

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**

Jointly 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 the Indigenous peoples of 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, India (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; Indian Confederation of Indigenous and Tribal Peoples (ICITP); Adivasi Ekta Parishad (India); United Peoples' Federation of Assam (UPFA) India; All Dimasa Student's Union (ADSU) India; All Barman Kachari Students' Union (ABKSU) India; Borosa Onsai Afat (BOA) India; Asia Indigenous Peoples Pact (AIPP); Cordillera Peoples Alliance, Philippines; Saami Council; IXAM 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 (IORD); 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 (Bethchilokono) of Saint Lucia (SAM-BGC); Caribbean Antilles Indigenous Peoples Caucus & The Diaspora (CAIPCD); Genetic Resources, Traditional Knowledge and Folklore International (GRTKF Int.); FIMI North America (International Indigenous Women's Forum); Fundación para la Promoción del Conocimiento Indígena (FPCI), Panama; Tebtebba Foundation, Philippines; 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; Earth Peoples; 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 cuidando mas de 10.000 años 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.