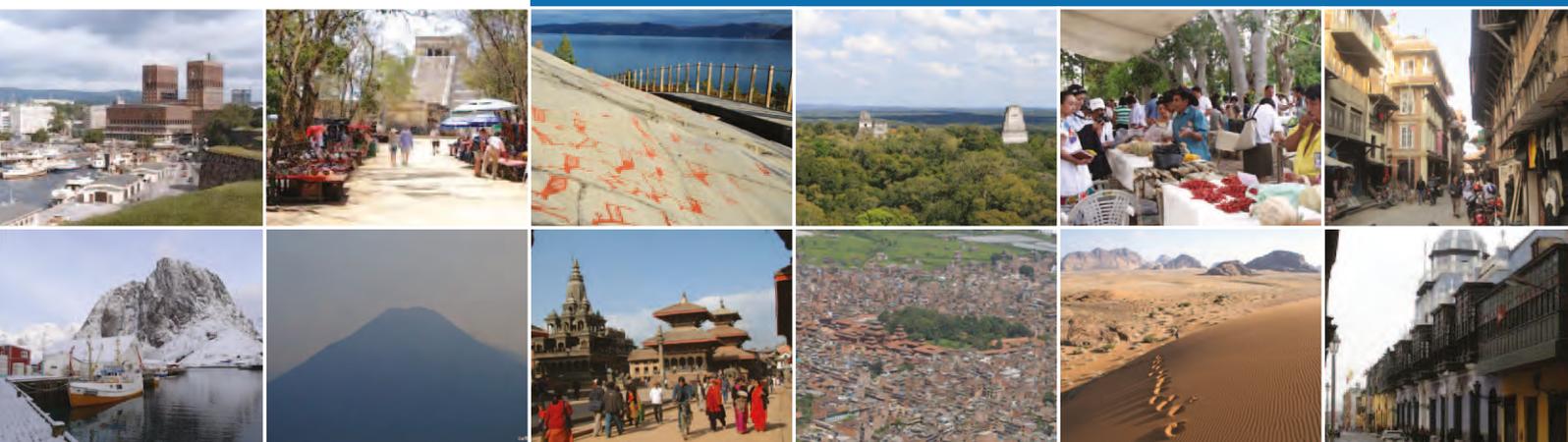




ICOMOS Australia
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Case Studies

Carried out within the
'Our Common Dignity Initiative 2011-2016:
Rights-Based Approaches in World Heritage'



Editors:
Amund Sinding-Larsen and Peter Bille Larsen

CASE STUDIES were carried out within the Our Common Dignity initiative by ICOMOS Norway and Partners between 2011 to 2016.

Editors

Amund Sinding-Larsen and Peter Bille Larsen

The Our Common Dignity initiative is carried out by ICCROM, ICOMOS and IUCN and coordinated by ICOMOS Norway

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This document, and the full case study texts, shall be made available for download at <http://www.icomos.no/whrba>

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Oslo, April 2017
Amund Sinding-Larsen

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INTRODUCTION

The *Our Common Dignity* initiative has resulted in a range of activities. This document summarizes some of the independent case studies initiated by ICOMOS Norway and its partners. While not formally part of the Advisory Body collaboration, they offer important lessons and insights.

The purpose of presenting these case studies now is to illustrate rights issues being discussed in various geo-cultural regions.

ICCROM, ICOMOS and IUCN - the Advisory Bodies to the 1972 World Heritage Convention (*Convention Concerning the Protection of the World Cultural and Natural Heritage*) – have, since 2011, collaborated on rights and World Heritage under the umbrella of the *Our Common Dignity* Initiative, coordinated by ICOMOS Norway.

The Advisory Body Activity Report – ‘Taking Stock and Looking Forward’, published in parallel with the Case Studies, presents key results of the formal collaboration among ICCROM, ICOMOS and IUCN

The objective of the *Our Common Dignity* initiative has been to contribute towards building awareness of rights issues in World Heritage and heritage management, to promote ‘good practice’ approaches to rights and their enabling conditions, and to develop and recommend relevant tools and guidelines in World Heritage, from tentative list nomination through to management.

The understandings and points of view expressed in the case study texts are those solely of the authors.

The case studies have, in other words, not been subject to comments or input, or indeed approval, from any local, national, regional or international heritage management authority or scientific body, including ICOMOS, IUCN and ICCROM.

The case studies presented here were initiated by ICOMOS Norway in dialogue and collaboration with ICOMOS National Committees and professional partners possessing extensive experience with the selected World Heritage Areas.

In all, seven case studies were investigated during 2015-2016. Of these, five are presented here in summary form. Four of them were initiated and carried out during the 2015-2016 funding cycle (India, South Africa, Niger and Norway), and the fifth (Australia) was originally investigated in 2014 and revisited and updated in 2015.

References to earlier *Our Common Dignity* case studies which were carried out in 2011, 2012 and 2014 are also included in this publication.

Advancing human rights has been an integral component of UNESCO’s mission since its creation in 1945. However, it is only in the last few years that the link to World Heritage has become more evident. Rights issues are not explicitly mentioned

in the 1972 World Heritage Convention, but have indeed been present in World Heritage work in a variety of ways since its inception. However, since the inclusion of a 5th Strategic Objective in 2007 known as the ‘5th C’, the purpose of which was ‘*To enhance the role of communities in the implementation of the World Heritage Convention*’, the need to respect and support communities involved in World Heritage processes has become clearer.

The case studies aim to shed more light on, and contribute towards, internal and international discussions on rights issues that could or should be regarded as relevant in the context of World Heritage management and heritage management in general.

Increased reflection on World Heritage processes and practice has led to a better understanding of the social impacts of World Heritage designation, and the need to address and repair earlier errors or oversights, as it has become generally acknowledged that problems and conflicts can arise where rights issues are not addressed in heritage conservation.

ICOMOS Norway and its partners hope to continue the work to highlight the importance of rights in heritage management. In addition, ICCROM, ICOMOS and IUCN plan to continue to collaborate to produce guidelines and tools, to increase knowledge, and to recommend approaches beneficial to their shared work with World Heritage.

The Norwegian Ministry of Climate and Environment has generously funded the *Our Common Dignity* initiative since its inception, as well as much of the work presented here. ICOMOS Norway and its partners wish to wholeheartedly thank the Ministry for its generous support over the years.

This document will initially be distributed in paper format, and shall subsequently be posted with full texts on our website (refs).

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AUSTRALIA: TASMANIAN WILDERNESS AND WET TROPICS WORLD HERITAGE AREAS

This case study looks at how efforts to engage Indigenous peoples differ across two World Heritage Areas (WHA) in Australia. The current text is an updated version of an earlier comparative case study presented in 2014.

One of the two World Heritage Areas (WHA), the Wet Tropics of Queensland (inscribed 1988), stretches along the north-east coast of Australia for some 450 km, and is made up largely of tropical rainforests.

The other, the Tasmanian Wilderness (inscribed 1982, extension 1989), is located in the south west of the island state of Tasmania, which lies south of the mainland. In a region subjected to severe glaciations, these parks and reserves, with steep gorges and covering an area of over 1 million ha, constitute one of the last expanses of temperate rainforest in the world. Remains found in limestone caves attest to human occupation for more than 20,000 years.



Lake St Clair in the Tasmanian Wilderness World Heritage Area

In 2014, one Tasmanian Wilderness WHA was faced with a proposal to de-list part of the inscribed area. For the other WHA, a potential re-nomination was being considered, for the purpose of including Aboriginal cultural values in the existing World Heritage inscription. The contrasting ways in which Aboriginal people are engaged are in part due to the different legislative frameworks of the States of Queensland and Tasmania, as well as various demonstrations of 'good will' shown by the management agencies. However, there are also similarities in how Aboriginal people are engaged..

ADDRESSING INDIGENOUS PEOPLES RIGHTS

In the Wet Tropics of Queensland, the original organization representing the 20 language groups of the Rainforest Bama (Aboriginal people) has recently been replaced with the network of Rainforest Aboriginal Peoples (RAP). However,

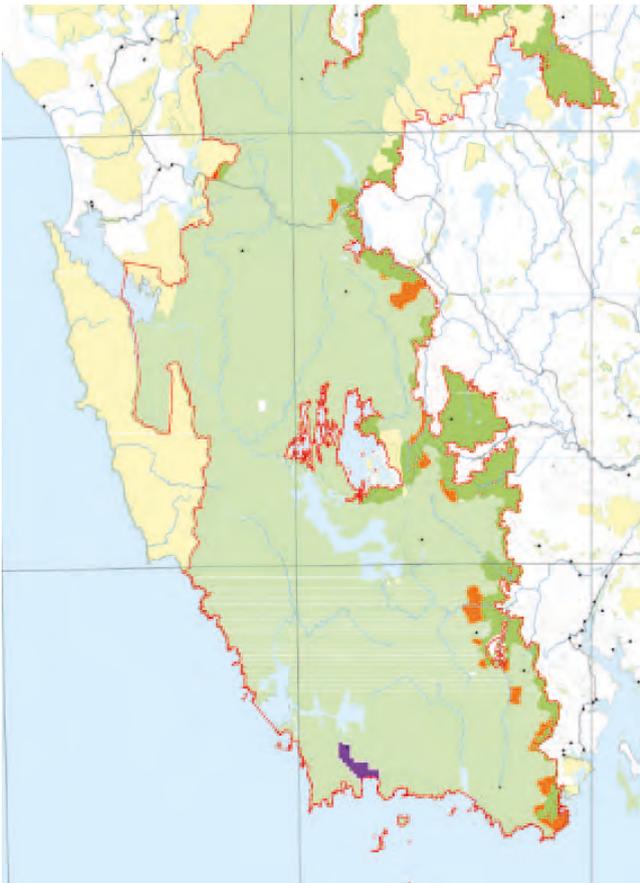
as all community work is done on a voluntary basis, the limited network resources and capacity severely hamper its effectiveness.

In the Tasmanian Wilderness, Aboriginal organisations have lobbied for the newly formed Tasmanian Regional Aboriginal Communities Alliance, which also focuses on issues such as tourism in the WHA.

SUCCESS FACTORS

Strong leadership skills and close, regular dialogue with the population groups are critical for efforts to successfully address rights issues and for Indigenous communities to succeed in participation processes.

In both WHAs, observations have been that lack of information, as well as outright misinformation, contributes to maintaining hierarchical and unequal relationships between Indigenous



Map of the Tasmanian Wilderness World Heritage Area

Traditional Owners as 'rights-holders', on the one hand, and the managing authorities on the other.

The Tasmanian Aboriginal community has, since 2013, participated in the review of the Tasmanian Wilderness WHA Management Plan, and issues raised by the community are now being addressed in further planning. Commonwealth Government funding will be used to address identified priority issues such as road safety and bio-security concerns, including managing the spread of invasive species, pests and pathogens. The funding will also cover costs of further studies and consultations between government and the Tasmanian Aboriginal community, as requested by the World Heritage Committee. The Committee requested this to encourage a deeper understanding of tangible and intangible Aboriginal cultural heritage values of the Tasmanian Wilderness WHA be developed and documented.

In the case of the Wet Tropics WHA, a number of earlier unreleased Discussion Papers and a combined report on the Wet Tropics Rainforest Aboriginal Peoples' consultation about cultural and natural resource management (CNRM) were published in 2014. Since the recognition of Aboriginal cultural values in 2012 to the Australian National Heritage List, some funding was made available for further consultation and exploration of the importance of Aboriginal cultural values and the views of the Aboriginal community on what it would mean to have those values included in the World Heritage listing. Rainforest Bama were asked what they would wish to see

happen, and the community expressed its desire that the Wet Tropics WHA be managed for all its natural and cultural values and that the community be kept informed of and in dialogue on this critical issue.

LESSONS LEARNED

The consultation on the Wet Tropics revealed a low level of prior knowledge of World Heritage processes and what potential impacts Aboriginal cultural values would have if included in the World Heritage listing. The Aboriginal communities need to fully understand the extent to which they can maintain access to sites and use of resources within the WHA and what level of protection will be afforded to their tangible and intangible cultural heritage sites and areas. The National and State governments need to show leadership in taking responsibility for fully recognising the rights of Aboriginals as Traditional Owners and 'rights-holders' throughout all processes of the World Heritage systems.

The above confirms and reinforces the fact that communication across and within the communities is crucial for population groups to understand the implications of processes for listing at World Heritage level, and for engaging them in the processes at an early stage.

The review of the Tasmanian Wilderness WHA Management Plan was balanced and genuinely respectful of cultural and natural values, allowing for active engagement of the Tasmanian Aboriginal community. Implementing the Plan should enable a stronger focus on the significance of cultural heritage values and effective co-management arrangements.

A positive outcome is the fresh engagement with the Aboriginal community, a quantum shift from the approach adopted under previous Plans. There will also be consultations between the Tasmanian Aboriginal community and government on dual naming of the Tasmanian Wilderness WHA. In addition, other aspects of the Management Plan will be open for public discussion through the consultation process.

Out of concern that the term 'wilderness' might imply a denial of the Aboriginal prior occupation and ongoing cultural use of these areas, the Plan will change its name from 'Wilderness Zone' as a 'measure of respect for the perspective of Tasmanian Aboriginal people'.

At the 39th Session at Bonn, Germany (28.6-8.7 2015), in its Decision 39 COM 7B.35, the World Heritage Committee expressed concern regarding the progress of the "further study and consultation with the Tasmanian Aboriginal community to provide more detailed information on the cultural value of the property," and for the Management Plan to adequately provide for the management arrangements and protection of cultural heritage. The World Heritage Committee "urged the State Party to review the proposed new Management Plan for the property to ensure that it provides adequate protection for its OUV." The World Heritage Committee requested that the revised draft Management Plan be submitted for examination by the Committee at its 40th session in 2016.

OUR COMMON DIGNITY

While the National and State governments might express good intentions on paper, only a consistent use of best practice standards implemented through legislation, regulations, policies and programs could make a difference in how effectively Aboriginal people are being engaged in the identification, assessment, nomination, management, monitoring and reporting of their cultural values within Australia's WHAs. There is currently no consistency of legislation or practice across the Australian Commonwealth. This confirms the inequitable position of the Indigenous people in World Heritage Areas and other National Parks, Protected Areas, and general land and heritage management.

WHAT NEXT?

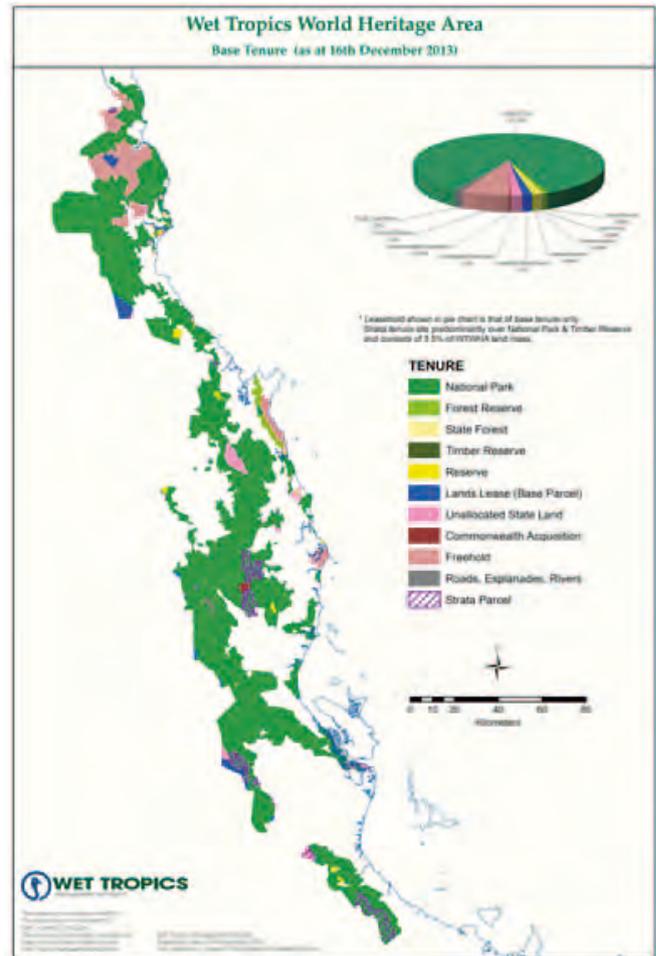
It is hoped that the Wet Tropics Management Authority, the managing agency for the Wet Tropics WHA, continues its communications to keep Rainforest Bama informed, and maintain efforts to have Aboriginal cultural values included in the Wet Tropics World Heritage Listing text.

There are, however, challenges; for instance:

- The Wet Tropics Management Authority needs to facilitate the necessary regular communication processes;
- All Rainforest Bama must be informed of the implications of having these values listed;
- The potential cultural and economic benefits to Rainforest Bama must be determined; and most importantly,
- Rainforest Bama should be allowed effective participation in World Heritage processes – from nomination and implementation, through to management and monitoring.

The process seems to have been determined for the Tasmanian Wilderness WHA through the World Heritage Committee's Decision 39 COM 7B.35 from its 39th meeting in 2015. The report of the Reactive Monitoring Mission in November 2015 has generally been welcomed by the Tasmanian Aboriginal community. The Mission Team appears to have listened to the Aboriginal community on most of the central issues raised, such as the recognition of a diverse community, and being supportive of shared engagement in order to consolidate a joint management approach between the Tasmanian Wilderness WHA management team and the Tasmanian Aboriginal community.

Experience clearly shows that Australia's Indigenous peoples are opposed to the use of 'wilderness' terminology, if its use is based only on Western concepts. In 1997, Indigenous people and State and Territory Government staff from across Australia met to discuss the "wilderness" issue in Manjimup, Western Australia, when Regional Forest Agreements were being negotiated to manage large tracts of Australia's 'bush'. The *Manjimup Statement* was developed and signed by the majority of participants (Indigenous and Government), to send a message regarding the perceptions and connotations that are conjured up in the minds of the general public when 'wilderness' terminology is used.



WTQWHA (Wet Tropics of Queensland World Heritage Area) tenures - December 2013 map

'Wilderness' terminology encourages the false perception that no humans had ever traversed or lived in this 'wilderness' before time periods referred to in written sources. There is therefore a need for further and deeper consideration of the Tasmanian Aboriginal communities' desire to change the name of the Tasmanian Wilderness WHA to use terminology different to that currently in use. While it may be 'comfortable' to refer to the Tasmanian Wilderness, such terminology disconnects the Aboriginal habitation and use of this and similar areas from established history.

When the Tasmanian Wilderness WHA was listed in 1982, there would have been very limited, if any, consultation with the Tasmanian Aboriginal community. At that time, to inquire into local community views about a potential World Heritage listing, discuss the name of a prospective WHA, or engage the local community at any level in World Heritage processes, was not common, and all too often happened without local community involvement or consent.

CONCLUDING

At the level of the Commonwealth of Australia, there are some good examples of best practice, as well as some examples in which certain improvements could 'make a positive difference' for Indigenous engagement in World Heritage processes.

There is a need for consistency across the country to reduce the disadvantages facing Indigenous communities in a State or Territory where legislative frameworks are not conducive to or compatible with the aspirations of Indigenous people's engagement in the World Heritage processes.

In terms of any potential return of land to the Aboriginal community – as promised or indicated by the Premier of Tasmania – no detailed negotiations have yet taken place. Changes have also been put in place for land and heritage management responsibility, with Tasmania's Aboriginal communities being engaged in the review of the Management Plan.

Concerning the hierarchical and unequal relationships between Indigenous Traditional Owners as *rights-holders*, on the one hand, and the managing authorities on the other, dialogue needs to be greatly improved in order to empower the communities and give them confidence to participate in the processes. Capacity building is needed to ensure that continuity can be maintained from the community's perspective and engagement sustained for World Heritage processes.

In order to acknowledge and recognise Aboriginal cultural heritage values, best practice standards should include:

- Dual naming of places;
- Introducing the practice of 'Welcome to Country' by the Traditional Owners and 'Acknowledgement of Country' when there is an absence of the rightful Traditional Owners as a mark of respect of the First Peoples of Australia;
- Improved communications within the Indigenous communities, as well as with State government management agencies to communities; and
- Recognising the rights of Indigenous peoples in Australia in line with the UN Declaration on the Rights of Indigenous Peoples, to be fully implemented at all levels of government.

A FINAL REFLECTION

Indigenous traditional knowledge, innovations and practices contribute to 'cultural science', which is not widely accepted as 'science' in a Western context. However, there is an abundance of evidence across a wide range of fields – from conservation of biodiversity and ecosystems, to climate change mitigation – that Indigenous 'cultural science' should be acknowledged as equal in scientific status by the Western scientific community.

RECOMMENDATIONS

The following recommendations were made in 2014, and are still valid as a vehicle of further development for the two World Heritage Areas in terms of action and policy.

- Legislative frameworks, policies, management and action plans to be aligned to reflect the recognition of Aboriginal cultural values.

- Communications to be improved to ensure there is a clear understanding by all parties about processes, timing and responsibilities.
- Community organisations should be resourced so that they can be meaningfully engaged.
- 'Welcome to Country' and dual naming practices must be retained or re-instated as best practice standards.

National level policy recommendations should include:

- Australian Government to consider full financial and secretariat support for the Australian World Heritage Indigenous Network (AWHIN) to fulfill its role regarding Indigenous peoples and World Heritage.
- All levels of governments to develop a strategy to implement the principles of the UN Declaration on the Rights of Indigenous Peoples through best practice standards.
- Development of one Management Plan for all values in accordance with the National Heritage Management Principles.
- All governments to take a leadership role in applying and registering traditional Aboriginal names across the landscapes through a dual naming process.
- Australian Government to recognise Aboriginal people's cultural values and appropriately resource them to manage those cultural values.

Strengthening of global best practice should include:

- 'Expert groups' to consist of Indigenous people, and not non-Indigenous 'experts', to advise the World Heritage Committee on Indigenous natural and cultural heritage.
- WHAs to recognise Indigenous traditional knowledge systems, innovations and practices that contribute to 'cultural science' as being at least equal to western science, and ensure measures are taken to appoint appropriate Indigenous people to relevant advisory scientific committees.
- Indigenous people to be provided with the opportunity to be actively engaged in representation at those levels where decisions are made regarding the management of the cultural OUVs of a WHA.
- ICOMOS and IUCN to develop appropriate guidelines and tools to assist State Parties to take a consistent line to a rights-based approach for Indigenous peoples in the World Heritage systems. This would include free, prior and informed consent and full and effective participation in the processes of nomination, implementation, management and monitoring.

Chrissy Grant

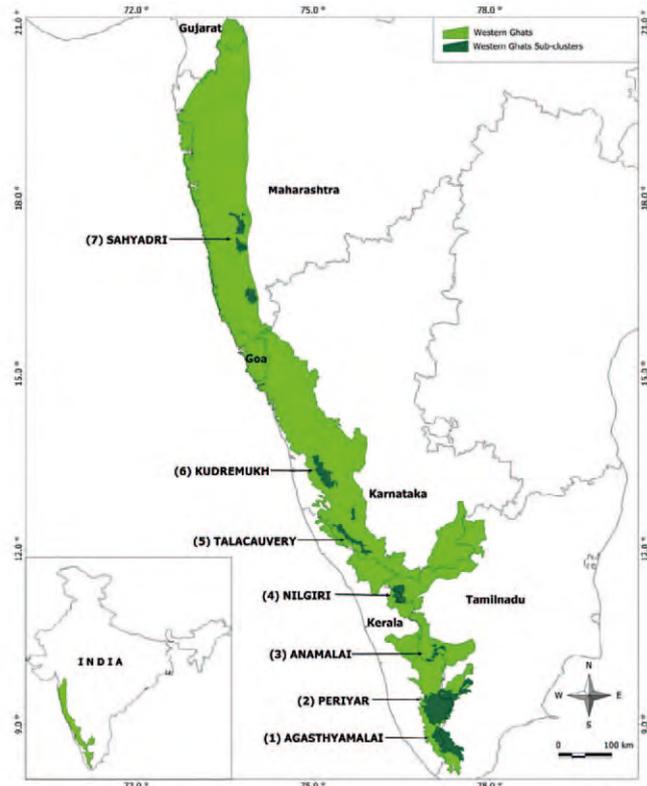
Photographic material is contributed through the author unless otherwise credited.

INDIA: THE WESTERN GHATS WORLD HERITAGE AREAS

In the larger sociocultural and geographical context, the Western Ghats hold immense importance for millions of people of southern India. The Ghats intercept moisture-laden monsoon clouds and bring about seasonal rains, and play a vital role in determining the rainfall patterns across peninsular India.

The rains give rise to countless streams that join to form over 60 rivers that are the lifeline of over 300 million people. Trees that have been an inseparable part of local culture, such as Sap trees (*Mangosteen Garcinia* sp.), jackfruit trees (*Artocarpus* sp.), banana trees (*Musa* sp.) and several spices, are native to this region.

Spices such as black pepper (*Piper nigrum*) and cardamom (*Elettaria cardamom*) represent ancient trade commodities. Several plants of medicinal value (e.g. *Trichopus zeylanicus*) are grown in this area, and ancient systems of medicine, such as the *Siddha* system of medicine, originated here. Numerous ancient sacred shrines and sacred groves are still preserved in the region.



Map of Western Ghats World Heritage Areas
© Wildlife Institute of India, Dehradun, India

Several communities of people of varied culture, language and lifestyle inhabit the area. The Western Ghats are home to a large number of tribal communities living in close proximity to rich biodiverse landscapes, having evolved location-specific and innovative livelihood strategies based on their traditional knowledge. The hill tribes – or *Adivasis* (original inhabitants), as they are called – account for about 5% of the area population in the Western Ghats. The tribes have coexisted with nature for centuries while maintaining a rich body of traditional knowledge, and a rich cultural life. They possess a vast knowledge of medicinal plants that has been passed on orally from generation to generation. At least 70 plant species belonging to 42 families have been recorded as being used for various purposes by tribal people of Western Ghats. Moreover, many of the cultural practices of the tribal communities of the Western Ghats are closely interlinked with its natural heritage.

The Western Ghats were inscribed as a UNESCO World Heritage Site under Natural Criteria (ix) and (x) of the World Heritage Convention, in the General Assembly of World Heritage Committee held at St. Petersburg, Russia in 2012. It was successfully nominated and inscribed after six years of consistent effort by the management bodies and the Government of India. This is the first serial site in India to be inscribed on the World Heritage List.

The site is comprised of 39 components grouped into seven sub-clusters, and is a chain of mountains running parallel to India's western coast. Located approximately 30-50 km inland, the Ghats traverse the States of Kerala, Tamil Nadu, Karnataka, Goa, Maharashtra and Gujarat. These mountains cover an area of around 140,000 km² in a 1,600 km long stretch that is interrupted only by the 30 km Palghat Gap at around 11°N. The 39 components belong to the same biogeographic province, and remain as isolated remnants of previous contiguous forest. The justification of developing a serial approach, rather than simply identifying one large protected area to represent the biodiversity of the Western Ghats, is due to high site endemism in the region.

The UNESCO World Heritage List documents on the Western Ghats state that:

- The Western Ghats of India are a geomorphic feature characteristic of the Indian Peninsula. About 65 million years ago, at the beginning of the Tertiary Era, a piece of the ancient Gondwana landmass collided with the Asian landmass, and its northern portions witnessed enormous volcanic eruptions that resulted in the formation of the Deccan Traps – a vast region of over 500,000 km² of basaltic rock. The rocks and soils of the Western Ghats relate to the region's tectonic history. The remarkable geomorphic formations in the Western Ghats present an exceptional documentation of geological processes and momentous events in the history of the Earth. Their excellent and relatively intact representation within the nominated Sub-clusters in the Western Ghats, from the Deccan Traps in the north to the ancient mountains in the south, are very important for the recognition and preservation of these values (<http://whc.unesco.org/en/list/1342>; Brief synthesis on the Outstanding Universal Value, OUV of the Western Ghats, India).*



The property is thereby recognized as a region of immense global importance, making conservation essential to protecting its geological, cultural and aesthetic values, as well as its rich biological diversity.

VALUES AND SIGNIFICANCE

This section discusses authenticity and integrity. All 39 components, within the seven sub-clusters, belong to the same biogeography province, and are isolated remnants of previous contiguous forest. A significant characteristic of the Western Ghats is the exceptionally high level of biological diversity and endemism. This mountain chain is recognized as one of the world's eight 'hottest hotspots' of biological diversity (along with for instance Sri Lanka). The forests of the Western Ghats include some of the best representatives of non-equatorial tropical evergreen forests in the world. At least 325 globally threatened (IUCN Red Data List) species occur in the Western Ghats. The globally threatened flora and fauna in the Western Ghats are represented by 229 plant species, 31 mammal species, 15 bird species, 43 amphibian species, five reptile species, and one fish species. Of the total 325 globally threatened species in the Western Ghats, 129 are classified as Vulnerable, 145 as Endangered, and 51 as Critically Endangered.

COMMUNITIES AND SOCIAL SYSTEMS

The tribes inhabiting the World Heritage Area are known to be the Toda, Halakki, Siddis, Paniyas, Adiyar and Kani, to name a few. These communities live in and around the World Heritage Site and are dependent on the landscape in various ways. This relationship has an immediate bearing on the management of the site and, in turn, on the quality of life within the communities. The ancient Toda tribe of Nilgiri hills are pastoral people. The name 'Toda' is derived from the word *tud*, which is the sacred tree of the Todas.

The Todas worship aspects of nature such as hill-gods, as well as the Lord of Amnadr (the realm of the dead) and the goddess Teikirzi. The Todas reside in reserved forest land¹. They rear buffaloes and produce milk products which they sell

to or exchange with different products of neighbouring tribes to procure items for daily use. Thus, there exists a 'socio-economic symbiosis' between tribes. The dairy works are completely in the male domain and females are debarred from entering the dairy house. Previously, males were engaged in cooking, but now this duty has been shifted to the women of the household. The women are also primarily responsible for raising children, as well as fetching water and fuel from the forest².

The Halakki Vokkal tribe inhabit the state of Karnataka, mainly in North Kanara district. The Halakki Vokkal are agriculturists living on farm lands located on the outskirts of towns sandwiched between the Western Ghats in the east and the expanse of the Arabian Sea on the west. Approximately 75,000 Halakkis live in Koppas under direct control of their community heads. According to their social structure, the elderly men of the community wield influence over the day-to-day matters of village life. The mud walls and floors of their thatched huts are elaborately decorated with 'Hali' (white *rangoli* against a black or red background). 'Halakki Kannada' refers to the dialect of the state language in which these people converse. They have a rich folklore. The main source of livelihood is animal husbandry, while they also practice small scale agriculture. Another source of income is generated by the collection of herbal leaves, wild berries, nuts and honey, and the making and selling of bamboo baskets. Vokkals believe in animism, including a belief in spirits dwelling in forests and beside rivers, mixed with elements from popular Hinduism³.

The Siddi tribe, a Scheduled Tribe, is mostly concentrated in the state of Karnataka. This tribe has, for the most part, remained secluded and economically and socially marginalised. They live in the jungles of the Dharwad and Karwar districts of Karnataka, residing in small clusters of settlements either in the forest or on its outskirts⁴. The one factor which binds the Siddis, irrespective of their religion, is the *Hiriyaru*, or ancestor worship. The dead are believed to be nearby, in the form of spirits. They are regarded as witnesses to be consulted by a family in regard to all its concerns. On occasions such as births, marriages and deaths, the ancestors are invoked. *Hiriyaru* worship may be performed twice a year by the *Kartha* (head) of the family. It is normally held during the Navarathri festival in the first week of November. While they mainly speak the Kannada language, other languages, such as Konkani and Marathi, are also spoken.

The Soliga tribe resides in the hilly forest areas of Karnataka. The tribe is also referred to as Sholiga, Soliga, and Soligaru. They speak an old dialect of Kannada called 'Soliga nudi'. They have two types of forest settlements: *haadi* (permanent settlements) and *podu* (settlements on hill slopes or in the forest with a lesser number of families). They are economically heavily dependent upon timber as well as non-timber forest produce. Their main occupation is the collection of minor forest produce such as gum, honey, soap nuts, root and tubers,

² District of the Nilgiris District Administration, Banerjee 2014

³ Câmara C. 2011

⁴ Shodhganga- Siddis

¹ Indian Mirror- Toda tribes.

tamarind, etc⁵. They are known to live in harmony with nature and possess a rich wealth of indigenous knowledge on forest conservation and sustainable agriculture⁶. People from the Soliga tribe practice herbal medicine, enabled by their deep knowledge of medicinal plants. This tradition is passed on from one generation to the next. The knowledge of the Soligas, and their practices of conservation, is linked to the *kula* (clan) system and their configuration of the landscape. Each *kula* has its own six important places of worship: *Devaru* (god), *Maramma* (goddess), *kallu gudi* (stone temple), *Veeru* or *Muni*, *habbi* or *jala* (waterfall), and, *Samadhi* (burial ground). They also worship trees - *Michelia champaca* and *Terminalia bellerica* (locally called *Sampige* and *Tare*, respectively) - and animals such as bears (*Karadi devaru*) and elephants (*Ane devaru*). Their songs reflect indigenous knowledge of forest flora and fauna and describe various species, enabling the transfer of indigenous knowledge from one generation to the next⁷.

The Paniya, also known as Paniyar and Paniyan, are an ethnic group primarily inhabiting Wayanad, Kozhikode, Kannur, and Malappuram districts in Kerala. The tribe is considered to be one of the prehistoric, homogenous Dravidian tribes. Their customs, culture and religious practices are unique. Every village is headed by a ruler called *muppen* belonging to different clans, or *kulam*. They have their own language called *Paniyabhasha*, a mixture of the Tamil and Malayalam languages. Historically, they worked as agricultural labourers. They are believed to have been brought to Wayanad by the king of Malabar, and thereafter tilled the land as serfs. Following the abolition of the slave-holding system, the Paniya were resettled in different areas established by the government. Typically, they live in villages (*padis*) consisting of a few huts (*pire* or *chala*). Each hut settlement contains five to fifteen dwellings.

Traditionally Paniyas were food gatherers enjoying freedom and self-sufficiency of nomadic life in the interior forests. They used edible roots and leaves, and trapped or hunted animals in the forest. Although rice is their staple food, considerable quantities of wheat are consumed by the Paniyas. Tapioca, vegetables, animal flesh, fish, crabs and varieties of roots and tubers form part of their diet. Many food items are obtained from the wild and the Paniya have a rich traditional knowledge of the nutritional and medicinal values of biodiversity⁸. Among Paniyas the literacy rate is very low when compared to that at the state level in Kerala or Tamil Nadu. They have limited access to modern healthcare facilities⁹.

The Adiyian tribe, one of the Scheduled Tribes of Kerala, are distributed mainly throughout the Mananthavady taluka (thesil) of Wayanad district. They speak a hybrid language between Kannada and Malayalam, more akin to Kannada. They are mostly marginalized farmers with little control over resources, and have largely been devoid of skills for subsistence in the



mainstream economy. The term Adiyian is synonymous with the subservient role they played in the past under the landlords. It is believed that their name derives from an old rule which states that they should maintain a distance of 'ar' (six), 'adi' (feet) from the landlords. The economy of the Adiyian is centred on food gathering, marginal agriculture, animal husbandry and agricultural labour. Their economy also depends on the collection of forest produce. In Adiyian society, a clear division of labour prevails according to sex. Men plough the land, carry head-loads, collect minor forest produce, and guard crops from wild animals. As in many parts of India, it is taboo for women to plough. It is the same with the Adiyian: even though they are agricultural labourers, women are not engaged in ploughing¹⁰.

The Bhil tribe live in the hilly tracts of Maharashtra in the Western Ghats. They speak the Bhil language, a sub-group of the Western Zone of the Indo-Aryan languages. They practice farming, with a significant minority living as landless agricultural labourers. Bhil villages are located in rich forest areas. The Bhils are divided into a number of endogenous territorial divisions, which in turn contain a number of clans and lineages. Religious practice among the Bhils differs from place to place. Most worship local deities such as Khandoba, Kanhoba, Bahiroba, and Sitalmata, while some worship a Tiger God called 'Vaghdev'. They consult Badvas, the hereditary sorcerers, on all occasions. They have *Bhagat*, or Gurus, who perform religious rites. They have village headsmen, who deal with their disputes. Bhils strictly follow tribe rules and regulations. Their close relationships are strongly based on mutual love and respect. They have a rich cultural history and ascribe great importance to dance and music. *Ghoomar* is amongst the most well-known aspects of the Bhil culture. *Than Gair* is the religious dance drama performed by men in the month of Sharavana, i.e. in the monsoon season (July and August). Talented in painting and sculpture, the Bhil make beautiful horses, elephants, tigers and deities out of clay (EcoIndia; "Bhil Tribe")

The Kani live in the Kanyakumari and Thirunelveli districts of Tamil Nadu, and the Thiruvananthapuram district of Kerala. Practicing an egalitarian value system, no one in the tribe claims a superior status, nor does the community allot a superior position to anyone based on social, economic, cultural or literary criteria. Community administration is governed by a

5 Shodhganga-Soligas

6 Agriculture network

7 Madegowda 2009; Zaraska N. 1997

8 Shodhganga-Paniya

9 Shodhganga-Paniyas

10 Ramachandran 2004

headman (*Mootukaani*), a secretary (*Vizhikaani*) and a physician (*Pilathi*). This triumvirate administers the community in decision-making, dispute resolution, judgment, punishment, celebrations, and rituals, and maintains the integrity and cohesion of the community. All major decisions are made at the community level¹¹. Among all the tribes present in the Western Ghats, the Kani tribe is best known for its rich traditional knowledge of herbal medicines. The herbal lore possessed by this community reveals a deep knowledge about a large number of wild plants in the region, which has helped them survive for generations. Traditionally a nomadic community, they now lead a primarily settled life in the forests of the Agasthyamalai hills of the Western Ghats, in the Thiruvananthapuram district of Kerala. It was the Kanis' traditional knowledge and use of the fruit of a plant identified as *Trichopus zeylanicus travancoricus*, found in the forests where they live, that provided the impetus for the scientists of Tropical Botanic Garden Research Institute (TBGRI)



to investigate the plant and identify its active ingredients. From this plant, TBGRI developed a drug called *Jeevani*. Any commercial returns from the drug were to be shared with the Kanis at a rate of fifty percent. *Jeevani* is a restorative, immune system-enhancing, anti-stress and anti-fatigue medication based on the herbal medicinal plant *arogyapaacha* used by the Kani tribals in their traditional medicine. The Kani tribe lives in areas known as 'hotspots', which are rich, but deeply threatened, repositories of biological diversity. The Kani maintain their culture in the deep forests, with unique environmental ethics and intrinsic value systems. (Shiva B 2011)

OPERATIVE RIGHTS REGIME ANALYSED

The rights regime in forested areas of India, including Protected Areas such as Wildlife Sanctuaries, National Parks and World Heritage Sites, is governed by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006. This Act seeks to vest the forest rights, and occupation of forest lands, in forest-dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such environments for generations, but whose rights appear not to be recognised. The Act states that it has become necessary to address the longstanding tenure and access rights of these populations.

The rights that have been granted under this Act include the right to hold and live on forest land; community rights such as

*nistar*¹²; the right of ownership, collection, use and disposal of minor forest produce; other community rights of uses or entitlements, such as produce from water bodies, grazing, traditional seasonal resource use of nomadic or pastoralist communities; community tenure of habitat for primitive groups; rights for conversion of *Pattas* on forest lands to titles; rights of settlement of forest villages to revenue villages; the right to conserve any traditionally protected community forest resource; rights under any traditional or customary law of tribes of any State; right of access to biodiversity and community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity; and the right to *in situ* rehabilitation. Besides this, the Act also covers any other traditional rights customarily enjoyed by Scheduled Tribes or other traditional forest dwellers that are not mentioned in the earlier clauses, excluding the traditional right to hunt, trap or extract a part of the body of any species of wild animal.

The Act lays down the authority and procedure for vesting of forest rights through the *Gram Sabha* (village collective body), a Sub-Divisional Level Committee, a District Level Committee, and a State Level Monitoring Committee. It may be mentioned that the recognition of forest rights includes the responsibility and authority for sustainable use, conservation of biodiversity, and maintenance of ecological balance, thereby strengthening the conservation regime of forests while ensuring the livelihood and food security of the forest-dwelling Scheduled Tribes and other traditional forest dwellers (FRA, 2006). The Act seeks to protect the most vulnerable and marginalized even amongst tribal communities, such that securing community tenure over their customary habitats could provide them with significant protection against usurpation of their resource rights.

Taken up with hope and enthusiasm in many areas with tribal populations, the implementation of the Act was intended to address challenges of promoting the community and customary rights of forest dwellers to natural resources. However, it was observed that, though tribal communities had customary and historical claims to dependency on forests for their livelihoods and very way of life, few community claims were being registered, as opposed to individual claims for user rights¹³. In addition, ownership of common property resources is unclear, despite the high dependence on such resources.

There are persistent issues of poor understanding amongst the implementing agencies regarding both the objectives and provisions of the Act, and a certain level of confusion at district and lower levels regarding institutions for implementation. Recognition of rights, particularly in Protected Areas, therefore remains inadequate. Many plans for management of such Protected Areas, including those leading to restrictions on customarily exercised rights, cannot include a significant amount of active local participation¹⁴

¹² Nistar: to release; Principle originates from the 'System of Commons' Sarin and Springate-Baginski 2010

¹³ Sathyapalan 2010, UNDP 2012

¹⁴ Desor 2013

¹¹ Shiva B. 2011



PEACE AND SECURITY AND RELATED ISSUES

While support for the World Heritage nomination was evident from many quarters, including government agencies, local populations, academics, and committed conservationists including a variety of NGOs and individuals, opposition to the nomination of sites as World Heritage was witnessed in some places such as Kodagu, Karnataka¹⁵.

The Western Ghats have witnessed several environmental movements and agitations. Conflict between ‘development needs’ and conservation has led to struggles to save the fragile ecology on the one hand, and forest-dependent livelihoods in the Nilgiris and Silent Valley National Park and several other sites on the other. The ‘Save the Western Ghats March’ (SWGMM) began on November 1, 1987 and was revived in 2009 with the organization of a meeting of civil society representatives from the Western Ghats that mobilized about 200 organizations and individuals. The meeting deliberated on issues including ‘Saving Nilgiri Biosphere Reserve’, hydroelectric and thermal power development, mining, ‘Bring Western Ghats into NAPCC’, rights of indigenous people, human-wildlife conflict, genetically modified crops, and organic farming.

MANAGEMENT SYSTEMS STRUCTURE

With the shift towards participatory approaches in forest management and biodiversity conservation, and the enunciation of the National Forest Policy (1988) that local communities are required to be involved in natural resource conservation, there has been a significant effort on the part of the administration – more specifically the forest management bodies of the government – to implement approaches such as ‘eco-development’. Eco-development comprises site-specific measures for protection and management of biodiversity and natural heritage through local economic development involving grassroots level institutions.

The 39 serial sites of the Western Ghats World Natural Heritage property fall under a number of protection and management regimes, including Tiger Reserves, National Parks, Wildlife Sanctuaries, and Reserved Forests. All components are owned

by the State and are subject to stringent protection under laws including the Wildlife (Protection) Act of 1972, the Indian Forest Act of 1927, and the Forest Conservation Act (1980). Through these laws, the components are under the control of the Forestry Department and the Chief Wildlife Warden, which therefore provide legal protection. Approximately 40% of the property lies outside of the formal protected area system, mostly in Reserved Forests, which are legally protected and effectively managed. The Forest Conservation Act (1980) provides the regulatory framework to protect them from infrastructure development.

Integrating the management of 39 components across four States is a challenge, for which a three-tier governance mechanism has been developed to operate at the Central, State and Site levels, to provide effective coordination for the management of the 39 components. A Western Ghats Natural Heritage Management Committee (WGNHMC), under the auspices of the Ministry of Environment of Forests (MoEF), of the Government of India, has been created to ensure overall coordination and integration for the World Heritage Area as a whole. All 39 components in the seven sub-clusters are managed under specific management/working plans duly approved by the State and/or Central governments. Concerns regarding livelihood rights and opportunities of local communities are regulated by the Forest Rights Act of 2006, and community participation in governance is ensured through Village Eco-Development Committees (VECs) or Eco-Development Committees (EDCs). These VECs or EDCs are grassroots level organizations of which families dependent on the forest are members, participating in the planning and implementation of various forestry and community development programmes. For example, in Kerala, Participatory Forest Management (PFM) is used as a management tool to protect the forest and manage the non-wood forest resources of forests in a sustainable manner, with active participation of forest-dependent communities ensuring their livelihood needs. Under the PFM setup, there are Village Level bodies known as Vana Samrakshana Samitis (VSSs) in the Territorial Divisions and Eco Development Committees (EDCs) in the Wildlife Divisions. As part of the participatory management strategy of Protected Areas, eco-development aims at conserving biodiversity by addressing both the impact of local people on the protected areas and the impact of the protected areas on local people.

All 39 sites in the Western Ghats have participatory mechanisms in place through Village Eco-Development Committees (VEDCs), and the management system supports participatory governance schemes. Under eco-development, people can only be empowered in aspects of development that do not lead to the exploitation of wildlife or forest resources. However, issues of power influence eco-development efforts wherein poor and marginalized people are often inadequately represented in VECs or, if represented, are unable to influence the decision-making process. There is also a lack of proper understanding of the concept among forest departments and local people, who may

¹⁵ IUCN Evaluation Report 2012

fear the loss of their rights. The VEDCs offer a mechanism for consultation and inclusion through representation of all groups and individuals of local communities. However, these VEDCs need to ensure that governance mechanisms are not merely imposed, but account for and respect existing indigenous institutions for decision making.

The paper is based on a large report produced by the project team appointed by ICOMOS India on Heritage and Rights, and chaired by Gurmeet Sangha Rai, ICOMOS India Vice President.

Photographic material is contributed through the author unless otherwise credited.

Gurmeet Sangha Rai

The Western Ghats World Heritage Areas raises significant challenges and issues as regards all aspects of management and utilisation of resource that directly affect the living conditions of resident population groups. Opinions about the conservation base for this extended area may hence vary considerably – as also comes through in the small addition from another major report on the Western Ghats World Heritage Area, referenced as shown. This is included here to illustrate some of the complexity that exists around World Heritage work in living natural and cultural protected areas.

Recognizing Adivasi customary rights in the Western Ghats:

“The designation of Western Ghats as a Natural World Heritage site has to be contextualized and placed in the reality of its traditional inhabitants, the *Adivasis* or Scheduled Tribes, including the widespread violations of their rights both historically and to the present day. There is a fear, which was expressed by local peoples during the IUCN evaluation and afterwards, that the inscription of the Western Ghats on the World Heritage List will precipitate a survival crisis. Union Environment Minister, Jayanthi Natarajan, has tried to allay these fears by stating that “tribal communities living in and around the 39 serial sites will not be adversely affected by the World Heritage designation” and that listing would “in no way affect the present management regime of the sites, which would be managed... under the legal provisions of the Wildlife Protection Act, Indian Forest Act and the Forest Rights Act.” Such promises are hardly reassuring to the traditional inhabitants, considering that the Forest Rights Act was not even mentioned in the nomination documents and is routinely violated in India and Western Ghats.” (Bijoy 2014: 241)

C.R. Bijoy (2014), *Western Ghats of India: A Natural Heritage Enclosure?*, in Disko, Stefan and Tugendhat, Helen, “World Heritage Sites and Indigenous Peoples’ Rights”, IWGIA Document 129, Copenhagen

“IUCN notes that there are some 40 different Adivasi/indigenous peoples in several states of the Western Ghats region. IUCN have also been made aware of continued significant concerns about the nomination and rights issues from sections of the indigenous local community. Whilst the Village Ecology Development Committees offer a mechanism for consultation it is important that governance mechanisms not be externally imposed but respect existing indigenous institutions for decision- making consistent with the UN Declaration on the Rights of Indigenous Peoples” (IUCN 2012:57).

SOUTH AFRICA: RICHTERSVELD WORLD HERITAGE AREA – EXPLORING ASPECTS OF RIGHTS

This article was prepared in the context of the rights-based approach (RBA) collaboration between ICOMOS Norway (project manager), ICOMOS South Africa, ICOMOS India and ICOMOS Australia, with a focus on ‘*building capacity to support rights-based approaches in the World Heritage Convention and learning from the practice*’. The content was put together based on personal knowledge and experience gathered during the nomination process of a portion of the area to be designated a World Heritage property. This knowledge was augmented through literature review and participation in the pilot training on human rights and heritage conservation that was sponsored by ICOMOS Norway.



OVERALL CONTEXT

The Richtersveld Cultural and Botanical Landscape is currently a World Heritage property that was inscribed on the World Heritage List in 2007 under criteria (iv) and (v). The property is located in the Succulent Karoo biodiversity hotspot in the north-western corner of the Northern Cape province of South Africa. For the purpose of this article, interest in this property is based on the legal precedence it sets for the reinterpretation of the definition of ‘right in land,’ as stipulated in the South African Restitution of Land Rights Act, No. 22 of 1994, to include customary law ownership or aboriginal title in cases considered for restitution of land rights; as well as on a management of its portion as a World Heritage property by the community. Prior to the Richtersveld land claim case, aboriginal title was excluded from consideration as a legitimate claim under the country’s existing laws. The Constitution of the Republic of South Africa determines the cut-off date for consideration of land claims, within the context of the definition of ‘right in land’ provided by the Restitution of Land Rights Act, as 19 June 1913¹. Subsequent to the resolution of the land claim, the Richtersveld area also became, and continues to be, the first

1 The date is stipulated in section 121(2)(a) of the Constitution of South Africa

community-owned and managed World Heritage Property in South Africa. Therefore, the case of the Richtersveld does not only enhance customary rights or aboriginal title in land, but it also illustrates the manner in which an enabling environment for rights, coupled with a knowledge of what those rights are, creates an empowered community – especially in a country in transition such as South Africa. The transitional justice² processes introduced in post-1994 South Africa served the Richtersveld community well by providing such an environment, as well as support systems to reclaim their land rights violated by past apartheid regimes.

HUMAN RIGHTS ENABLING LEGAL INFRASTRUCTURE

For generations, the citizens of South Africa lived in a society divided along racial lines by apartheid laws which were strictly enforced by the government. After years of prolonged injustices, political isolation, and secret negotiations amongst political actors, the system of apartheid collapsed and the apartheid laws were repealed. Though a new dispensation was inaugurated in 1994, the society still remained divided, thus providing fertile ground for introduction of a rights-based approach. However, unlike past regimes, the state in the new dispensation is required to respect, protect, promote, and fulfil the human rights enshrined in the Constitution of South Africa. Notwithstanding apartheid, over the years South Africa developed a ‘hybrid’ or ‘mixed’ legal system³, based on a number of distinct legal traditions: a civil law system inherited from the Dutch, a common law system inherited from the British, and a customary law system inherited from indigenous Africans (often termed African Customary Law, of which there are many variations depending on tribal origin)⁴.

As a general rule, the new South Africa dispensation follows English law in both criminal and civil procedure, company law, constitutional law, and the law of evidence, while Roman-Dutch common law is followed in the South African contract law, law of delict (tort), law of persons, law of things, family law, etc. With the commencement in 1994 of the interim Constitution, and

2 Transitional justice as defined by the United Nations refers to ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’ (United Nations Human Rights, 2014)

3 Robert Coniglio, Methods of judicial decision-making and the rule of law: The case of Apartheid South Africa

4 Law of South Africa, https://en.wikipedia.org/wiki/Law_of_South_Africa

its 1996 replacement, the final Constitution, another strand of international Bill of Human Rights was added to the legal mix. In terms of the Constitution, when the courts interpret the Bill of Rights, they must consult international law, and can also refer to foreign law. This means that the country's courts can look to laws made outside of South Africa for guidance. The South African court system is organised hierarchically, and consists of (from lowest to highest legal authority): Magistrates' Courts; High Courts; a Supreme Court of Appeal, the highest authority in non-Constitutional matters; and a Constitutional Court, which is the highest authority in constitutional matters. In addition to these courts, there are a number of special courts in South Africa that deal with labour, small claims, and family and community matters.



MAJOR SOCIAL CHALLENGES AND RIGHTS ISSUES

The majority of the people of the Richtersveld live in Alexander Bay and Port Nolloth on the Atlantic coast of South Africa, and the rest live in the small towns of Kuboes, Sanddrift, Lekkersing and Eksteenfontein, as well as Sendelingsdrift. In 2005, approximately 300 people, mostly semi-nomadic livestock farmers, lived in the area then earmarked for World Heritage status⁵. The World Heritage upstream nomination processes of this portion of the Richtersveld were undertaken concurrently with the prolonged legal battle between Alexkor Ltd Mining Company⁶ and the community of approximately 3000 Nama that sought to reclaim their land (Tucker-Mohl, 2008). The term '*Nama*' refers to the Richtersveld descendants of the two ancient Khoi-San tribes that merged some time before the nineteenth century.

As many scholars have observed, South African history is steeped in a long history of land dispossessions. The San and Khoi-Khoi were the first people to be dispossessed of their traditional land, and thereafter numerous wars were fought over land control in most parts of the country. After the greater Richtersveld was annexed by the British Crown in 1847, the Cape Colonial government considered the Richtersveld as part of Crown land as well. Despite this, the Richtersveld inhabitants

maintained social and political organisation during and after annexation, thus remaining on the land and exercising the same rights as they had done before (Tucker-Mohl, 2008). Traditionally, they had migrated with herds of sheep, goats and cattle on a seasonal basis, and lived in portable houses. Environmental conditions did not permit intensive agriculture⁷. Their situation changed rapidly after diamonds were discovered in the area in 1925, after which they were increasingly confronted with systematic curtailment of access to their land (Smith, 2013). The government of the day used the Precious Stones Act, No. 11 of 1899⁸ to push the community off their land, as this Act did not recognise the Richtersvelders right to the subject land and its concomitant use, since they were not officially the registered owners. This move was in total contradiction to the currently held universal belief that (human) rights cannot be transferred, waived, forfeited, usurped, or lost through failure to exercise or assert them (Powell, 1998). Notwithstanding this, the extraction of diamonds in the area introduced a discriminatory land regime that had progressively adverse effects on the local community and their livestock, as it limited access to the land they had previously freely occupied and used for grazing. In 1957, a fence was erected around the land, permanently denying access to the Richtersveld community and their livestock (Barume, 2014). Rudman (2009) singles out the discovery of diamonds as one of the major factors behind the Richtersveld community's loss of rights to land. By 1994, all rights the community previously had to their land were passed on to Alexkor Ltd, a public mining company of which the government was the sole shareholder.

The end of apartheid in 1994 brought rights-based changes, in which were embedded transitional justice mechanisms and processes. One such mechanism was the redress of past injustices that, among other things, covered the restitution of rights to land that had previously been lost due discriminatory laws. This enabled the Richtersveld community to lay a claim to their ancestral land; a claim which was pursued notwithstanding the cut-off date established by the Constitution of the country as well as the Restitution of Land Rights Act, No. 22 of 1994, which precluded pre-1913 historical land dispossession cases (i.e. customary law ownership or aboriginal titles) from consideration. It therefore came as no surprise, in the first instance, when the Land Claims Court ruled against the Richtersveld community by confirming the view that historically based land claims relating to dispossessions that occurred prior to 1913 are excluded from the restitution process⁹. This ruling, however, did not discourage the Richtersveld community as they took their legal fight further to the Supreme Court of Appeal¹⁰. The appeal succeeded, as the community was found to be entitled to exclusive 'beneficial occupation and use' similar to that held under common law ownership of the subject land,

5 ICOMOS Evaluation Report of the Richtersveld, 2007

6 Alexkor Ltd was a public mining company of which the government was the sole shareholder

7 ICOMOS Evaluation Report of the Richtersveld, 11 March 2007

8 In an effort to bring about equitable reform, the Mineral and Petroleum Resources Development Act, 28 of 2002 [MPRDA] was promulgated. One of the most controversial features of the MPRDA is that it acknowledges that the country's mineral and petroleum resources belong to the nation and that the State is the custodian thereof.

9 Richtersveld Community v Alexkor, 2001 (3) SA 1293 (LCC)

10 Richtersveld Community v Alexkor, 2003 (6) SA 104 (SCA)



which included its minerals as well as its precious stones. Alexkor Ltd then appealed this decision to the Constitutional Court on the basis that any rights to the subject land which the Richtersveld community might have held were terminated by the 1847 British crown annexation.

However, the Constitutional Court concluded this matter by accepting the community's evidence that the nature of the title held by them in the subject land was a right of communal ownership under indigenous law¹¹. The Court also concluded that, prior to annexation, the Richtersveld community had previously had the right of ownership over their land, and that this right was held under indigenous law. Hence the Court found that the community was entitled, under section 2(1) of the Restitution of Land Rights Act, to restitution of the right to ownership of the claimed land, including its minerals. In its judgment, the Court placed emphasis on the use rights of the Richtersveld community, which were said to be:

- [h]abitation, cultural and religious practices, grazing, cultivation, hunting, fishing, 'water-trekking' and the harvesting and exploitation of natural resources. As indicated earlier in this document, contrary to Alexkor's claim, the 1847 annexation did not affect the community's use of the land¹².

The matter was then referred back to the Land Claims Court for implementation, whereby a settlement agreement between the parties was concluded.

COMMUNITY APPROACHES AND SPECIFIC RIGHTS ISSUES

As Powell (1998) highlights, the idea of rights asserts an entitlement on the part of the rights holder under an applicable norm, and an obligation on the part of society to incorporate that entitlement into its system of values and laws. In the case of South Africa, entitlement to rights is incorporated into the Constitution of the country (hereafter 'the Constitution') through the Bill of Rights¹³. The Constitution includes provisions for the establishment of human rights, justice and accountability, and it also enables the development of laws that address



specific issues, including land rights. This created the basis on which the development of the Restitution of Land Rights Act 22 of 1994 was founded. Fabbriani (2007) adds that the inequality and injustice caused by decades of apartheid land law forms the background for the South African land reform programme. In addition to ensuring that restitution of land rights to persons or communities dispossessed of such rights happens, the Restitution of Land Rights Act established the Commission on Restitution of Land Rights to coordinate the restitution processes as well as the Land Claims Court to hear cases related to claimed land. The Restitution of Land Rights Act is implemented in conjunction with the Community Property Associations Act 28 of 1996 (CPA Act) that enables communities with legitimate claims to land to form juristic persons, known as Communal Property Associations (CPAs). These structures are established to acquire, hold and manage property on behalf of communities on the basis agreed to by members of communities, in the form of written constitutions.

Like many other communities in similar situations in South Africa, the Richtersveld people constituted themselves into a CPA in order to pursue their land rights as well as all other land related matters, including initiatives related to the conservation of their natural and cultural landscape. Tucker-Mohl (2008) confirms that in 2004, the Land Claims Court determined that the community would be awarded restoration of the right to land and minerals, with the potential for additional equitable redress to provide for, among other things, remediation of environmental damage. Hence, the application for World Heritage status was undertaken with consideration of all sensitivities related to the protection of the community's rights to their land.

LESSONS LEARNED

The Richtersveld case highlighted the significance of entrenching human rights in the Constitution of a country, as well as the centrality of rights systems supported by the political will to promote, protect and fulfil these rights. The ubiquity of these rights in post-apartheid South Africa has made it easier than ever for the claimant communities to assert their rights.

11 Alexkor v Richtersveld Community, 2003 (12) BCLR 1301 (CC)

12 Alexkor v Richtersveld Community, 2003 (12) BCLR 1301 (CC)

13 South African Constitution (Constitution Act 108, 1996)



This was made possible by the existence of a common purpose and identity founded on rights, as well as a statutorily recognized community structure like the Community Property Association. Community empowerment, and sharing experiences with communities around the world in similar situations, were of great help in the Richtersveld case.

The paper is based on a larger text produced by Ntsizi November, ICOMOS South Africa President and Pascall Taruvinga, Past President of ICOMOS South Africa.

Photographic material is contributed through the author unless otherwise credited.

Ntsizi November

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NIGER: HUMAN RIGHTS IN THE AIR AND TENERE WORLD HERITAGE AREA

The Aïr and Ténéré National Nature Reserve (RNNAT), as Niger's first World Heritage Area (WHA) at its time of inscription in 1991, raised substantial issues. At some 7,7 million ha, the RNNAT is the largest protected area in Africa. When considering human rights of indigenous peoples in the inscription and management of this WHA, the focus for the Tuareg people has been less about the WH designation impacting their specific human rights, and more about how the Tuareg might continue to express a right to self-determination in governance and protect the continuity of their traditional pastoralism and related economic and cultural activities.



After twenty-three years on the World Heritage List in Danger (since 1992) due to recurrent politico-military conflict and instability, Niger is exploring ways in which the WHA might be withdrawn from the 'Danger' list. In 2015, the International Union for Conservation of Nature (IUCN) conducted a reactive monitoring mission that involved field work to assess the state of conservation and human rights and governance issues relevant to the indigenous Tuareg people of the territory. At the 39th session of the UNESCO World Heritage Committee, members received the 2015 IUCN reactive monitoring mission report on the state of conservation of the Aïr and Ténéré National Nature Reserve (RNNAT) and World Heritage Area¹.

Aïr and Ténéré is rich in geological formations, rare animal species, and important rock art, and is [classified as] an Important Bird Area (IBA). Aïr and Ténéré tells the modern story of conflict and the struggle for democracy in the Sahara.

¹ Downloadable here: <http://whc.unesco.org/en/list/573/documents/>

The Aïr and Ténéré is the traditional territory of the Tuareg indigenous people who have survived in the unique Saharan landscape for millennia. The World Heritage Area was scarred by the conflicts of colonial occupation and a turbulent transition to independence, after which it was rocked by armed civil conflicts. Its landscape is impacted by uranium and artisanal gold mining, whereas its traditional use was associated with camel herding and oasis gardening, and hosted a complex clan and caste social structure.

Niger achieved independence from France in August 1963. In the early 1970s, a series of droughts devastated the pastoralist north, destabilising the rural economy and pushing herders into urban areas. From 1975, the IUCN, in cooperation with the World Wildlife Fund (WWF) and the UN Environment Programme (UNEP), were invited to give Niger guidance on how to address the rapidly declining biodiversity of the northern region. This triggered a proposal to conserve the vast desert territory.



Due in large part to Brigi Rafini's efforts and the presence of the IUCN and other conservation agencies, Aïr and Ténéré Reserve was inscribed by the UNESCO World Heritage Committee as a natural site in 1991, on the basis of criteria (vii) (ix) and (x). By 1992, the site had to be put on the UNESCO endangered list, where it has remained.

Anthropological research suggests that the Tuareg of the Aïr adapted and reconfigured their traditional systems of governance to promote conservation and to merge with a political system overhaul that presented opportunities for decentralization (Bourgeot 2007). Bourgeot argues that Tuareg society adjusted its nomadic socio-spatial organisation(?) to accommodate the state as a legitimate landscape actor, notably in supporting conservation. The new system emerged as the *unités géographiques d'aménagement et de cogestion* (UGA) – community based conservation monitoring units in each of the desert valleys inside the reserve. During the cycles of armed conflict, these governance mechanisms remained significant to the community.

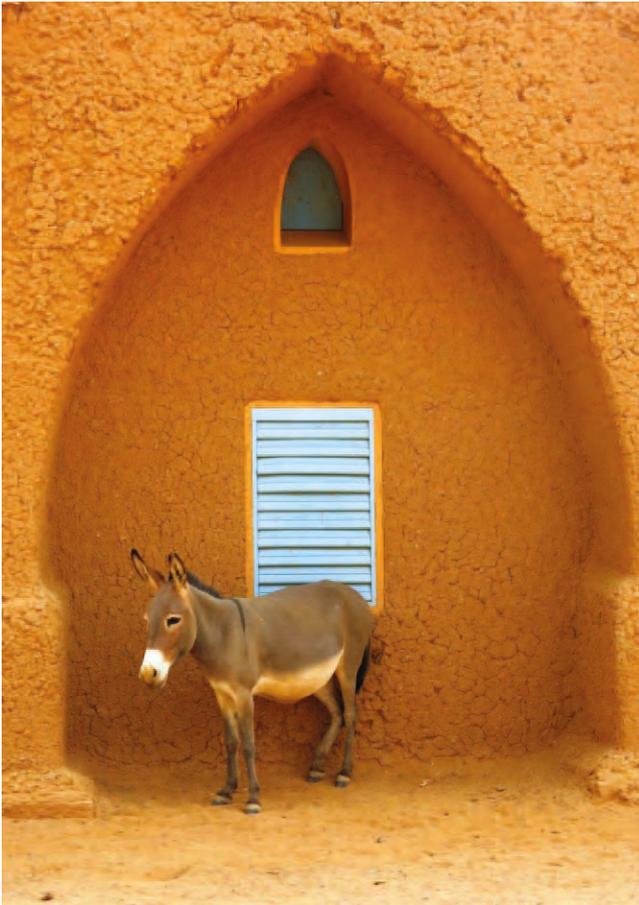
The indigenous Tuareg culture has not rejected professional conservation as alien to its values and ways. In fact, the reverse has happened, with traditional authorities, religious leaders and people on the ground seeing conservation as a cultural priority and an expression of self-determination. The challenge currently being experienced in the Reserve and its surrounds, is how to find an adequate relationship between indigenous mechanisms of stewardship and the responsibilities of state

agencies, including the Ministry of the Environment and other ministries dealing with mining and policing. The Reserve's management systems are relatively clear. The emphasis now will need to be on good governance that effectively fuses indigenous systems of governance and decision-making with the roles and functions of the state. This needs to include a gender-sensitive approach – as many of the Reserve's residents are female herders – while also considering issues of re-establishing the UGA mechanisms for local governance of valleys by indigenous stewards.

Desert pastoralist northerners remained unhappy about the iniquitous exploitation of the northern resources by southern elites. The vast and sparsely populated region of Agadez thus repeatedly erupted in two major armed conflicts, notably in 1992-1995 and 2007-2009. The Aïr and Ténéré served as a base of resistance and the site of military intervention and violence. In the midst of the human conflict, endangered wildlife found itself caught up in the armed turmoil.

The IUCN reactive mission of 2015 met traditional and administrative authorities, a wide array of stakeholders from camel herders and oasis dwellers living in the reserve to His Highness, the Sultan of Aïr, Ibrahim ben Oumarou Ibrahim. Interviews were held with municipal authorities from Timia, Tabellot, and Iferouane, with the Governor's office in Agadez, and eventually with the Prime Minister.

It was evident that the Tuareg people consider the conservation



of the Aïr and Ténéré Reserve to be a duty inherently associated with their identity and heritage. The conservation of nature is part of Tuareg identity, and it is an obligation of all of the tribes to conserve and protect the Reserve. The Aïr and Ténéré Reserve hosts a microcosm of people trying to establish who is responsible for governance, who are the rights-holders and duty holders, and who is capable of addressing the drivers of species and ecosystems threats. Everyone agrees that there is a balance to be found between indigenous stewardship, professional conservation, and an enabling state policy framework.

The IUCN reactive monitoring mission ended with an interview with the Prime Minister of the Republic [of Niger], Brigi Rafini, who had played a key role in the original inscription. Rafini asked why, given that the United Nations created a treaty for World Heritage, the international partners withdrew and left the site to suffer whatever damage might occur when a national situation becomes a crisis. If the purpose of the United Nations is international solidarity, and the purpose of the World Heritage Convention is to protect outstanding universal value of such sites, is it not also incumbent on the international community to assist during times of conflict and instability, to help the different actors protect the site and mitigate threats while working towards long-term solutions?

The self-determination of the Tuareg people may be intimately tied to the landscape of the Aïr and Ténéré; it is also tied to the success of the multilateral system to accompany its members in promoting peaceful co-existence and problem solving during times of crisis. World Heritage conservation may require some rethinking of how the world cooperates to promote peace, hold different actors accountable, and ensure that highly vulnerable species are not subjected to unnecessary violence during human conflicts. The Niger case is a reminder that good governance of heritage resources is always built on a healthy integration of indigenous and local values and landscape management systems in coordination with the state's own capacity, duties, and resources.

Nigel Crowthall

The historical sections of this paper are informed by discussions with Mohammed Ewangaye, a Tuareg cultural and historical specialist from Agadez.

Photographic material is contributed through the author unless otherwise credited.

NORWAY: NEGOTIATING SAMI RIGHTS AND HERITAGE IN RØROS WORLD HERITAGE AREA

Røros Mining Town was established in the mid-17th century. The copper resources of the surrounding landscape were commercially mined for 333 years, until 1977. The site, initially inscribed on the World Heritage List in 1980, comprises the town and its industrial-rural cultural landscape. Established in 1646, the town today contains about 2000 wooden one-and-two-storey houses and a smelting hut. Many of these buildings have retained their blackened wooden façades, giving the town a medieval appearance. Surrounded by a buffer zone termed 'the Circumference' – coincident with the large area granted to the Mining Company as its 'commercial' land by the Danish-Norwegian Crown in 1646 – Røros illustrates the establishment and flourishing of a long-lasting culture based on copper mining in a remote region with a harsh climate (<http://whc.unesco.org/en/list/55>).

In 2010, the Røros Mining Town World Heritage property was extended to include the historical Circumference as its buffer zone (criteria [iii], [iv] and [v]). The WH property, with its buffer zone, covers almost 5000 km² of diverse landscapes that reveal various reminders and traces of centuries of mining operations, including mining construction [sites].

In this brief report, it will be argued that the nomination process leading up to the 2010 World Heritage extension inscription failed to recognize Sami issues and rights concerns in the Røros region, including the omission of *Sami* heritage in its Outstanding Universal Value (OUV).



Photo: Røros © Amund Sinding-Larsen, Map: Kartverket

CONTEXTUALISING SAMI HERITAGE

The Røros World Heritage mining narrative is challenged by several narratives. The Røros region is also the southern border of *Sápmi*, the cultural region traditionally inhabited by the *Sami* people – the indigenous people of Norway – and stretches across parts of four countries: Norway, Sweden, Finland and Russia (use map wikicommons). Parts of three main reindeer husbandry districts are located within the eastern half of the Circumference area (see map). The Samis have used, and continue to use, these areas in accordance with what can be termed the 'Sami economy', which revolves around reindeer husbandry, organised and practiced in different ways through history¹. This 'economy' is intimately linked to the development

of Sami culture and language². However, Sami heritage and history is not recognised as part of the official Røros World Heritage narrative.

It is argued by some sources that the Sami have been present in the region since before the Røros Copper Company was established. They have definitely outlived the mining company's 333 year history. However, within the official WH narrative and the adopted definition of OUV for the WH property, no reference to *Sami* presence is made. Further, no mention is made of centuries of interactions between the mining community, local farmers and the Sami. In the late 19th century, the Sami were 'written out' of the history of the region as a means of settling

¹ From hunting of wild reindeers (→15/1600 A.D.), to domestication and nomadic practises (15/1600-1900/30 A.D.), and finally to the extensive reindeer husbandry (1900/30 →).

² See Jenny Fjellheim, Det samiske perspektivet i verdensarven Røros, Rørosmuseet 2007

disputes over customary land-use rights with local farmers. Nationally, the Sami were deprived of substantive rights through institutionalised, state-driven discriminatory policies, beginning in the second half of the 19th century and peaking in the 1930s. The local implications of these policies are today beginning to be recognised. Thus, as the WH narrative was constructed during the nomination process between 2005 and 2010, the framers of the narrative took sides – albeit unintentionally – in a complex political, judicial and historiographical debate about rights and history.

SOCIAL CHALLENGES AND RIGHTS ISSUES

Representatives of the Røros Sami community were consulted during the nomination process of the extension process that started in 2005. Efforts were made to include *Sami* heritage in the inscription proposal by means of a consultant report from the Sami department of the Røros Museum. However, the overarching WH approach was to reinforce the mining town narrative from the 1980 inscription, rather than to revise and broaden the scope of the OUV with an additional indigenous dimension. Inclusion of Sami issues in the OUV was thus dependent on (or reduced to) source materials describing functional and mutually beneficial relationships with the mining community. A corollary of historically being a nomadic, non-written culture is that the various stages of the Sami way of organising and practicing reindeer husbandry have left various, rather 'invisible' traces in the landscape and in the written sources.

Historically, beginning in the late 19th century, the question of sources (i.e., arguments based on the absence of sources proving *Sami* historical presence) was used as a means to exclude the Sami population from the history of the region³. This had serious legal implications for *Sami* customary land-use rights, and spurred long-lasting academic debates on *Sami* history. When the WH narrative was constructed during the 2005-2010 nomination process, the question of sources was yet again on the agenda. To better understand the context in which the nomination process occurred, a short review of the 'source situation' is necessary.

PAST MEETS PRESENT

Beginning in the late 19th century, the lack of sources mentioning the Sami was relied on to settle legal disputes about customary rights to land use between farmers and Sami reindeer husbandry families in the Røros region. The so-called 'advancement theory' (*framrykkingsteori*), proposed by the historian Yngvar Nielsen in the 1890s, concluded that the Samis had immigrated to the area long after the Copper Company was established and farmers had settled. Nielsen based his work on the lack of written sources, the lack of Sami place names, and the absence of sacrificial sites, among other things. Nielsen's studies were used as a contextual framework for the



Kjerkgata, Røros before 1940 © Røros Museum

'Lapp Commission' (*Lappekommisjonen*) of 1889, appointed by the Norwegian government with a mandate to propose district boundaries between farming areas and areas for reindeer husbandry. Subsequent court rulings in the 1890s, drawing on the historical works by Nielsen, decided in favour of the farmers when the boundaries were drawn up. In short, the boundaries severely reduced the size of Sami reindeer areas. Worse, they did not follow the natural migratory patterns of the reindeer, meaning the reindeer would naturally trespass onto private land, which in turn led to potential conflict and compensation claims from the farmers. In some documented cases, such claims meant that Sami families lost all their assets⁴. These boundaries are still in effect today and, according to the administrators of the reindeer husbandry districts, still problematic for the same reasons.

At the time the Nielsen theory was published, nationalistic sentiments in Norway were running high, as secession from the Swedish-Norwegian union was hotly debated. With growing nation-building efforts and the need for internal, national consolidation, minorities such as the Sami were – despite programmes of national wide schooling – denied education in their own languages. When the so-called 'politics of assimilation' intensified in the beginning of the 20th century, later to peak in the 1930s, the Sami were deprived of what we today consider substantive rights. Discriminatory court rulings concerning the Røros region should be viewed against this backdrop, as the Sami were clearly considered second-class citizens.

WORLD HERITAGE NOMINATION

As part of the WH nomination process, the Sami department of the Røros Museum was mandated to investigate the Sami community's relationships and interactions with the Røros mining community. The report pointed out a historiographical problem, as 1) historians have tended to leave the Sami out of the narrative, and 2) Sami 'internal' history had only been formally researched during the last decade. No proper investigation of relationships and interactions had been done,

³ As documented by Sami historian Sverre Fjellheim: Sverre Fjellheim Gæbrien Sijte – en sameby i Rørostraktene, Sverre Fjellheim (publisher), 2012

⁴ Fjellheim 2012



Sami presence in Northern regions © Røros Museum

this having been treated only rather peripherally. However, the report showed – as was its mandate – several social and economic arrangements between the two populations. None of this was included in the recommended inscription proposal presented to the World Heritage Committee. The reason behind this is not easy to determine. A mention of the Sami, even as a small reference in the OUV, would not in any way have weakened the proposal, and would have included the first recognition of Sami heritage and culture in a Norwegian WH inscription. The World Heritage Committee did not raise any issues or questions about the Sami dimension at Røros during the 2010 Committee session.

CURRENT APPROACHES

It would be going too far to say that the WH management of Røros Mining Town and the Circumference reflects a rights-based approach. On a more personal note, this author confesses to having only recently begun to link the World Heritage designation with rights issues in the Sami context. Maybe this late reflection is a direct result of the construction of a powerful WH narrative? Might the defined values make professionals within the management system almost blind to those other histories?

Despite the OUV ‘alienation’, one Sami representative is a member of the local World Heritage Board. The board consists of the mayors from five municipalities, two county politicians, and one Sami representative who is appointed by the Norwegian Sami Parliament.

The board does not, however, have any legislative power, and its main objective is to create consensus on issues regarding World Heritage, and which projects should be prioritised. The Sami representative uses the WH arena to promote consciousness about Sami issues in relation to the OUV, and also to stay up dated on current WH issues. This works well because of good relationships among the members of the board.

One of the current issues affecting Sami ambitions is the planning of local World Heritage Centres at each Norwegian WH site. This could potentially reveal tensions between the official

OUV and the locally recognised values that have influenced it, and might even influence discussions on World Heritage in practice.

As expressed in Government White Paper 35 (2012-2013), *Framtid med fotfeste*, a decision has been made to establish incentives for the establishment and operation of such centres. Further, the government is currently planning an official Norwegian WH exhibition designed for the centres. The official exhibition will be followed by in-depth and locally hosted WH exhibitions explaining the specifics of the OUV at each Norwegian site. The locally-hosted WH exhibition must be approved by the Directorate for Cultural Heritage and the Norwegian Environment Agency. Will the official Røros WH presentation include the Sami? Will the directorate and the agency approve locally hosted exhibitions that go beyond the exact wording in the approved OUV?

The Sami community has had hopes of realising a long-anticipated exhibition on Sami cultural history through a future Røros WH centre. Through negotiations with Sami institutions, the local WH Board have agreed that the Sami exhibition is better realised in the Røros Museum, which already has a Sami Department. The official WH exhibition might at best include peripheral information about the interaction between the Sami community, local farmers and the mining community. The larger Sami exhibition may thus never be realised in that context. To fulfill the ambitions of the Sami community, a full-fledged exhibition should be based on Sami culture and history, and should investigate relationships and interactions with the mining community from that perspective as well. Could more be done in this respect to reflect parallel histories?

RECOMMENDATIONS

Recent Sami perspectives on the history of the region document injustices inflicted on the population. History writing is considered an important tool to mend open wounds relating to the loss of rights, identity and language for the Sami people. A common recognition of this ‘negative’ history constitutes an important part of current reconciliation processes.

The Sami dimension could be further investigated through a pilot study in which WH, Sami history and rights are coupled. Hopefully, it would be less controversial, at some point in the future, to include Sami heritage in a final or revised OUV-text for the Røros World Heritage Area.

Erlend Gjelsvik

Photographic material is contributed through the author unless otherwise credited.

CASE STUDIES 2015/2016 - AUTHORS BIO-DATA

Our Common Dignity - World Heritage and Rights-Based Approaches

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Ntsizi November

President of ICOMOS South Africa, with extensive experience in World Heritage, intergovernmental relations and performance management in the public sector and international organisations. His academic qualifications cut across the fields of education, history, project management, negotiations and political science. Has served in advisory roles to academic institutions and to the ICOMOS World Heritage Panel. He has facilitated several stakeholder engagement initiatives involving government and the private sector in South Africa.

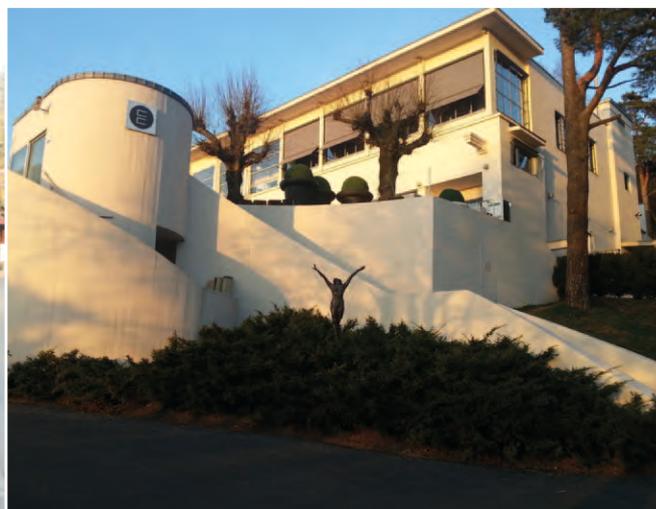
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Our Common Dignity - World Heritage and Rights-Based Approaches

The following individuals have taken part in the Our Common Dignity RBA activity in 2015 and 2016. Some of them also brought selected professional teams into the activity. The team members are not individually named here. We are very grateful to all who have contributed.



The 'functionalist' building, an early example of this international style in Norway, was completed in 1929, designed by architect Lars Backer (1892 –1930) and remodelled in 2005.

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OUR COMMON DIGNITY - WORKSHOP 2014

Our Common Dignity: Towards Rights-Based World Heritage Management
OSLO, April 2014



2014 workshop – The Workshop Participants in Oslo Harbour © Kirsti Kovanen

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PROJECT ACTIVITY 2012

Our Common Dignity - World Heritage and Rights-Based Approaches

INVOLVEMENT OF LOCAL PEOPLE, X'IAN, CHINA DEVELOPMENT AND CONSERVATION PROCESS OF A HISTORIC AREA - HAN CHANGAN CITY

The Han Changan site in Xi'an has a high ranking on the National Archaeological Heritage Park List of China. The site represented the southern terminal of the Silk Road, which is designated to be nominated on UNESCO's World Heritage List as a serial inscription. Conflicts have arisen between archaeological interests, the interests of the local stakeholders, urban planners and politicians, real estate developers, the tourist industry, and not least due to the rather central localization in Xi'an, a fast-growing city of 8 million inhabitants.



Project staff member in dialogue with young resident stakeholders. © Harald Høyem

The research project, conducted prior to a possible application to the World Heritage List, considered several research questions. The project was descriptive and analytical, based on information collected in Xi'an in the period 2011-2013. The project was carried out in close co-operation with a reference group consisting of representatives from the public sector and academic institutions in Xian, including the ICOMOS office in Xi'an, IICC-X. The project team was cross-disciplinary, including scientific staff from the Xi'an University of Architecture and Technology and the Norwegian University of Science and Technology (NTNU) involving the fields of architecture, planning, anthropology and building conservation, and receiving minor financial support from ICOMOS Norway.

EVALUATION OF WORLD HERITAGE PROCESSES REGARDING COMMUNITIES AND RIGHTS PILOT PROJECT CARRIED OUT BY IUCN, 2012

The purpose of the project was to briefly analyse the overall IUCN framework related to rights in the World Heritage context, and undertake a desk-based review of IUCN's evaluation processes for nominations of sites to the World Heritage List, specifically in relation to the identification and recognition of issues related to rights of local communities (including indigenous peoples) within nominations submitted by signatory States Parties to the World Heritage Convention.

The exercise was considered a "learning-by-doing" process explicitly aimed at generating lessons and tools to be tested by IUCN and its evaluators in 2012 and onwards. The project emphasis was therefore operational, and draft proposals were developed and tested by IUCN, its panel and field evaluators. The IUCN process was followed up by consultations with ICOMOS and ICCROM.

OUR COMMON DIGNITY 'FOUNDING' WORKSHOP 2011

Our Common Dignity: Towards Rights-Based World Heritage Management
OSLO, March 2011



2011 workshop – The Workshop Participants at the National Museum – Architecture, Oslo © Norwegian Helsinki Committee

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“Protection and conservation of a World Heritage site vs ownership right /as one of the human rights: Kalwaria Zebrzydowska: the Mannerist Architectural and Park Landscape Complex and Pilgrimage Park; Poland”



ICOMOS Australia
ICOMOS South Africa
ICOMOS India
ICOMOS Norway

