

**The United Nations
Educational, Scientific and
Cultural Organization
(UNESCO) and Indigenous
Rights:
Selected Case Studies
from the African Continent**



Snowchange Discussion Paper 20

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Table of Content

I. Introduction	3
1. ‘Fortress’ conservation and landscape approach	3
2. So, what’s left now?	4
3. What are the key mechanisms that maintain fortress conservation and land grabbing?	5
II. UNESCO: Ally or Enemy to Indigenous Peoples?	7
1. The UNESCO’s incorporation of the conservation’s ‘new paradigm’	7
2. The ‘corruption’ of human rights for economic and political interests	8
III. The Sangha Tri-National World Heritage Site	12
1. Context: A ‘Landscape’ Foreign to the Conservation’s Landscape Approach	13
2. The TNS as a World Heritage Site	15
2.1. The Bakas’ consultation (or lack thereof)	15
2.2. The violation of the Bakas’ substantive rights as indigenous communities	15
2.3. UNESCO’s Inability to Address the Bakas’ Suffering	16
IV. Escaping the Hegemonic Model: the ICCA of Kawawana in Cassamance, Senegal	18
1. The ICCA of Kawawana	18
2. What can UNESCO learn from Kawawana?	20
2.1. An Endogenous and Indigenous Enterprise	20
2.2. ... Deeply Implicated in Natural and Cultural Heritage Protection	21
2.3. An ICCA Made Possible as a Result of Suitable Institutional Support	22
V. Conclusion and Recommendations	25
References	28

Images between sections are both from Nibela, the community affected by the issues outlined in the report and South African conservation sites, including Krueger National Park. Principal photography *Antoine Scherer*, Snowchange.

I Introduction

In September 2020, a fisherman residing in the Nibela region of South Africa, which aquatic resources are now under the authority of the iSimangaliso Wetland Park (a designated World Heritage Site by United Nations Education, Scientific and Cultural Organisation (UNESCO)) was shot dead by park rangers (Xolo, 2020; Singh, 2020). This is one example of the actions undertaken by wildlife conservation projects against indigenous and local peoples. In fact, the dispossession of indigenous peoples' lands and waters by states and international institutions, disguised under the argument of protecting the environment is very common (Anaya, 2012). Various tribes and communities across the world, particularly on the African continent, are concerned about the alleged violation of their rights by wildlife conservation projects such as those undertaken by UNESCO (Disko et al., 2014).

The report shall outline the key mechanisms that contribute towards indigenous people's rights violations in the context of environmental conservation. I shall focus on UNESCO World Heritage sites and programmes, and their contradictory agenda, as it is one of the main international institutions for environmental and cultural conservation, with overall 1, 154 sites across 167 countries (UNESCO, no date). The institution has encouraged the strengthening of the human rights-based conservation approach but it has been alleged that it continues to fund projects that work against indigenous peoples' rights (Disko et al., 2014). To understand UNESCO's institutional dysfunction, I will review UNESCO's inclusion (or lack thereof) of indigenous peoples' rights to then contrast two case studies. I will do an in-depth analysis of

the marginalisation of the Bakas by the Sangha Trinational World Heritage in the Congo Basin and of the Indigenous Community Conserved Area (ICCA) of Kawawana in Senegal where the Diola peoples successfully managed to implement a locally protected land and aquatic management system based on their traditional culture and knowledge (Borrini-Feyerabend et al., 2009). The report advocates for a paradigm change in environmental conservation, in tune with human and indigenous rights guidelines, and highlights the necessity for binding indigenous legislations, better corrective measures following indigenous rights' violations and stronger customary recognition at the local level so that local communities can, for example, truly benefit from tourism.

1) 'Fortress' conservation and landscape approach

Many scholars have covered the colonial paradigm of environmental conservation which legitimises Western ascendance over indigenous peoples' lands (Domínguez and Luoma, 2020; Colchester, 2004). As such, the 'fortress' or 'colonial' mode of conservation is 'based on the belief that biodiversity protection is 'best achieved by creating protected areas where ecosystems can function in isolation from human disturbance' (Domínguez and Luoma, 2020: 2). This approach to land is the direct continuation of the Western ontology which considers nature (and in fact the 'Other' i.e., the non-Western subject) as a resource that can be extracted to serve the coloniser (Ferdinand, 2019).

‘[I]ndividualized property regimes’ were introduced on the African continent, which legitimised the ‘exploit[ation of] natural resources for the benefit of the coloniser and [the] dispossession of indigenous peoples of their territories’ (Domínguez and Luoma, 2020: 3). This is contingent on the rise of modern civilisations, which hold ‘wilderness areas conceived as [...] primitive [...] and which must be kept inhabited, set aside for recreation and science’ (Colchester, 2004: 146). Hence, colonial powers started to circumscribe protected areas on the territories they captured (Kidd, 2014: 148). It is also apparent that post-colonial African states followed the same style of conservation (Colchester, 2004: 146). As such, newly independent states adopted neoliberal government styles, pushing for more lands’ privatisation, so the latter could be used ‘freely’ by foreigners (Alden Wily, 2012: 766). Hence, in a similar vein to the colonial age, ‘untilled lands are [deemed to be] lands without owners or even lawful occupants’ and can be seized, which results in lands dispossession for local populations (Alden Wily, 2012: 764). Such land grabbing was facilitated by laws which delivered individual property tenures (ibid). Indigenous peoples are designated as poachers on their own territories and local practices are criminalised by ‘park rangers’, whose use of violence over local communities is legitimised (Domínguez and Luoma, 2020: 2). Western practices such as ‘tourism, safari hunting and scientific research’ are however allowed (ibid).

It has been argued that the end of the 20th century saw the emergence of a new paradigm of environmental conservation (Colchester, 2004). Indigenous peoples saw an increased recognition of their rights at the international level, which peaked with the United Nations Declaration on the Right of Indigenous Peoples (UNDRIP) in 2007. The latter was a milestone to the protection of what ‘constitute[s] the minimum standards for the survival, dig-

nity and well-being of the indigenous peoples of the world’ (Disko et al., 2014: 6). The UNDRIP encompasses indigenous peoples’ right to self-determination, autonomy and self-government, cultural rights, land rights and rights to reparations (ibid: 8-13). Likewise, many international efforts reflect an attempt to encompass indigenous rights to environmental conservation, most notably the Kinshasa resolution in 1975, the World Parks Congress Durban accord in 2003 or the Whakatane mechanism in 2008 (Colchester, 2004: 148). In particular, the Convention on Biological Diversity that was first introduced in 1992 and ratified in 1993 enacted important articles concerning indigenous and local peoples’ rights within environmental conservation (Convention on Biological Diversity, 2018). Especially, articles 8(j) and 10(c) enacted ‘principles and guidelines, including through respecting, preserving, and maintaining the traditional knowledge of indigenous peoples and local communities, and respecting their right to customary sustainable use of biodiversity’ (ibid: 11). However, in practice, contemporary conservation projects continue to exercise coercive power over Indigenous peoples. The increasing threat of climate change and the global degradation of biodiversity that goes along with it has increased the number of protected areas at the international level, and their legitimacy, and furthered the split between environmental conservation and indigenous peoples’ rights (Dominiguez and Luoma, 2020).

2) So, what’s left now?

The hegemony of a colonial, positivist approach to law, and the way colonial administrations refused to respect indigenous communities’ systems of tenure, coupled in this arena with the exclusionary approach to conservation leads to the poor recognition of

customary rights at the domestic level and the disregard of Indigenous peoples' rights in many post-colonial states in Africa. In 2012, the UN Special Rapporteur on the rights of indigenous peoples raised their concern about local peoples' 'lack of participation in the nomination, declaration and management' in the designation case of World Heritage sites (Anaya, 2012). Conservation projects in tune with the traditional colonial model have led to the continued violation of indigenous peoples' rights such as the 'right to property, the right to culture, the right to food and natural resources, the right to health, and the right to economic, social and cultural development' (Domínguez and Luoma, 2020: 7). Besides, the marginalisation of local communities, and the exploitation of ancestral lands for conservation, generally contravene indigenous peoples' right to Free, Prior and Informed Consent (FPIC) to the use of their lands (Disko et al., 2014: 10). The legacy of the fortress conservation model has also led to poor protection of indigenous peoples at the national level. African state laws centring private property are vectors of land rush, which 'demonstrate[s] the use of perfectly legal means of dispossession or relocation of lands involving significant loss of access for [local communities] [...]' (Alden Wily, 2012: 752). Such a western-like model does not recognise indigenous tenure regimes and collective forms of customary ownership. By referring to African states' customary laws, the aim here is not to homogenise nor essentialise African states' legal systems, but rather to point out the general marginalisation of indigenous peoples by African states. Lands occupied by local communities are deemed as 'unowned' because they do not serve capitalist interests, which legitimises dispossessions (Alden Wily, 2012). Besides, indigenous communities have poor political recognition, representation, and participation (Van Genugten, 2010: 33). As such '[t]he targeted pastoralist and hunter-gatherer communities have only, to a very limited extent, legal

titles to their land as their customary laws and regulations are not recognized or respected and as national legislation in many cases does not provide for collective titling of land' (ibid).

3) What are the key mechanisms that maintain fortress conservation and land grabbing?

Hence, the perpetuation of an exclusionary environmental conservation model, asserted through lawful land grabbing, the weakness of indigenous protection mechanisms at the international level, and the lack of sound customary laws, create growing exclusion of indigenous and local communities from their lands. The report finds that UNESCO directly and indirectly enables the dispossession of indigenous lands. UNESCO's conservation paradigm, which projects heritage through Western lenses and which pushes for the commodification of indigenous culture corrupts the human rights approach they may attempt to incorporate. Besides, such a weak advocacy for indigenous rights generally takes place in national contexts where indigenous peoples are already marginalised. Such lack of active defence of indigenous rights intersects gross human rights violations which UNESCO does not act on, which creates a certain complacency towards indigenous rights' violations.¹ Finally, this piece argues that UNESCO fails to incorporate sound corrective measures to better indigenous experiences in protected areas.

¹ The section on the Sangha Tri National World Heritage is an example of this argument

Photo: A herd of elephants in Krueger Park, 2019.



II- UNESCO: Ally or Enemy to Indigenous Peoples?

UNESCO introduced the concept of sites of Outstanding Universal Value (OUV) with the World Heritage Convention of 1972 (Disko et al., 2014). Such an impulse for an ‘international movement for protecting heritage’ translated an attempt to encompass the protection of nature as cultural heritage (UNESCO, no date). However, UNESCO still struggles to have a fully human rights-centred conservation approach.

In this section, I shall review the UNESCO’s inclusion of indigenous peoples’ status and rights: I argue here that the UNESCO increasingly includes such rights, as recognised by international human rights law and international customary law, but that their core heritage conservation model ‘corrupts’ the mere concern for human right protection for economic and political interests (Disko, et al. 2014). In practice, this creates a UNESCO body with a contradictory agenda: they pledge to respect and protect Indigenous rights but oversee projects that work against indigenous and local communities’ rights and interests.

1) The UNESCO’s incorporation of the conservation’s ‘new paradigm’

It is apparent that the UNESCO’s World Heritage programme accompanied the emergence of the ‘new’ paradigm on environmental conservation which holds a less exclusive approach to indigenous and local communities in comparison to the ‘traditional’ fortress conservation model. The World Heritage Convention (hereby referred to as the Convention) of 1972 claims to ‘integrate

the protection of the cultural and natural heritage’ and thus combines nature and culture as constituting the world’s sacred heritage (UNESCO, no date). The Convention also stresses the importance to ‘preserve the balance between [people and nature]’ (ibid). Likewise, UNESCO created the ‘5 Cs’ to put ‘Credibility’, ‘Conservation’, ‘Capacity-Building’, ‘Communication’ and ‘Communities’ at the center of their strategy (UNESCO, no date).

UNESCO reiterated their commitment to respect indigenous people’s rights with the revision of the World Heritage Convention’s Operational Guidelines in 1994 which called for the ‘acknowledg[ment] of the relationship between indigenous peoples and sites on the World Heritage List’ as it included-inter alia-properties that ‘bear a unique or at least exceptional testimony to a cultural tradition or to a civilization’ and ‘directly or tangibly associated with events or living traditions’ (Vrdoljak, 2018: 257; UNESCO, 1994: 65).

Even more significantly, UNESCO’s endorsement of the United Nations Declaration on the Right of Indigenous Peoples (UNDRIP) in 2007 represented a crucial move towards the recognition of indigenous peoples’ special relationship with World Heritage sites. Indeed, the UNDRIP stressed that ‘land rights’ are at the core of cultural rights, the right to self-determination and the prohibition of racial violence (Disko, 2014: 13). Also, the UNDRIP’s Article 41 and 42 specify that ‘UN organs and specialized agencies’ [shall] promote and act in accordance with the standards expressed in the Declaration’, to which UNESCO is no exception (Disko et al., 2014: 15). Besides, UNESCO’s then-Director General Koïchiro Matsuura declared that the UNDRIP would ‘provide the

foremost reference point [for UNESCO] in designing and implementing programmes with and for indigenous peoples' (Matsura in Disko et al., 2014). The body also reiterated their commitment to be aligned with the UNDRIP principles in their Medium-Term Strategy of 2014-2021 and 2018 Policy on Engaging with Indigenous Peoples (UNESCO Policy) in 2018. The former states that 'the organisation will implement the UNDRIP across all relevant programme areas' (UNESCO, 2013). Such an endorsement of the UNDRIP echoes the 2003 Convention on Intangible Cultural Heritage which recognises 'that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage' which recognises Indigenous peoples' *special* status (UNESCO, 2003). Similarly, the UNESCO Policy redressed the position of the institution as a strong defender of indigenous peoples' rights (Vrdoljak, 2018: 267). In the Policy, commitment to the UNDRIP's principles of 'non-discrimination, the right to self-determination, cultural rights (including land rights), and the right to participation in the decision-making that affects them, including FPIC' is renewed (ibid).

Besides, UNESCO enacts duties for the World Heritage Convention State Parties. The 2003 Convention on Intangible Cultural Heritage calls such State parties to 'take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory' (UNESCO, 2003). Likewise, State parties 'shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management' (ibid).

2) The 'corruption' of human rights for economic and political interests

Despite a growing concern towards the protection and respect of indigenous peoples' rights, the UNESCO World Heritage Programme continues to orchestrate domination over indigenous and local communities' territories that are designated World Heritage sites (Disko, 2014; Anaya, 2012). Indeed, it is apparent that indigenous peoples whose lands are designated World Heritage sites struggle to be fully included in the nomination process, which impedes on their fundamental right to Free, Prior and Informed Consent (FPIC), to participate in the management of the site post nomination, and to bring up their grievances to the UNESCO branches (ibid). I interpret here the cognitive dissonance that lies in UNESCO's approach to indigenous rights alongside the materials coined by critical heritage scholars (Kirshenblatt-Gimblett, 1998; Frigolé, 2010; Rautenberg et al., 2000; Gillot et al., 2013). The approach stresses that the concept of heritage was produced by a 'western, linear and open conception of time which is one of European modernity' (Gillot et al., 2013: 4). Actually, 'social actors', part of a 'vast hierarchical network', have the ability to select what constitutes heritage or not and define 'dominant models of heritage' (Frigolé, 2010: 19). Such an ontology on heritage is based on the 'ownership' of land by a designated group which does not coincide with indigenous collective land tenure and thus legitimise the grabbing of land because it is viewed as unutilised (Kania, 2018). Besides, such actors construct heritage by 'select[ing], activat[ing] and legitimiz[ing] certain cultural goods and manifestations' which removes the framed heritage from its context and surroundings (Kania, 2018: 129; Frigolé, 2010: 14). The concept of patrimonialisation has been associated with the development of 'cultural tourism' (or 'ecotourism') and the

commodification of culture for capital accumulation profit-making (Gillot et al., 2013: 4). Though tourism can positively contribute to local communities' social and economic development, the present structure makes it rare for local communities to actually receive the benefits of tourism. Likewise, the centrality of utilising heritage to benefit the touristic sector by UNESCO overtakes the concern for human rights (Kania, 2018).

Firstly, it has been argued that the World Heritage nomination process prevents the full inclusion of indigenous peoples (Anaya, 2012). Indeed, the UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya raised that the World Heritage designation process did not require States 'to provide any information on the indigenous peoples and local communities living in or around [the site] or review the kind of impact a site might have on the rights of these groups' (2012: 10). The designation of territories as World Heritage sites tends to disregard the consultation of the people who live on such territories, and the information relative to the inscription process are not always publicly available, which impedes on indigenous peoples' ability to give a Free, Prior and Informed Consent (Disko, 2014: 25). Such concerns were voiced by many indigenous representatives in the UNESCO, which notably led to the International Union for Conservation of Nature's (IUCN) resolution on the *Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention* in 2012 which notably raised the numerous breaches to FPIC in World Heritage nomination processes on the African continent (2012: para. 10). Likewise, the International Expert Workshop on the World Heritage Convention and Indigenous Peoples called in 2012 for 'an open and transparent process to elaborate, with the direct, full and effective participation of Indigenous peoples'

(Disko and Tugendhat, 2012: 61).

Secondly, Anaya describes that, after designation, indigenous peoples are often subjected to 'negative impacts [on their] substantive rights, especially their rights to lands and resources' (Anaya, 2012: 539). This is unfortunately the direct continuity of the paradigm shaped by the UNESCO body: the Operational Guidelines consider indigenous communities as 'stakeholders', as important as 'site managers, local and regional governments [...] non-governmental organizations (NGOs) and other interested parties and partners' (UNESCO, ...). Hence, indigenous peoples are not recognised as endowed with 'special rights' on natural and cultural heritage, which is in direct contradiction to the ratified agreements such as the UNDRIP (Kania, 2018: 142). Indigenous peoples can be lawfully prohibited to access their ancestral land and forced to be displaced which violates their right to cultural and land rights (Kania, 2018). This is closely linked to the States' use of a World Heritage designation to attract more tourists: local cultures are used for tourism, but indigenous peoples often find themselves unable to carry on with their ancestral practices (Kania, 2018). Similarly, the benefits of tourism rarely trickle down to local communities.

Lastly, affected indigenous communities brought up UNESCO's institutional failure to incorporate marginalised voices on the table and therefore take into account their complaints and consider mechanisms that can correct indigenous rights' neglect (Disko, 2014). Quite significantly, the IUCN's resolution on the *Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention* cited above called for 'mechanisms to assess and redress the effects of historic and current injustices against

indigenous peoples in existing World Heritage sites' and to 'establish a mechanism through which indigenous peoples can provide direct advice to the Committee in its decision-making processes in a manner consistent with the [...] right to participate in decision making as affirmed in the [UNDRIP]' (2012: para 2). This echoes Anaya's concern on the lack of 'specific policy or procedure which ensures that indigenous peoples can participate in the nomination and management of these sites' and the limited 'technical, human and financial resources for carrying out consultations with all affected indigenous peoples for all sites that have been nominated' (2012: para. 35-39). Thus, the central issue lies in the lack of a UNESCO's active support of indigenous rights as, at best, the organization calls upon 'avoiding harm [towards indigenous peoples]' instead of 'actively support[ing] indigenous peoples' rights' (Vrdoljak, 2018: 266). It can be noted that such a passivity on indigenous rights' protection contravenes the UNDRIP's Article 20(2) which affirms that 'indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress' (UN General Assembly, 2007). Finally, UNESCO's inability to overcome the states' sovereignty limits the former's ability to strongly engage in indigenous rights protection. Article 4 of the *World Heritage Convention* (1972) establishes that 'the duty of ensuring the identification, protection, conservation, presentation and transmission [...] of the cultural and natural heritage referred to [...] on its territory, belongs primarily to that State' and article 19(2) of the *Convention on Intangible Cultural Heritage* (2003) precises that the 'safeguarding of cultural heritage [should not harm] the provisions of their national legislation and customary law and practices'. Though states' sovereignty over domestic laws is prominent in the general

legal structure, such a relativism creates a certain complacency towards the general enterprise of states that negatively impact indigenous peoples, in particular on the African continent.

In this section, I reviewed the key mechanisms that shape UNESCO's inclusion (and exclusion) of indigenous peoples on World Heritage sites. I argued that although UNESCO has made promising progress embracing indigenous peoples, the institution is trapped in a structure which entails the use of cultural and natural heritage to serve capitalist interests. Besides, it is apparent that UNESCO is not a structure robust enough to challenge states' domestic jurisdictions and policies. This only continues and reinforces the poor participation of indigenous peoples in the nomination and management of world heritage sites.

Photo: A Nibela fisherman heading out to lake St. Lucia, July 2019.



III The Sangha Tri-National World Heritage Site



The Sangha Trinational (TNS) landscape lies in the south-western part of the Congo Basin, at the juncture of the Central African Republic (CAR), Cameroon and the Republic of Congo (hereby referred to as Congo) (Amougou-Amougou and Woodburne, 2014). It encompasses the Lobéké National Park situated in Cameroon, the Dzanga-Sangha National Park in CAR and the Noutabale Ndoki National Park in Congo and covers about 750,000 hectares (ibid; UBC, no date). Created in 2000 in a collaboration of the three governments, along with the participation of the Swiss NGO World Wide Fund for Nature (WWF) and the German Technical Cooperation (GTZ), the TNS landscape was designated World Heritage site in 2012 (Amougou-Amougou and Woodburne, 2014: 106). The TNS site is home to various indigenous communities, particularly the Baka peoples,² a hunter-gatherer community that has lived in the forests of the Congo Basin for tens of thousands of years (UBC, no date). The Baka cultural identity is profoundly connected to the forest and the

² It has to be noted that the Bakas are not the only peoples living on the Congo Basin and that there also exists intra-communal discriminations which is out of the TNS responsibility (UBC, no date). For the sake of this section, I shall however limit my scope to the Bakas' experience.

community's wellbeing is deeply connected to their lands (ibid).

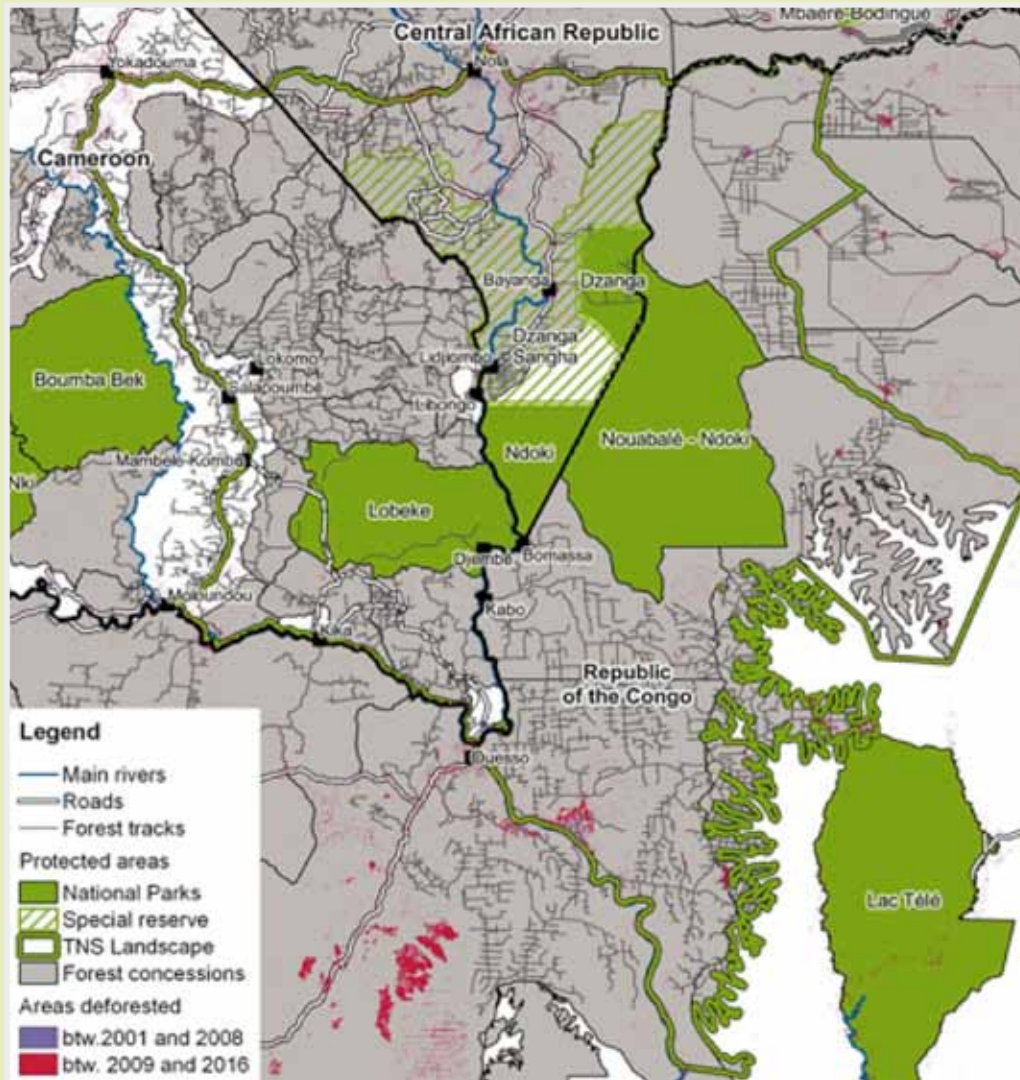
In this section, I will focus on the consequences of the nomination of the TNS as a World Heritage site on the indigenous communities, predominantly Bakas. I intend to show that UNESCO stepped into a project that was transgressing indigenous rights, and that their involvement did not improve the local communities' inclusion in the management of the site. On the contrary, it only reinforced the marginalisation of the Bakas. I shall add here that the literature centering UNESCO's responsibility for the marginalisation of the Bakas is very limited and that for the scope of this paper I shall not cover the depth of the organisation's role in indigenous rights violations.

1) Context: A 'Landscape' Foreign to the Conservation's Landscape Approach

The tenure of the Congo Basin region has been a matter of foreign interest since the 1970s, particularly shared by scientists and conservationists (UBC, no date). This pressured for the creation of national parks designed to protect the Congo Basin's biodiversity in the 1990s; and the TNS project is the result of a willingness shared by the national parks in Cameroon, CAR and Congo to have a coordinated control of the 44.000 km² of the Congo Basin (KFW, 2018). The TNS site was created to enhance environmental protection by focusing on anti-poaching activities, sustainable development, enhancing research activities and fostering eco-tourism (ibid). The TNS site outlines protected areas as those 'where natural resource use is prohibited' and 'logging and hunting concessions' are administered at the states' discretion (UBC, no date). Thus, although the TNS project aspires to project itself as grounded in the only concern of environmental protection, it

is fair to interpret the latter as rooted into the perception that the protection of the environment depends on the marginalisation of local communities. I stretch the argument here by suggesting that the TNS landscape was built to enhance states and foreign authorities' power over the Congo Basin. For instance, the delimited protected areas correspond to the community's sacred territories (KFW, 2018). In practice, this hinders local people's use of areas they deem sacred and the perpetuation of traditional hunting practices, as the latter are banned on protected areas (UBC, no date).

Moreover, environmental degradation has been pinpointed to the Congo Basin's local communities, especially the Bakas, in continuation of the *ethos* of the fortress colonial model. The TNS project covered the forbidding of hunting practices on the protected areas under the argument of protecting the hunted species (UBC, no date). However, many of the concessions given to hunting concern foreign actors (Globus Jagdreisen, no date). Besides, safari-hunting practices are allowed on protected areas (Corry, 2017). Several 'legal trophy hunting' organised by tour operators, especially German [...] take place in the three national parks (KFW, 2018). A flyer made by the German company *Blaser safaris* states that trophy hunting activities are aimed at 'helping local village communities recognize the value of their natural environment' (ibid), which completely wipes off the forbidding of the Bakas to hunt on their lands. The TNS authorities allowing such activities, which marketizes the shooting of local species (see images from the Blaser safari flyer below) is in direct contradiction to its alleged goal of enhancing environmental protection.



Conservation and human activities in the Sangha landscape, *KFW*, 2018

Gruppe A				
	Lord Derby Eland	EUR 3.500,-		Western Roan EUR 2.000,-
	Nord Western Büffel	EUR 1.800,-		
Spez. Kategorie				
	Wasserbock	EUR 900,-		Buschbock EUR 500,-
Gruppe B				
	Western Lewel Hartebeest	EUR 800,-		Nigerian Bohor Riedbock EUR 450,-
	Western Ceb	EUR 400,-		Warzenschwein EUR 400,-
Gruppe C				
	Oribi	EUR 300,-		Pavian EUR 200,-
	Western Busch Ducker	EUR 300,-		Python EUR 325,-
	Rotflankenducker	EUR 375,-		Civet Katze EUR 250,-

Trophy Hunting in the Sangha Tri-National, *Blaser Safari*, no date

2) The TNS as a World Heritage Site

UNESCO stepped into a project that was clearly problematic in terms of inclusion of indigenous people to the protected area, and which does not abide by indigenous peoples' rights as recognised in international human rights law. When one looks at UNESCO's pledge to be in line with the UNDRIP (Disko, 2014), it is fair to expect a certain intransigence regarding the protection of the Bakas on the TNS site. Nonetheless, the nomination file to the World Heritage List does not address the Bakas' marginalisation by the TNS authorities. As a matter of fact, the paper is confined to the natural value of the site. A group of indigenous communities pointed out the poor acknowledgement of the 'living cultural values of the Indigenous residents' connected to such areas (Endorois Welfare Council et al., 2011: 2).

2.1. The Bakas' consultation (or lack thereof)

The inscription of the TNS as a World Heritage Site acknowledged the necessity to include 'local and indigenous communities in the nomination process and future management [...] in order to fully recognize the rich tapestry of cultural and spiritual values associated with the property' (UNESCO, 2011) which led to a wide consultation process of the communities residing in buffer zones (Amougou-Amougou and Woodburne, 2014). Nonetheless, the actual enterprise of the consultation process did not improve the involvement of local communities (ibid). The consultation process took place 'between [...] January and March 2012, despite the proposal being submitted on February 1st, 2012' (ibid: 112). It is estimated that only a fourth of the communities within the landscape were visited (CEFAID, 2012). Likewise, a small number of

Baka representatives were on the 'consultation team' - in fact only one Baka member (augmented to two following contestations) despite the fact that the Bakas are the ones who rely the most on the forests (ibid; Amougou-Amougou and Woodburne, 2014). The nomination documents were not made publicly available at the time which impeded on communities' ability to give 'informed consent' (Amougou-Amougou and Woodburne, 2014: 112). It has also been pointed out that the authorities carrying out the consultation process had a patronising, and 'dictatorial' attitude 'which discouraged free expression by members of the communities' and did not provide to such communities the opportunity to ask questions in order to give full and informed consent (CEFAID, 2012). The time allocated to each community for consultation was also very brief and raises the question on how they could have given full consent (Amougou-Amougou and Woodburne, 2014). Groups of indigenous communities have issued a *Joint Statement* that precisely condemns the UNESCO's disregard of indigenous peoples' Free, Prior and Informed Consent prior to the nomination of the TNS (Endorois Welfare Council et al., 2011: 10).

2.2. The violation of the Bakas' substantive rights as indigenous communities

The disconnection of the World Heritage project with local communities has naturally led to a greater marginalisation of the residents of the TNS site. Indeed, UNESCO has intimately worked with the Cameroonian, Congo and CAR states and has secured the three states' interests in having a World Heritage site. Hence, I assert here that UNESCO is indirectly complicit in the grabbing of lands from the local residents.

The three states feature a poor implementation of indigenous

peoples' customary rights (UBC, no date). The mapping of the TNS centred the reservation of land use to research and tourism and puts on the same level the administration of permits for logging and carrying of traditional practices (KFW, 2018). 'Permits' are conceded to local communities on the TNS site which, firstly signifies that Indigenous peoples' access to their own lands is a *privilege* and not a *right* (ibid). Such an ethos is a manifestation that the three states did not push through the World Heritage designation to have a better mechanism of protection of their indigenous peoples. Actually, the State Parties wiped out the possibility of nominating the TNS as a 'mixed natural or cultural' site (Brumann, 2015: 281). Hence, it looks like the case of the TNS is a good example of a politicisation of a World Heritage designation to better 'brand' the site for tourism (Kania, 2018: 130).

UNESCO's relativism over poor pressurising states to comply with the stated guidelines of, as explained in the first section of this paper, has led to a certain complacency of UNESCO over the breach of indigenous rights. Surely, the situation on the TNS site is that the Bakas cannot access their ancestral lands and perpetuate ancestral practices e.g., hunting, which is a breach to their right to culture and land (UBC, no date; Disko, 2014). Besides, violence and abuse conducted by wildlife officers towards the local communities, especially the Bakas, have been reported (Survival International, 2015). The Bakas describe being 'tormented'- even when they do not conduct hunting activities- and 'tortured' by the anti-poaching authorities.. Also, the TNS authorities allegedly 'destroyed camps and property belonging to the Baka people' (Barkham, 2017). This has created a fear for Baka people to enter the forest and drew many Bakas to migrate to other regions to escape the violence (Survival International, 2014).

2.3. The UNESCO's Inability to Address the Bakas' Suffering

Lastly, UNESCO has failed in establishing measures that are corrective to the Bakas' marginalisation and persecution. This is in direct contradiction to UNESCO's incorporation of the UNDRIP which notably notices indigenous peoples' right to 'just and fair redress' (UNDRIP, 2007: 16). As mentioned above, UNESCO is not acting on the Bakas' maltreatment by the TNS authorities. Moreover, we can notice that UNESCO was absent in the complaint brought by Survival International against WWF for human rights abuses, including the eco-guards' destruction of the Bakas' 'camps and properties' and the use of 'physical force and threats of violence' (Barkham, 2017). In the case, Survival also claimed that WWF is disregarding their own policies on indigenous rights' protection and the Organisation for Economic Co-operation and Development (OECD) guidelines 'designed to prevent human rights abuses arising from corporate activities' (Corry, 2017). It was accepted in early 2017 by the OECD (ibid). WWF refused to accept any responsibility in the torture of the Bakas and the case was dropped in September 2017 (Conservation Watch, 2017).

Similarly, UNESCO has not really made any explicit comments on the Bakas' reality. In the decision 41 COM 7B.19, the World Heritage Committee only '[w]elcomes the efforts of the States Parties of Cameroon and the Republic of Congo respectively to secure the right of Baka to exploit their resource in areas identified within the property and to promote the sustainable exploitation of fisheries resources, targeting in particular women and Indigenous peoples' (2017: 95). Finally, no consultation process to the residents of the TNS site has been conducted ex-post the nomination of the land as World Heritage (Endorois Welfare Council et al., 2011).

In this section, I shed light on UNESCO's complacency to the persecution of the Bakas peoples on the TNS World Heritage Site. By becoming involved in a project whose *raison d'être* was the dispossession of local peoples, UNESCO complied to make the designated World Heritage site a touristic bargain, instead of purposefully achieving environmental and cultural protection. The organisation is actually even perpetuating the marginalisation of the Bakas.



Photo: Cape glossy starling, 2019.

IV Escaping the Hegemonic Model: the ICCA of Kawawana in Casamance, Senegal

If UNESCO rather promotes a Western projection of nature and culture to grow tourism instead of bringing to the front indigenous rights' protection, then is the organisation stuck in an institutional impasse? Is environmental conservation doomed to failure? In this section, I use the case of the Indigenous Community Conserved Area (ICCA) of Kawawana in Casamance, southern region of Senegal. CCAs are formally described as 'ecosystems [...] conserved by indigenous peoples and local communities' with '1) one or more communities closely related to the ecosystems and/or species, because of cultural, livelihood, economic or other ties; 2) community management decisions and efforts lead[ing] to the conservation of habitats, species, ecological benefits and associated cultural values [...] and 3) communities [being] the major players in decision-making and implementing actions related to ecosystem management' (Kothari, 2006: 3).

Though Kawawana is not a World Heritage site, it is an example of an area managed by local communities i.e., fishers preserving their ecosystem through the maintenance of their cultural heritage. I argue here that UNESCO can learn from such an endogenous conservation enterprise to change their contradictory missions.

1) The ICCA of Kawawana

Acronym for Kapoye Wafwolale Wata Nanang (Diola for '*Our Heritage to be Preserved Together*'), Kawawana was formed in 2008 by an association of fishermen of the Rural Community of Mangagoulack (APCRM) to foster social, and environmental conditions, especially 'food security and sovereignty' (Borrini-Feyerabend et al., 2009; Sambou and Chatelain, 2021; UNDP, 2013: 3). The region is especially constituted of estuarine mangroves and canals (also called *Bolongs*) surrounded by eight villages (Borrini-Feyerabend et al., 2009: 2-3). The local population (mostly Diola) relies on the cultivation of resources such as fish, oyster, and rice (ibid). The ICCA of Kawawana was formed in reaction to strong levels of maritime soil erosion, increased loss of marine biodiversity as well as a lack of free access to the water by fishermen from several villages due to inadequate conventional institutions (Sambou and Chatelain, 2021: 53; ICCA Consortium, 2014). The APCRM included members from the eight villages that make up Mangagoulack (UNDP, 2013: 4). They established a set of objectives for the ICCA, especially 'keeping and recovering Kawawana's bolong ecosystem for current and future generations, as well as their cultural heritage related to the different use of the environment and its resources' (Borrini-Feyerabend et al., 2009: 49). Together, they drew three internal zones to better manage and protect the area: the 'Mitiji bolong' (Red Zone) with a forbidden access, recreating an undisturbed environment that is favourable



Map of Kawawana, *ICCA Consortium* (2021): 53

to the growth and reproduction of species; the ‘Village bolong’ (Orange Zone), reserved for fishing by villagers ‘having to be either consumed or sold locally by local intermediaries’; and the ‘Tendouck Bolong’ (Yellow Zone) with open access and where fish products can be sold on all markets but where the use of monofilament nets and of engines are prohibited (Borrini-Feyerabend et al., 2009: 50; Sambou and Chatelain, 2021: 55; UNDP, 2013: 6).

Kawawana is an essentially independent enterprise supported by the IUCN and the Centre for Sustainable Development and Environment (CENESTA), an Iranian NGO, and received financial assistance from the Fondation Internationale pour le Banc d’Arguin (FIBA) and the UN Development Program (UNDP) (Borrini-Feyerabend et al., 2009: 3). Nonetheless, the association stressed that they only accepted ‘punctual’ financial assistance from FIBA and CENESTA, as well as their willingness to remain autonomous and avoid reliance on financial aid (Fontaine, 2012). It has been estimated that the project has increased by 100% the levels of fish abundance, tackled maritime land degradation, increased food security and living standards, reduced emigration rates (especially rural exodus), increased the involvement of women and fostered overall social cohesion (UNDP, 2013: 8-9; Sambou and Chatelain, 2021: 53). Kawawana was officially recognised as an ICCA in 2010 from the Regional Council and the Governor of the Casamance Region (ICCA Consortium, 2021: 7). The APCRM also received in 2012 the Equator Prize for sustainable development for the Kawawana enterprise (UNDP, 2013).



Zoning of Kawawana, Courtesy Kawawana Governing Board, 2019

2) What can UNESCO learn from Kawawana?

2.1. An Endogenous and Indigenous Enterprise...

The case of Kawawana is compelling as it is a project run by and for the Mangagoulack community. By encompassing modern conservation methods and traditional practices, Kawawana does not fall in a *patrimonialised* pitfall (unlike UNESCO), as natural and cultural heritage are recognized as interchangeable and cultural practices are not commodified for tourism. Surely, the mapping of the area was informed by traditional Diola culture: the Mitiji

bolong corresponds to a sacred area, ‘home to the ancestors and the spirits of conservation’ (Sambou and Chatelain, 2021: 55). Such a traditional practice was removed by modern laws that allowed free access to coastal areas (UNDP, 2013: 6). Likewise, the surveillance system is nowhere near the ‘park ranger’ model which relies on coercive policing. Instead, the ICCA is undertaken by Mangagoulack’s inhabitants to monitor strategic sites such as the main entry to the Mitij Bolong (Borrini-Feyerabend et al., 2009: 52). Besides, the surveillance system uses modern signs such as panels and signs, but also fetishes (important in the Diola culture) (ibid). Work is also made to raise awareness on Kawawana, especially towards fishermen conducting illegal fishing activities (ibid). The system has been found to be more effective than the conventional methods as rules are enacted by the people themselves and thus better understood by them.

Likewise, it differs from the fortress conservation perception of local communities as predators or poachers of ecosystems, and rehabilitates the former as responsible actors who are part of the natural and cultural landscape (Domínguez and Luoma, 2020).

Moreover, Kawawana is ruled by five different organs i.e., the APCRM General Assembly, the APCRM Bureau, the Council of the Rural Municipality, the Scientific Advisory Committee, and the Council of Elders; each organ with different responsibility (UNDP, 2013: 5). Such a system ensures a participatory governance of Kawawana and independent monitoring of the conducted activities (ibid). But most importantly, it is a ruling based on the Diola management customs ‘that had gradually become neglected’ before Kawawana (ibid: 6).

2.2. ... Deeply Implicated in Natural and Cultural Heritage Protection.

Kawawana’s other particularity is that it does not follow the capitalist *ethos* of turning conservation enterprises into a profit-making industry. Indeed, Kawawana’s primary aim was to restore ‘the good life’ and have better agency over their resources (UNDP, 2013: 13), unlike the Sangha Tri-National landscape. The ACPRM asserted that the marketisation of conservation generally drives rent seeking and corrupts the project’s authenticity (Fontaine, 2012). It is notably for that reason that surveillance crews and members of the five organs operate on a volunteering basis (Borrini-Feyerabend et al., 2009; UNDP, 2013). Likewise, the ICCA is cautious of its external financing (especially NGOs) as they recognise that ‘when too much money is brought in compared to the genuine needs, it perverts the relationship between the population and the NGOs’ (Fontaine, 2012). Thus, Kawawana aimed from the start to achieve a sustainable and self-sufficient source of income (UNDP, 2013: 10). Though they do not rule out the possibility of creating camps for ecotourism within the ICCA to promote the local biodiversity (PRCM and FIBA, 2012: 18), it is plausible that Kawawana’s openness to tourism will go to benefit the local population instead of foreign actors capitalising indigenous cultures, as it is the case in the Sangha Tri-National site. This precise case is also useful to understand how external organisations (for instance UNESCO) can make effective investment. The CENESTA notably funded ‘meetings to consult the wider community on [Kawawana]’ and it is during such meetings that the community exchanged on their troubles (UNDP, 2013: 4-5). This is nowhere near UNESCO’s funding of the Sangha Tri-National site for a careless and tokenistic and consultation process (Disko, 2014).

Likewise, Kawawana's organs operate a monitoring of the projects undertaken to evaluate the 'ichthyological' and 'socio-economic' impacts which allows a thorough and independent tracking of the activities (Borrini-Feyerabend et al., 2009: 11).

2.3. An ICCA Made Possible as a Result of Suitable Institutional Support

Though Kawawana was a local enterprise- officially recognised in 2010 (two years after its creation)- it was able to flourish as a result of sound legal recognition of ICCAs (Borrini-Feyerabend et al., 2009; UNDP, 2013: 10) which stands as an example of best practice in this regard for UNESCO. The Vth IUCN World Parks Congress convened in Durban in 2003 officially 'recognised, strengthened, protected and supported' CCAs as a governance type (ICCA, 2003). Similarly, the Seventh Conference of Parties to the Convention on Biological Diversity (CBD COP7) in Kuala Lumpur in 2004 adopted the Programme of Work on Protected Areas (PoWPA), a 'significant international statement of international law on protected area' which 'formalised the new protected areas paradigm in international law' (ICCA, 2004).

Such a context conducive to community-conserved projects is aligned with the ethos of the UNDRIP (Corrigan and Granziera, 2010). Indeed, the definition of ICCA encompasses environmental conservation to the preservation of cultural heritage and recognises indigenous peoples as 'the major players in decision-making' (Kothari, 2006: 3). This differs from the World Heritage Convention's problematic dichotomy of 'natural' and 'cultural' heritage, implying that the two can be separated; as well as the World Heritage's consideration of indigenous peoples as 'stakeholders' and not 'rights-holders' (Kania, 2018: 127-143). ICCAs

can also be used for other objectives than conservation, which does not exclude 'ecotourism' (Corrigan and Granziera, 2010). Nonetheless, it is apparent that this enterprise differs from the traditional *patrimonialising* approach, which is orchestrated by an external organ as it is internally organised by the community (ibid). Besides, the CBD PoW explicitly 'calls Parties to establish mechanisms for the equitable sharing of both costs and benefits arising from the establishment and management of protected areas' which prevents the marketisation of indigenous culture by foreign actors (Borrini-Feyerabend, 2008: 8). Hence, UNESCO could make ICCAs qualify 'for World Heritage status, provided that the Convention's requirements of outstanding universal value, authenticity and integrity are fulfilled'- which would make UNESCO's endorsement of UNDRIP more genuine (Kothari, 2006: 12).

Moreover, the World Heritage implementation of an alternative governance model based on indigenous knowledge would enable UNESCO to have more influence on State Parties 'to pursue political and legal pluralism as well as to promote more multi-layered and context-sensitive conservation systems' (ibid). Indeed, as described in the above sections, UNESCO's reliance on domestic legal systems (and hence compliance with states with poor customary protection) is a handicap to the potential incorporation of an ICCA, as it remains at the state parties' discretion (ibid). UNESCO could rethink its nomination approach to affected communities instead of a narrow 'state-restricted' format³ (ibid). The case of Kawawana is compelling in that matter, as a decisive factor to the creation of the ICCA was Senegal's Decentralisation Law 'which assigns to the municipal authority responsibility over

³ This is especially relevant in the case of the Sangha Tri-National World Heritage Site where the Bakas' ancestral lands are at the juncture of CAR, Cameroon and Congo?

natural resources in terrestrial environments', hence offering more autonomy to indigenous communities (UNDP, 2013: 5). Thus, UNESCO could offer more pressure over states' jurisdictions, especially on the latter's protection of CCAs.

In this chapter, I examined the ICCA of Kawawana to present an alternative model to conservation. Being based on indigenous knowledge and governance, the ICCA of Mangagoulack is run by and for rural communities, for the protection of natural and cultural heritage. I argued here that an active UNESCO recognition and support of ICCAS would benefit their dedication to fulfil the protection of natural heritage and its dedication to support UN-DRIP. This could also create more pressure on State Parties to follow a less capitalistic model, and adopt a mutual tenure of lands, alongside instead of over indigenous communities.



Photo: The lilac-breasted roller, 2019.

Photo: Snowchange member Tero Mustonen with Nibela fishers, summer 2019.



V Conclusion and Recommendations

In the report, I argued that UNESCO's conflicting agenda on indigenous rights can be understood by its willingness to remain apolitical, which only reinforces a status quo of institutional marginalisation of indigenous communities by wildlife conservation plans. Though UNESCO incorporated a human-rights based paradigm, which peaked with the endorsement of the UNDRIP in 2007, it appears that the institution frames conservation as *profitable* which prevents the genuine concern for the protection of environmental and cultural heritage (Kania, 2018). Heritage is constructed *by* foreign actors and *for* foreign actors, as scholars who coined the concept of *patrimoinialisaton* argue (Kirshenblatt-Gimblett, 1998; Frigolé, 2010; Rautenberg et al., 2000; Gillet et al., 2013). This erases indigenous knowledge of their environment and only reinforces the procedural marginalisation of indigenous and local communities during and after World Heritage nominations.

I firstly drew on UNESCO as a body, their guidelines, and principles to have a better understanding of what legal standards bind the institution. I asserted that despite UNESCO's endorsement of several legal documents (particularly the UNDRIP, 2003 Convention on Intangible Cultural Heritage and 2018 Policy on Engaging with Indigenous Peoples) acknowledging that the safeguarding of environmental heritage shall embed the protection of indigenous communities' cultural heritage and that such communities are entitled to 'non-discrimination, the right to self-determination, cultural rights (including land rights), and the right to participation in the decision-making that affects them, including FPIC' (Disko

et al., 2014; Vrdoljak, 2018: 267).

I then illustrated my argument with the example of the Sangha Trinational World Heritage in the Congo Basin: I asserted that it was the prime example of how UNESCO actively and passively contributes to the marginalisation of indigenous communities i.e., the Baka peoples. Indeed, UNESCO stepped into a wildlife conservation project which rested upon the exclusion of local communities, supposedly to foster the protection of biodiversity (UBC, no date). UNESCO's poor incorporation of binding instrument regarding indigenous rights' protection fuelled such an expulsion of the Bakas by 1) failing to lead a proper consultation of the affected communities before the nomination of the Sangha Trinational Park as a World Heritage, hence contravening the fundamental right of Free, Prior and Informed Consent (FPIC), 2) being complicit to the abuses conducted by eco guards against the Bakas and disregard of substantive rights to land and culture, and 3) failing to adequately address the latter's suffering with satisfactory corrective measures (Amougou-Amougou and Woodburne, 2014 ; Endorois Welfare Council et al., 2011 ; UBC, no date; Corry, 2017).

In the final section, I contrasted the case of the Sangha Trinational Park with the Indigenous Community Conserved Area (ICCA) of Kawawana in Senegal. I argued that Kawawana was the illustration of an *endogenous* and *indigenous* enterprise for cultural and environmental conservation, which UNESCO can learn from. I demonstrated that being an independent enterprise, run by and

for indigenous communities, it avoided the corruption of conservation for monetary interests, unlike UNESCO. The management of the ICCA is based on indigenous knowledge and governance systems. Indeed, the mapping of the site was realised by the fishermen of the Rural Community of Mangagoulack, separating a restricted area, an area reserved to local fishermen and a less restricted. But contrary to the Sangha Trinational Site, such zoning resonates to the local Diola culture where the restricted area is a sacred area (Borrini-Feyerabend et al., 2009). Likewise, the area is monitored by local habitants who fine rule breaches, but also have a pedagogical approach (Borrini-Feyerabend et al., 2009: 52). Hence, contrary to a UNESCO conservation paradigm which centralises tourism, Kawawana's considers opening to tourism as a secondary matter which should always come after the protection of cultural and environmental heritage (PRCM and FIBA, 2012: 18). I concluded that such a positive story on conservation was a bottom-up enterprise, but it was made possible by the increased recognition of ICCAs- especially as a result of the IUCN World Parks Congress in 2003 and the CBD Conference of Kuala Lumpur in 2004 (ICCA, 2003; ICCA, 2004)- which UNESCO has yet to incorporate.

Recommendations

1. The UNESCO establishment of a High Level Panel chaired by the UN Rapporteurs on the Environment and the UN Rapporteur on the Rights of Indigenous Peoples, including representation of recognised indigenous peoples, to **conduct a joint investigation into the extent to which the existing UNESCO recognised World Heritage Sites comply with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and to make recommendations for the restructuring of UNESCO processes accordingly.**
2. The **reviewing of the processes for reporting on actions** taken to ensure the Convention on Biological Diversity (CBD) Articles 8j and 10c- pertaining to the recognition of and respect for indigenous peoples in conservation and protection of biodiversity, including biocultural rights- are prioritised in the reporting framework.
3. The development of **a mechanism to ensure the full and effective involvement of indigenous peoples in the governance and management of each site.** Such a mechanism should be standardised in line with UNDRIP and applied in a site-specific way to ensure that it is appropriate for each indigenous community.
4. The establishment of an **independent mechanism for monitoring, evaluation and considering potential redress** at the international level.
5. The development of **a mechanism taking proactive steps and applying sanctions in a situation where a country fails to comply** with its obligations to respect and protect the rights of indigenous peoples timeously.
6. A **greater recognition of local initiatives for Community-Conserved Areas** which could incentivise State Parties to adopt a less centralised governance system of indigenous territories. For this sake, UNESCO could rethink its national-based nomination system for OUVs, and incorporate the nomination of affected communities to the relevant local council.

Photo: A lion at night time, 2019.



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