

World Heritage and human rights in Australia: lessons from a practitioners' Round Table

Sixteen natural and cultural heritage practitioners and policy-makers from five Australian States participated in the Round Table on Rights-Based Approaches in Heritage Management, held in Melbourne in October 2015.

The Round Table model was used to complement other research activities, and focused specifically on practitioner perspectives. The Round Table model is compact, allowing robust and open-ended discussion. It cannot represent every experience, but can capture key issues and ideas in ways that can contribute to a continuing dialogue, both locally and globally.

Aware of the dialogue concerning human rights and World Heritage processes and outcomes, the Round Table participants were asked to reflect on two questions:

What difference does it make to apply a rights-based approach to heritage management? Is this a valuable approach for your work?

What are the barriers and enabling factors in implementing a rights-based approach to heritage conservation?

Although work within international organizations and processes is ongoing, complementing this with national discussions is beneficial in looking at how rights-based approaches to heritage management could be understood and applied. This could help to improve outcomes for Australia's heritage and World Heritage, and is needed so that Australian experiences can contribute to the international dialogue. Global standards are very useful, but it is necessary to also tailor them to specific situations. Consistent with the recently launched *Australian Heritage Strategy* there is a potential leadership role for the Australian Government, and opportunities for collaboration with practitioners [including Australia ICOMOS and the Australian Committee for IUCN].

Although 'human rights' covers a very broad range of phenomena and standards, the Round Table discussions largely focused on the rights of Indigenous peoples. This reflected the direct experience of the participants in their work in Australia and the Asia-Pacific region. There was a high degree of awareness of the United

Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the legal, policy and professional framing in Australia to recognize these rights [including the recognition of Native Title and associated legal and policy frameworks].

There are some dimensions to the development of rights-based approaches that are specific to the World Heritage system which need more discussion within Australia. These include the implications of rights-based approaches for the different processes articulated in the Operational Guidelines, such as preparation of nominations, evaluation of nominated properties for inclusion in the World Heritage List, and consideration of the management of properties in relation to pressures. For example, there are particular issues that arise when World Heritage properties have been inscribed for their natural values, but are considered by Traditional Owners to be of cultural significance; and World Heritage listing can generate tourism pressures that have impacts on cultural practices and the rights of Traditional Owners. Beyond this important starting point,

POLICY MESSAGE

Australian natural and cultural heritage practitioners and policy makers are interested in applying rights-based approaches.

Practitioners are seeking ways to gain greater knowledge, awareness and capacity to effectively work with the full diversity of rights issues in Australia. Involving practitioners working with Australia's World Heritage will contribute to improving the capacity for recognising rights.

The rights of Australia's Indigenous peoples – including the need for 'FPIC' (free prior and informed consent) is the most readily identified priority in developing rights-based approaches to World Heritage and heritage management generally. This is known to be a pressing matter for a number of Australia's existing and potential future World Heritage properties.

There are specific issues for the development of rights-based approaches for Australia's World Heritage. These need more discussion and include the implications of rights-based approaches for the processes articulated in the *Operational Guidelines*, such as preparation of nominations, evaluation of properties nominated for the World Heritage List, and consideration of the management of properties in relation to pressures.

10 key messages were captured from the Round Table.

A 'do no harm' orientation could be a useful starting point.

World Heritage practice might not have the ability to 'solve' human rights issues, but it seems immediately feasible to improve awareness and attention to these issues by the World Heritage Committee and to provide more support for communities and States Parties. It is important to acknowledge that World Heritage can have unintended consequences in relation to human rights.

Rights-based issues are often considered through existing heritage practices for recognition of social value, or establishing processes for community involvement.

Heritage practitioners are more familiar with dialogues around community values and interests, consultation, and engagement than with the 'human rights' discourses. While this conflation of rights and 'community' can be pragmatically useful, there are potential problems when consideration of 'community interests' rather than 'rights' results in treating all 'stakeholders' in the same way. Rights holders cannot be considered as 'stakeholders' because the responsibilities and obligations are not the same. In particular, in Australia, Traditional Owners should not be treated as 'stakeholders' since this negates their specific rights (and cultural obligations) to speak for Country.

There are different types of rights – considering cultural rights and collective rights raise further questions.

Recent international work on cultural rights is relevant to heritage practices. Cultural rights can be individual or collective, but are not straightforward or uncontentious in the human rights sphere. While cultural rights are sometimes interpreted as applying to heritage, there is no consensus about this.

There is a focus in Australia on the implications of the United Nations Declaration of the Rights of Indigenous Peoples, 'FPIC' (free prior and informed consent), and the arrangements for governance and management systems in relation to Indigenous peoples. Participants found the IWGIA (International Work Group on Indigenous Affairs) 'Call for Action' useful in advocacy for new policies and processes within the World Heritage system. Including 'FPIC' in heritage processes is an important priority for the short-term.

However, there are other dimensions to human rights that make this picture

more complex. Is the 'right to develop' going to be given the same emphasis? What about economic rights arising from commercial use of traditional knowledge? What about the right to live in a safe and healthy environment? What about the rights of children? Should the rights of animals and non-human living things be considered in the same way? Is there a temporal dimension to human rights implied in the conservation of World Heritage for 'future generations' (and, does this somehow disadvantage the current generation)? Is there a 'right to destroy' cultural heritage? Recognizing these complications is an essential part in advancing this dialogue.

Legal and Policy Frameworks for Human Rights need to be better understood by practitioners.

In general, legal frameworks for human rights are not within the training and professional development competencies of most heritage disciplines, and there is variable engagement with human rights discourses, terminologies and organizations by practitioners. For the private sector (clients and consultants), legal requirements are an important starting point, especially the requirement for free, prior and informed consent from Indigenous peoples ('FPIC'). However, this compliance focus on legal requirements is just the start - good outcomes depend on building relationships. Participants noted the diverse laws across Australian jurisdictions. Nevertheless, statutory framing can and should be an enabling factor.

In many parts of Australia, there are conflicts over questions of who speaks for Country (i.e. disputes within and between Indigenous groups, families and individuals). The policy and process inconsistencies between jurisdictions in Australia contribute to this problem.

There are specific issues for Heritage Consulting.

In Australia, the work of heritage consultants presents specific issues and opportunities. There are

DEFINITIONS

Australia lacks a national Human Rights Act. There is considerable variation in the legal framing across the various Australian jurisdictions. For example, Victoria has a Charter of Human Rights and Responsibilities, the Australian Capital Territory has a Human Rights Act, and the Queensland Parliament is currently inquiring into a proposed Human Rights Act. Internationally, there are a number of broadly relevant instruments and programs such as the United Nations Guiding Principles on Business and Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples, and the work of the World Intellectual Property Organization (WIPO).

constraints arising from the limited time available to complete consultation and assessment projects, and the need to consider the interests of clients alongside the rights of cultural groups and individuals. As a result, engagement with communities and individuals is often done in a limited and/or formulaic way (or not at all). It can be difficult to overhaul practice within this environment unless there are regulatory requirements or other incentives for proponents/clients. More specific and visible processes would facilitate better practice. This also raises questions about the perspectives of rights-holders in these processes.¹

Managing and minimizing risk is a particularly strong focus for many actors, especially for government and the private sector organizations.

Risk management can be a stronger organizational focus than consideration of rights, and could therefore be a key driver for change. There are political sensitivities for World Heritage – this can either support or hinder the adoption of rights-based approaches. Focus on potential political or reputational risk can serve as a catalyst to facilitate more-inclusive rights-based approaches to heritage management decisions at all levels.

¹ These perspectives are considered in other parts of the larger project – see the Policy Briefs on the Australian case study and legal frameworks.

The question of risk perceptions by rights-holders is also an important dimension.

One aspect relates to an observed reluctance to consider problems as 'rights' issues, and some caution about the use of rights frameworks. If this is true, how can we react to political sensitivity or professional apprehension about rights? Are there ways to address the discomfort that seems to accompany this discussion?

Mechanisms for measuring outcomes are needed.

There are often assumptions that rights-based approaches will improve conservation (for example, by reducing conflict and aligning with traditional knowledge), but there is little evidence about the outcomes (which can be social, environmental or political). Do we know if rights-based approaches improve conservation outcomes?

There are some emerging mechanisms that are relevant, typically packaged with measurement of the benefits of community involvement and effective governance. Some examples that could be expanded include IUCN's Management Effectiveness Tool, and

the Aichi targets established within the Convention on Biological Diversity.

Social science research is needed to advance community engagement approaches.

Heritage practices need to include better research to identify whose rights are involved. Many issues need to be considered, and the heritage sector needs to 'upskill' to be able to respond appropriately.

There is a need to take account of the rights of a large range of groups and individuals whose rights might be impacted by heritage decisions. These could include rights arising from gender, disability, religious or political affiliations.

Identify and address barriers to applying rights-based approaches.

There are issues of practice and perception that act as barriers to adopting rights-based approaches. For example, legitimacy can be an issue (Who speaks for rights-holders? Whose rights are acknowledged?). Are there points beyond which rights do not prevail? How can the costs of effective 'grass-roots' work be properly funded

(especially in remote areas in Australia where this is particularly expensive)?

While discussions of rights issues in heritage conservation are often framed negatively (seeing the ways that heritage conservation and protection can infringe on rights), there is a need to also find positive benefits of recognizing rights in heritage practices.

In the 21st century context – with immense and complex movements and displacements of peoples – are there new issues and ways to think about heritage and cultural rights?

There is value for Australia in contributing to the development of an international consensus.

While Australia is seen internationally as a leader in many respects, its existing World Heritage properties have different legacy issues owing to insufficient attention to rights at the outset, and these are challenging for site managers, communities, and governments to address. It is therefore considered that Australia can benefit from the development of international standards and approaches (as well as contributing to such matters through their application to specific cases).

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POLICY IMPLICATIONS RESEARCH

1. **Further work at the national level** by heritage organizations and governments is essential in order to look in more depth at how rights-based approaches could be more widely applied in policies and practices.
2. **ICOMOS and IUCN should continue to build awareness and capacity** with practitioners and policy-makers. Australia ICOMOS could develop a 'Burra Charter Practice Note' on this topic; and IUCN could include commentaries on rights issues in the World Heritage Conservation Outlook and Green List.
3. **Developing clear guidance about applying 'FPIC' in Australian contexts** could be an important next step, especially given the 2015 changes made to the World Heritage Operational Guidelines to explicitly require this. Guidance is needed for each of the processes – Tentative Listing, nominations, extensions, management systems and so on. In order for guidelines to work, greater awareness and capacity must also be developed.
4. **Overcoming the conceptual divide between nature/culture** in heritage practices will be an important component of developing rights-based approaches in Australia. The 'Connecting Practice' initiative of IUCN and ICOMOS is therefore directly relevant. Issues of non-human rights also need attention within this dialogue.
5. **Management Effectiveness Tools** developed by IUCN could be expanded to apply to cultural heritage and also to strengthen the specific focus on rights in the social indicators.
6. **Identify and take advantage of relevant processes in Australia.** What opportunities do existing national processes offer for advancing the discussions with governments and communities? A number of existing opportunities were identified.
7. **IUCN and ICOMOS should continue to work together on rights-based approaches to World Heritage and Australian heritage.** Australia is well placed to set new standards and protocols for international best practice. If there are guidelines and policy documents that both IUCN and ICOMOS use, they would be powerful and readily recognized by governments.
8. **There is a need to actively engage in the emerging work and share resources.** What mechanisms will work best?

Further Reading

The report of the Round Table has been submitted to each of the partners, and can be accessed through the website of Australia ICOMOS <<http://australia.icomos.org/>>.

Australian Committee for IUCN <http://aciucn.org.au/>

ICOMOS Norway – World Heritage and Human Rights 'Our Common Dignity'. <http://www.icomos.no/whrba/>

Australia ICOMOS 2013, *The Australia ICOMOS Charter for Places of Cultural Significance, The Burra Charter*. See also the Burra Charter Practice Notes on Indigenous Cultural Heritage Management. <http://australia.icomos.org/publications/charters/>.

Connecting Practice – a joint program of IUCN and ICOMOS. News and reports can be found at:
<https://www.iucn.org/about/work/programmes/wcpa_worldheritage/about_world_heritage/linking_culture_nature/>

International Work Group on Indigenous Affairs [IWGIA] 2012, 'World Heritage and Indigenous Peoples: a call to action'. Available from the UNESCO World Heritage Centre website: <http://whc.unesco.org/en/events/906/>

Larsen, Peter Bille 2012b, 'Discussion Paper: Advisory Body Evaluations of World Heritage nominations in relation to community and rights concerns'. Report to IUCN, ICOMOS Norway and Ministry of the Environment Norway, June, 2012.

Rio Tinto 2013, *Why Human Rights Matter: a resource guide for integrating human rights into communities and social performance work at Rio Tinto*. Jan 2013. Rio Tinto Limited, Melbourne. http://www.riotinto.com/documents/ReportsPublications/Rio_Tinto_human_rights_guide_-_English_version.pdf

United Nations Declaration on the Rights of Indigenous Peoples, adopted 13 September 2007, <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>



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Project: Understanding Rights
Practices in the World Heritage
System: Lessons from the Asia
Pacific