

UN Permanent Forum on Indigenous Issues, Eleventh Session
New York, 7-18 May 2012

Agenda Item 4(a):

*Human rights: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples
(Tuesday, 15 May 2012)*

**Joint Submission on the
Lack of implementation of the UN Declaration on the Rights of Indigenous
Peoples in the context of UNESCO's World Heritage Convention**

Jointly submitted by: International Work Group for Indigenous Affairs (IWGIA); Forest Peoples Programme; Endorois Welfare Council, Kenya; Centre for Minority Rights Development Kenya (CEMIRIDE); Centre pour l'Education, la Formation et l'Appui aux Initiatives de Développement au Cameroun (CEFAID); Campaign for Survival and Dignity, India; 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); Adivasi Gothra Mahasabha, Kerala (representing Indigenous peoples of 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); Adivasi Gothra Jana Sabha, Kerala (Aralam Wildlife Sanctuary, Western Ghats, India); Kerala Girivarga Kanikkar Sangham, Kerala (Shendurney Wildlife Sanctuary, Neyyar WS, Peppara WS, Kulathupuzha Range, Palode Range); Pothigaimalai Adivasi Kanikkar Munneta Sangam, Tamilnadu (Kalakkad Mundanthurai Tiger Reserve, Western Ghats, India); Mainyoito Pastoralist Integrated Development Organization (MPIDO), Kenya; Minority Rights Group International; Association OKANI, Cameroon; PIDP SHIRIKA LA BAMBUTI, Democratic Republic of Congo; Innu Council of Nitassinan, Canada; Fundación para la Promoción del Conocimiento Indígena (FPCI), Panama; Asian Indigenous Peoples' Pact Foundation (AIPP); Asia Indigenous Peoples' Caucus on the UN Permanent Forum on Indigenous Issues; International Indigenous Women's Forum (FIMI) North America; Tebbteba Foundation, Philippines; Cordillera Peoples' Alliance, Philippines; Africa Indigenous Peoples Climate Change Network; Indigenous Peoples National Steering Committee on Climate Change, Kenya; Pastoralist and Hunter-Gatherer Network of East Africa; Pastoralist Communication and Development Alliance, Kenya; Association for Law and Advocacy for Pastoralists (ALAPA), Tanzania; Gundjeihmi Aboriginal Corporation, Australia; Saami Council; Rapa Nui Parliament; Enlace Continental de Mujeres Indígenas de las Américas (ECMIA); Centro de Cultura Pueblo-Nación Mapuche Pelonxaru, Chile; Network of the Indigenous Peoples-Solomons (NIPS), Solomon Islands; Na Koa Ikaika KaLahui Hawai'i; International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IAITPTF); Aha Kiole Council of Hawaii; Centro de Culturas Indígenas del Perú (CHIRAPAQ), Peru; The Koani Foundation, Hawai'i; Observatorio de Derechos Humanos de Pueblos Indígenas, Argentina; Organisation Tamaynut, Morocco; Inuit Circumpolar Council Greenland; Russian Association of Indigenous Peoples of the North (RAIPON); The Aldet Centre-Saint Lucia; Commonwealth Indigenous Peoples and Local Communities Rights (CIPLC Rights); Gema Alam West Nusa Tenggara, Indonesia; Confederación Indígena Tayrona, Colombia; Kirat Welfare Society, Nepal; American Indian Law Alliance; Confédération des Associations Amazighes du Sud Maroc (Tamunt n Iffus), Morocco; Indigenous World Association; DAMAAN Development Organization, Pakistan; 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; Organización Indígena Kus-Kurá S.C., Costa Rica; Red de mujeres indígenas sobre Biodiversidad de América Latina y El Caribe (RMIB-LAC); Asia Pacific Indigenous Youth Network (APIYN); Aliansi Masyarakat Adat Nusantara (AMAN), Indonesia; First Peoples Human Rights Coalition; Canadian Friends Service Committee (Quakers); Almáciga; Cultural Survival; Asociación de Abogados/as de Derecho Indígena (AADI), Argentina; Samdhana Institute; Netherlands Centre for Indigenous Peoples (NCIV); Centre for Human Rights and Empowerment, Nigeria; Rutu Foundation for Intercultural Multilingual Education; Instituto Peruano de Educación en Derechos Humanos y la Paz (IPEDEHP).

Introduction

1. At the tenth session of the UN Permanent Forum on Indigenous Issues, in May 2011, over 70 indigenous peoples' organizations and NGOs presented a joint statement on the continuous violations of the principle of free, prior and informed consent in the implementation of UNESCO's World Heritage Convention.¹ The statement was also submitted to UNESCO, the World Heritage Committee and the Committee's advisory bodies (IUCN, ICOMOS and ICCROM), in advance of the World Heritage Committee's 35th session in June 2011.
2. The joint statement expressed serious concern about the ongoing disrespect of the principle of free, prior and informed consent by the World Heritage Committee when it designates sites in Indigenous peoples' territories as UNESCO World Heritage sites.²
3. The statement drew particular attention to three World Heritage nominations that were under consideration by the World Heritage Committee at its 35th session: the nominations of **“Kenya Lake System in the Great Rift Valley”**, **“Western Ghats”** and **“Trinational de la Sangha”**. The statement noted that all three of these nominations had been prepared without the meaningful involvement of, or consultation with, the Indigenous peoples concerned and without due consideration of Indigenous cultural values. It urged the World Heritage Committee to *defer* these nominations, and call on the respective States Parties to consult and collaborate with the affected Indigenous peoples, 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.
4. We appreciate the serious consideration that the Permanent Forum gave the joint statement and the recommendations that the Forum adopted in response. We also highly appreciate the Forum's follow-up during the past year, including its participation in the 35th session of the World Heritage Committee and the Chairperson's interview recently published in UNESCO's World Heritage Review.³ We recall that in its recommendations last year the Permanent Forum encouraged a review of existing procedures for the preparation and processing of World Heritage nominations and made itself available to assist in the review and revision of the World Heritage Convention's Operational Guidelines. The Forum also recommended “that the UNESCO World Heritage Committee, and the advisory bodies IUCN, ICOMOS and ICCROM, scrutinize current World Heritage nominations to ensure they comply with international norms and standards of free, prior and informed consent”.⁴
5. Unfortunately, the joint statement did not receive serious consideration from the World Heritage Committee. The Committee did not even acknowledge receipt of the joint statement nor did it discuss the concerns expressed in the statement regarding the nominations of “Kenya Lake System”, “Western Ghats” and “Trinational de la Sangha” during the 35th session in June 2011. Regrettably, in all of the three cases the points of contention until today remain unresolved, largely unaddressed or even disregarded.
6. We reiterate here the concerns and recommendations contained in last year's joint statement. While recognizing recent references to the rights of Indigenous peoples by the World Heritage Committee,⁵ we remain deeply concerned about the working processes through which the UNESCO World Heritage Convention is implemented and the lack of transparency of the existing procedures. We are concerned that effective consultation and consent processes are neither required nor recommended by the Convention's Operational Guidelines,

nor are such processes consistently carried out by States parties or by the advisory bodies. There is not even a requirement for World Heritage nominations to be made publicly available before the World Heritage Committee takes a decision. We are also deeply concerned that there is no effective way for Indigenous peoples to bring concerns regarding World Heritage nominations directly to the attention of the World Heritage Committee. We also draw attention to the fact that only Member States of the World Heritage Committee are allowed to speak when nominations are discussed and that only very limited and restricted procedures exist for Indigenous peoples and NGOs to participate in the World Heritage Committee's sessions. The existing participation procedures are not in accordance with international standards related to the right of Indigenous peoples to participate in decision-making in matters that would affect their rights.⁶ They are also in conflict with international commitments and principles relating to public participation in environmental decision-making.⁷

Kenya Lake System in the Great Rift Valley (Kenya)

7. In the case of "Kenya Lake System", the World Heritage Committee completely ignored the objections expressed in the joint statement. It inscribed "Kenya Lake System" on the World Heritage List,⁸ without obtaining the free, prior and informed consent of the Endorois and despite the fact that the Endorois Welfare Council (the main organization representing the Endorois) had urged the Committee to defer the nomination because of the lack of meaningful involvement and consultation with the Endorois.⁹ This raises very serious and pressing concerns due to the fact that "Kenya Lake System" includes the Lake Bogoria National Reserve, which was the subject of the recent landmark ruling of the African Commission on Human and Peoples' Rights in the *Endorois* case, which affirmed the rights of ownership of the Endorois to their ancestral lands around Lake Bogoria.¹⁰ UNESCO was made aware of the ruling in letters sent to the World Heritage Centre in August 2009 and April 2010.¹¹
8. Following the World Heritage listing of "Kenya Lake System", the African Commission expressed its deep concern about the conduct of the World Heritage Committee in a special resolution on the issue. The Commission emphasized "that the inscription of Lake Bogoria on the World Heritage List without involving the Endorois in the decision-making process and without obtaining their free, prior and informed consent contravenes the African Commission's Endorois Decision and constitutes a violation of the Endorois' right to development under Article 22 of the African Charter [on Human and Peoples' Rights]".¹²

Western Ghats (India)

9. In the case of "Western Ghats", the World Heritage Committee referred¹³ the nomination back to the State Party, among other things to allow the State Party to "Facilitate increased engagement with all stakeholders to build awareness and support, foster participatory governance approaches, and ensure equitable sharing of benefits".¹⁴ The Government of India has resubmitted a revised nomination in January 2012, however, there still has not been any meaningful involvement and consultation of the affected Indigenous peoples and their free, prior and informed consent has not been attained. This is underscored by the fact that the revised nomination documents have not been made public by the Indian Government and are also kept secret by UNESCO. It is clear then that the concerns raised in last year's joint statement have not been adequately addressed. The revised nomination of Western Ghats is being reviewed by IUCN and will be considered by the World Heritage Committee at its

upcoming 36th session in Saint Petersburg (24 June - 6 July 2012). We are deeply troubled by the lack of transparency and the secrecy of the procedures.

10. It is noteworthy that the concerns raised in last year's joint statement have been corroborated in the final report of the Western Ghats Ecology Expert Panel (WGEEP).¹⁵ The World Heritage Committee has explicitly requested India to take account of any recommendations of the WGEEP in deciding on the scope and composition of the serial World Heritage nomination.¹⁶ According to its final report, the WGEEP feels that "there is a need for greater participation of local people and communities in formulation and implementation" of the World Heritage nomination.¹⁷ In regard to the scope and composition of the serial World Heritage nomination, the WGEEP recommends:

"It is proposed that the further process of fine-tuning the limits of the various zones, deciding on management regimes and the implementation be a participatory process going right down to gram sabhas [village assemblies]. WGEEP believes that these proposals are far more comprehensive, and would more effectively serve the objectives of the UNESCO Heritage Programme, than the proposals currently submitted by the Government of India. Importantly, the WGEEP proposals would overcome the serious and quite genuine objections raised at the UN Permanent Forum on Indigenous Issues on 17 May 2011 at the Tenth Session..."¹⁸

We are deeply concerned that the revised nomination (additional information) submitted by the Government of India in January 2012, which could only be obtained through unofficial sources, conceals the conclusions of the WGEEP regarding the World Heritage nomination.¹⁹ We are also concerned that the nomination documents still do not acknowledge nor recognize the Forest Rights Act according to which the village assemblies (gram sabhas) have statutory authority over the management and protection of significant parts of the nominated areas.²⁰

Trinational de la Sangha (Congo / Cameroon / Central African Republic)

11. The nomination of "Trinational de la Sangha" was referred back to the States Parties, among other things to allow them to "Increase further the involvement and representation of local and indigenous communities in the nomination process and future management... in order to fully recognize the rich tapestry of cultural and spiritual values associated with the property, and in recognition of contributions by local and indigenous communities, such as local knowledge and adapted resource use practices..." The World Heritage Committee also called on the States Parties to "Evaluate the potential application of cultural criteria to the nominated property (i.e. nomination as a mixed property), taking into account the rich indigenous cultural heritage of the area".²¹
12. The governments of Congo, Cameroon and the Central African Republic have resubmitted a revised nomination of Trinational de la Sangha on 1 February 2012, which is being reviewed by IUCN and will be considered by the World Heritage Committee at its upcoming 36th session. Again the revised nomination has not been made publicly available and is kept secret by UNESCO. Consultations with some few Indigenous communities in Cameroon and the Central African Republic were carried out during January 2012, the validity of which has been challenged, however. The consultations in Cameroon were reportedly entirely inadequate and were carried out at the very last minute, just before the nomination document was resubmitted to UNESCO. It even appears that some of the consultation meetings were held after the submission was handed in. Not enough time was provided for the consultation

meetings, some of which were under thirty minutes. Information given during the meetings was highly insufficient and did not include an explanation of the potential risks of World Heritage listing for Indigenous peoples. Moreover, most of the communities living in the TNS were not consulted at all and large areas were not visited by the consultation team. It also appears that the authorities decided against re-nominating the property as a mixed site (in recognition of the rich Indigenous cultural heritage of the area) already before the consultations were carried out and that this was not presented as an option to the affected Indigenous peoples.²²

40th Anniversary of the World Heritage Convention

13. We note that 2012 marks the 40th Anniversary of the World Heritage Convention, which is being celebrated under the theme “World Heritage and Sustainable Development: the Role of Local Communities”. As UNESCO has underlined, the 40th Anniversary provides an “excellent opportunity... to address concerns that have been raised within the framework of the Permanent Forum and to work towards a constructive solution to the challenges that the United Nations Declaration on the Rights of Indigenous Peoples brings to the international community as a whole.”²³
14. We welcome with appreciation that the World Heritage Committee last year adopted a decision in which it encourages States Parties to involve indigenous peoples in decision making and to respect their rights when nominating, managing and reporting on World Heritage sites in their territories.²⁴ While this decision is an important step forward, it will need to be followed up with adequate, stringent changes to the World Heritage Committee’s procedures and Operational Guidelines in order to have a practical effect.

Recommendations

We call on the Permanent Forum to:

- a) continue to engage with UNESCO regarding the implementation of the World Heritage Convention and continue to send a representative to the ordinary sessions of the World Heritage Committee, including the upcoming 36th ordinary session in Saint Petersburg, Russian Federation (24 June - 6 July 2012);
- b) bring the specific concerns regarding the World Heritage nominations of “Western Ghats” and “Trinational de la Sangha” to the attention of the World Heritage Committee and urge the Committee not to approve these nominations, or any other nominations of sites in Indigenous peoples’ territories, until it has been ensured that the Indigenous peoples concerned have been adequately consulted and involved and that their free, prior and informed consent has been obtained;
- c) recommend to the Governments of India, Congo, Cameroon and Central African Republic to withdraw the nominations of “Western Ghats” and “Trinational de la Sangha”, with a view to carrying out more extensive, meaningful consultations with the Indigenous peoples concerned and obtaining their free, prior and informed consent *before* resubmitting any revised nominations;

- d) urge the World Heritage Committee's advisory bodies carrying out technical evaluations of World Heritage nominations (IUCN and ICOMOS), to recommend the deferral of World Heritage nominations whenever it cannot be verified that the affected Indigenous peoples have been adequately consulted and involved, that their priorities and needs are appropriately reflected in the nomination documents and management plans, and that their free, prior and informed consent has been obtained;
- e) urge IUCN to continue calling for the *deferral* of the nominations of “Western Ghats” and “Trinational de la Sangha”;²⁵
- f) join the African Commission on Human and Peoples' Rights in expressing concern about the inscription of Lake Bogoria National Reserve on the World Heritage List, without the free, prior and informed consent of the Endorois through their own representative institutions;
- g) urge the Government of Kenya, the World Heritage Committee, UNESCO and IUCN to ensure the full and effective participation of the Endorois in the management and decision-making of the “Kenya Lake System” World Heritage area, through their own representative institutions, and to ensure the implementation of the African Commission's Endorois Decision in the World Heritage Area;
- h) continue to insist that the World Heritage Committee review and revise its current procedures and Operational Guidelines, in order to ensure that the implementation of the World Heritage Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples and that Indigenous peoples' rights are respected, protected and fulfilled in World Heritage areas;²⁶
- i) continue to call on the World Heritage Committee to revisit the initial efforts to establish a World Heritage Indigenous Peoples' Council of Experts (WHIPCOE) and to revive efforts to establish an appropriate mechanism through which Indigenous peoples can provide advice to the World Heritage Committee, effectively bring concerns to its attention and effectively participate in its decision-making processes;²⁷
- j) urge the World Heritage Committee and UNESCO to establish the necessary procedures to remedy the existing lack of transparency in the implementation of the World Heritage Convention and in the processing of World Heritage nominations. Such procedures must ensure, *inter alia*, that World Heritage nominations are made publicly available *as soon as they are received*, so that affected Indigenous peoples, communities and other rights- and stakeholders have sufficient time to review the nominations and provide input and comments in advance of any decision being taken by the World Heritage Committee;
- k) recommend that UNESCO and the World Heritage Committee establish a process through which existing World Heritage sites may be reviewed with reference to the requirements of the UN Declaration on the Rights of Indigenous Peoples;
- l) recommend that States parties nominating sites in Indigenous peoples' territories be required to provide information on the existing legal framework relating to the rights of Indigenous peoples (including laws, regulations, domestic and international jurisprudence and relevant pending court cases), in order to enable the Committee and its advisory bodies to assess

whether the management and decision-making framework for the nominated area meets the requirements of the UN Declaration on the Rights of Indigenous Peoples.

Endnotes

¹ *Joint Statement on Continuous violations of the principle of free, prior and informed consent in the context of UNESCO's World Heritage Convention, UNPFII, Tenth Session* (delivered by Mililani Trask on 17 May 2011): <http://www.international-alliance.org/Joint%20Statement%20of%20Indigenous%20organizations%20UNESCO.pdf>.

² This is a concern that has been raised with the Permanent Forum on many occasions, by Indigenous peoples and organizations from many different parts of the world. See the **Statement of the UNPFII 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... 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.”

³ **Interview with Myrna Cunningham, Chair of the UNPFII, World Heritage Review No. 62: World Heritage and Indigenous Peoples** (World Heritage Centre, 1 April 2012), <http://www.pfdheritage.com/wh62en/>, p. 54 ff.

⁴ **Permanent Forum on Indigenous Issues, Report on the tenth session (16-27 May 2011)**, Doc. E/2011/43-E/C.19/2011/14, paras. 40-42:

“40. The Permanent Forum confirms its intention to participate in the 35th session of the World Heritage Committee (Paris, 19 to 29 June 2011). The objective of such participation is to encourage a review of existing procedures with regard to rights-related mechanisms, norms and standards in the preparation and processing of world heritage nominations by States parties.

41. The Permanent Forum welcomes the initiative of UNESCO, the International Union for Conservation of Nature (IUCN), the International Council on Monuments and Sites (ICOMOS) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (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 regard to nominations and site assessments. The Permanent Forum further recommends that UNESCO invite indigenous peoples' representatives and experts to contribute to deliberations on and recommended changes to procedures and operational guidelines.

42. The Permanent Forum recommends that the UNESCO World Heritage Committee, and the advisory bodies IUCN, ICOMOS and ICCROM, scrutinize current World Heritage nominations to ensure they comply with international norms and standards of free, prior and informed consent.”

⁵ See para. 14 below.

⁶ See *UN Declaration on the Rights of Indigenous Peoples*: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights...” (Art. 18); “The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration... Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established” (Art. 41).

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

Also see the *Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums* (Doc. ECE/MP.PP/2005/2/Add.5) adopted in 2005 by the second meeting of the Parties to the Aarhus Convention, which “relate to all international stages of any relevant decision-making process in matters relating to the environment” and “are intended, through their application, to positively influence the way in which international access is secured in international forums in which Parties to the Convention participate” (paras. 5, 6).

The intransparency of the World Heritage Convention’s procedures is also incompatible with **Principle 10 of the Rio Declaration on Environment and Development** (1992), UN Doc. A/Conf. 151/5/Rev. 1:

“Principle 10 – Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

⁸ **WHC Decision 35 COM 8B.6** (see Doc. WHC-11/35.COM/20, p. 171 f.).

⁹ *Joint Statement on Continuous violations of the principle of free, prior and informed consent in the context of UNESCO’s World Heritage Convention* (see above). The joint statement was submitted to UNESCO, the World Heritage Committee and its advisory bodies on 23 May 2011.

¹⁰ **Decision on Communication 276 / 2003 - Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya**, adopted by the African Commission (ACHPR) at its 46th Ordinary Session (11-25 November 2009), www.minorityrights.org/download.php?id=748.

In the decision, the ACHPR condemns the forcible eviction of the Endorois from their ancestral lands surrounding Lake Bogoria for the purpose of creating a wildlife reserve and tourist facilities. The Commission found that the evictions and the failure to adequately involve the Endorois in the management and decision-making of the reserve had violated their human rights to property, natural resources, development, culture and religion (Articles 1, 8, 14, 17, 21 and 22 of the *African Charter on Human and Peoples’ Rights*). It ordered Kenya, among other things, to restore the Endorois to their traditional land and to compensate them for all the loss suffered. Underlying the case was the fundamental issue that the Endorois had been excluded from all decision-making regarding the treatment of their lands. The ruling explicitly states that “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” (para. 291).

¹¹ See the **letters sent to UNESCO’s World Heritage Centre on behalf of the Endorois by Minority Rights Group International and CEMIRIDE, dated 19 June 2009, 3 August 2009 and 6 April 2010** (on file with MRG). The letters noted that the Endorois had not been consulted or included in the UNESCO designation process and informed UNESCO of the land dispute involving the Lake Bogoria area and the decision of the African Commission of Human and Peoples’ Rights. They urged UNESCO to include the Endorois within the consultation process, via the Endorois Welfare Council, and to take into account the wishes of the Endorois community regarding their land. The Endorois never received a response to their letters from UNESCO and there is no indication that the World Heritage Centre ever forwarded any of the letters to the World Heritage Committee or its Advisory Bodies (although the Director of the World Heritage Centre forwarded the first letter to the Kenya Wildlife Service, who dismissed the claims in a written response). None of the information was included in any of the official documentation prepared for the World Heritage Committee.

The **letter of 6 April 2010, sent to the World Heritage Centre by MRG and CEMIRIDE**, stated:

“We refer to MRG’s letters to you of 19 June 2009 and 3 August 2009 voicing concerns regarding the designation of the Lake Bogoria area in Kenya as a World Heritage Site.

As this letter explained, there is a land dispute involving the Lake Bogoria area before the African Commission on Human and Peoples’ Rights, which centres on the Endorois peoples’ indigenous property rights claim to the Lake Bogoria region. In February 2010, the African Commission’s decision was adopted by the African Union and became public. Crucially, it held that the Endorois are the rightful owners of the land in question, which therefore

should be returned to them. A copy of the decision is enclosed, together with a short summary of the same, for your ease.

Despite the Endorois' rights over these lands, they have not been consulted or included in the UNESCO designation process. As a result, and in accordance with UNESCO's rules of procedure, we strongly urge that the Endorois are included within the consultation process, via the Endorois Welfare Council. Failure to take into account the wishes of the Endorois community regarding their land will continue to undermine and interfere with the Endorois' property, economic, cultural and religious rights in relation to the area, in violation of the African Commission's decision.

We would be grateful for your consideration of our request, and look forward to hearing from you in due course. Should you require any further information, please do not hesitate to contact us."

¹² *ACHPR/Res.197 (L) 2011: Resolution on the protection of indigenous peoples' rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site*, adopted on 5 November 2011. [For the full text of the resolution see Annex I below.](#)

¹³ On the difference between a deferral and a referral see the **2011 Operational Guidelines for the Implementation of the World Heritage Convention**, paras. 159-160. In the case of a referral, only some additional information is required and the nomination may be resubmitted to the World Heritage Committee in the following year. In the case of a deferral, "more in depth assessment or study, or a substantial revision by the State Party" is necessary and the revised nomination will be re-evaluated by the relevant advisory body/bodies in the same way as a new nomination.

¹⁴ **WHC Decision 35 COM 8B.9** (Doc. WHC-11/35.COM/20, p. 178), para. 2.e). The Committee also called on India to "strengthen community membership and input" in the management mechanisms for the proposed World Heritage site (Ibid., para. 2.f)).

¹⁵ The WGEEP was constituted by the Indian Ministry of Environment and Forests (the very agency that has submitted the World Heritage nomination) to demarcate ecologically sensitive areas and make recommendations for the conservation, protection and rejuvenation of the Western Ghats Region. The final *Report of the Western Ghats Ecology Expert Panel* was issued on 31 August 2011 and is available (in two Parts) at: <http://www.indiaenvironmentportal.org.in/reports-documents/report-western-ghats-ecology-expert-panel-2011>.

¹⁶ **WHC Decision 35 COM 8B.9**, para. 2.a (see Doc. WHC-11/35.COM/20, p. 178).

¹⁷ *Report of the Western Ghats Ecology Expert Panel*, Part II, p. 322.

¹⁸ Ibid., Part II, p. 121. Similarly, Part I, p. 40: "WGEEP... believes that it is inappropriate to depend exclusively on Government agencies for constitution and management of [Ecologically Sensitive Zones]. Instead, WGEEP suggests that the final demarcation of the Zones (including those surrounding PAs, as also in context of the UNESCO Heritage Site proposal)... and fine tuning of the regulatory as well as promotional regimes, must be based on extensive inputs from local communities and local bodies..."

The WGEEP report notes that generally "the genuine involvement and empowerment of local communities [in forest protection and management] is limited" in the Western Ghats Region (Part II, p. 121) and that "The Forest Rights Act (FRA) 2006 has yet to be implemented in its true spirit and the State Forest Departments to be alerted to the fact that implementation of this act is needed for future forestry governance" (Part II, p. 66).

The *Forest Rights Act* recognizes forest dwellers' rights and makes conservation more accountable. Meant to undo the "historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystems" (Preamble), the Act recognizes the Gram Sabha (village assembly) as the authority empowered to "protect wild life, forest and biodiversity" and to "ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage" (Chap. III).

¹⁹ In response to the Committee's request that India "review the scope and composition of the current serial nomination to take account of any recommendations of the [WGEEP]", the additional information merely states (misleadingly) that "The matter of determining the inclusion/ exclusion of sites in the serial nomination has not been dealt by the Western Ghats Ecology Expert Panel and accordingly there are no recommendations on this issue." (See *Response to the World Heritage Committee Decision 35 COM 8B.9 – Submitted by State Party: India to UNESCO World Heritage Centre, Paris, January, 2012*, pp. 10-11).

²⁰ See footnote 18 above. The Forest Rights Act has not been implemented in the various protected areas included in the World Heritage nominated area and its implications have not been taken into account in the World Heritage nomination. These should be essential prerequisites for any revised nomination to be accepted by the World Heritage Committee.

²¹ **WHC Decision 35 COM 8B.4**, paras. 2.b) and 2.d) (see Doc. WHC-11/35.COM/20, pp. 169-170).

²² See CEFAID, “**Projet d’inscription du Tri National de la Sangha en Patrimoine mondial de l’UNESCO par les Services de conservation: Expérience du processus de consultation des communautés locales et autochtones vivant autour du Parc National de Lobéké du 26 Janvier au 02 Février 2012 – Cameroun**”, <http://www.forestpeoples.org/topics/environmental-governance/news/2012/04/report-cefaid-consultations-cameroon-world-heritage-sit>.

Also see **Forest Peoples Programme**, “**Report by CEFAID questions the validity of the consultations in Cameroon for the World Heritage Site nomination of the Tri-National de la Sangha (TNS) protected area**”, *FPP E-Newsletter April 2012*, <http://www.forestpeoples.org/topics/environmental-governance/news/2012/04/report-cefaid-questions-validity-consultations-cameroon>.

²³ **Statement by UNESCO, 10th Session of the Permanent Forum on Indigenous Issues, 17 May 2011**, available at www.docip.org/gsd/collect/cendocdo/index/assoc/HASHbfc/9a7a182d.dir/PF11douglas071.pdf.

Also see **World Heritage Committee Decision 35 COM 12D (2011)**, para. 10:

“[The World Heritage Committee] Acknowledges the statements made by the Representative of the United Nations Permanent Forum on Indigenous Issues (UNPFII) at its 34th and 35th sessions, held in Brasilia (Brazil, 2010) and Paris (UNESCO Headquarters, 2011), respectively, and notes that UNESCO is in the process of preparing a policy with regard to its programs on indigenous peoples; further notes that these considerations should be included in the theme of the 40th anniversary, “World Heritage and Sustainable Development: the Role of Local Communities”;

²⁴ **WHC Decision 35 COM 12E (2011)**, para. 15 (see Doc. WHC-11/35.COM/20, p. 270 ff.):

“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;...”

²⁵ In both cases IUCN recommended a *deferral* rather than a *referral* last year. See *IUCN World Heritage Evaluations 2011*, Doc. WHC-11/35.COM/INF.8B2, pp. 10 and 44.

²⁶ See **Permanent Forum on Indigenous Issues, Report on the tenth session (16-27 May 2011)**, Doc. E/2011/43-E/C.19/2011/14, paras. 40-42.

Also see the **Statement of the UNPFII at the 34th Session of the UNESCO World Heritage Committee, Brasilia, 2010**, Recommendation 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.”

Also see “**Interview with Myrna Cunningham, Chair of the United Nations Permanent Forum on Indigenous Issues (UNPFII)**”, *World Heritage Review No. 62 – World Heritage and Indigenous Peoples (UNESCO: World Heritage Centre, 1 April 2012)*, <http://www.pfdheritage.com/wh62en/>, pp. 54, 56:

“We are well aware that the World Heritage Convention and its Operational Guidelines do not offer the necessary provisions on the rights of indigenous peoples, nor do they include other references to human rights or the rights of indigenous peoples. I understand that this is due in part to the early adoption of the Convention, in 1972, when

international and national protected area policy frameworks paid little importance to the relationship between indigenous peoples and their communities. With regard to indigenous peoples' involvement, for those World Heritage sites that are already established, new provisions and guidelines need to be adopted to ensure full and effective participation of indigenous peoples in the management and decision-making concerning these sites. [...]

It is very important for Permanent Forum members to participate in World Heritage Committee sessions... [T]wo members have already provided short statements to the World Heritage Committee in the past year on indigenous peoples' rights. The focus of their statements has been on the need to consult with indigenous peoples when inscribing World Heritage sites and to request that the implementation of the World Heritage Convention is consistent with the United Nations Declaration on the Rights of Indigenous Peoples..."

Similarly, the **UN Expert Mechanism on the Rights of Indigenous Peoples** has recommended, in *Expert Mechanism advice No. 2 (2011): indigenous peoples and the right to participate in decision-making*, UN Doc. A/HRC/18/42, Annex, para. 38:

"UNESCO should enable and ensure effective representation and participation of indigenous peoples in its decision-making, especially with regard to the implementation and supervision of UNESCO Conventions and policies relevant to indigenous peoples, such as the 1972 World Heritage Convention. Robust procedures and mechanisms should be established to ensure indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites."

²⁷ See **Statement of the UNPFII at the 34th Session of the UNESCO World Heritage Committee, Brasilia, 2010**, Recommendation 3:

"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."

Likewise, **Intervention by UNPFII Member Mr. Paul Kanyinke Sena at the 35th Session of the World Heritage Committee, Paris, 2011**, http://www.iwgia.org/news/search-news?news_id=314.

Annex I:

ACHPR/Res.197 (L) 2011: Resolution on the protection of indigenous peoples' rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site

The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 50th Ordinary Session held from 24th October to 5th November 2011 in Banjul, The Gambia:

Recalling its mandate to promote human and peoples' rights and ensure their protection in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Considering Article 22 of the African Charter which recognizes that all peoples have the right to their economic, social and cultural development and that States have the duty, individually or collectively, to ensure the exercise of the right to development;

Recalling its Decision on Communication 276 / 2003 - *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (Endorois Decision), adopted at the 46th Ordinary Session held from 11 – 25 November 2009 in Banjul, The Gambia;

Noting that this decision affirms the rights of ownership of the Endorois to their ancestral lands around Lake Bogoria and that these rights are protected by Art. 14 of the African Charter;

Noting Article 1 of the Constitution of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) on the purposes and functions of the Organization, according to which UNESCO shall “further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations”;

Recalling the United Nations Declaration on the Rights of Indigenous Peoples, a universal international human rights instrument that has attained consensus among UN Member States, and reaffirming the African Commission's commitment to fostering the values and implementing the principles enshrined in this Declaration;

Bearing in mind Advice No. 2 (2011) of the UN Expert Mechanism on the Rights of Indigenous Peoples, which calls on UNESCO and the World Heritage Committee to establish robust procedures and mechanisms to ensure that indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites;

Noting with concern that there are numerous World Heritage sites in Africa that have been inscribed without the free, prior and informed consent of the indigenous peoples in whose territories they are located and whose management frameworks are not consistent with the principles of the UN Declaration on the Rights of Indigenous Peoples;

Deeply concerned that the World Heritage Committee at its 35th session, on the recommendation of International Union for the Conservation of Nature (IUCN), inscribed Lake Bogoria National Reserve on the World Heritage List, without obtaining the free, prior and informed consent of the Endorois through their own representative institutions, and despite the

fact that the Endorois Welfare Council had urged the Committee to defer the nomination because of the lack of meaningful involvement and consultation with the Endorois;

1. Emphasizes that the inscription of Lake Bogoria on the World Heritage List without involving the Endorois in the decision-making process and without obtaining their free, prior and informed consent contravenes the African Commission's Endorois Decision and constitutes a violation of the Endorois' right to development under Article 22 of the African Charter;

2. Urges the World Heritage Committee and UNESCO to review and revise current procedures and Operational Guidelines, in consultation and cooperation with the UN Permanent Forum on Indigenous Issues and indigenous peoples, in order to ensure that the implementation of the World Heritage Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples and that indigenous peoples' rights, and human rights generally, are respected, protected and fulfilled in World Heritage areas;

3. Calls on the World Heritage Committee to consider establishing an appropriate mechanism through which indigenous peoples can provide advice to the World Heritage Committee and effectively participate in its decision-making processes;

4. Urges IUCN to review and revise its procedures for evaluating World Heritage nominations as well as the state of conservation of World Heritage sites, with a view to ensuring that indigenous peoples are fully involved in these processes, and that their rights are respected, protected and fulfilled in these processes and in the management of World Heritage areas;

5. Urges the Government of Kenya, the World Heritage Committee and UNESCO to ensure the full and effective participation of the Endorois in the decision-making regarding the "Kenya Lake System" World Heritage area, through their own representative institutions;

Done in Banjul, The Gambia, 5 November 2011