 

Moving towards effective Rights Based Approaches and Good Practice in the World Heritage system

A Discussion Paper

*Working Draft not for wider distribution*

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March, 2014

**Table of Contents**

Executive summary 4

1. Introduction 6

What is a Rights-Based Approach? 7

Why good practice? 9

2. Human rights in World Heritage: from “work in progress” towards coherent policy guidance 10

Respect, protect and fulfil 12

Scoping specific rights themes 13

Procedural and substantive rights 15

Addressing legacy issues 16

Addressing vulnerable groups and rights-holders 17

Building on practice 17

Clarifying and updating existing policy guidance 18

3. Operational issues and entry-points 20

Clarifying language and vocabulary 20

Developing comprehensive operational mechanisms and guidance 20

Strengthening the learning by doing process 21

Early identification and assessment of rights claims and duties & rights-holders and duty-bearers 21

Clarifying roles and responsibilities 22

Tentative listing 24

Nomination 24

Evaluation process 25

Decision of the World Heritage Committee 25

Authenticity and integrity 26

Management & protection 26

Reporting and Monitoring 27

A comprehensive approach to rights in operational guidance 27

4. Enabling factors 29

Building awareness and understanding: reducing misunderstanding 29

Building skills and systems-wide organizational capacity 29

Working with rights: new approaches, expertise & tools 30

Setting up a good practice barometer and learning community 30

Addressing capacity needs of rights holders and duty-bearers 31

Technical cooperation on World Heritage and rights 31

5. Follow-up Scenarios 32

Scenario 1: status quo 32

Scenario 2: Adopting a common rights framework/ RBA policy guidance 33

Scenario 3: Common framework + operational guidance 34

Scenario 4: Common policy framework + operational guidance + enabling conditions 35

6. Conclusions 36

Recommendations 38

Expert meeting Oslo 38

Advisory Bodies & World Heritage Centre 38

References 39

**Acknowledgements**

This work would not have been possible without the continued effort of ICOMOS Norway and generous support provided by the Ministry of Environment, Norway. The report benefited from substantial discussions with case study authors as well as representatives from the World Heritage System. From the Advisory Bodies, Tim Badman (IUCN), Gonzalo Oviedo (IUCN), Kristal Buckley (ICOMOS), Gwenaelle Bourdin (ICOMOS) and Joseph King (ICCROM) kindly offered their thoughts and inputs. Mecthild Rössler (UNESCO) and Giovanni Boccardi (UNESCO) shared important perspectives from the World Heritage Centre. Particular thanks and respect goes to Amund Sinding-Larsen for his leadership and pioneering efforts to address human rights in the World Heritage system. Finally, gratitude is expressed to the participants of the Oslo workshop with whom discussions are on going in the run-up to the workshop. This is a working draft meant for exchange and debate among workshop participants.

## Executive summary

How can the World Heritage system move towards better recognition and understanding of “good practice”, and as a whole, strengthen rights-based approaches (RBA)? This discussion paper is part of an ICOMOS Norway-led pilot project to identify and deepen an understanding of “good practice” approaches to RBA from a systems perspective.

**Good Practices**

The study of Good Practice recognizes that certain approaches work better than others in view of the diversity of social, cultural and political contexts within which the WH system operates. Working towards good practice is therefore about recognizing the value and taking stock of hands-on experiences in addressing what are often complex issues and striving for excellence. In addition, there is today a body of systems-level “good practices” in terms of how human rights concerns are mainstreamed in a systematic way by UN bodies. Good practice is from this perspective not limited to site-level processes, but equally concerns how the World Heritage Convention, its Secretariat, State Parties and Advisory Bodies together operate.

**Policy guidance**

This report argues that basic commitments to rights are well in place, but are not sufficiently articulated and framed in a clear and coherent fashion in terms of policy and operational guidance. Whereas the different actors of the WH system have increasingly adopted rights language and tabled commitments, there is need to further clarify and articulate a common human rights framework and practical policy guidance. Such a framework, reflecting the World Heritage sphere of influence and good practice among other organizations, could articulate key working principles and standards. It could also fill the gap in terms of policy guidance on key rights themes already identified as significant both in terms of procedural and substantive rights. For this purpose, there is a need for a scoping exercise to determine the wider set of rights impacted, whether positively or negatively, by World Heritage processes. This would include, but not be limited to, specific themes such as legacy issues, Free Prior Informed Consent and vulnerable groups. On-going processes to develop policy guidelines in general, and sustainable development policy language in specific, offer a critical window opportunity to consolidate guidance on rights-based approaches.

**Operational guidance**

Many efforts are already being undertaken to strengthen operational practice, and pointing to high degrees of convergence. There is a good opportunity to complement such efforts with a more concerted approach. Mainstreaming of RBA, for one, requires a process to clarify roles and responsibilities. Operational Guidelines (OG) already contain some rights-related provisions, yet there is a need to build further coherence and fine-tune rights-specific language. Different understandings of rights justify the need for a common operational vocabulary, set of standards and mechanisms. The learning by doing process on “community and rights issues” is deemed positive. It could be expanded to the whole WH system and strengthened in terms of themes and structured learning around specific objectives. There are multiple operational entry points. Streamlined operational guidance on the early identification and assessment of rights claims is critical hand in hand with the early identification and involvement of both rights holders and duty bearers. The World Heritage system puts a strong emphasis on participation, which could be more clearly articulated in terms of its rights implications both in the nomination process and management. On-going evaluation work on communities and rights confirms relevance, yet needs to be strengthened and better resourced. While existing operational guidelines allow for RBA and a diversity of governance approaches, specific guidelines highlighting their importance would facilitate take-up by State Parties in management processes. There are also good opportunities to mainstream rights indicators in the monitoring and reporting system. The multiple operational aspects illustrate the importance of a comprehensive review and formulation of specific recommendations for operational guidance to allow for effective action by States Parties. On-going processes to revise Operational Guidelines and otherwise strengthen operational guidance and mechanisms offer immediate opportunities in this respect.

**Enabling factors**

Effective rights-based approaches are not only about clear policy guidance and well-tailored operational mechanisms. A host of other factors may enable the articulation and implementation of effective responses. A major enabling factor concerns the awareness and understanding of rights-based approaches and practices in the World Heritage context. On-going capacity building by Advisory Bodies and other partners could be complemented with efforts to address the needs of both duty-bearers and rights holders. There is equally a need to explore the development of appropriate site-level tools and state-of-the-art material on dealing with rights issues. In addition, there is a need to address the power asymmetries present and specifically facilitate processes that empower rights holders to effectively and equitably engage in World Heritage deliberations. Good practices, if carefully designed and contextualized around a “barometer” with specific indicators and learning outcomes may equally serve as enablers. Actors involved in bilateral and multilateral heritage cooperation efforts can play key catalysing roles by framing rights issues more clearly in their collaborative agenda.

**Scenario options**

A concerted effort is needed to clarify both the “what” is meant by RBA for different actors in the system as well as “how” to put it into effective, equitable and efficient practice. The report presents 4 different scenarios as an illustration of some of the possibilities for action.

Scenario 1: Status quo

Scenario 2: Adopting a common rights framework/ RBA policy guidance

Scenario 3: Common framework + operational guidance

Scenario 4: Common policy framework + operational guidance + enabling conditions

**Recommendations**

A final section on recommendations, in particular, calls for participants of the Expert meeting in Oslo and the Advisory Bodies to review findings and build consensus on recommended follow-up action.

## 1. Introduction

How can the World Heritage system move towards better recognition and understanding of “good practice”, and as a whole, strengthen rights-based approaches (RBA)? What are some of the key questions, challenges, opportunities and possible avenues for consolidated rights-based approaches, which responds to needs and realities on the ground?

This discussion paper is part of an ICOMOS Norway-led Advisory Body pilot project to identify and deepen an understanding of “good practice” approaches to human rights and their enabling conditions in the World Heritage arena. It builds on previous efforts under the “Our Common Dignity” agenda involving a working group of the advisory bodies and the UNESCO WH Centre shedding light on how a Convention without specific references to human rights may nonetheless address these concerns in heritage deliberations ([Ekern et al. 2012](#_ENREF_2); [Larsen 2012a](#_ENREF_5); [Oviedo and Puschkarsky 2012](#_ENREF_8); [Sinding-Larsen 2012](#_ENREF_9)).

The approach taken in this project is two-fold. On the one hand, good practices are explored, in a bottom-up manner, through a series of detailed case studies and face-to-face experience sharing in the Oslo Expert meeting. On the other hand, this paper seeks to contribute to discussions through addressing wider systemic experiences and concerns and perspectives from the advisory body experience to date.

1. What are the overall lessons learnt from the international systems perspective, which may inform the improved design of rights-based approaches in the World Heritage sphere and identify enabling conditions for their implementation?
2. What are the major needs and opportunities for systems level efforts to strengthen rights-based approaches?

There is somewhat of a misconception that there is yet to be a clear commitment to uphold basic civil, political, economic, social and cultural rights in the World Heritage system. This report argues, on the contrary, that commitments are well in place, but are not sufficiently articulated and framed in a clear and coherent fashion in terms of policy and operational guidance. A concerted effort is needed to clarify both the “what” is meant by RBA for different actors in the system as well as “how” to put it into effective, equitable and efficient practice. Many efforts are already being undertaken in this direction pointing to high degrees of convergence. The challenge is now to build clarity and coherence enabling concerted State party action.

Whereas rights language by its harshest critiques is seen as development jargon, this analysis works with the basic assumptions that:

* Human rights involve a consolidated set of standards, values and mechanisms
* World Heritage creation is a critical social transformative process with significant social, political and economic implications for specific sites and the people that inhabit them and their rights.
* While human rights commitments are in place, implementation remains uneven and fragmented triggering a need for clarity and streamlined approaches
* A carefully designed systems-wide RBA can enhance the contribution of World Heritage efforts towards the effective and equitable implementation of rights

Such assumptions stated, major questions remain in terms of how to ensure a rights-based approach, which is both effective and equitable. The 4 dimensions explored in this pilot project are; good practices, policy frameworks, operational needs and enabling conditions.

**Exploratory for strengthening RBA**

### What is a Rights-Based Approach?

What is meant by Rights-based Approaches? Defined in different ways, we here employ the concept as framed by UNESCO. The UN Development Group operates with a “Common Understanding” since 2003[[1]](#footnote-1), equally adopted by UNESCO.

**“UN Common Understanding”/ UNESCO Rights-Based Approach** (2003)

All programmes, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all programming in all sectors and in all phases of the programming process.

 Programmes and activities should contribute to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights. (UNESCO 2003)

"Human rights", in this sense, are rights considered *universal* to humanity, regardless of citizenship, ethnicity, gender, etc. They are inalienable and equally applicable, and carry with them a promise of State responsibility:

„Concerns, when conceived of as rights, are elevated from the realm of State and international promises premised on good faith, to a level of legal entitlement requiring national and international response. Concerns, when conceived of as claims of human rights, become fundamental, immutable and priority claims ([Goonesekere 1998](#_ENREF_3)).“

UNESCO specifically sets the following **objectives**:

(i) Integration of a human rights-based approach into all UNESCO activities and projects in line with the United Nations Reform Programme;

(ii) Intensified in-house coordination of human rights activities, ensuring a more effective contribution to the advancement of all human rights, particularly those within UNESCO’s competence;

(iii) Increased awareness and knowledge on the part of UNESCO staff of human rights standards, major challenges to human rights and human rights-based programming.

It proposes the following **action**:

 (a) Development, with due consideration of the mainstreaming experience accumulated within the United Nations, of a phased plan to mainstream human rights into all of UNESCO’s programmes and activities on the basis of human rights instruments and the conclusions of treaty monitoring bodies;

(b) Staff training in human rights at Headquarters and in the field, including staff meetings on major challenges to human rights with leading experts;

(c) Regular exchange of information and implementation of joint intersectoral projects;

(d) Regular evaluation of the activities implemented and the results achieved ([UNESCO 2003](#_ENREF_10))[[2]](#footnote-2).

We may, in the same vein of thought, think of an RBA as not only the commitment to mainstreaming rights, but equally as a set of specific objectives and actions. Put in the context of the World Heritage, RBA is thus not only about a commitment to human rights goals, but equally includes specific policy objectives and operational practices. UNESCO, for example, has a specific rights-based approach to education, but not a clearly fleshed out strategy and approach for World Heritage. Interestingly, as elaborated below, core blocks are nonetheless already in place. The World Heritage System involves basic commitments to Human Rights. It has elaborated preliminary policy guidance and contains some operational guidelines with rights dimensions. Furthermore, many rights-related activities are being undertaken by States, Advisory Bodies and the World Heritage Centre. Still, these different elements do not yet form a coherent, clear and practical approach. A number of gaps, discussed in further detail below, currently hinder a fully-fledged contribution from the World Heritage system to the realization of rights.

**Towards a coherent RBA for World Heritage**

### Why good practice?

Why speak of good practice in relation to human rights and World Heritage? For some, the concept remains fluffy and poorly suited to address the legal nature of rights and duties. Good Practice, critiques may argue, is a second-best and soft option for (not) setting the bar high enough in terms of comprehensive mainstreaming of rights through firm commitments and obligations.

On the other hand, the World Heritage system is as a whole keen on profiling and valorizing State efforts to “raise the bar” for World Heritage management and protection. Best practice case studies include the 2012 effort to document “new and creative ways of managing sites”[[3]](#footnote-3). From this perspective, the question is one of promoting and recognizing excellence.

The UNEP OHCHR interagency programme on human rights and the environment, for example, equally use the term “good practice”, as one, which “must integrate human rights and environmental standards in an exemplary manner”. Good Practice, in this sense, is about what moves beyond required minimum obligations. While a rights-based approach in the World Heritage context has yet to be clearly articulated, many States have in fact started moving ahead in terms of specific rights approaches. The study of Good Practice recognizes that certain approaches work better than others, not least in diverse social, cultural and political contexts.

Good practice is thus not merely about soft guidance, but pointing to the real life practicalities of making a complex system work, while recognizing that nothing is perfect. It may range from identifying the range of specific rights issues, which are affected by or otherwise related to World Heritage site management to ways of going about addressing such rights issues in a constructive, equitable and effective manner. Working towards good practice is therefore about recognizing the value and taking stock of hands-on experiences in addressing what are often complex issues and striving for excellence. Yet, to fully matter beyond polite portrayals, there is arguably a need for solid criteria to determine how practice qualifies as “good” and for what reasons (see later discussion). Such criteria do not imply that other practices are necessarily bad, but they create specific benchmarks allowing to perfect practice.

Finally, there is arguably today a body of systems-level “good practices” in terms of how human rights concerns are mainstreamed in a systematic ways UN bodies. Good practice is from, this perspective, not limited to site-level processes, but equally concerns how the World Heritage Convention, its Secretariat, State Parties and Advisory Bodies, as a whole, operate with systems level processes comparable to its institutional peers. This paper is written to particularly address the latter aspect exploring good practices and their implications in relation to the World Heritage system as a whole.

## 2. Human rights in World Heritage: from “work in progress” towards coherent policy guidance

Besides from the general point that human rights concern everyone, whether or not the live within or outside (potential) World Heritage sites, core questions of dignity, equality, justice and responsibility are of course equally at the heart of the World Heritage system.

From one perspective, there is overall “constitutional” commitment to human rights within the UNESCO system. Not only are commitments spelt out in UNESCO statutes, the organization has as a whole adopted human rights as a transversal approach adopting a strategy for this purpose ([UNESCO 2003](#_ENREF_10)). Furthermore, policy guidance on human rights is being consolidated in the World Heritage context. At the World Heritage Committee (37 COM), draft policy guidelines contained a preliminary section on human rights[[4]](#footnote-4).

“The obligation to promote and protect human rights is formulated in article 1 of the UNESCO Constitution (1945), which states that: “The purpose of the organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms” (WHC-13/37.COM/13 p.6).

This sends a strong signal to State Parties that addressing human rights issues matter as an integral part of the Convention’s approach to the 5th “C” and sustainable development. Indeed, it was noteworthy that the 40th anniversary celebration theme “World Heritage and Sustainable Development: the Role of Local Communities” involved over 100 events in the world, many closely tied to question of rights. Not only do equitable approaches to “community” involvement build on rights, a host of initiatives may implicitly address rights concerns without necessarily being framed as such. This is also appears in several case studies being prepared for the Oslo meeting. Furthermore, many State Parties have already signalled such commitment through nomination profiles addressing participation, consent and community tenure.

 Yet, even if there is overall commitment to rights-based approaches in the World Heritage context, questions remain in terms of how rights relate to World Heritage processes, the scope of rights being considered and operational implications.

UNESCO, for example, bases its human rights-based approach on the principles of Participation, Accountability, Non-discrimination, Empowerment and Linkages to human rights standards. Advisory Bodies have undertaken both independent and collaborative work towards fleshing out the significance of human rights in their work. The ICOMOS General Assembly 2011 in Paris adopted Resolution 17GA 2011/30 on “Our Common Dignity: Rights-based Approaches to heritage management”, which among other things:

“Recognizes that an integration of human rights concerns is essential to heritage identification and conservation, and considers that the implementation of heritage conservation initiatives needs to be supported by human rights based approaches introduced as a ‘sustainability check’ to all phases of these activities”[[5]](#footnote-5).

IUCN, in turn, at the 2012 Congress in Jeju, adopted a “Policy on Conservation and Human Rights for Sustainable Development” to “integrate human rights issues into its work, including but not limited to, the development and implementation of rights-based approaches (RBAs) within its projects and programmes.” A specific resolution equally concerned the implementation of the UN Declaration on the rights of Indigenous Peoples in the context of the World Heritage Convention. There is clearly convergence in terms of commitment to RBA, yet linkages need be further articulated for the System as a whole. While World Heritage ratification may not be seen as a commitment to international human rights law *per se*, the current lack of clarity begs the question how the WH system addresses the increasingly known human rights implications of World Heritage processes in operational terms. Such aspects are currently not clearly articulated preventing operations from running smoothly.

Thus while Operational Guidelines, for example, specify that management may involve a range of tenure arrangements, this has not yet been clearly articulated as an existing rights-related policy commitment. Whereas many State Parties address such tenure diversity, policy guidance on collective rights and other relevant standards would help clarify the principles at stake. This being said, both national and international human rights standards adhered to by State Parties obviously offer a shared starting point for WH deliberations. This is more clearly articulated in the Convention on Intangible Heritage, which solely addresses what is considered compatible “with existing international human rights instruments“ (Article 2). While States, of course, have human rights obligations spelt out in ratified instruments and national constitutions, clarifying the linkages between World Heritage policy principles and rights would now be the next logical step.

Key finding: Whereas the different actors of the WH system have increasingly adopted rights language and commitments, there is yet to be established a common human rights-framework and practical policy guidance.

Policy guidance would not involve re-inventing the wheel as much as clarifying commitments through specific and coherent policy objectives and guidance. This also creates the need to better clarify how different actors and mechanisms in the system can contribute to this goal.

1. What are the core standards and minimum requirements relevant for any World Heritage site process? What kinds and levels of performance on rights should be expected in order for a site to be recommended for inscription without reservation (such as in the compatibility requirement)?
2. What kinds of practices or levels of information gaps would result in referrals or deferrals?
3. How does the World Heritage system value investments in “rights” excellence? What kinds of contributions to the realization of rights would “count” in the assessment of World Heritage sites as “good practice”?
4. What kinds of poor practices and rights concerns would lead to properties not being recommended for inscription or otherwise be taken up by the World Heritage system?
5. How can the system be harnessed to allow for major human rights infringements to be detected, and remedial measures put in place?
6. How, in turn, can positive contribution of World Heritage conservation to the realization of rights be acknowledged and encouraged?

States already have human rights obligations. Understanding how their implementation of rights is affected by World Heritage processes can be greatly facilitated by a system clarifying policy objectives and guidance on questions like the ones listed above. The ultimate goal is, of course, securing effective and equitable conservation and protection of the properties listed, and not listing alone.

Key finding: An effective RBA will require clarifying a framework reflecting the specific WH sphere of influence

### Respect, protect and fulfil

What are some of steps the system can take to clarify and improve policy guidance? Human rights literature generally distinguishes between three levels of State obligations; respect, protect and fulfil.

**Respect**: Respecting human rights requires policy guidance encouraging State-led World Heritage activities to refrain from directly or indirectly interfering with individual and collective enjoyment of human rights as a basic policy stance. A basic commitment towards respecting human rights, and ensure compatibility, not only follows from existing commitments to rights, but reflects wider strategic commitments to enhance the credibility, transparency, equitability and accountability of the Convention[[6]](#footnote-6). Consolidating the respect of human rights and compatibility as a policy principle would also bring the Convention up to speed compared to later heritage standards with specific wording on rights. A clear statement or policy framework adopting the **respect of human rights** in World Heritage-related activities i.e. as the minimum principle of work (i.e. “do nor harm”) would clarify the significance of RBA to State Parties.

**Protect**: Protection of human rights specifically requires States to protect individuals and groups against human rights infringements by others. Adopting this principle in the World Heritage context would specifically concern the role of State Parties in protecting against infringements by third parties such as, for example, NGOs and private sector activities with negative impacts on rights in the World Heritage field. Consider, for example, community rights to benefit from rights to development and benefits from tourism operations. Given the considerable involvement of non-State actors often “capturing” such benefits from World Heritage recognition, at times at the cost of neglecting human rights, policy emphasis on protection would send a clear signal about the importance and responsibility of socially inclusive State-regulation of third party activities. This would also, in more positive terms, guide third parties down the road of strengthening the voice and role of rights-holders to participate equitably in such activities. A policy framework adopting the **protection of human rights** (“preventing harm from others”) send a clear signal to the World Heritage community.

**Fulfil**: This involves positive State action to facilitate the enjoyment of rights. Whereas States have adopted a range of human rights commitments and obligations, implementation often remains a major challenge. World Heritage efforts can be a critical instrument to help fulfil and realize rights to heritage, culture etc. More broadly, cooperation to secure an equitable World Heritage system is a major pledge in the 2012-2022 strategic action plan[[7]](#footnote-7). World Heritage processes are also critical public policy tools, where political attention and financial resources may help resolve and realize longstanding rights claims and legacy issues. In most countries with collective land rights and community tenure regimes, for example, implementation is typically work in progress highly dependent on cash-strapped titling agencies. Other cases may involve claims being stuck in overburdened legal systems and protracted processes. In both cases, State party attention to fulfil such rights as part of the World Heritage processes can help deliver rapid solutions. Adopting **fulfilment of rights** as a principle would demonstrate the general contribution of World Heritage for the enjoyment of certain rights e.g. to culture, heritage and environmental health as well as the recognition of positive action to allow WH activities to contribute to rights implementation.

In practice, most work in World Heritage efforts touch upon all 3 obligations in different manners. Policy guidance, affirming these principles, would therefore not only establish coherence between critical international standards, but also help to profile the important contributions made in the heritage field. For this contribution to be even more clear, further work on identifying critical heritage and rights intersections is arguably important.

### Scoping specific rights themes

As a general point, addressing human rights in World Heritage is not about reinventing a system, but rather entails clarifying linkages with a consolidated system of well-established rights and obligations at both national, regional and global levels. Human rights are at the same time well-established, evolving (e.g. in terms of jurisprudence) and may include a narrow or broader set of rights.

Scoping specific rights concerns is about identifying when World Heritage activities contribute to State implementation efforts of their human rights obligations when relevant. This relies on existing knowledge about relevant inter-linkages between rights and World Heritage practice. In other words, the WH system as a whole, and State Parties in particular, would benefit from having a more detailed understanding of common and critical rights issues to address recognizing that these will obviously differ between different kinds of sites. What might be considered in terms of scoping such rights?

In general terms, good practice in the RBA field ([NORAD 2001](#_ENREF_7)) suggests that any „scoping“ should aim for the highest possible standards. The international system and the UN in particular, pioneer and offer important vehicles for enhancing the respect for rights, also where they may not have been recognized.

Secondly, good practice scoping, in this sense, does not limit itself to core, fundamental or basic rights[[8]](#footnote-8). While their respect should be given absolute priority (i.e. as possible qualifying entry criteria for listing as such), good practice suggests an inclusive approach. IUCN has adopted an approach to rights that encompasses both international standards and national rights language. This includes both human rights, which are protected and recognized and those, which aren’t:

“human rights, which are the rights that all people are entitled to regardless of nationality, sex, origin, race, religion, language, political association or other, and which are protected and recognized in international and national laws, and rights in a broader sense, which may not be internationally or nationally recognized and protected, such as many of the customary rights of indigenous peoples or local communities (e.g. tenure rights)”.

This arguably reflects an inclusive approach to rights. How then to go about “scoping” rights? For some, it is considered unrealistic and impractical to cover all rights in World Heritage work. The argument goes that there are some rights that are more important than others, not least from the perspective of rights-holders. Some rights will inevitably be more affected by WH processes compared to others.

For others, rights are as such indivisible, interdependent and interrelated (see Vienna Declaration and Programme of Action (1993), para. 5)[[9]](#footnote-9). The two positions are not necessarily incompatible. In other words, one could very well imagine a World Heritage system, which recognizes how rights are universal, indivisible, interrelated and interdependent, yet nevertheless in operational terms mainly focuses on a more narrow scope of rights concerns common and critical in World Heritage processes. There are arguably a number of criteria and principles to take into consideration:

1. First of all, such scoping or prioritization should, as a principle, not be interpreted as “watering down” or taking place at the detriment of other human rights obligations.
2. Rather, scoping of rights issues should be seen as moving towards building a knowledge basis of critical, common or major rights issues often appearing where World Heritage processes impact on their enjoyment in ways, which require attention.
3. Thirdly, more explicit emphasis by the system would allow State Parties to early on identify and assess the extent to which specific rights issues are pertinent for the specific processes and being adequately addressed in nomination, state of conservation reporting etc.
4. Fourthly, a clearly spelt out scope would evolve over time to reflect evolving international standards, while allowing for State party work to have more clarity about what is expected from them

What are then some of the specific issues to consider when specifying policy guidance? An emerging body of work by the World Heritage system and other actors have started documenting and exploring different rights issues such as indigenous rights and public access to World Heritage processes. This is generating important insights about the linkages, but would benefit from a more comprehensive treatment.

Key finding: Work has been initiated to explore certain themes in more detail, yet thematic scoping is yet to be undertaken systematically

### Procedural and substantive rights

“A strong human rights-based approach to the preservation/safeguard of cultural heritage, both tangible and intangible, requires the establishment of procedures ensuring the full participation of concerned individuals and communities.” UN Special Rapporteur on cultural rights

A critical body of rights, where substantial, if partial and fragmented, progress is being made in the World Heritage context concerns procedural obligations and good practice such as:

1. Information disclosure and access
2. Prior impact assessments and making impacts publicly available
3. Public participation, consultation and consent in World Heritage decision making
4. Accountability, compliance and remedial mechanisms

These are often inter-related, and furthermore reflect converging standards between environmental and cultural rights at large. In the World Heritage context, for example, public participation is emphasized in operational guidance, and evaluations increasingly assess efforts in this respect. Effective public participation, for example, relies on access to information about the nomination and its potential impacts, just as remedial mechanisms. Progress is being made in terms of securing public access to World Heritage related processes. A recent, and important development, triggered by IUCN requests, now involves the possibility of gaining access to World Heritage nomination files upon request. This would ideally, in coming years, evolve into full-blown public access to nomination documents, which will facilitate public participation and inputs to the process.

Procedural language around participation and consultation have now become so common place as a catch-all that it may cover everything from nominal information sharing to year-long processes of debate around substantive issues to build consent. This is triggering

**Free Prior Informed Consent**

This concerns a particular procedural right, where further policy guidance is urgently needed in terms of when, under what conditions and how it applies. Without such guidance, State Parties will lack a stable foundation for addressing such rights effectively.

As a general point, World Heritage designation may infringe upon substantive rights such as development, housing, food, culture and land, in the pursuit of protecting and conserving sites of Outstanding Universal Value. Yet, protection against such negative impacts should not overshadow how it may also positively contribute to the realization of certain substantive rights. The relative importance of different substantive rights issues differ significantly across different types of sites.

**Examples of Substantive Rights**

• Nondiscrimination and equal protection of the law

• Right to life

• Prohibition of force and child labour

• Freedom of movement and residence

• Right to privacy and home life

• Right to property

• Freedom of religion

• Right to an adequate standard of living (food, medicine, clothing, housing, water) • Cultural rights

• Minority rights

• Right to safe and healthy working conditions

• Freedom of assembly and expression/opinion

• Right to health

• Right to privacy

• Right to self-determination of peoples

• Right to a certain quality of environment (Greiber, et al. 2009: 13)

Land rights issues are, for example, far more prevalent, or at least different, in natural sites compared cultural sites. The bottom-line is that the rights pertinent to a given World Heritage context are multiple and will often vary between countries and individual sites. This may range from disability rights in terms of access to a given heritage site to indigenous territorial rights when sites are found to overlap with customary lands and waters of indigenous and tribal peoples. The key point here, however, is that there is currently no systematic guidance for State Parties to address substantive rights issues concerned. While this potentially allow all rights to be taken into account in all sites, the opposite scenario of rights being neglected due to lack of explicit attention is more frequent. States ultimately have the discretionary power to strike the balance and determine what rights to address and how. From a WH perspective, the question becomes to what extent relevant procedural practices have been put into practice, and whether substantive rights have been addressed adequately in the process of striking this balance. Have the full range of relevant substantive rights implications been addressed when striking the balance? This requires, as a first step, that the WH system as a minimum clarifies the scope of rights to be addressed consistently.

Key finding: Policy guidance clarifying procedural and substantive rights standards would enable a more coherent and structured approach

### Addressing legacy issues

Given the nature of World Heritage listing, many rights issues are intimately tied to prior processes of protected area creation or heritage making. The documentation of such legacy issues has grown over the years pointing, for example, to legacies of dispossession, marginalization and unresolved land claims, underlining a strong rights dimension. World Heritage processes may contribute to resolve such legacy issues or by neglecting them further deepen the infringements at stake. The World Heritage System is increasingly confronted with having to address how to constructively advise State Parties and rights-holders on such matters. Whereas previous approaches are characterized by case-by-case treatment and “fire fighting”, the question is now how to move towards a more explicit and strategic emphasis on addressing outstanding legacy issues. This would involve exploring:

1. A rights-based approach to legacy issues including questions of access to remediation, restitution and mitigation
2. A streamlined process for State and/ or independent reviews of legacy issues
3. Compilation of case study material in addressing legacy issues
4. Relevant technical assistance modalities relevant to facilitate progress on legacy issues

Such legacy issues, “the elephant in the room” in the words of one person interviewed, present immediate challenges to many governments. Further policy guidance and support from this WH system would be a critical enabling factor allowing the WH system to truly support State Parties in their reconciliatory efforts.

Key finding: Policy guidance on how to address “legacy issues” would offer urgently needed advice to State Parties

### Addressing vulnerable groups and rights-holders

Focus on particularly vulnerable groups and specific rights-holders is a central feature of many RBAs. This is well-illustrated in the World Heritage context with work addressing the collective rights of indigenous peoples, where international standards are increasingly consolidated ([Disko and Tugendhat 2013](#_ENREF_1)). Substantial debate and recommendations have been put forward in relation to indigenous peoples and their rights[[10]](#footnote-10). This is helping to clarify the specific rights at stake as well as pointing to operational implications. Documentation and progress to address such rights in World Heritage would benefit considerably from a strengthened RBA. In similar terms equal attention, yet with different rights implications, an effort is now needed to address the rights other vulnerable groups such as children, women and migrants as well as local communities. Many WH sites, particularly many cultural sites, illustrate the need for attention to other vulnerable groups. There is much confusion in the World Heritage community regarding the rights-implications for such groups. How to address the specific needs and rights of children, workers and squatters, for example? Explicit attention to particular groups and rights holders known to be affected by World Heritage would allow for more consistency and guidance enabling inclusion in rights deliberations.

Key finding: Policy guidance is needed on how to address the specific needs and rights of vulnerable groups and rights holders

### Building on practice

A number of efforts are already underway to explore and scope different rights themes in the World Heritage system ranging from global meetings on indigenous rights to hands-on efforts in specific sites. The Advisory Body “learning by doing” process in relation to evaluation processes is a good example. IUCN, for example, operates with a number of key rights themes to be explored in evaluation processes:

1. Consultation and consent processes
2. Tenure Rights
3. Management and decision-making
4. Livelihood and benefit-sharing rights
5. Cultural rights

These are, it should be noted, i) quite broad in scope and do not cover all issues ii) formulated specifically in relation to natural sites. The categories are not definitive, but were drafted in the spirit of “work in progress” in order to offer advisory body teams and State Parties a set of practical categories for the evaluation process ([Larsen 2012b](#_ENREF_6)). Initial experience by IUCN is revealing that such explicit attention is proving helpful in terms of generating a preliminary understanding of some rights issues at stake (see additional discussion below). This suggests a number of things. Firstly, it illustrates the relevance of developing explicit operational frameworks for addressing rights issues. In one site, for example, evaluations led to a productive discussion with the State party allowing for an unresolved issue to be addressed. Secondly, it shows the pertinence of expanding such identification to not only appear in the evaluation process, but equally to be taken up elsewhere in the World Heritage system. Thirdly, in prolongation, it points to the need for shared policy language and rights categories to build coherence.

Key finding: On-going evaluation practice with rights issues offers a good starting point for informing the design of a more comprehensive approach

### Clarifying and updating existing policy guidance

As discussed above, clarifying policy guidance is not about reinventing the wheel, but establishing clarity about existing standards and linkages. A number of provisions of the Operational Guidelines (OG) already offer important rights-related policy standards. Clarifying policy guidance would, entail establishing coherent guidance language about how such existing Operational Guidelines relate to human rights standards. In effect, the WH system has already embarked on developing policy guidance with preliminary wording on human rights. Policy guidelines, in general, seek to improve institutional memory and build coherence and consistency in terms of general guidance. Their development would incorporate General Assembly and Committee decisions alongside case-specific decisions. These are all important aspects of clarifying the scope and significance of rights-based approaches. Initial wording in this respect listed in the following box:

**Draft Policy Guidelines section on Human Rights**

The obligation to promote and protect human rights is formulated in article 1 of the UNESCO Constitution (1945), which states that: “The purpose of the organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms”. In 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights, as a common standard of achievements for all peoples and all nations.

Draft Policy Guidelines WHC-13/37.COM/13 p.7

The World Heritage Convention (1972), partly due to its early adoption, makes no direct reference to human rights. However, the Operational Guidelines, paragraph 12 points out, that local acceptance and participation is necessary in different planning procedures: “States Parties to the Convention are encouraged to ensure the participation of a wide variety of stakeholders, including site managers, local and regional governments, communities, (…) in the identification, nomination and protection of World Heritage properties”.

Following a workshop held in Oslo, Norway (2011) on “Our Common Dignity: Towards a rights-bases World Heritage management”, a working group was set up by ICOMOS with IUCN, ICCROM and the World Heritage Centre to identify a set of recommendations to strengthen the respect for and fulfilment of human rights in all World Heritage activities. This working group met several times, including with the Rapporteur on Human Rights. (See also: International Journal of World Heritage Studies, 18(3), 2012).

The 17th General Assembly of ICOMOS recognized that, “an integration of human rights concerns is essential to heritage identification and conservation, and considers that the implementation of heritage conservation initiatives needs to be supported by human rights based approaches introduced as ‘sustainability check’ to all phases of these activities“ (ICOMOS 17 GA 2011/30).

http://whc.unesco.org/archive/2013/whc13-37com-13-en.pdf

The draft text offers a sample of human rights commitments and related activities. The current preliminary wording on rights in the policy guidance draft offers a starting point, yet does not yet offer clear and practical standards for State Parties given the complexity of the matter. There is therefore a need to further elaborate a practical policy framework. Such guidance on RBA would offer a “basic framework” informing policy development in relation to sustainable development[[11]](#footnote-11) and indigenous peoples to name two other on-going policy topics being explored. Rather than repeating policy language on rights in every sector or theme, general RBA policy guidance would offer a transversal umbrella framework. Such a framework would allow the WH system to clarify existing commitments and obligations and thereby also “catch up” with later Conventions. It would be highly beneficial for State Parties allowing them to situate their efforts within shared standards. It would also facilitate Committee deliberations currently lacking clear benchmarks to advance in an effective and efficient manner.

The Committee decision to request further work on policy guidance[[12]](#footnote-12) is a key opportunity to consolidate wording on human rights in general and guidance on rights-based approaches in specific. A good opportunity is now to accelerate a pilot effort to further develop and clarify the scope and contents of policy guidance on RBA as part of the wider ICCROM-led process.

**Towards piloting Policy Guidance on RBA**

Key finding: Current processes to develop policy guidelines in general, and sustainable development policy language in specific, offer a critical window opportunity to consolidate guidance on rights-based approaches

## 3. Operational issues and entry-points

How do States and other actors move from overall commitments and policy guidance to rights-based approaches towards effective action? A streamlined operational approach to RBA does not involve re-inventing a new system, as much as clarifying standards, roles, procedures and ensuring adequate capacities to contribute as effectively. In contrast to mainstreaming of RBA in much project work, the World Heritage field involves a system with defined roles and responsibilities around well-established practices and procedures, not least fleshed out in the Operational Guidelines. Policy guidance, discussed above, is only one “leg” of the RBA showing where the System wants to go. Lack of operational frameworks are often underlined as an obstacle hindering more effective RBA integration ([Greiber et al. 2009](#_ENREF_4)). From this perspective, the global system arguably needs to recognize it has been slow to incorporate, in operational terms, the growing understanding of human rights deficits in World Heritage work. As one informant expressed it “We’ve done a lot of reflection, but very little integration into the system”. It is telling that the only explicit language reference to rights in the Operational Guidelines is limited to questions of copy right and visual material. While there are important policy principles and articles related to rights issues, there is a lack of specific and clear language and vocabulary providing operational direction. Rights-holder are thus currently subsumed under stakeholder language, just as State Party wording subsumes more specific duty-bearer implications.

Key finding: There is a need to strengthen operational guidance on rights reflecting its distinct system characteristics

### Clarifying language and vocabulary

Human rights mean different things to different people, which can become challenging in operational terms. What, on the one hand, reflects a set of national and international standards supported by mechanisms and systems, for others concern moral codes, notions of rightful or wrongful social or governmental action or government ([Ekern et al. 2012: 215](#_ENREF_2)). There are equally fluctuating meanings of what a rights-based approach means, although there is a high degree of convergence (see discussion above). In operational terms, further clarification and policy guidance would therefore be highly beneficial both in terms of clarifying relevant standards as well as establishing a common vocabulary and set of principles. It would, also in operational terms, be beneficial with brief training sessions for key players in the World Heritage system to acquire operational knowledge and a shared understanding about RBA. This could be organized and integrated in the wider World Heritage Capacity Building Strategy in order to build coherence.

Key finding: Different understandings of rights trigger the need for building a common language and operational vocabulary

### Developing comprehensive operational mechanisms and guidance

There are different windows of opportunity to strengthen operations in relation to rights. Some advances have been made such as the “learning by doing” process evaluations in relation to community and rights issues. IUCN has, for example, adapted its evaluation format to include one specific community & rights section. In similar ways, various other WH mechanisms and levels also offer specific contributions to strengthen rights implementation. It is now time to complement such “tweeking” of bits and pieces of the WH System, to properly mainstream rights in a comprehensive manner. This would have several immediate advantages. It would:

1. Allow for a process of mapping system wide operational needs and opportunities followed up by careful design based on shared standards
2. Facilitate shared inputs for the revision of Operational Guidelines revisions to the Operational Guidelines are on the agenda for 39 COM (2015).
3. Address other operational document and procedures such as nomination and reporting formats
4. Allow for concerted wording for integration in global reference documents and manuals
5. Ease the development of specific rights-related guidance material

Such an approach would not only be more effective, it would also secure streamlined language, synergies and coherence.

Key finding: There is a good opportunity to complement individual rights improvements with a comprehensive mapping and design of operational needs and opportunities

### Strengthening the learning by doing process

The recent effort to embark on a learning “by doing” process to address community and rights issues was generally perceived as a constructive approach, which could be expanded and improved. Benefits highlighted included a process, which allows move forward and improve practice. Simultaneously, it was also clear that a more structured learning framework would be beneficial. Such a structured learning framework could include:

* Clarifying specific learning themes and questions
* Setting learning/ practice objectives
* Linking learning to specific standards
* Agreeing upon the means for learning e.g.
	+ Creating spaces for knowledge sharing
	+ Allowing inputs/ studies from universities and others
	+ Assessments of what works/ what doesn’t
	+ Building linkages with other communities of practice/ knowledge

Key finding: The learning by doing process on “community and rights issues” is deemed positive. It could be expanded to the whole system and strengthened in terms of themes and structured learning.

### Early identification and assessment of rights claims and duties & rights-holders and duty-bearers

A major operational *sine qua non* condition of RBA, concerns the actual understanding of the human rights situation of a given WH context. Currently, far too many WH processes learn about rights issues in and ad hoc manner through critique and fire fighting. Sectoral divides and silo-tendencies often prevent knowledge of on-going claims, and even human rights jurisprudence, from filtering into the heritage sector. Responses thus easily become defensive, as rights issues, such as lack of consultation of rights-holder, may appear once work has been done and finalized. Time gained in terms of rapid nomination processes is lost in protracted re-negotiations, which could have been avoided by more head-on treatment.

The operational issue therefore concerns the identification and assessment of rights claims and duties. Such identification could address not only the specific rights claims as such, but also analyze the obstacles or enabling factors behind the non-realization of rights. A key aspect of this early identification specifically concerns the specification of WH-related impacts. Such potential impacts, may be both negative and positive, and require a systematic analysis of not just the nomination process, but equally the regulatory and management implications of site and bufferzone design. Another critical dimension of this concerns the identification of rights holders and duty-bearers. This entails a differentiated understanding compared to standard stakeholder identification, not only in terms of different rights and duties at stake, but also in terms of actual capacity to claim rights and duty-bearer capacity to fulfil obligations. Many rights-holders may not be in a position to immediately claim rights, just as many duty-bearers may lack organizational capacity to respond to their duties.

Key finding: there is a need to strengthen streamlined operational guidance on the early identification and assessment of rights claims and duties alongside rights-holders and duty-bearers as part of the WH partnership approach

### Clarifying roles and responsibilities

The World Heritage system involves a distinct division of roles and responsibilities between the World Heritage Centre, State Parties, the Committee and the Advisory Bodies. Clear-cut roles are essential to the functioning of the system. Currently, the lack of clarity with regards to operational roles and responsibilities on rights issues has generated some confusion, false expectations and additional workloads. As one person noted “we cannot fix what’s wrong by ourselves”. There is a need for building coherence in terms of roles and responsibilities. States do not receive clear-cut guidance from the system in terms when and how to best address rights. Further clarification would also help in clarifying how the World Heritage Centre and Advisory Bodies could then support and contribute States in this work.

**Clarifying roles and responsibilities**

Consider the case of Advisory Body evaluations, for example. While the evaluation process offers a critical space to explore how community and rights have been addressed in the nomination process, it is unrealistic with the current resource situation, to expect, for example, evaluation processes to undertake a thorough identification and assessment of human rights. Rather, there is need to make clear and explicit what can be expected from the evaluation process notably in terms of assessing how and the extent to which State Parties have identified and responded to specific rights issues. The role of Advisory Bodies is not to provide a judgement about whether or not a claim is legitimate. Advisory bodies have neither the mandate, nor the capacity, to legitimately do this. Legitimate actors concerning contested rights claims are obviously both rights holders and duty bearers themselves alongside relevant national and regional legal bodies. Rather, the role of the advisory bodies in a nomination or reporting process would involve supporting State Parties to ensure that rights concerns are being equitably addressed by relevant legal bodies to ensure that a World Heritage processes respect, protect and ideally move towards fulfilling relevant rights. This may also involve encouraging the promotion of legal and extra-legal bodies and mechanisms to speed up conflict resolution if judged relevant. In similar terms, the World Heritage Centre has a specific role in terms of both guidance, facilitation and communication with distinct opportunities for enhancing the implementation of RBA.

Key finding: While there is overall policy commitment in place, the systematic mainstreaming of RBA in terms of guiding operations in terms of *how* this is done and by *whom* is often unclear triggering a need for a process to clarify roles and responsibilities

As the protagonists in World Heritage matters, and main duty-bearers in relation to rights, State Parties play a critical role in terms of addressing rights issues not only at the moment of nomination, but in the long preparatory process from tentative listing, consultation with stakeholders to the nomination. They equally play roles in terms of effective management and monitoring. In some cases, reflective of national legislation and policy prescriptions, such work is codified and framed in terms of specific human rights. In other cases, heritage policy processes may not automatically address rights issues in explicit terms. Common for both situations, is the lack of explicit guidance and valorization of such efforts by the World Heritage system. There is, for example, no specific guidance for State Parties to include comprehensive documentation and mapping of rights issues as part of the nomination dossier. State party engagement and perspectives on human rights approaches to heritage, in short, remain undermobilized due to a lack of specific operational guidance. More clarity and streamlined procedures would reduce this gap.

### Tentative listing

Tentative listing concerns State listing of potential sites, which in the next 5 to 10 years are being considered for WH site nomination. This offers an important time frame for early information sharing and the identification of human rights concerns. Some significant rights concerns, such as land rights, require a year-long process if they are to be resolved equitably.

*64. States Parties are encouraged to prepare their Tentative Lists with the participation of a wide variety of stakeholders, including site managers, local and regional governments, local communities, NGOs and other interested parties and partners (OG)*

Currently, while operational guidance stresses partnerships, there is no explicit guidance on how States could identify rights holders and start assessing rights claims early on in connection with tentative listing. Such work would not require extensive treatment, but at least offer a good time frame to prepare the ground for a nomination process.

Key finding: there is a good opportunity to develop operational guidance for State Parties to start identifying rights holders and assess implementation at the stage of tentative listing

### Nomination

The preparation of the nomination is arguably the critical moment for States to develop a comprehensive approach to rights in partnership with rights-holders. This arguably entails both a series of procedural and substantive concerns as discussed above.

1. *Participation of local people in the nomination process is essential to enable them to have a shared responsibility with the State Party in the maintenance of the property. States Parties are encouraged to prepare nominations with the participation of a wide variety of stakeholders, including site managers, local and regional governments, local communities, NGOs and other interested parties. (OG)*

 It is a state-driven role and responsibility, and the WH system is generally mobilized in terms of providing good practice guidance, clarifying policy objectives and requirements of the system. While existing operational guidance emphasizes participation and shared responsibility, it currently lacks wording on rights leading to a lost opportunity to inform States adequately. Thus, whereas the identification, assessment and analysis of human rights claims and duty-bearer obligations is a „standard“ component of good RBA practice at the international level, there has been limited systematic efforts to encourage and inform such identification to take place in nomination processes. States would benefit with more clear guidance on: i) the identification and assessment of nomination impacts on rights ii) specific action to address identified rights issues, iii) engagement strategy with rights holders and duty-bearers notably in terms of relevant procedural rights and iv) performance standards and criteria in relation to rights. Explicit attention in the Operational Guidelines, nomination formats and the nomination guidance provided by Advisory Bodies and others would catalyze an adequately “timed” constructive process with State Parties. In particular, it could be explored to have a dedicated section of the nomination profile specifically and in explicit terms addressing rights concerns. Such a “box in the nomination file”, in the words of one informant, “would allow rights to be built into the system from the beginning. It would become real”.

Key finding: Current Operational Guidance on participation in the nomination process and outputs, would benefit from clear incorporation of rights in terms of nomination format, criteria and essential guidance.

### Evaluation process

The evaluation process is mainly an Advisory Body activity, yet also involves State party and Centre action. As discussed elsewhere, Advisory Bodies have for the last couple of years sought to establish more explicit attention to questions of community and rights in the evaluation process including separate reporting space on the topic. There has yet to be a thorough assessment of progress till date in terms of the effectiveness of these evaluation processes, yet there is a general perception that it is:

* Helping to identify some issues and initiate a dialogue with State Parties
* Useful, yet would benefit from a more structured, better resourced and comprehensive treatment earlier in the WH process driven by State Parties
* Would benefit from clearer performance criteria and in more explicit terms be linked to nomination format and guidance

In particular, it was recognized that the evaluation process may only “scratch the surface”, cover overall questions of public awareness and consultation, yet face time and resource constraints to adequately understand and evaluate substantive rights impacts in more detail. Clearly, the process would benefit if guidance to State Parties was more explicit in terms of requirements and standards to address rights in the nomination process.

Key finding: on-going evaluation work on communities and rights confirms relevance, yet needs to be strengthened and better resourced.

### Decision of the World Heritage Committee

153. The World Heritage Committee decides whether a property should or should not be inscribed on the World Heritage List, referred or deferred.

156. At the time of inscription, the Committee may also make other recommendations concerning the protection and management of the World Heritage property.”

How and to what extent is the realization of rights tied to decision-making the World Heritage Committee? This is not spelled out clearly in the Operational Guidelines. Whereas the Committee upon inscription elaborates a statement of OUV, guided by the ABs with a protection and management emphasis, this could benefit from clearer language on rights where relevant. Recommendations may also be issued at this point, where the Committee could signal their support to resolving rights issues including a call for international support. Given the changing composition of the Committee, and in the spirit of coherence, policy guidance discussed above, would be complemented with simple operational guidance for the Committee supported by the ABs to help formulate nomination-specific recommendations for follow-up if necessary

Key finding: RBA guidance for the World Heritage Committee would be beneficial

### Authenticity and integrity

At first glance, questions of authenticity and integrity may not appear to be linked to rights issues. Yet, a more careful assessment soon reveals the how rights issues are often integral to the authenticity of values being attributed to heritage and the integrity of the ecological relationships. If rights to culture, for example, are ignored nominations are unlikely to reflect an authentic picture of cultural value attributions and may appear driven by specialist perspectives alone. In similar terms, ecological values may be represented in abstract terms without adequately reflecting how, for example, customary rights and practices, form part of the “relationships and dynamic functions” in targeted properties. Ignoring, for example, the use of customary rights, use and management in shaping landscapes and use of built heritage would have negative consequences for the integrity of the property. In contrast, by clarifying the significance of rights for integrity and authenticity would heighten the chance of World Heritage processes supporting, rather than potentially undermining, rights at stake. The question is critical as it concerns the operational dimension of articulating the very values, which then serve to guide management and protection interventions making up WH management. Many conflicts between local use and World Heritage value attribution can, in part, be explained from this. RBA may not necessarily prevent or resolve such conflicts, but level the playing field for a more balanced approach when determining value attribution at stake.

Key finding: There is a need to clearly articulate the rights dimension as integral to the qualification of authenticity and integrity

### Management & protection

*All properties inscribed on the World Heritage List must have adequate long-term legislative, regulatory, institutional and/or traditional protection and management to ensure their safeguarding. This protection should include adequately delineated boundaries.*

World Heritage operational (policy) guidance is clear that adequate management and protection may involve a whole range of measures. Whereas this is often interpreted as the need to reinforce government-driven management, the policy principle, in fact, allows for alternative governance approaches. Still, there is a need to strengthen operational guidance to enable duty-bearers and rights-holders to explore such alternatives in a more head-on manner. This would, for example, involve further operational guidance to facilitate:

1. State party awareness about the significance of rights-based approaches to management and protection
2. Procedural rights to ensure rights-holder participation in the development of appropriate management and protection
3. Access to the wide range of management and protection modalities, which can build on and enhance rather than undermine rights

Considerable advances have been made in this respect, including work in the current reference manuals. Yet, more is needed to – in operational terms – allow for a diversity of approaches to be articulated. Specifically, operational guidelines could articulate the importance of rights-based approach to the design and formulation of management and protection regimes.

Key finding: While existing operational guidelines allows for RBA and a diversity of governance approaches, specific guidelines highlighting their importance would facilitate take-up by State Parties in management design and planning processes

### Reporting and Monitoring

What opportunities are there to mainstreaming RBA relevant indicators in the unique reporting and monitoring work undertaken in the World Heritage system? Is additional reporting and monitoring needed? As with any operational activity, monitoring and evaluation offers State Parties a the means to assess progress and respond to emerging opportunities and challenges as necessary, equally in terms of rights issues. Key opportunities would involve:

1. Guidance to States to encourage national level monitoring and evaluation of both outcomes and processes guided by human rights standards and principles
2. Incorporation of rights criteria in State of Conservation reporting and corrective measures
3. Including rights in periodic reporting questionnaire and regional debates
4. Promoting independent and participatory monitoring by rights-holders at the site level through a system of checks and balances

Key finding: There are good opportunities to mainstream rights monitoring and reporting through current operational mechanisms

### A comprehensive approach to rights in operational guidance

The different examples above reveal several operational themes and entry-points. Such operational opportunities can be addressed on a case-by-case basis, as it is currently being done, or involve a shift to a more standardized and mainstreamed approach, where operational guidance thought broadly is sharpened to facilitate a more systematic approach.

**Operational entry points**

The advantages of a more systematic approach are:

* Clear and transparent operational standards for State Parties
* More efficient use of the WH system by clarifying roles and responsibilities
* Offering concrete solutions and avenues for action to address complex issues

This will, of course, rely on a concerted response from Advisory Bodies, the World Heritage Committee and the World Heritage Centre to support the overall mainstreaming of RBA (as per policy guidance above) followed by detailed operational guidance according to the different operational entry points outlined above.

Key finding: The multiple operational windows of opportunities illustrate the importance of a comprehensive review and formulation of operational guidance to allow for effective State party action

## 4. Enabling factors

Effective rights-based approaches are not only about clear policy guidance and well-tailored operational mechanisms. A host of other factors may determine whether or not and how rights are being implemented, as many of the case studies presented in Oslo reveal. Far too often RBA is left at the level of policy commitments without adequate attention to other factors, which may trigger or catalyse real change on the ground. This section briefly explores a selection of enabling factors.

### Building awareness and understanding: reducing misunderstanding

Given the current lack of policy and operational guidance, the *ad hoc* nature of rights appearing in World Heritage, there is generally not a systematic understanding of the issues at stake. In addition, there is some questioning about whether indeed human rights are the most appropriate way to address a range community issues in the World Heritage context. There is, for example, a concern that human rights discourse is politically contentious for some countries and may undermine possibilities for a constructive engagement about the social issues at stake. This is leading both to lost opportunities for action and weariness in terms of consolidating a more practical approach to RBA. In the vast majority of cases, the question arguably boils down to the novelty of rights-language among many heritage professionals and the unexploited potential for shared language and practical responses if broader awareness was to be in place. Concrete suggestions included gathering all relevant documents on a World Heritage Centre web page dedicated to the topic.

 Key finding: A major enabling factor concerns the awareness and understanding of rights-based approaches and practices in the World Heritage context. Concrete measures are needed to raise awareness including a dedicated web-page on RBA on the World Heritage Centre web-page.

### Building skills and systems-wide organizational capacity

Staff competencies do not automatically derive from adopting an RBA. UNESCO has, for example, developed the following learning modules for in-house capacity building:

* Human Rights Training for SHS Headquarters Programme Staff
* Human Rights-Based Approach to UN Common Country Programming Processes
* Human Rights Training for UNESCO Resource Persons
* A learning module for UNESCO Directors and Chiefs of Section

Currently, no structured RBA and accompanying learning and induction has been developed for the World Heritage System. This being said, there is strong interest among key actors to strengthen the levels of understanding and operational skills to enhance RBA implementation. Ensuring basic skills, in this respect, is arguably necessary to effectively service and support State party activities in the field.

Key finding: There is a need for a systems-wide training/ crash course on RBA and World Heritage in order to effectively support State party activities

### Working with rights: new approaches, expertise & tools

Working with rights in a pro-active mode entails taking up a whole new range of tools, bodies of knowledge and groups of expertise. For the moment, State party access to such support elements is scattered and project specific. Approaches to rights therefore vary not only according to social and cultural context, but equally reflect the levels of access to knowledge and types of tools brought to the design table.

 A critical enabling factor could involve addressing this gap. This would, in other words, complement policy commitments making sure that technical know-how and tools on rights concerns are available to the national agencies, consultants and rights holders partnering in the specific sites. In particular, it was suggested to update or complement existing resource manuals with annexes containing guidance and tools on RBA, in general, and specific rights themes as FPIC in specific. Furthermore, it was suggested to develop more hands-on based case material allowing State Parties to gain a better understanding of what works and what doesn’t. A

Key finding: There is a need to complement policy commitments with efforts to make state of the art know-how and tools on relevant rights approaches available

### Setting up a good practice barometer and learning community

There is wide consensus about the importance of learning from good practice, and not just tools and manuals, in the World Heritage field. Practitioners frequently refer to specific World Heritage sites when pointing to how rights can be addressed. Certain sites thus (informally) feature as having constructively addressed rights concerns. Some State Parties, for example, have mechanisms and consultation processes in place to build consensus and secure consent in the nomination process. Apart from procedural aspects, this may also involve practices to address substantive rights claims. Whereas the current good practice model is largely constructed around showcasing sites internationally as a “carrot” to stimulate further good practice, building additional modalities could arguably strengthen the use, relevance and replicability of good practices. This could include:

* The identification of selected rights themes posing challenges to existing practice such as legacy issues and Free Prior and Informed Consent
* Establishing a “barometer” with specific indicators to identify good – and better – practice on key rights themes.
* Forging learning communities, engaging rights holders and duty bearers in relevant sites a “learning by doing” process supported by the World Heritage Centre and the advisory bodies
* The development of specific learning modules on selected rights themes in cooperation with State Parties already working on such themes

In the words of one person interviewed, some State Parties “are ahead of the game”. Good practice dissemination is one effective way of recognizing and valorizing efforts being undertaken. There is a strong perception that State Parties are ready to embark on such a “learning by doing” process if framed in a coherent manner.

Key finding: Good practices if carefully designed and contextualized around a “barometer” with specific indicators and learning outcomes may serve as enablers for RBA

### Addressing capacity needs of rights holders and duty-bearers

Identifying and addressing rights and duties can rarely be achieved simply through expert opinion, analysis and planning alone. A key enabling condition, involves recognizing another “elephant in the room”, namely the power asymmetries often found between duty-bearers and rights holders. This involves a process of engaging with rights-holders and duty-bearers to assess their own situation and ensure respective capacities to effectively engage in World Heritage related processes. A key aspect of international support concerns various forms of capacity building and management support to World Heritage sites. Such support may appear both through national and international means. The current WH capacity building strategy, for example, operates with different target audiences potentially encompassing both rights-holders and duty-bearers. Capacity building efforts particularly at national and site levels offer good opportunities therefore to make sure that:

1. both rights-holders and duty-bearers are targeted
2. rights aspects of different capacity building themes explored when relevant
3. Capacity building of rights holders is tied to rights claims

Key finding: Capacity building of rights holders to actively take part in World Heritage processes is a key enabling factor for effective RBA

### Technical cooperation on World Heritage and rights

A host of national and international technical cooperation initiatives today address related issues in World Heritage from participation, local development to poverty reduction and living heritage. Such initiatives may directly or indirectly contribute towards realizing rights without necessarily using such language. Showing such results may be important to convey the importance of existing efforts. Yet, from another perspective, there is also a need how rights remain a major gap both in terms of advisory body support as well as technical cooperation undertaken by partner agencies.

There is a need to boost such activities. Multilateral and bilateral agencies and donors can, from this perspective, support enabling conditions through mainstreaming RBA in in their support programmes to World Heritage. Considerable extra-budgetary contributions are being made to World Heritage related work, which could benefit from a strategic emphasis on rights-related activities.

Key finding: While much technical cooperation work addresses community issues, rights questions remain a major gap. There is a need and opportunity to boost RBA in bilateral and multilateral support to World Heritage

## 5. Follow-up Scenarios

The following scenarios offer different options for action. They are here specifically put forward to generate debate, discussion and inputs from workshop participants in terms of what a strengthened RBA might look like. They may be seen as different scenarios or alternatively as a thinking tool or step by step approach for fleshing out an effective RBA.

### Scenario 1: status quo

In this scenario, no further additional policy guidance is offered. Rights are expected to gradually and on a case-by-case basis appear in WH related work reflecting existing commitments and growing State understanding of their significance. However, due to funding constraints faced by the WH system, already initiated work to develop policy guidance on rights and specific sustainable development aspects will face serious delays. The system as it currently functions will not systematically offer guidance, nor incentives for States to clearly articulate WH related work in relation to rights. Furthermore, given the major transformations of the World Heritage Centre in terms of budget cuts and the significant resource and time constraints faced also by Advisory Bodies, rights concerns are unlikely to appear as part of the core business.

With only a very basic and largely implicit rights framework and scattered operational guidance in place, the risk of rights infringements remains high despite growing knowledge about potential impacts and positive alternatives. Rights will thus, as now, more likely appear based through individual cases, where specific States, civil society organizations or evaluation processes flag their significance. In turn, due to lack of clear operational procedures, responses will be characterized by uneven treatment, fire fighting and damage control. Considerable uncertainty would also remain among State Parties about what standards and benchmarks to respect in World Heritage processes.

Still, working procedures and collaboration will likely improve gradually as experience grows. However, given the reluctance of some States to address rights concerns, a gap will likely appear between countries with strong national frameworks and civil society activity around rights concerns and other countries, where this is lacking. As a consequence, the likelihood of rights of the most vulnerable remaining neglected and even further infringed upon by World Heritage processes is high.

While the cost implications in terms of upfront investment are low, complications generated by the lack of clear guidance would likely generate higher costs down the line, loss of credibility and lost opportunities to resolve rights issues early on in nomination processes.

### Scenario 2: Adopting a common rights framework/ RBA policy guidance

In Scenario 2, the World Heritage Centre and the Advisory Bodies, in a speedily fashion prepare the building blocks for common RBA policy guidance for the World Heritage Committee as part of the 2015 windows of opportunity.

This could specifically involve promoting a common rights framework as pilot effort to flesh out effective policy guidance in the making. This would be developed in close collaboration with ICCROM mandated[[13]](#footnote-13) for this work in cooperation with the other advisory bodies.

It would involve a consensus building process among the main actors of the World Heritage system and help clarify existing policy commitments to human rights. Such a clarified framework would offer a clear message to State Parties about the significance attached to rights-based approaches. Also, States would have a clearly identified basis of standards for how to go about identifying outstanding rights challenges and resolve them in the light of recognized standards as part of a nomination process, for example.

As a result, State Parties would increasingly be able showcase and gain recognition of national efforts to reconcile rights and World Heritage. A clear set of standards would also facilitate the work of Advisory Bodies in terms of the terminology and benchmarks when advising States.

Cost implications are relatively low and would namely involve the process of clarifying a common human rights framework as part of on-going policy guidance development. Additional resources in this scenario would involve further work to raise awareness of standards including a training session for Committee members, web site information sharing and further distribution of policy guidance.

### Scenario 3: Common framework + operational guidance

Whereas Scenario 2 allows for the clarification of the policy standards, Scenario 3 involves adding the element of operational guidance to translate policy principles into the mechanisms and working arrangements of the Convention. This would involve a concerted effort in preparation for the 2015 Committee meeting to address operational implications from tentative listing, over nominations, management to monitoring. Rather than reinventing the system, it would involve building coherence with current operational mechanisms.

As a consequence, rights would form part of the “core business” of the WH system heightening the chances for the early detection of possible impacts, challenges and opportunities. It would, for example, involve the addition of relevant language in the nomination format and guidance specifying appropriate action by State Parties and advisory bodies.

In this scenario, far more explicit treatment of rights issues would appear throughout the system. Rights would appear systematically in nomination profiles and State party investments in procedural mechanisms would increase. Different actors in the system would have a clear and precise idea about their roles and responsibilities.

 Experience with the use of RBA at both national and regional levels would grow, particularly in well-off countries with access to expertise and resources for additional rights work. Evaluation processes would equally become more specific and consistent in their treatment. Still, rights issues would remain relatively sparsely documented in countries with limited resources, weak civil society and legislative frameworks.

### Scenario 4: Common policy framework + operational guidance + enabling conditions

Effective rights-based approaches are not only about clear policy guidance and well-tailored operational mechanisms. A host of other factors may determine whether or not rights are being addressed effectively. Scenario 4 would involve designing support mechanism to create enabling conditions for RBA to work effectively, also in countries where resources, capacity or legislative frameworks remain weak.

While a better understanding of such enabling conditions is still “work in progress”, this scenario could involve:

* Requesting support from multilateral and bilateral heritage cooperation to specifically target rights implementation in program and project development
* Capacity building support of both rights holders and duty bearers
* Bridging power asymmetries
* Promoting the development of tools and good practices

As a result, a growing number of countries not only address rights implications along formal requirements, but equally have the human, technical and financial resources to support rights holders and duty bearers to partner in the design of rights-based World Heritage initiatives.

## 6. Conclusions

The build-up of discussions, decisions and systems wide commitments over the last few years have made it clear that the World Heritage system is ready to move from overall commitments to human rights and translate them into tangible action and a RBA approach that fits the reality of the system and the specific realities of site conservation on the ground. This equally mirrors wider shifts in both natural and cultural fields to adopt RBA at both national and international levels.

**Current RBA**

In the current situation, the World Heritage system is lagging behind in terms of policy and operational guidance compared to many national systems and later Conventions. Whereas World Heritage, for many, is a role model and reference point for wider heritage practices, progress on rights is hampered by lack of effective policy standards and operational mechanisms. While commitments to rights are in place alongside initial mechanisms, there is a need for a strategic and coherent approach to ensure an effective, efficient and streamlined RBA. Currently, many actors in the system are increasingly under critique for not adequately addressing rights leading to unnecessary tensions and feelings of mistrust. There is a recognition that rights issues “easily fall in the cracks”, because the system is not adequately geared to capture them early on. Not only may this be judged inadequate compared to good practice about RBA in other UN processes, it also creates avoidable problems, which could be resolved constructively through a system and enabling conditions better geared to rights in overall terms.

Three major building blocks of an effective RBA are proposed in this discussion paper. The first concerns the fine-tuning of a coherent RBA policy guidance framework for the World Heritage system. This would elaborate on and establish coherence within existing policy guidance and respond to a major implementation gap faced by State Parties. Such policy guidance would allow to signal visibility around the theme currently lacking as well as building coherence around a set of common standards.

The second building block involves building coherence in operational terms. Current operational progress is uneven and scattered, and would benefit from a more streamlined approach across the different phases and mechanisms of the World Heritage system.

The third building block concerns reinforcing enabling conditions for effective RBA combining capacity building, technical cooperation and further work on good practices and tools development. Inputs from site-managers and rights-holders will be critical to ensure that such work is not “supply-driven”, but focuses on factors effectively enable change on the ground.

The major challenge is now determining the next steps, including both immediate and long-term priorities. Whereas this discussion paper maps out opportunities at the systems level and possible avenues for action, questions remain in terms of recommending a prioritized list of actions for the different actors in the WH system.

Whereas, the WH system in an ideal world would embark on a fully-fledged RBA right away, it needs to recognized that it is both overstretched, under-funded and under severe pressure. This is already posing major implementation challenges in terms of its everyday operations. Would an RBA not add additional work to an agenda already full? This analysis suggests, on the contrary, that a bundle of targeted “upstream” improvements of the existing system would in fact help both the State Parties and the system as a whole to clarify and build coherence around a major implementation challenge currently confronted by practitioners. Rights intersections with World Heritage currently take up considerable time, and pose major challenges whether seen from the perspective of rights holders, State Parties, Advisory Bodies or the World Heritage Committee. There is a genuine commitment to respond to rights holders, yet none of these actors can effectively alone. A streamlined system would, in fact, help simplify procedures and expectations and allow for a constructive rather than confrontational or firefighting approach.

The task in front of us is therefore, from different perspectives, to identify what good practices can help a Systems wide shift towards an effective rights-based approach.

* What kinds of policy guidance would most appropriately and effectively build coherence and clarity?
* What kinds of operational guidance and mechanisms would, in a prioritized order, facilitate streamlined and effective inclusion of rights concerns and responses?
* Which kinds of enabling conditions should receive the highest priority by national governments and the international cooperation?

By not only stressing the need for RBA, but equally offering advice and recommendations for a practical way forward, the experts gathered in Oslo can play a crucial role in addressing a long-standing implementation gap. This would send an important signal to the global heritage community as well as to rights-holders. Concrete follow-up would not only strengthen the credibility and effectiveness of the system, it would demonstrate that World Heritage system can respond to the plight of the most vulnerable and contribute positively to realizing their rights.

## Recommendations

### Expert meeting Oslo

Expert practitioners are recommended to offer sharing experiences, building on their respective cases and wide knowledge of the system, in order to identify major challenges and opportunities to strengthen RBA in World Heritage.

It is specifically recommended that the expert group works to, aims to, endeavours to:

* Identify a list of common rights issues experienced on the ground
* Identify major bottlenecks and enablers within the system at national and international levels
* Identify common lessons learned about how emerging good practices can be strengthened, replicated and their relevance further enhanced

In concrete terms, the expert group is recommended to:

1. Use the collective brainstorming to build a vision and recommendations for a roadmap with concrete prioritized list of action points for strengthening RBA and the use of Good Practices in the World Heritage system
2. Condense the vision and action points in an outcome document to be shared with the wider World Heritage Community
3. Propose a roadmap with next steps for bringing the vision and action points to life

### Advisory Bodies & World Heritage Centre

The Advisory Bodies and the World Heritage Centre are recommended to take into account report findings and meeting recommendations in on-going activities as well as exploring options for next steps. Specifically, the Advisory Bodies are recommended to:

1. Agree on roadmap and timeline for next joint steps
2. Facilitate the organization of a side-event at the World Heritage Committee meeting in Doha to share findings and recommendations with States Parties
3. Incorporate findings and meeting recommendations in on-going Advisory Body work to further develop policy guidance and improve WH operational guidelines
4. Submit meeting documents and report progress at the World Heritage Committee meeting in Doha, June 2014
5. Develop a follow-up project to prepare specific inputs for policy guidance and operational guidance in response to priorities identified in the Oslo meeting
6. Incorporate findings in the World Heritage Capacity Building Strategy
7. Set-up a Web-page platform on Rights and World Heritage

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1. http://www.undg.org/archive\_docs/6959-The\_Human\_Rights\_Based\_Approach\_to\_Development\_Cooperation\_Towards\_a\_Common\_Understanding\_among\_UN.pdf [↑](#footnote-ref-1)
2. See also http://www.unesco.org/new/en/social-and-human-sciences/themes/human-rights-based-approach/ [↑](#footnote-ref-2)
3. For list of sites recognized for their best practices, see http://whc.unesco.org/en/recognition-of-best-practices/ [↑](#footnote-ref-3)
4. http://whc.unesco.org/archive/2013/whc13-37com-13-en.pdf [↑](#footnote-ref-4)
5. whc.unesco.org/document/116777 [↑](#footnote-ref-5)
6. http://whc.unesco.org/archive/2011/whc11-18ga-11-en.pdf [↑](#footnote-ref-6)
7. http://whc.unesco.org/archive/2011/whc11-18ga-11-en.pdf [↑](#footnote-ref-7)
8. These may include the right to life, the right to a minimum level of security, the inviolability of the person, freedom from slavery and servitude, and freedom from torture, unlawful deprivation of liberty, discrimination and other acts which impinge on human dignity [↑](#footnote-ref-8)
9. http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/A.CONF.157.23.En?OpenDocument [↑](#footnote-ref-9)
10. This includes draft text for revising operational guidelines (such as the inclusion of wording on rights), reference to specific procedural rights in nomination formats (such as Free Prior Informed Consent) and the recognition of indigenous peoples as rights holders (rather than stakeholders). The Committee is considering these recommendations. http://whc.unesco.org/document/120075 [↑](#footnote-ref-10)
11. Decision: 36 COM 5C - World Heritage Convention and Sustainable Development [↑](#footnote-ref-11)
12. „ICCROM, in collaboration with the World Heritage Centre and the other Advisory Bodies, to further develop the Policy Guidelines and present a scoping document so that stakeholders are made fully aware of policy decisions that have been taken by the World Heritage Committee“, http://whc.unesco.org/en/decisions/5187/ [↑](#footnote-ref-12)
13. http://whc.unesco.org/en/decisions/5187 [↑](#footnote-ref-13)