

The World Heritage Committee and human rights: observations and policy lessons from the 39th session (Bonn, 2015)

This policy brief presents selected findings from a collaborative event ethnography undertaken at the 39th session of the World Heritage Committee in Bonn, Germany in 2015. The research team sought to trace how human rights were articulated within official processes and documents, as well as in the hallways, working groups and side events. In recent years, there has been an increase in the use of ethnography to explore World Heritage dynamics including the World Heritage Committee meetings. Our dual role as heritage practitioners (insiders), and outside observers offered potentially useful insights into both formal and informal dynamics. This brief contains preliminary policy lessons for further policy and practice development in the World Heritage community.

There is a growing understanding of the significance of recognizing rights challenges and incorporating rights concerns in the World Heritage processes among key actors.

Side-events, Committee discussions and interviews revealed a growing awareness and understanding among States Parties, UNESCO officials and Advisory Body representatives in relation to rights issues. In 2015, the Operational Guidelines were revised to include recognition of the UN Declaration on the Rights of Indigenous Peoples and requirements for Free Prior Informed Consent; references to human rights also occurred in the context of the draft Sustainable Development policy; and rights issues were raised in relation to particular nominations and State of Conservation reports. Side events, such as the Advisory Body session on 'Our Common Dignity' – concerning the development of rights-based approaches to natural and cultural heritage management – featured activities in different parts of the world.

Rights concerns in the work of the World Heritage Committee appeared in a variety of contexts.

Human rights appeared in multiple ways throughout the Committee meeting from indigenous claims to policy changes as well as specific sites

discussions, grievances and debates. South Africa, for example, hosted an event to share current work on the theme of liberation and reconciliation, focusing on the life of Nelson Mandela. This theme of triumph of humanity and human rights over apartheid is seen as potentially demonstrating OUV. Another example is the 'Sites of Japan's Meiji Industrial Revolution: Kyushu-Yamaguchi and Related Areas'. Here issues of 'rights' as a historical legacy were raised, and texts were negotiated as part of the process to inscribe this serial property. The diversity of rights concerns, but also their potential significance and sensitivity point to the relevance of further work and guidance.

Multiple references, yet also a lack of systematic consideration.

A number of decisions in 2015 included specific wording related to different rights themes. This includes discussions related to land and resource issues in both nominations and State of Conservation reporting. For example, in the case of the State of Conservation report for Air-Teneré, Niger the text spoke of reinvigorating land commissions to clarify "rights of land use and access to resources"; in a case in Belize, the decision requested the State Party to establish "a legal instrument that would guarantee permanent cessation of the sale and lease of lands throughout the property

POLICY MESSAGE

Rights concerns in the World Heritage Committee sessions appear in a variety of contexts, including: nominations to the World Heritage List, State of Conservation reporting, the development of new policies and procedures to support the work of the World Heritage Committee.

The Committee's 39th session made important revisions to the Operational Guidelines to recognise the relevance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the associated requirements for 'Free Prior and Informed Consent' in World Heritage processes.

The Sustainable Development Policy represents significant progress in awareness and application of rights-based approaches in the World Heritage system.

Rights language is increasingly appearing in the World Heritage Committee context, yet is overall fragmented in terms of *how, when, for whom and what* rights issues are identified and *how* they are being addressed and responded to institutionally. However, there are also signs of reticence and caution, and treatment of rights remains fragmented, limited to certain rights and at times out of sync with wider international processes.

and a clear definition and strict control of development rights on existing private and leased lands"; and in Chad, the State Party was congratulated for ensuring participation, respect of local knowledge and rights to maintain sustainable traditional use of resources. Similarly, for Lake Bogoria (Kenya), the State Party was strongly

urged to “fully implement the African Commission on Human and Peoples’ Rights (ACHPR) Endorois decision... and to ensure the full and effective participation of the Endorois in the management and decision-making”. In the case of the nomination of the Kaeng Krachan Forest Complex (Thailand), the State Party was requested to implement “a participatory process to resolve rights and livelihoods concerns and to reach the widest possible support of local communities, governmental, non-governmental and private organizations and other stakeholders for the nomination”; and in the Lena Pillars Park (Russia), the State Party was requested to ensure “continued recognition and respect of traditional rights”. As these examples illustrate, approaches differ, reflecting various needs and opportunities.

Progress was made on Indigenous peoples’ rights, yet challenges remain.

Indigenous peoples’ organizations and NGOs have sought to raise awareness about the rights of Indigenous peoples in the context of World Heritage. Including ‘FPIC’ wording in the Operational Guidelines was a priority for these groups at Bonn, so this decision was a significant achievement for them. However, there are continuing issues in World Heritage for Indigenous peoples, so advocates and spokespersons consider that their work is not yet finished. For example, in the side event on nature and culture, Ovide Mercredi, former Chief of the Cree in Northern Manitoba (Canada) clearly linked the provisions of UNDRIP to the incorporation of Indigenous worldviews in World Heritage processes (as opposed to the notions of the divide between culture and nature), as well as recognition of land rights.

While rights language and the identification of rights issues is on the increase, appearance and treatment remains fragmented, limited to certain rights, and at times out of sync with wider international processes. A wider range of human rights concerns and

rights-holders remain poorly identified in Committee processes.

Although the World Heritage Committee recently adopted a general commitment to mainstream human rights in its Sustainable Development policy framework, rights issues remain fragmented. This can be seen in the narrow range of rights issues identified, the lack of clarity about how they can be addressed, and the lack of a common framework in policy deliberations. ‘Free Prior Informed Consent’ was explicitly included in the Operational Guidelines at this meeting, although critiques point to limited progress in relation to a wider range of internationally recognized human rights standards. Efforts to incorporate policy language in operational guidance appear cautious.

Other rights-holders and concerns remain conspicuously absent from the dialogues at the Committee session. For example, UNESCO’s focus on gender equity is a priority issue but its influence in World Heritage Committee discussions is not yet particularly evident. In 2015, the English version of the Operational Guidelines was changed to remove gender specific language. This seems a small but important step. Another example that needs greater attention concerns the case of movements of peoples in contemporary refugee flows and people living in transboundary settings.

Rights issues appear easier to discuss when other language is used, yet generalized references to ‘communities’ also presents challenges.

Since 2007, the adoption of the ‘5th C’ [‘community’] as one of the World Heritage Committee’s strategic objectives, references to ‘community’ have been commonplace and widely accepted in the discussions by the World Heritage Committee. States Parties seem generally more willing to discuss ‘community’ issues compared to rights, yet there is not much clarity about the definition of ‘community’ and the issues are frequently challenged. One obvious consequence of this trend is that rights issues and other community interests are not distinct.

Current global concerns are evident in the committee discussions.

The World Heritage Committee appears ready to take up rights concerns in relation to major global events. The launch of #Unite4Heritage and the support it has mobilized in various ways reflects this trend where heritage destruction as a rights violation can be contrasted with the everyday rights infringements and wide range of legacy issues found in many World Heritage management situations.



'Legacy' effects persist for some World Heritage properties.

While resolving rights problems from the start is obviously desirable, there is a bank of 'legacy' effects across the more than 1000 already inscribed World Heritage properties, many of which experience difficulties with protection and conservation that intersect with rights concerns. For example, a group from the Mikisew Cree First Nation (whose land is included in Wood Buffalo National Park in Canada, inscribed in 1983 according to natural criteria) used the occasion of the Committee session to discuss their concerns with many delegates, demonstrating the potential usefulness of the State of Conservation Reporting process for raising rights (and unrecognized) cultural issues. Many State of Conservation reports, however, do not reflect on-going rights concerns, yet further use of the mechanism could be explored.

The existence of international rights instruments and existing debate helps, but does not confer easy application within the heritage sphere.

Although State Party representation is dominated by skilled diplomats who are knowledgeable about human rights standards, in many cases, the formal discussions of whether and how to apply these within the context of World Heritage did not reflect this existing awareness. This was somewhat bewildering for NGO observers, particularly in the 'working group' sessions on the revision of the Operational Guidelines. On the other hand, States Parties were ultimately able to agree to language which simply referenced UNDRIP. Similarly, in the case of Kaeng Krachan Forest Complex in Thailand (discussed above), the World Heritage Committee was able to accept the need to refer the nomination, in part because of the direct and formal involvement of the OHCHR. It appears that a certain level of international recognition can facilitate the take-up of rights concerns.

Inconsistent treatment of rights in the formal mechanisms of World Heritage.

Although many examples were noted in observations at the Committee session, there are currently few formal requirements or guides for systematic community involvement in the decisions taken by the World Heritage Committee. Given the lack of explicit formal requirements, benchmarks and criteria, the lack of consistent responses is understandable. In the medium term, seeking to craft complementary institutional measures, which reflect the new normative framework is likely to receive priority.

The role of civil society in articulating rights is significant.

Not surprisingly, *where* and *how* human rights were raised and articulated in the World Heritage Committee session was partly dependent on civil society organizations and Advisory Body inputs. This found its way into the discussions in various ways. For example, in the lengthy set of interventions about the Great Barrier Reef (Australia), several Committee delegations mentioned the importance of civil society (including Indigenous groups) in helping to properly recognize the issues and to contribute to the improved circumstances. In some cases, the World Heritage system has difficulties identifying rights issues without the alerts provided by civil society.

Despite their importance in informing the system, the ability of non-government actors to speak during the formal sessions is allowed during the World Heritage Committee session is limited. Yet in other ways, non-government 'Observers' have reasonably free access to the event as a whole (able to attend side events and working groups and meet socially with delegates). This allowed informal follow-up discussions between Advisory Bodies, State Party delegates and NGOs.

Until recently, not many NGOs have regularly attended the Committee sessions, but this seems to be increasing. World Heritage Watch - established for the first time in St Petersburg by NGOs in 2012, met for the second time in Bonn, but with an impressive range of issues and voices represented. It was clear that many NGOs do not have sufficient experience of the Committee's working methods and Operational Guidelines to know how best to influence the work.

The constant tending of the 'sovereignty of States Parties' in the implementation of the Convention is a relevant factor.

States Parties in general, and the Committee in particular, do not always take the advice that is provided, and the World Heritage Committee may well be hesitant to criticize State Party performance in relation to policy standards on rights. One NGO observer noted that although human rights is a founding principle for the UN system as a whole, state sovereignty can be a stronger imperative. Understanding these tensions is an important component of achieving improved outcomes.

Drawing lessons from other UNESCO Conventions might assist in bringing new working methods into World Heritage.

There is an emerging desire to develop more interaction between the cultural conventions; and the existence of a 'Sustainable Development policy' document for the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) was mentioned in the formal discussions of the draft made for World Heritage. Much of the discussion on 'other Conventions' focuses on the other UNESCO Conventions for culture, but there is great potential for learning across other multi-lateral instruments for nature conservation as well (including Ramsar, Biodiversity Convention, Biosphere Reserves).

DEFINITIONS

World Heritage Committee: "The World Heritage Committee meets once a year, and consists of representatives from 21 of the States Parties to the Convention elected by their General Assembly. At its first session, the Committee adopted its Rules of Procedure of the World Heritage Committee. The Committee is responsible for the implementation of the World Heritage Convention, defines the use of the World Heritage Fund and allocates financial assistance upon requests from States Parties. It has the final say on whether a property is inscribed on the World Heritage List. It examines reports on the state of conservation of inscribed properties and asks States Parties to take action when properties are not being properly managed. It also decides on the inscription or deletion of properties on the List of World Heritage in Danger."
<http://whc.unesco.org/en/committee/>

The funding 'crisis' for UNESCO is creating conditions where new ways of working are being considered.

The funding crisis has created limitations to the ability of the Secretariat to support and follow-up the issues that are raised. For example, IUCN noted that one impact of the budget constraints and staff movements is that the World Heritage Centre lost its natural heritage specialists. Cuts in core capacity fields raises questions about the ability to incorporate cultural diversity and rights into the work of the Committee and the Secretariat. In this context, the growing enthusiasm for the 'upstream' approaches might be helpful in enabling rights issues to be identified jointly by the Advisory Bodies and

States Parties at an early point in the processes of nominating properties to the World Heritage List.

Language and access to documentation remain important challenges understanding and participating in the World Heritage system.

Although there are 6 official languages, in practice important discussions happen in only English or French. Even though the processes (including documents) are increasingly made available on-line, access to technology and languages can inhibit the ability of communities to engage in World Heritage processes. The effort needed to access and understand the implications of World Heritage

decisions is considerable, especially for actors in the global South. Whereas some community representatives have the needed institutional support to pursue engagement, this is not always made possible.

Embedding 'rights' within the larger policy for "Sustainable Development" has been useful for introducing new concepts and principles.

The recent adoption of the Sustainable Development policy with an unprecedented substantive emphasis on human rights alongside gender, peace and security, inclusive development and more appears to offer an "acceptable" framework for State Parties. As debates were limited in Bonn and equally during the General Assembly in relation to the rights dimension, future rights-related activities in relation to different aspects of the World Heritage system will reveal in more detail how such policy imperatives are being received and acted upon. As with the sustainable development concept in general, such openings may be used to "settle" and contain a status quo, as it may be offer opportunities for change and empowerment.

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