



minority  
rights  
group  
international



BY EMAIL

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29 January 2018

**Human rights violations against the Batwa in Kahuzi-Biega National Park, Democratic Republic of Congo**

Dear Ms Rössler and Mr Badman,

We are writing to voice our deep concern regarding the continuous and ongoing violations of the human rights of the Batwa indigenous people of the Kahuzi-Biega National Park (PNKB) and to draw your attention to the recent murder of a Batwa boy by PNKB park guards. We also want to inform you about an ongoing land dispute regarding the PNKB between the Batwa and the DRC government, including the Congolese Institute for the Conservation of Nature (ICCN), which is currently pending before both national courts and the African

Commission on Human and Peoples' Rights (ACHPR). Brief details of each of our organisations, their experience and interest in this matter, are set out in Annex 1 to this letter.

The Batwa were evicted from their ancestral land in the PNKB following its creation as a National Park in the 1970s. The establishment of the PNKB was not least the result of the lobbying efforts of international conservation organisations, including IUCN.<sup>1</sup> The local inhabitants of the area, including the Batwa, were not consulted when the PNKB was created.<sup>2</sup> The PNKB was then inscribed on the World Heritage List in 1980 at the fourth session of the World Heritage Committee, again without prior consultation with, let alone the consent of, the Batwa community.

These historic violations of the rights of the Batwa of the PNKB are intensified and continued by the fact that the Batwa have not received any kind of redress for the loss of their lands, as required under international law on the rights of indigenous peoples. The UN Declaration on the Rights of Indigenous Peoples (Declaration), which the DRC voted favourably to adopt in 2007, places a duty upon States to provide effective redress for dispossession of indigenous peoples' lands, territories or resources.<sup>3</sup> In a similar vein, the Declaration affirms indigenous peoples' right to redress where their lands, territories and resources have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.<sup>4</sup>

In the case *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya*, the Kenyan government's failure to provide adequate compensation to the Endorois or restitution of their land was found to violate the African Charter on Human and Peoples' Rights (the Charter).<sup>5</sup> Similarly, in *African Commission of Human and Peoples Rights v Kenya* (the Ogiek case), the African Court of Human and Peoples' Rights found violations of the Charter following the systematic denial of the Ogiek's property, natural resource, cultural and religious rights over their ancestral lands in Kenya's Mau Forest, and the failure to both adequately consult with the Ogiek over the development of their lands and to compensate them for the denial of those rights. The Committee on the Elimination of Racial Discrimination has stated that indigenous peoples who have been deprived of their traditional lands have the right to restitution of such land or to just, fair and prompt compensation only where restitution is not possible.<sup>6</sup>

To date, the Batwa of the PNKB have not been involved in any aspect of management of the designated land, nor do they receive any share of the benefits from the PNKB as a World Heritage site. They are also prohibited from entering the PNKB and using its resources. Moreover, although the World Heritage Committee has examined the state of conservation of the PNKB annually since 1997, the Committee has never paid any attention to the plight of the Batwa and they are not mentioned in any of its decisions. We have also noted with concern that the 2017 Reactive Monitoring Mission of the World Heritage Centre and IUCN

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<sup>1</sup> In 1966, the 9th General Assembly of IUCN recommended "that the Congo Government should undertake without delay the establishment of a National Park in the Kahuzi-Biega region and the administrative measures necessary to ensure the immediate strengthening of protection..." (Res. 15). The recommendation was reiterated by the 10th General Assembly of IUCN in 1969 (Res. 6).

<sup>2</sup> UNEP-WCMC & IUCN, 'Kahuzi-Biega National Park, Democratic Republic of the Congo' (2011), at page 4.

<sup>3</sup> UN Declaration on the Rights of Indigenous Peoples, Arts. 8, 10.

<sup>4</sup> *Ibid.*, Art. 28.

<sup>5</sup> African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya*, Communication No. 276/2003, para. 268.

<sup>6</sup> *General Recommendation XXIII on the rights of indigenous peoples*, para. 5.

failed to meet with representatives of the Batwa.<sup>7</sup> In 2014, representatives of Batwa communities evicted by the creation of the PNKB (and with IUCN oversight and participation) made use of the IUCN Whakatane dialogue process to help bring all sides to the table to seek to regain their collective rights to lands that were gazetted without their consent, ancestral lands they have sustained and been sustained by. These efforts saw initially solid results and a promising roadmap was adopted in 2014. The roadmap had two key aspects: requiring the Provincial and Park Authorities to meet the immediate livelihood needs of the Batwa; and agreeing that the Batwa would be provided pilot areas of the PNKB where they can live and demonstrate that they can sustainably use and protect their forests. If successful, then this Batwa community tenure-based conservation, with support from the PNKB and the ICCN, would be rolled out across the PNKB.

However, no concrete steps have been taken by the ICCN since the adoption of this roadmap, and neither of the agreed elements of the roadmap has progressed beyond talking. The process today has been unilaterally stopped by the ICCN following the tragic incident in the PNKB on the morning of Saturday, 26 August 2017.

### ***Ongoing land dispute involving the PNKB***

The above-mentioned dispute centres on the Batwa people's indigenous rights over the land that is now within the PNKB. The Batwa are one of the most marginalised ethnic groups in the DRC. Prior to their eviction from the PNKB, the Batwa had inhabited the forests around Mounts Kahuzi and Biega since time immemorial and practised a subsistence lifestyle. The Batwa's ancestral land, in addition to securing subsistence and livelihood, is seen as sacred, being inextricably linked to the cultural integrity of the community and its traditional way of life.

The Batwa claim that during the creation of the PNKB, the disputed area was expropriated from them by the DRC government, which failed to adhere to expropriation procedures or issue notice or compensation to the evicted community. This was confirmed by the Institut Zaïrois pour la Conservation de la Nature (IZCN) in its contribution to the original World Heritage Nomination dossier in 1979: "When Kahuzi-Biega was given the status of a reserve, in 1960, and later of a national park, in 1970, the local populations were forced to leave the territory...".<sup>8</sup> The Batwa further claim that they have not received economic or other benefits from the activities within the PNKB since its establishment. The ACHPR has reviewed the situation of the Batwa after their exclusion from the park area, and their conclusions could hardly be more damning:

Land should have been given to the Batwa, but this did not happen. Now the Batwa are forbidden to hunt in the park, and forbidden to collect park products. They have no food resources or medicinal plants, and the forest is no longer their place of worship. *The Batwa have been culturally and psychologically shattered by the loss of their forests.* The local authorities do not allow the Batwa to return to the forest of Kahuzi-Biega, as they claim they pose a high risk to the ecosystem. However, this is only a pretext, as traditionally the Batwa have never hunted gorillas, nor do they

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<sup>7</sup> "Rapport de la mission conjointe de suivi réactif, Centre du patrimoine mondial/UICN au Parc National de Kahuzi-Biega, République démocratique du Congo, 24 avril au 4 mai 2017", available at <http://whc.unesco.org/document/158725>.

<sup>8</sup> The IZCN was the forerunner for the Institut Congolais pour la Conservation de la Nature (ICCN) now involved in management of the Site. Unofficial translation from page 10, IZCN, 1979, *Liste do patrimoine mondial: Parc National du Kahuzi-Biega, Zaire* (World Heritage Nomination), Kinshasa.

destroy the forest by cutting down trees... The Batwa who were driven out of the Kahuzi-Biega forests are now extremely poor, even destitute. Most have no property, and it is very difficult for them to obtain their basic needs.<sup>9</sup>

It is critical to note here that the original violation of the forced eviction from their traditional lands has been replaced by the continued, often violent, exclusion from any access to their traditional resources. The result of this continued exclusion amounts to a continuing human rights violation and should not be viewed as a legacy issue from the creation of the PNKB but rather a fundamental flaw in the approach to park management now.

Assisted by the ERND Institute, the Batwa commenced domestic proceedings against the DRC government and the ICCN in 2010. Due to delays and other procedural irregularities, the case has not yet been resolved and remains pending before the Supreme Court in Kinshasa. Moreover, in November 2015 a complaint was lodged with the ACHPR. MRG and the ERND Institute represent the Batwa before the ACHPR. The complaint remains pending as we await a decision on admissibility.<sup>10</sup>

### ***The importance of the Batwa's ancestral land***

The Batwa's reliance on the disputed land as a means of economic, cultural and religious fulfilment is made clear through sworn statements of several Batwa community members who were either born in or lived in the PNKB, in the context of the ACHPR case as well as through extensive ethnographic research over the past decades.<sup>11</sup>

Birafanwa Byambu summarizes the link between the forest and the Batwa's cultural identity:

The forest was very important for our culture because all of our activities linked to our traditions and customs came from there. Certain places were considered to be sacred and reserved for spiritual activities... The characteristics that define our identity are our language, our lifestyle and our cultural activities that we conduct in the forest. Formerly, our link with the forest was alive, because everything happened inside it. It perfectly represented our identity, which differentiated us from other ethnic groups.<sup>12</sup>

Butachibera Munganga simply states that “[t]he forest was our existence. We believe god was in the forest”,<sup>13</sup> while Chatechirwe Fundiko explains that “[t]he forest plays a crucial role for us... [T]he forest was our whole life... We practised our traditional rituals in the forest, for example, youth initiations.”<sup>14</sup> According to Cikuru Mwendanabo Cyprien, “I viewed the forest as a paradise. My life and my identity are very strongly linked to living in the forest. I

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<sup>9</sup> ACHPR 2003, *Report of the African Commission's Working Group on Indigenous Populations/Communities*, Doc. DOC/OS (XXXIV)/345, at page 13 (emphasis added). (The African Commission on Human and Peoples' Rights adopted this report, including its recommendations, on 20 November 2003 by Resolution 65 (XXXIV) 03).

<sup>10</sup> For further information on the proceedings, please see the following link to MRG's website: <http://minorityrights.org/law-and-legal-cases/minority-rights-group-international-et-environnement-ressources-naturelles-et-developpement-au-nom-des-batwa-du-parc-national-de-kahuzi-biega-rdc-v-republique-democratique-du-congo-rdc/>.

<sup>11</sup> See, among others, Barume, A.K., *Heading Towards Extinction? Indigenous Rights in Africa: the Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo*, Copenhagen, IWGIA/FPP, 2000.

<sup>12</sup> Paras. 9 and 16.

<sup>13</sup> Para. 11.

<sup>14</sup> Para.10.

feel dead now because I cannot live in the forest. I feel like my culture and identity are being wiped out.”<sup>15</sup>

Fanda Munono explains how the forest provided sustenance and medicine for the Batwa community:

When we lived in the forest, we had access to all the natural resources we needed to survive without being discriminated against or despised by anyone. We exchanged our forest goods with other communities in order to meet our needs... Medicinal plants were available to treat any illness. When a woman was pregnant she used a specific plant to give birth easily. Maternal mortality cases were rare.<sup>16</sup>

The sworn statements also show the extent to which the Batwa viewed themselves as caretakers of their ancestral land. According to Marguerite M’Masahali, “[w]hen we used to live in the forest, there were no problems. We feared nothing. We could not destroy the forest because a Mumbuti cannot destroy his own home.”<sup>17</sup> In the words of Merumatawa Shangulu:

Tradition recognises us as owners of the Park. We have lived there for a very long time. We had special areas and precise periods where we could take resources. Each one of us had this in their spirit. This was the case for every single resource, and for all the customs and traditions that we conducted in the forest. We respected the forest because it was our only hope for survival. All the essential resources for our survival were found inside this Park.<sup>18</sup>

The Batwa’s respect for the resources and wildlife in the forest was a fundamental part of their existence. According to Rosa M’Bidiku,

We had sacred places and sites for different cultural activities, like *Mahero* (the place where our ancestors were venerated), where we prayed for an abundance of animals to hunt and the cure for diseases. We had very important medicinal trees such as *Igwerhe* which cured our stomach aches and diarrhoea, and *Mujimbu* whose roots are effective in treating small children. Not every animal was meant to be hunted. The gorillas and elephants were sacred and no one could shoot them even when they were too old.<sup>19</sup>

Freddy Masumbuko Kavurha states that the Batwa protected certain species of trees, “such as the *Musayosayo* and the *Mulungu* due to their cultural value.”<sup>20</sup> According to Jean-Pierre Muchiga Mwendanabo Kaneto,

We used to live in harmony with the forest. We never cut down trees unless they were already dead, which we used for wood. We used grass for huts. We would only hunt small animals and we knew which ones we could hunt, such as deer, porcupines, squirrels, ground rats. We never hunted gorillas or elephants.<sup>21</sup>

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<sup>15</sup> Para. 16.

<sup>16</sup> Paras. 9 and 10.

<sup>17</sup> Para. 9. “Mumbuti” is another word for “Mutwa”, the singular of “Batwa”.

<sup>18</sup> Para. 8.

<sup>19</sup> Para. 11.

<sup>20</sup> Para. 4.

<sup>21</sup> Para. 14.

Other Batwa community members have attested to the fact that it was forbidden to kill certain animals, such as gorillas, chimpanzees and elephants, and gorillas were particularly respected as some communities considered them to be ancestors.<sup>22</sup>

### ***The shooting of two Batwa in the PNKB by park guards***

On 26 August 2017, two Batwa from the village of Buyungule were shot by park guards in the PNKB. Mobutu Nakulire Munganga, and his 17-year-old son Mbone Nakulire, had entered the PNKB to forage for honey and medicinal plants to treat diarrhoea and cholera. At around 8:30 am they were both shot by four park guards on patrol, who reportedly considered them to be poachers; the child died on the spot whilst his father received bullet wounds in his right arm and shoulder blade.

Mr Munganga was transferred to the Bukavu Referral Hospital (l'hôpital Général de Référence de Bukavu) for treatment, where he remained for some time. Mbone Nakulire's body was buried a few days after his death, in an atmosphere of heightened tension between the Batwa community and PNKB authorities. We have received information that a proceeding has been initiated by the public prosecutor against the park guards of the PNKB allegedly responsible for the shooting of Mr Munganga and his son, injuring the former and killing the latter. Annex 2 to this letter provides supporting documentation in respect of these events.

### ***Request for action***

In view of the above, we call on UNESCO and IUCN to address the plight of the Batwa through the SOC process. In particular, we call on UNESCO and IUCN to:

- a) Express their concern and dismay about the killing of Mbone Nakulire and the shooting of Mobutu Nakulire Munganga by PNKB park guards;
- b) Urge the DRC government to provide redress to the Batwa for the forced removal from their traditional lands in the PNKB during its establishment and for the continuing exclusion of the Batwa from lands and resources included in the PNKB's boundaries;
- c) Express the need for the DRC government to ensure the effective participation of the Batwa in the management and decision-making of the PNKB as a World Heritage site, through the Batwa's own representative institutions, chosen by themselves in accordance with their own procedures;
- d) Call on the government of the DRC to ensure respect for indigenous peoples' rights to engage in sustainable traditional resource use in the PNKB;
- e) Urge PNKB authorities to re-open the dialogue with local organisations supporting Batwa communities around the Whakatane process and call on the ICCN and the PNKB for effective implementation of the 2014 Whakatane Roadmap;
- f) Express the need for suitable mechanisms to be put in place by the DRC government to ensure that the Batwa community receives appropriate economic benefits from the activities within the PNKB;

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<sup>22</sup> Affidavit of Butachibera Munganga, para. 8; Affidavit of Maramuke Nakayombo, para. 7.

- g) Urge the DRC government and the ICCN to intensify “efforts to fulfil their commitments to a rights-based approach to conservation”<sup>23</sup> and “implement measures to recognize the rights of indigenous peoples as a matter of priority”.<sup>24</sup>

In support of this request, we note that the Operational Guidelines for the Implementation of the World Heritage Convention support a partnership approach to the management and monitoring of World Heritage properties and identify indigenous peoples among the key partners in the protection and conservation of World Heritage.<sup>25</sup> We also note that the World Heritage Committee has called on States Parties to “[e]nsure that the full cycle of World Heritage processes from nomination to management is compatible with and supportive of human rights” and to “[a]dopt a rights-based approach, which promotes World Heritage properties as exemplary places for the application of the highest standards for the respect and realization of human rights”.<sup>26</sup> The Committee also “encourages the effective and equitable involvement and participation of indigenous peoples and local communities in decision-making, monitoring and evaluation of World Heritage properties and the respect of indigenous peoples’ rights in nominating, managing and reporting on World Heritage properties in their own territories”.<sup>27</sup> The same policy also calls on States Parties to develop operational mechanisms for indigenous peoples’ involvement in World Heritage processes; ensure the free, prior and informed consent and equitable and effective participation of indigenous peoples where World Heritage nomination, management and policy measures affect their territories, lands, resources and ways of life; actively promote indigenous initiatives to develop equitable governance arrangements, collaborative management systems and, when appropriate, redress mechanisms; and support activities contributing to the building of a sense of shared responsibility for heritage among indigenous people and local communities, by recognizing both universal and local values within management systems for World Heritage properties.<sup>28</sup>

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

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<sup>23</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/34/49, para. 73.

<sup>24</sup> Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, A/71/229, 29 July 2016, para.32.

<sup>25</sup> Operational Guidelines for the Implementation of the World Heritage Convention, WHC.17/01, 12 July 2017, para. 40.

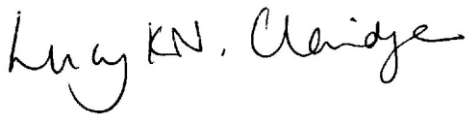
<sup>26</sup> Policy for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention, 19 November 2015, para. 20.

<sup>27</sup> *Ibid.*, para. 21.

<sup>28</sup> *Ibid.*, para. 22.

Finally, we would be grateful if you could kindly acknowledge receipt of this letter.

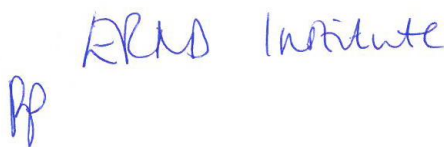
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## ANNEX 1

### BACKGROUND OF SUBMITTING ORGANISATIONS

Minority Rights Group International (MRG) is an international non-governmental organisation working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries and has developed extensive experience in the fields of indigenous rights, property rights and human rights law.

Environnement Ressources Naturelles et Développement (ERND Institute) is a non-governmental organisation legally registered and based in the Democratic Republic of Congo (DRC). Its mission is to defend the interests of indigenous peoples and local communities, for the conservation of natural resources and management of forest ecosystem processes, promote participatory and sustainable development, advocate for indigenous peoples' and local communities' access to benefits relating to the exploitation of natural resources, and facilitate the participation of indigenous peoples and local communities at all levels of decision-making processes that could affect them. The ERND Institute has offices in North Kivu, South Kivu, Maniema, Orientale and Kinshasa.

Forest Peoples Programme (FPP) was founded in 1990 in response to the forest crisis, specifically to support indigenous forest peoples' struggles to defend their lands and livelihoods. It is an international human rights organisation that supports the rights of peoples who live in forests and depend on them for their livelihoods. We work to create political space for forest peoples to secure their rights, control their lands and decide their own futures.

Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables / Centre of Assistance for Indigenous Pygmy Peoples and Vulnerable Minorities (CAMV), is a not-for-profit indigenous peoples' organisation. It was formed as a response to the bitter realities observed by a group of Pygmies educated with the support of certain religious charities. This group examined the extreme difficulties suffered by their brothers and mankind in general: ignorance, poverty, profound illiteracy, marginalisation and social discrimination, exploitation, social stigmatisation, expulsion from the forests, deforestation etc. It was in the process of trying to find solutions to these problems that this group created the association CAMV on 2 February 1995 in Bukavu in the Democratic Republic of Congo (DRC) to protect and promote their causes.

International Work Group for Indigenous Affairs (IWGIA) is an international, non-governmental membership organisation, which supports indigenous peoples worldwide in their struggle for self-determination. IWGIA's activities focus on human rights work and project activities in co-operation with indigenous organisations and communities.

Rainforest Foundation Norway (RFN) is working for a world where the environment is protected and human rights are fulfilled. Our specific focus is the intersection - in the rainforest - of these two worldwide struggles. Our mission is to support indigenous peoples and traditional populations of the world's rainforests in their efforts to protect their environment and fulfil their rights. We collaborate closely with more than 70 local and national environmental, indigenous and human rights organisations in 11 countries.

## ANNEX 2

### SUPPORTING DOCUMENTATION REGARDING SHOOTING IN AUGUST 2017

- A. Press release by ERND and fellow civil society organisations, dated 29 August 2017;
- B. Press release by MRG, dated 30 August 2017;
- C. Press releases (in English and French) by CAMV and FPP, dated 31 August 2017 and 30 August 2017, respectively;
- D. Death certificate of Mbone Nakulire (named therein as Mbone Nakulire Christian);
- E. Burial certificate of Mbone Nakulire (named therein as Mbone Nakulire Christian);
- F. Bukavu Referral Hospital discharge sheet of Mobutu Nakulire Munganga (named therein as Munganga Nakulire);
- G. International Committee of the Red Cross discharge sheet of Mobutu Nakulire Munganga (named therein as Munganga Nakulire);
- H. Kavumu Hospital Centre referral sheet for Mobutu Nakulire Munganga (named therein as Munganga Nakulire);
- I. Voter registration card of Mbone Nakulire;
- J. Voter registration card of Mobutu Maheshe Munganga (official name of Mobutu Nakulire Munganga);
- K. Sworn statement of Mobutu Nakulire Munganga (named therein as Munganga Nakulire);
- L. Sworn statement of Mangaza M'Namwenjera;<sup>29</sup>
- M. Report of the Cimanuka Family Gorilla Tracking Patrol Dated 26 August 2017.

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<sup>29</sup> Please note that the witness's name is misspelled in the portion of the sworn statement in which she solemnly makes oath and swears to its contents. The name in this portion of the sworn statement should be Mangaza M'Namwenjera, not Mangaza M'Ngengera.

### ANNEX 3

#### **SUPPORTING DOCUMENTATION REGARDING BATWA RELATIONSHIP WITH THE PNKB**

- A. Affidavit of Birafanwa Byambu (French original with unofficial English translation)
- B. Affidavit of Butachibera Munganga (French original with unofficial English translation)
- C. Affidavit of Chatechirwe Fundiko (French original with unofficial English translation)
- D. Affidavit of Cikuru Mwendanabo Cyprien (French original with unofficial English translation)
- E. Affidavit of Fanda Munono (French original with unofficial English translation)
- F. Affidavit of Marguerite M'Masahali (French original with unofficial English translation)
- G. Affidavit of Merumatawa Shangulu (French original with unofficial English translation)
- H. Affidavit of Rosa M'Bidiku (French original with unofficial English translation)
- I. Affidavit of Freddy Masumbuko Kavurha (French original with unofficial English translation)
- J. Affidavit of Jean-Pierre Muchiga Mwendanabo Kaneto (French original with unofficial English translation)
- K. Affidavit of Maramuke Nakayombo (French original with unofficial English translation)
- L. "Kahuzi Biega National Park: World Heritage Site versus the Indigenous Twa", by Roger Muchuba Buhereko – extract from *World Heritage Sites and Indigenous Peoples' Rights* (IWGIA and FPP, 2014).