkaran Samuthaya Munnetra Sangam (Kalakkad Mundanthurai Tiger Reserve, Western Ghats, India); Tanzania Network for Indigenous Pastoralists (TANIPE); Yiaku Peoples Association, Kenya; The Koani Foundation, Hawaii; Ke Aupuni o Hawaii; Adivasi Gothrajaan Sabha, Kerala (Aralam Wildlife Sanctuary, Western Ghats, India); Adivasi-Dalit Land Rights Committee, Kerala; Adivasi Gothra Mahasabha, Kerala (representing Shendurney Wildlife Sanctuary, Neyyar Wildlife Sanctuary, Peppara Wildlife Sanctuary, Kulathupuzha Range, Palode Range, Ranni Forest Division, Konni Forest Division, Achankovil Forest Division, Mankulam Range, Chinnar Wildlife Sanctuary, Silent Valley National Park, Attapadi Reserved Forest, Aralam Wildlife Sanctuary); Pastoralists and Hunter Gatherers Ethnic Minorities Network, Kenya; Unissons nous pour la Promotion des Batwa (UNIPROBA) Burundi; Kerala Girivarga Kanikkar Sangham (Shendurney Wildlife Sanctuary, Neyyar WS, Peppara WS, Kulathupuzha Range, Palode Range); Indian Confederation of Indigenous and Tribal Peoples (ICITP); Adivasi Ekta Parishad (India); United Peoples' Federation of Assam (UPFA); All Dimasa Student's Union (ADSU) India; All Barman Kachari Students' Union (ABKSU) India; Borosa Onsai Afat (BOA) India; Saami Council; Asia Indigenous Peoples Pact (AIPP); Cordillera Peoples Alliance, Philippines; /XAM Association of South Africa; Rapa Nui Parliament; Network of the Indigenous Peoples-Solomons (NIPS), Solomon Islands; International Alliance of Indigenous Peoples of the Tropical Forests; Asociación Indígena Ambiental, Panama; International Organization of Indigenous Resource Development (IOIRD); Samson Cree Nation; Ermineskin Cree Nation; Montana Cree Nation; Louis Bull Cree Nation; Foundation for Aboriginal & Islander Research Action (FAIRA) Australia; The Aldet Centre-Saint Lucia; Self-governing Administrative Mechanism of the Indigenous People (Bethcheilokono) of Saint Lucia (SAM-BGC); Caribbean Antilles Indigenous Peoples Caucus & The Diaspora (CAIPCD); Genetic Resources, Traditional Knowledge and Folklore International (GRTKF Int.); Fundación para la Promoción del Conocimiento Indígena (FPCI), Panama; Tebtebba Foundation, Philippines; Russian Association of Indigenous Peoples of the North (RAIPON); Unión Nacional de Abogados y Abogadas Indígenas de Panama (UNAIPA); Centro de Asistencia Legal Popular (CEALP), Panama; Organización Indígena Kus-Kurá S. C., Costa Rica; Kirat Welfare Society, Nepal; First Peoples Human Rights Coalition; Indigenous Environmental Network (IEN); Indigenous World Association; American Indian Law Alliance; International Indian Treaty Council; Instituto Peruano de Educación en Derechos Humanos y la Paz (IPEDEHP); TARA-Ping Pu, Taiwan; TIMC (Takao Indigenous Makatao Council), Taiwan; Union of British Columbia Indian Chiefs; Centro de Estudios Mapuche para el Desarrollo de los Pueblos Indígenas, Chile; Azkintuwe – El Periódico del País Mapuche, Chile; GEMA ALAM West Nusa Tenggara, Indonesia; FIMI North America (International Indigenous Women's Forum); Innu Takuaikan Uashat Mak Mani-Utenam; Earth Peoples; Netherlands Centre for Indigenous Peoples (NCIV); Hawai'i Institute for Human Rights; Society for Threatened Peoples International; Canadian Friends Service Committee (Quakers); Forest Peoples Programme; International Work Group for Indigenous Affairs (IWGIA).

Introduction

1. We would like to again bring to the attention of the Permanent Forum our serious concern about the continuous and ongoing disrespect of the principle of free, prior and informed consent by UNESCO's World Heritage Committee when it designates sites in Indigenous peoples' territories as "World Heritage sites".
2. This issue has already been brought to the attention of the Permanent Forum on several occasions, by Indigenous peoples and organizations from many different parts of the world.¹
3. There are numerous examples of Indigenous sites on the World Heritage List that have been inscribed without the free, prior and informed consent of the Indigenous peoples concerned. In many cases Indigenous peoples were not even consulted when their territories were designated as World Heritage sites, although this designation can have far-reaching consequences for their lives and human rights, their ability to carry out their subsistence activities, and their ability to freely pursue their economic, social and cultural development in accordance with their right of self-determination.
4. The practice of the World Heritage Committee is inconsistent with the provisions of the *UN Declaration on the Rights of Indigenous Peoples*,² the *Programme of Action for the Second International Decade of the World's Indigenous People*,³ the United Nations Development Group's *Guidelines on Indigenous Peoples' Issues*,⁴ the comments and concluding observations of the UN human rights treaty monitoring bodies,⁵ the views of the UN Special Rapporteur on the rights of indigenous peoples,⁶ the Resolutions of the 4th World Conservation Congress (Barcelona, 2008),⁷ and the recommendations of the Permanent Forum on Indigenous Issues.⁸
5. It is also inconsistent with UNESCO's objective to integrate a human rights-based approach into all of its programmes and activities.⁹ It contrasts with the practice of UNESCO's Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage, which has adopted *Operational Directives* ensuring that elements can only be inscribed on UNESCO's lists of intangible cultural heritage if the free, prior and informed consent of the communities and groups concerned has been obtained.¹⁰
6. Last year, at the World Heritage Committee's 34th Session in Brasilia (25 July – 3 August 2010), the Committee inscribed two sites on the World Heritage List although questions had been raised regarding Indigenous peoples' participation in the nomination processes and their free, prior and informed consent: the **Northwest Hawaiian Islands Marine Monument** ("Papahānaumokuākea Marine National Monument")¹¹ and the **Ngorongoro Conservation Area** in Tanzania.¹² The latter was re-inscribed as a cultural World Heritage site, because of its significance as an archaeological site, not because of the significance of the Maasai culture.¹³ We are concerned that the Committee's recognition of only the archaeological values, and not the living cultural values of the Indigenous residents, may exacerbate the already existing imbalances in the management framework for the Ngorongoro Conservation Area¹⁴ and lead to additional restrictions on the livelihoods of the Indigenous residents and further infringements on their rights.

7. This year, at its upcoming 35th Session in Paris (19-29 June 2011), the World Heritage Committee will be considering several nominations of sites that are located in Indigenous peoples' territories. These include (among other sites):

- “Western Ghats” (India);
- “Trinational de la Sangha” (Republic of Congo / Cameroon / Central African Republic);
- “Kenya Lake System in the Great Rift Valley” (Kenya).

All three of the mentioned sites are nominated under natural World Heritage criteria alone, without giving due consideration to the Indigenous cultural values connected to these areas and Indigenous peoples' roles as stewards of these places. Moreover, all of the mentioned nominations were prepared without meaningful involvement and consultation of the Indigenous peoples concerned and without obtaining their free, prior and informed consent.¹⁵

Recommendations

We urge the Permanent Forum to call on the World Heritage Committee:

- a) to defer all World Heritage nominations of sites in Indigenous peoples' territories if it cannot be ensured that the Indigenous peoples have been adequately consulted and involved and that their free, prior and informed consent has been obtained;
- b) to defer the nominations of “Western Ghats”, “Trinational de la Sangha” and “Kenya Lake System in the Great Rift Valley”, and call on the respective State parties to consult and collaborate with the Indigenous peoples concerned, in order to ensure that their values and needs are reflected in the nomination documents and management plans and to obtain their free, prior and informed consent;
- c) to endorse the *UN Declaration on the Rights of Indigenous Peoples* and use it as the basic reference framework when making decisions about World Heritage sites in Indigenous territories, together with the *UNDG Guidelines on Indigenous Peoples' Issues*;
- d) to immediately convene a Working Group of experts on Indigenous peoples' issues, with a mandate to draft an overarching policy on Indigenous peoples and to recommend changes to the *Operational Guidelines* and other appropriate steps to ensure that the implementation of the *World Heritage Convention* is consistent with the *UN Declaration on the Rights of Indigenous Peoples*. The Working Group should include representatives of the Permanent Forum, the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the Special Rapporteur on the rights of indigenous peoples, representatives of Indigenous peoples from World Heritage areas, TILCEPA, and others.
- e) to establish an Indigenous advisory body which should be involved in the evaluation of all nominated properties that are situated in the territories of Indigenous peoples and in monitoring the conservation and management of such World Heritage properties.¹⁶

We also strongly urge the Permanent Forum to send a representative to the upcoming 35th session of the World Heritage Committee in Paris (19-29 June 2011), in order to convey these recommendations and concerns to the Committee.

Background information

¹ We note in particular a submission by the Mirrar people from Kakadu National Park in Australia at the Permanent Forum's First Session in 2002; a collective statement of Indigenous Peoples of the Pacific Region in 2004; a statement of the South Asia Indigenous Women Forum in 2004; an intervention of the Continental Network of Indigenous Women of South America in 2004; and a statement of the Indigenous Peoples Caucus of the Greater Caribbean in 2007:

Submission by the Mirrar People, Kakadu, Australia, UNPFII, First session (2002), Item 6(b):

Environment, www.docip.org/gsd/collect/cendocdo/index/assoc/HASHec32/1edbc0bf.dir/D_29.pdf:

“In this United Nations International Year of Cultural Heritage 2002, the Mirrar People of the Kakadu (Australia) World Heritage area recommend the following to the United Nations Permanent Forum on Indigenous Issues. That the Permanent Forum undertake an Independent study of Indigenous Peoples and World Heritage. This study should include;

- 1 an analysis of the effectiveness of the World Heritage Convention in the protection of Indigenous peoples sacred sites and living tradition;
- 2 an analysis of the World Heritage Committee's current review of its Operational Guidelines and the potential impact on Indigenous peoples living in World Heritage areas;
- 3 an analysis of Indigenous peoples representation and input to the World Heritage Committee's decision-making processes;
- 4 the inclusion of case studies from all Indigenous peoples living in World Heritage Areas; and
- 5 include recommendations to ECOSOC regarding the protection of Indigenous Peoples sacred sites and World Heritage areas.”

Collective Statement of Indigenous Peoples of the Pacific Region, UNPFII, Third Session (2004), Item 4(b):

Environment, www.docip.org/gsd/collect/cendocdo/index/assoc/HASH0143/c5e8e610.dir/037_as.pdf (at p. 3):

“To date, designation of World Heritage Sites by UNESCO occurs largely without the consent of the Indigenous peoples whose lands, sacred sites, and otherwise culturally significant areas are encompassed within these World Heritage Sites. Designating these sites by the UN and member states is happening because it creates economic value for tourism. Any further designation must occur only in consultation with Indigenous peoples and only after their free prior and informed consent has been given.”

Statement of the South Asia Indigenous Women Forum (SAIWF), UNPFII, Third Session (2004), Item 4(b):

Environment, www.docip.org/gsd/collect/cendocdo/index/assoc/HASH0143/c5e8e610.dir/037_as.pdf:

“We request the Permanent Forum to urge the UNESCO that designation of World Heritage Sites must not occur without the consent of Indigenous Peoples. Designation of World Heritage Sites occurred largely without the consent of Indigenous Peoples, for example in St. Lucia. Designating these sites by the UN and member states is happening because it creates economic value for tourism.”

Intervención del Enlace Continental de Mujeres Indígenas de Sudamérica, FPCI, Tercera sesión (2004), Tema 4(e): Cultura, www.docip.org/gsd/collect/cendocdo/index/assoc/HASH01b2/65a93e7a.dir/109_es.pdf:

“Otro de los temas que queremos sugerir como una recomendación es que la UNESCO informe en la proxima sesión sobre la participación de los pueblos indígenas en todo lo referido a las declaraciones de patrimonio de la humanidad en territorios indígenas, tales el caso de la quebrada de Humahuaca en la provincia de Jujuy entre otros en Argentina. Que siguiendo las recomendaciones del comité de patrimonio Mundial de (Cairns 2000/Helsinki2001) sobre la inclusión de nuevas categorías, es que nuestro país decidió proponer la candidatura incluyendo territorios de mas 65 comunidades originarias y a sus culturas. Nosotros no nos oponemos a la preservación de las grandezas naturales que nuestros abuelos vienen cuidadando mas de 10.000 anos pero queremos asegurarnos de nuestra participación indígena en todo lo referido a la ya declarada Patrimonio de la humanidad de la Quebrada de Humahuaca. Otra de las recomendaciones que queremos sugerir es que la UNESCO establezca espacios de participación indígena en los órganos de selección de lugares declarados, como patrimonio culturales y o naturales como así también, en los órganos de control. Esta propuesta la hacemos en función a que son muchos los lugares declarados patrimonio cultural. Natural que son territorios de los pueblos indígenas.”

Statement of the Indigenous Peoples Caucus of the Greater Caribbean, UNPFII, Sixth Session (2007), Item 4(g), Second International Decade of the World's Indigenous People,

www.docip.org/gsd/collect/cendocdo/index/assoc/HASH01bb/ffe52bde.dir/PF07mildred235.pdf:

“we recommend that the Permanent Forum: [...] Urge UNESCO to sponsor a special regional meeting with representatives of the Indigenous Peoples Caucus of the Greater Caribbean as well as other regional initiatives to facilitate their full and effective participation in its work relating to... nomination of indigenous sites to the World Heritage List...”

² For example, Article 32(2) of the *UN Declaration on the Rights of Indigenous Peoples* (UN Doc. A/RES/61/295, Annex), adopted by the UN General Assembly on 13 September 2007, states:

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources...”

Art. 41 of the *Declaration* requires UN Agencies and other intergovernmental organizations to “contribute to the full realization of the provisions of this Declaration” and to establish ways and means of “ensuring participation of indigenous peoples on issues affecting them.”

Art. 42 calls on UN Agencies to “promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.”

³ According to the *Programme of Action for the Second International Decade of the World's Indigenous People* (UN Doc. A/60/270), adopted by the UN General Assembly on 16 December 2005, one of five objectives of the Decade is:

“Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent.” (para. 9ii)

The *Programme of Action* also states that “programmes and initiatives relating to indigenous cultures should follow the principle of free, prior and informed consent of indigenous peoples. Particular caution should be exercised when elaborating tourism and national park projects in indigenous territories.” (para. 19)

In regard to World Heritage nominations, the Programme of Action states:

“UNESCO is urged to establish mechanisms to enable indigenous peoples to participate effectively in its work relating to them, such as the... nomination of indigenous sites in the World Heritage List and other programmes relevant to indigenous peoples.” (para. 16, emphasis added)

⁴ *United Nations Development Group Guidelines on Indigenous Peoples Issues*, February 2008, p. 18:

“conservation efforts on indigenous lands, including the establishment of new and management of existing protected areas, have to take place with the free, prior and informed consent and full participation of the communities concerned.”

⁵ See, e.g., **Committee on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples**, 18 August 1997, para. 4(d):

“The Committee calls in particular upon States parties to... Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent...”

Committee on the Elimination of Racial Discrimination, Concluding observations: Ethiopia (2007), UN Doc. CERD/C/ETH/CO/15, para. 22:

“the Committee remains concerned about the consequences for indigenous groups of the establishment of national parks in the State party and their ability to pursue their traditional way of life in such parks...”

In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party provide, in its overdue report, information on the effective participation of indigenous communities in the decisions directly relating to their rights and interests, including their informed consent in the establishment of national parks, and as to how the effective management of those parks is carried out. The Committee also recommends that the State adopt all measures to guarantee that national parks established on ancestral lands of indigenous communities allow for sustainable economic and social development compatible with the cultural characteristics and living conditions of those indigenous communities.”

⁶ See, e.g., *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen*, UN Doc. A/HRC/6/15, 15 November 2007, paras. 68-72:

“On no account should development activities be allowed to run counter to the general principles of the human rights of indigenous peoples...”

Social and development policies and programmes relating to indigenous peoples must be based on the free, prior and informed consent of the communities concerned. These communities must be effectively involved in identifying priorities and in designing, implementing and evaluating the development activities...

[International agencies] engaged in cooperation work should refrain from supporting programmes and projects which, either directly or indirectly, are or could be conducive to the violation of the rights of indigenous peoples...”

⁷ For example, **World Conservation Congress Resolution 4.048 (2008)** calls on governments to work with Indigenous peoples’ organizations to:

“ensure that protected areas which affect or may affect indigenous peoples’ lands, territories, natural and cultural resources are not established without indigenous peoples’ free, prior and informed consent and to ensure due recognition of the rights of indigenous peoples in existing protected areas”.

⁸ See e.g., **UNPFII, Report on the Third Session (2004)**, UN Doc. E/C.19/2004/23, para. 80:

“The Forum recommends that the World Conservation Union Congress... emphasize... the need for the full respect for indigenous peoples’ rights and the need for indigenous peoples’ free prior informed consent to be obtained before the declaration or in the management of any protected area which may affect them.”

UNPFII, Report on the Fifth Session (2006), UN Doc. E/C.19/2006/11, para. 16:

“The Permanent Forum recommends that the United Nations Educational, Scientific and Cultural Organization (UNESCO)... establish an institutional partnership with indigenous peoples so that they can fully participate in the monitoring and other mechanisms of UNESCO conventions... that are relevant to indigenous peoples. The Permanent Forum further recommends that UNESCO establish an advisory group of indigenous experts to provide advice.”

UNPFII, Report on the Seventh Session (2008), UN Doc. E/C.19/2008/13, para. 137:

“The Permanent Forum requests that the specialized agencies of the United Nations, in accordance with articles 41 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples, review their policies and programmes in order to comply with the provisions contained in the Declaration ensuring respect for the right to self-determination of indigenous peoples and the right to free, prior and informed consent.”

UNPFII, Report on the Eighth Session (2009), UN Doc. E/C.19/2009/14, para. 37:

“The Permanent Forum recommends that States and United Nations agencies apply the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples throughout their operational frameworks for implementing the Programme of Action for the Decade, in particular its objective on free, prior and informed consent by indigenous peoples.”

UNPFII, Report on the Ninth Session (2010), UN Doc. E/C.19/2010/15, paras. 24 and 131:

“The Permanent Forum calls upon UNESCO... to support indigenous peoples in their process of cultural heritage restoration and strengthening. This process should be guided by indigenous peoples in order to avoid the misuse and distortion of indigenous peoples’ culture, practices and knowledge and to respect their perspectives and aspirations.”
“The Permanent Forum reiterates its concern about conservation efforts, including the designation of national parks, biosphere reserves and world heritage sites, which frequently lead to the displacement of indigenous peoples from their traditional lands and territories...”

Statement of the United Nations Permanent Forum on Indigenous Issues at the 34th Session of the UNESCO World Heritage Committee, Brasilia, 2010 (delivered by UNPFII member Victoria Tauli-Corpuz),

<http://xa.yimg.com/kq/groups/20674633/27593986/name/UNPFII+Statement+WHC+Final.docx>:

“I am here to raise with the WHC the concerns of indigenous peoples raised before us in the previous sessions but more particularly during the 9th session which was held in April 2010. At this 9th session, two issues were brought to our attention and these are the Ngorongoro Conservation Area (NCA) in Tanzania and the Northwest Hawaiian Islands Marine Monument (NWHIMM) now called referred to as Papahānaumokuākea Marine National Monument... The UN Permanent Forum... would like to reiterate that whenever decisions are taken by States and intergovernmental bodies that affect indigenous peoples there should be proper consultations done and their free, prior and informed consent should be obtained before any development or conservation project is brought into their

territories. There is a list of indigenous sites inscribed in the World Heritage List without the adequate participation and involvement of indigenous peoples which the Permanent Forum has received since its first session in 2002. In light of these and other similar situations, the UN Permanent Forum in its 9th session called upon UNESCO, the Secretariat of the Conference on Biological Diversity and other UN bodies and agencies to support indigenous peoples in their processes of cultural heritage restoration and strengthening. These processes should be guided by indigenous peoples in order to avoid the misuse and distortion of indigenous peoples' cultures, practices and knowledge and to respect their perspectives and aspirations...

To conclude I would like to present the following recommendations to the World Heritage Committee for your consideration.

1. That the practice of inviting a member of the UNPFII to attend the WHC sessions be sustained and that it be given a time slot to raise issues relevant to the various agenda items under discussion.
2. That the allegations raised by the indigenous peoples' organizations related to the Ngorongoro Conservation Area and the NWHIMM be investigated further by the UNESCO, IUCN with the participation of a member of the UN Permanent Forum on Indigenous Issues to verify the information received in terms of how the rights of indigenous peoples are violated and to make proposals on how to address these situations and similar ones which can arise in the future.
3. That the initial efforts to establish a World Heritage Indigenous Peoples' Council of Experts (WHIPCOE) be revisited and efforts to set up an appropriate mechanism whereby indigenous experts can provide advice to the World Heritage Committee and the World Heritage Center be revived.
4. That adequate consultation and participation of indigenous peoples be ensured and their free, prior and informed consent be obtained, when their territories are being nominated by States Parties to be inscribed as World Heritage Sites.
5. That the involuntary displacement or relocation of indigenous peoples from World Heritage Sites be stopped.
6. That the subsistence economic activities of indigenous peoples needed for their survival that are taking place in World Heritage Sites not be undermined or illegalized and adequate social services be provided to indigenous peoples living in these sites.
7. That the UN Declaration on the Rights of Indigenous Peoples and the UNDG Guidelines on Indigenous Peoples' Issues be used as frameworks when World Heritage Sites found in indigenous territories are nominated and managed as well as for missions done in these areas.
8. That the inclusion of indigenous experts be considered when missions are held to review the World Heritage Sites located in their territories."

⁹ *UNESCO Strategy on Human Rights*, adopted by the General Conference on 16 October 2003, UNESCO Doc. 32 C/57, paras. 10-14; *UNESCO Medium-Term Strategy for 2008-2013*, adopted by the General Conference on 2 November 2007, UNESCO Doc. 34 C/4, paras. 6, 69.

¹⁰ *Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage* (2010), Doc. ITH/10/3.GA/CONF.201/Resolutions Rev., RES. 3.GA 5, Annex, para I.2: "Criteria for inscription on the Representative List of the Intangible Cultural Heritage of Humanity... In nomination files, the submitting State(s) Party(ies) is (are) requested to demonstrate that an element proposed for inscription on the Representative List of the Intangible Cultural Heritage of Humanity satisfies all of the following criteria: ... R.4 The element has been nominated following the widest possible participation of the community, group or, if applicable, individuals concerned and with their free, prior and informed consent."

Similarly, para. I.1 (List of Intangible Cultural Heritage in Need of Urgent Safeguarding) and para. I.3 (selection of programmes, projects and activities that best reflect the principles and objectives of the Convention).

¹¹ In regard to the Northwest Hawaiian Islands Marine Monument, the World Heritage Committee had received the following complaint (receipt is acknowledged in Doc. WHC-10/34.COM/10C, 31 May 2010, para. 19): *Objections and Claims of NaKoa Ikaika KaLahui Hawaii and The Koani Foundation to the Nomination of the Northwest Hawaiian Islands Marine Monument (NWHI) to the UNESCO World Heritage List & to the UNESCO/WHC Pacific Action Plan*, 28 May 2010, pp. 1-3: "1. Petitioners object to the nomination of the "Papahānaumoku" (NWHI) Monument to the UNESCO/World Heritage List... Petitioners object... because we and other indigenous Hawaiians have not been afforded our right of consultation, and are negatively impacted by Federal processes which abridge our rights to sustenance, and to

economic, cultural and social development in the NWHI. Petitioners and other Native Hawaiians have not given their free, prior and informed consent to the listing of the NWHI as a World Heritage Site. The management plan proposed by the United States abridges Indigenous rights, does not meet the criteria for WH listing and contains numerous misrepresentation and omissions.

2. Petitioners object to the UNESCO/WHC processes and procedures that have had the effect of excluding petitioners and other Native Hawaiians from the nomination and evaluation process and which have been undertaken in secret and in violation of petitioners' human rights set forth herein...

Nakoa/Koani question the Advisory Bodies' (ICOMOS and IUCN) capacity to be independent (IUCN) and object to the processes followed by the site evaluators who are supposed to meet with all stakeholders including indigenous peoples who are practitioners, fishermen etc. This did not occur although the evaluators spent nearly a month in Hawaii...

RECOMMENDATIONS:...

1. Regarding the World Heritage nomination of the NWHI ("Papahānaumoku"):

a. NaKoa/Koani recommend that the UNESCO/WHC defer action on the nomination of the NWHI and request that the Obama Administration consult with PETITIONERS to resolve issues relating to the rights of indigenous Hawaiians to access their trust resources in the NWHI (including sustenance rights), and to provide a fair process for Hawaiians to obtain permits for cultural and other uses of their resources...

2. Regarding the procedures and processes utilized by UNESCO/WHC and their failure to integrate the human rights protections contained in the UN Declaration on the Rights of Indigenous Peoples or adopt internal policies relating thereto:

a. Nakoa/Koani recommend that the UNESCO/WHC immediately convene a Working Group of Indigenous Experts, including experts from the Pacific, the Special Rapporteur on the situation of human rights of indigenous people (Jim Anaya), representatives of the UN Permanent Forum on Indigenous Issues, and others.

b. Tasks of the Working Group will be 1) to draft an overarching policy on Indigenous Peoples (Model Policy) to guide the work of UNESCO and the WHC..."

The World Heritage Centre also received a **letter from Rowena Akana**, an elected trustee of the Office of Hawaiian Affairs (OHA), dated 12 July 2010, which stated:

"I am writing to you to voice my STRONG OPPOSITION to the U.S. nomination of Papahānaumokuākea as a UNESCO World Heritage Site on behalf of the Native Hawaiian beneficiaries of OHA who are the legal beneficiaries of the lands and resources of the NWHI..."

[T]he cultural, religious and economic rights of native Hawaiians to fishing and other resources within Papahānaumokuākea... are not included in the Management Plan...

OHA Trustees and native Hawaiians were not properly consulted. There have been 'public' hearings but none for the native beneficiaries. No effort was made to do education or outreach in native Hawaiian Homestead communities. No effort was made to ensure that native Hawaiian rights for gathering, worship and to participate in conservation management were protected. As a result there is no actual provision for cultural uses within Papahānaumokuākea, although language in the application indicates this is so, in reality it has not been implemented...

UNESCO contractors (the IUCN and ICOMOS) came to Hawaii and were supposed to meet with all 'stakeholders.' However, they did not meet with the OHA Trustees or native Hawaiian Community or Homestead Associations. Instead they limited their discussions to the Hawaiians selected by the US who do not represent the native Hawaiian beneficiaries.

The World Heritage Site criterion requires that all stakeholders be included in the nomination process, but OHA & indigenous Hawaiians were excluded, with the exception of a few who were designated 'Cultural Advisors' to the Monument...

I am requesting that the U.S. nomination of Papahānaumokuākea as a World Heritage Site be postponed until the OHA can address the matters discussed above with the Administration of U.S. President Barak Obama."

The issue of the "Papahānaumokuākea" nomination was also raised at the 2010 Session of the Permanent Forum, see: *Pacific Collective Intervention re: Indigenous Fishing and Cultural Rights in the Pacific Ocean and related Human Rights Violations, UNPFII, Ninth Session (2010), Item 7: Future Work of the Permanent Forum*, www.docip.org/gsd/collect/cendocdo/index/assoc/HASH0118/4984bc47.dir/PF10kenneth158.PDF.

¹² The fact that the renomination of the Ngorongoro Conservation Area under cultural criteria was prepared without meaningfully involving the Maasai and submitted without their free, prior and informed consent, is abundantly clear not only from the nomination document itself, but also from the Advisory Body Evaluation by IUCN as well as a

document submitted by the Indigenous residents of the Ngorongoro Conservation Area to an official UNESCO mission in December 2008:

IUCN Evaluations of Nominations of Natural and Mixed Properties to the World Heritage List: Ngorongoro Conservation Area (Tanzania), May 2010, UNESCO Doc. WHC.10/34.COM/INF.8B2, p. 189:

“The nomination document notes the interaction of the Maasai with the landscape of Ngorongoro, but this appears to be very much a secondary consideration, relative to the palaeontological sites related to human evolution. Reviewers noted that there is little or no information presented in the nomination regarding consultation with the Maasai as key stakeholder in Ngorongoro. It is suggested important to confirm that the nomination was prepared with free prior and informed consent from the Maasai. ICOMOS should also consider how the Maasai are represented with respect to management of the NCA, and whether this is credible and effective.”

Statement, findings and recommendations from the indigenous residents and stakeholders of Ngorongoro Conservation Area to decision-makers, national and international organizations (presented to the IUCN/UNESCO World Heritage Site monitoring team to Ngorongoro Conservation Area in December 2008), www.tnrf.org/files/E-INFO-UNESCO-IUCN_Ngorongoro_Residents_Statement_dec_2008.pdf:

“Participation in NCAA decision making bodies of local communities and local authorities is highly insufficient. People of NCA are not enjoying the same rights as other citizens of Tanzania... At the moment the right of association of people is not the same as in other parts of Tanzania. Consultative procedures are therefore not in place. No consultation with local people on the establishment of NCA as a World Heritage site was undertaken.”

¹³ The World Heritage Committee did not consider the living culture of the Maasai residents of the Ngorongoro Conservation Area as worthy of special protection under the *World Heritage Convention*, agreeing with the assessment of its Advisory Body ICOMOS “that the Maasai pastoral landscape [cannot] be justified as being of Outstanding Universal Value, nor does it satisfy conditions of integrity or authenticity”. According to ICOMOS, the Maasai pastoral landscape does not meet the conditions of integrity and authenticity because the “distinctive pastoralism [of the Maasai] within the Conservation area has now been substantially changed into agro-pastoralism...” (**ICOMOS, 2010 Evaluations of Cultural Properties - Ngorongoro Conservation Area (Tanzania)**, UNESCO Doc. WHC-10/34.COM/INF.8B1, pp. 68-69).

However, in contrast to the claims by ICOMOS, the Maasai have always resorted to cultivation in difficult times (such as droughts or diseases among their herds), so that small scale cultivation can be said to be an essential part of the pastoral system. The pastoral system of the Maasai in Ngorongoro has been disrupted because of the restrictions imposed by conservation authorities, so that now it is no longer possible for the Maasai in the Conservation Area to live a life that depends on livestock alone. Small scale agriculture is thus essential for the survival of the people in the area. These misunderstandings and misrepresentations could maybe have been avoided, if the Maasai had been adequately involved in the nomination procedures.

According to the *Operational Guidelines for the Implementation of the World Heritage Convention*, Doc. WHC.08/01, January 2008, “the respect due to all cultures requires that cultural heritage must be considered and judged primarily within the cultural contexts to which it belongs” (para. 81). 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.

¹⁴ On these imbalances, see e.g. **Olenasha, William (2006), “Parks Without People: A Case Study of the Ngorongoro Conservation Area, Tanzania”**, in International Alliance of Indigenous and Tribal Peoples of Tropical Forests (ed.), *Indigenous Peoples' Contributions to COP-8 of the Convention on Biological Diversity*, Chaing Mai: IAITPTF, pp. 151-163, www.ffla.net/new/es/bibliografia-recomendada/doc_download/60-parks-without-people-a-case-study-of-the-ngorongoro-conservation-area-tanzania.html.

¹⁵ In regard to Kenya Lakes System, see **UNPFII, Ninth Session, Annex to Final Report of the United Nations Inter-Agency Support Group on Indigenous Issues (IASG), Annual meeting 2009 hosted by UNEP and UNHABITAT, 28-30 September 2009, Nairobi, Kenya**, UN Doc. E/C.19/2010/CRP. 2, para. 10: “A representative of the Endorois people of the Lake Bogoria region in Kenya raised the issue of the nomination of Lake Bogoria as a world heritage site without prior consultation with the people indigenous and the resulting dispute. He sought clarification of the nomination process.”

As regards the Trinational de la Sangha, extensive fieldwork by the Forest Peoples Programme in the CAR section of the Trinational (between April 2008 and February 2011) found no evidence that Indigenous peoples were consulted or that their free, prior and informed consent was sought regarding the World Heritage nomination. Generally, there is a lack of Indigenous participation in the management of the protected area, which was gazetted in 1990 without obtaining the Indigenous peoples' free, prior and informed consent. See **Woodburne, Olivia (June 2009), "Central African Republic – Securing indigenous peoples' rights in conservation: Review of policy and implementation in the Dzanga-Sangha Protected Area Complex"**, www.forestpeoples.org/fr/node/343, pp. 1, 18: "participation in decision-making processes is low; although some BaAka are employed by the [Dzanga-Sangha] project, few other benefits arising from conservation or eco-tourism are shared equitably with communities; there are no mechanisms to ensure that principles of free, prior and informed consent are adhered to; and customary use has not informed park/reserve design, leaving many communities unable to access sufficient natural resources for subsistence purposes. [...] The BaAka state clearly that no consent was sought from them prior to the start of the conservation project, and, moreover, that it has never since been sought for any aspect of the project."

In the Cameroonian part of the Trinational de la Sangha, Indigenous peoples and their organisations were not consulted about the World Heritage nomination either. According to the Baka indigenous organization OKANI, "it is clear that the Indigenous peoples were not aware of this process, even less so about the consequences that it will have for communities". The protected area (Lobéké National Park) was gazetted in 2001 without the free, prior and informed consent of the Indigenous peoples concerned. See **Jackson, Dorothy (2004) "Implementation of international commitments on traditional forest-related knowledge: Indigenous Peoples' experiences in Central Africa"**, <http://www.forestpeoples.org/fr/node/710>, p. 45.

¹⁶ The 2000 proposal to establish a World Heritage Indigenous Peoples' Council of Experts (WHIPCOE) should be revisited in this context. See **World Heritage Committee, 25th Session (2001), Progress Report on the Proposed World Heritage Indigenous Peoples Council of Experts (WHIPCOE)**, UNESCO Doc. WHC-2001/CONF.208/13.

**UNESCO - WORLD HERITAGE COMMITTEE
Thirty-fifth Session**

Paris, UNESCO Headquarters
19-29 June 2011

Item 7B: State of conservation of properties inscribed on the World Heritage List
(Wednesday, 22 June or Thursday, 23 June)

**Intervention by Mr. Paul Kanyinke Sena,
Member of the UN Permanent Forum on Indigenous Issues**

Distinguished Chairperson, Committee members and Observers,

It is my great pleasure to address you today, on behalf of the United Nations Permanent Forum on Indigenous Issues.

At the 34th session of the UNESCO –World Heritage Committee, the then Chairperson of the Permanent Forum addressed the session raising concerns by indigenous peoples over two proposed World Heritage Sites: the Ngorongoro Conservation Area (NCA) in Tanzania and the Northwest Hawaiian Islands Marine Monument (NWHIMM) referred to as Papahānaumokuākea Marine National Monument.

As you may be aware, at its annual sessions of the Permanent Forum, indigenous peoples often raise concerns about many issues and the matter of the proposed World Heritage Sites is one of such issue.

The UN Permanent Forum on Indigenous Issues is a subsidiary body of the Economic and Social Council (ECOSOC) established by Resolution 2000/22 which is mandated to play a key role in coordinating indigenous issues within the United Nations system which includes transmitting indigenous concerns, undertaking research, and providing expert advice and substantive input on indigenous peoples' issues to the UN system and other intergovernmental bodies.

In this regard, I would like to briefly inform you that the 10th session of the Permanent Forum focused on three main areas such as economic and social development, environment and free, prior and informed consent. The Forum's report will be submitted to ECOSOC in July.

One of the roles of the Permanent Forum is to implement the Declaration on the Rights of Indigenous Peoples. This is perhaps an important area that the Committee may wish to further collaborate with the Permanent Forum.

Mr. Chairperson.

At its tenth session, the Permanent Forum made the following recommendations:

- The Permanent Forum welcomes the initiative of UNESCO-World Heritage Committee and the advisory bodies IUCN, ICOMOS and ICCROM to review current procedures and capacity to ensure free prior and informed consent, and the protection of indigenous peoples' livelihoods, tangible and intangible heritage. During this review process, it would be advisable to review the inconsistency of approaches to natural World Heritage and cultural World Heritage. The Permanent Forum makes itself available to assist in the review and revision of UNESCO Operational Guidelines with regards to nominations and site assessments, as well as recommends UNESCO to invite indigenous peoples' representatives and experts to contribute to deliberations and recommended changes to procedures and Operational Guidelines.
- Finally, the UN Permanent Forum recommends that the UNESCO -World Heritage Committee and the advisory bodies IUCN, ICOMOS and ICCROM, scrutinise current World Heritage nominations to ensure they comply with international norms and standards of Free Prior and Informed Consent.

I would like to take this opportunity to appeal to the States Parties of the Committee that the practice of inviting a member of the UNPFII to attend the WHC sessions be sustained and that a time slot is given to raise issues relevant to the various agenda items under discussion. Also, that the initial efforts to establish a World Heritage Indigenous Peoples' Council of Experts (WHIPCOE) be revisited and efforts to set up an appropriate mechanism whereby indigenous experts can provide advice to the World Heritage Committee and the World Heritage Center be revived.

In closing, I would like to take this opportunity to thank the States Parties of the Committee for giving me this brief opportunity to address the Committee and this is the beginning of developing a working relationship between the Committee and the Permanent Forum.

Thank you

Annex 4

UNESCO - WORLD HERITAGE COMMITTEE Thirty-fifth Session

Paris, UNESCO Headquarters
19-29 June 2011

General Statement
Thursday, 23 June

Intervention by Mr. Stefan Disko International Work Group for Indigenous Affairs (IWGIA)

Distinguished Chairperson and delegates, I am speaking on behalf of over 70 Indigenous organizations and NGOs in relation to the nominations of:

- Western Ghats (India)
- Trinational de la Sangha (Republic of Congo / Cameroon / Central African Republic)
- Kenya Lake System (Kenya).

The statement is endorsed by Indigenous organizations and communities from all of these areas.

We are concerned that the mentioned nominations were prepared without adequate involvement and consultation of Indigenous peoples and without obtaining their free, prior and informed consent. Indigenous cultural values, rights and needs are not duly taken into account.

We therefore call on the Committee to defer these nominations, in order to provide time for meaningful consultations and collaboration with the Indigenous communities concerned.

This would be in line with the UN Declaration on the Rights of Indigenous Peoples, the views of the UN human rights bodies, UNESCO's commitment to human rights, as well as the Fifth Strategic Objective (Fifth 'C').

We also urge the Committee to revise the Operational Guidelines in order to ensure that the implementation of the Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples.

A more detailed version of this submission is available in writing.

Thank you Madam Chairperson.