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RESEARCH ARTICLE



The Lightness of Human Rights in World Heritage: A Critical View of Rights-Based Approaches, Vernaculars, and Action Opportunities

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ABSTRACT

Why are the global rights commitments made by States Parties to the World Heritage Convention failing to trigger effective responses to critical human rights infringements? This paper responds to a continuous call from heritage practitioners to help clarify the meaning and significance of human rights-based approaches (RBA) that are adopted as policy imperatives, yet simultaneously undermined in practice. The first part of the paper reviews the vernacularization of human rights discourse and objectives at UNESCO and in the World Heritage policy field. It is argued that while clear formal commitments to human rights exist in the language, much ambiguity and several dilemmas remain in the framing of connections between heritage and human rights. The second part offers a critical discussion of the institutional traps, dilemmas and unresolved questions involved in adopting RBA in heritage work. A set of key questions follow about the why, what, for whom, and when, as well as how and under what conditions, human rights matter in heritage processes. While structural constraints appear daunting, accepting that heritage processes are powerful leads to real choices about whether to cement inequalities and state or corporate power hegemonies, or, conversely, to contribute towards building more equitable relationships.

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The heavier the burden, the closer our lives come to the earth, the more real and truthful they become. Conversely, the absolute absence of burden causes man to be lighter than air, to soar into heights, take leave of the earth and his earthly being, and become only half real, his movements as free as they are insignificant. (Kundera, Milan. The unbearable lightness of being. Faber & Faber, 2020.)

1. Introduction

Why are the global rights commitments of States Parties to the World Heritage Convention failing to trigger effective responses to critical human rights infringements?

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When the UNESCO World Heritage Committee inscribed the Kaeng Krachan Forest Complex in Thailand as a World Heritage Site in 2021, the International Work Group for Indigenous Affairs argued that it was trampling on human rights. It reported that the Committee had ignored ‘... repeated pleas of Indigenous peoples, the National Human Rights Commission of Thailand and the UN human rights system to defer listing moving ahead with inscription’.¹ Rather than celebrating the new World Heritage site, a widespread perception emerged that this was a new low point in the history of the Convention, as it had ignored ongoing human rights violations in the area including forced evictions, burning of houses, and forced disappearances.²

During the writing of this article, the Maasai in Ngorongoro and Loliondo bordering the Serengeti, Tanzania faced yet another tragedy of planned evictions of thousands of pastoralists, violent confrontations, and heavy-handed arrests.³

How to make sense of such tragedies occurring under one of the most prestigious and popular UNESCO conventions, despite massive public attention from national governments, the international community, and influential conservation NGOs? How could such lightness, in the form of blatant overruling of recommendations and a shirking of the burden to address human rights issues and undertake rights-based conservation, be possible for a UN mechanism explicitly required to promote World Heritage sites as ‘... exemplary places for the application of the highest standards for the respect and realization of human rights’?⁴

The Kaeng Krachan case is telling not only in terms of Committee members, seemingly out to please a State Party, immediately overruling rather than upholding UNESCO standards, but just as importantly illustrative of the systemic failure of a flagship case, despite solid forensic evidence, Advisory Body recommendations, and longstanding dialogues with grassroots, national, and international human rights institutions over several years. In September 2019, the Thai Department of Special Investigation had confirmed that bone residues found in Kaeng Krachan Dam were those of the missing Karen environmental activist Porlajee ‘Billy’ Rakchongcharoen. He had disappeared in 2014 likely for reasons tied into community claims in the forest area.⁵ The chilling confirmation in 2019 by DNA testing, the hallmark of evidence-based human rights work, confirmed that bones residues found belonged to the disappeared activist.

The unwillingness of the World Heritage Committee to require a firm state response to that news before inscription reveals its systemic failure to engage with States Parties on problematic terrain. For a UNESCO body with a constitutional commitment to human rights, its readiness to bypass both national and international human rights

¹IWGIA, ‘UNESCO World Heritage Committee Tramples on Human Rights’ (28 July 2021) <<https://www.iwgia.org/en/thailand/4441-unesco-world-heritage-committee-tramples-on-human-rights.html>> accessed 10 October 2021.

²Ibid.

³See e.g. The Oakland Institute, ‘The Looming Threat of Eviction: The Continued Displacement of the Maasai Under the Guise of Conservation in Ngorongoro Conservation Area’ (10 June 2021) <www.oaklandinstitute.org/looming-threat-eviction> accessed 14 July 2022.

⁴This policy commitment refers to the World Heritage and Sustainable Development policy adopted by the General Conference of States Parties in 2015.

⁵‘Bones found in Kaeng Krachan confirmed to be missing Karen activist’ (*Prachatai English*, 3 September 2019) <<https://prachatai.com/english/node/8202>> accessed 15 July 2022.

documentation seems paradoxical, but also raises real, hard questions about the meaning, practices, and significance of rights commitments.

The paradox is not a matter of insufficient public attention to what I call worldly or cosmopolitan representations. I use the word ‘worlding’ to mean the process of recontextualising a phenomenon to be of global significance, a process well-illustrated in the dynamics of cultural diplomacy. World Heritage is a prime example of this, alongside global events such as universal exhibitions and other prestigious gatherings. One case in point might be the Thai Pavilion at the 2021 Venice Architecture Biennale, intended to signify how Thai architecture embraces centuries-old human–elephant co-existence and the homecoming of elephants as household members.⁶ This ‘Human–Elephant house’ illustrated a carefully crafted worlding of Thai natural heritage that arguably stood in stark contrast with the burning of houses and loss of homes of Thailand’s Indigenous inhabitants in the name of (elephant) conservation elsewhere.

I take this paradox as a starting point to explore the meanings and practical implications of so-called human-rights-based approaches. This paper is also a response to a continuous call from heritage practitioners involved in World Heritage processes to help clarify the meaning and significance of such approaches at a time when its meaning is profoundly questioned. Last but not least, it functions as a reminder to the World Heritage Committee of its human rights obligations as a duty-bearer.

The first part of the paper reviews how human rights discourse and objectives have been vernacularised in the World Heritage policy field, with a focus on articulations in the normative arenas of UNESCO, illustrated by the example of the World Heritage Convention. It argues that while human rights are constitutionally recognised by UNESCO, in practice much ambiguity and many dilemmas remain in the framing of connections between heritage and human rights. This is despite formal commitments to systematic human-rights mainstreaming, highest international standards, and full rights-based safeguards, guidance tools, and operational mechanisms. The second part offers a critical discussion of the institutional traps, dilemmas, and unresolved questions involved in adopting RBA in heritage work. A set of key questions follow about the why, what, for whom, and when, as well as how and under what conditions, human rights matter in heritage processes.

The paper argues that what is at stake is not merely a few black sheep getting away with disregarding rights violations in a recent Committee session, but rather a systemic governance challenge to the World Heritage Convention. Despite new policy requirements to mainstream human rights, and even after years of dialogue, targeted documentation efforts, and ever more detailed findings in a series of emblematic cases, Committee decisions demonstrate a lack of progress in effecting systematic change and securing tangible outcomes. The Kaeng Krachan case exemplifies how the heavy burden of the displacement of the Indigenous Karen were conveniently turned into

⁶Thailandia biennale architettura, ‘A House for Human and a House for Elephants: National Thailand Pavilion, Biennale Architettura 2021’ (*The Association of Siamese Architects under Royal Patronage*, 2021) <<https://asa.or.th/thai-pavilion/>> accessed 25 January 2022.

light half-truths and aspirational language. The inscription decision spoke of ‘the understanding’ that the States Party would ‘... continue the work in progress’ on ‘Ensuring consultations with the local communities on their livelihoods and their active engagement in management of the property’.⁷ Thai embassies across the world reported how inscription was due to ‘... Thai authorities’ unwavering efforts in data collections and research on biodiversity and globally endangered and vulnerable species of flora and fauna on the ground throughout the past 10 years’.⁸ Absent from the official narrative were government objections to recognising the Karen in Ban Bang Kloi as Indigenous, the refusal of a visit from the United Nations Special Rapporteur, and the rejection of civil society allegations of harassment and arrests.⁹ ‘We lost everything. Life has been very hard here [on the resettlement site] – the land is not good for growing rice and vegetables, so we have to buy everything’, a local Karen woman named Gib Tonnarmpech told the *Bangkok Post*,¹⁰ having been among those arrested for encroachment when seeking to return to their ancestral village in early 2021. ‘We don’t know what the World Heritage listing means – no one has told us how it will impact us or whether it will help solve our problems.’

Sceptical voices continue to question the relevance and change-making potential of human-rights discourse in the heritage field. The approach taken here is to recognise RBA as a distinct rights complex or bundle, shaped at multiple levels of practice. This is not merely a conceptual or theoretical exercise, but helps identify and address opportunities for transformative heritage practice. As recent heritage deliberations in the World Heritage Committee have revealed, specific heritage processes prompt real decision-making in diverse contexts. Certain elephants in the room continue to shape so-called rights-based approaches practice. With growing attention to the possibilities¹¹ and limitations¹² of RBA, we can more clearly recognise the need to deepen analyses of rights as a field of diverse practices rather than taking it for granted as a set of uniform international norms and formal requirements.

In previous work, Buckley and I have argued that multiple heritage and human rights linkages can be found within a single Committee meeting.¹³ This diversity may be illustrated as follows:

⁷The World Heritage Committee, ‘Decision 44 COM 8B.7, Kaeng Krachan Forest Complex (Thailand)’ (UNESCO, 2021) <<https://whc.unesco.org/en/decisions/7926>> accessed 29 January 2022.

⁸Royal Thai Embassy, London, ‘Thailand, Kaeng Krachan Forest Complex (KKFC) inscribed as UNESCO’s World Heritage Property: Natural Property’ (2 August 2021) <<https://london.thaiembassy.org/en/content/thailand-kaeng-krachan-forest-complex-kkfc-inscrib?page=5d6636ce15e39c3bd0007331&menu=5d6636ce15e39c3bd0007332>> accessed 29 January 2022.

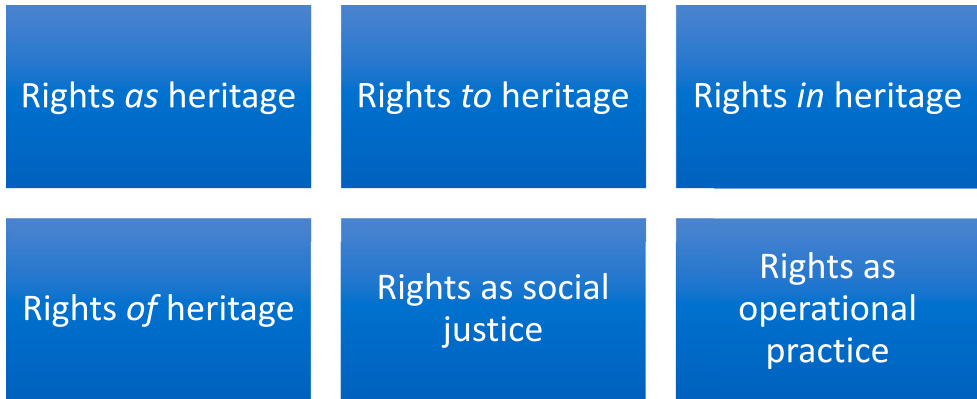
⁹Permanent Mission of Thailand, ‘Thailand’s Response to the Joint Communication – July 2021’ (2021) <<https://whc.unesco.org/en/list/1461/documents/>> accessed 29 January 22.

¹⁰Thomson Reuters Foundation, ‘Karen Fear Kaeng Krachan’s World Heritage Listing Ends Their Hopes’ (*Bangkok Post*, 8 October 2021) <www.bangkokpost.com/thailand/general/2194723/karen-fear-kaeng-krachans-world-heritage-listing-ends-their-hopes> accessed 29 January 22.

¹¹Stener Ekern and others, ‘Human Rights and World Heritage: Preserving Our Common Dignity Through Rights-Based Approaches’ (2012) 18 *International Journal of Heritage Studies* 213.

¹²Anna-Laura Kraak and Bahar Aykan, ‘Editorial: The Possibilities and Limitations of Rights-Based Approaches to Heritage Practice’ (2018) 25 *International Journal of Cultural Property* 1.

¹³Peter Larsen and Kristal Buckley, ‘Approaching Human Rights at the World Heritage Committee: Capturing Situated Conversations, Complexity, and Dynamism in Global Heritage Processes’ (2018) 25 *International Journal of Cultural Property* 85.



The diverse ways in which human rights appear include: as a discourse to claim social justice, as a technical discussion, as an argument to justify protection, and as a framework to understand and transform the distribution of rights within existing or new sites. Arguably, a critical category missing above is that which renders human rights invisible and insignificant. Indeed, the Kaeng Krachan case underlines the common practice not merely of ignoring human rights violations, but of lightly rendering them insignificant by prioritising the ‘bigger picture’ of globally significant heritage. This involved the double move of what I call naturalising nature, by discarding cultural connections,¹⁴ and bypassing the voices of national and international human rights institutions. UN Special Procedures, national human rights reports, and DNA-proofed studies were brushed aside by a State Party and subsequently by Committee members keener to please other States Parties than to take their Committee responsibilities and procedures seriously. This systemic failure concerns the uneven treatment of rights and voices, but also the readiness of States Parties and the World Heritage Committee to ignore recommendations even when supported by hard evidence. While in theory RBA align heritage work with universal human rights standards, in practice they have gone in the opposite direction. To unpack this paradox and how it was made possible, the following sections examine the formal characteristics of RBA in the UNESCO sphere.

2. Human Rights and Heritage: The Formal Characteristics of Rights-based Approaches in the World Heritage System

In recent years the human rights implications of heritage designation and management have received growing attention from heritage practitioners, civil society, policymakers, and scholars. Human rights language is now found in several heritage conventions and associated instruments.

UNESCO bases its RBA on the principles of participation, accountability, non-discrimination, empowerment, and linkages to human rights standards. The 2003

¹⁴Peter Bille Larsen, ‘The Neoliberal Heritage Affect: Worldly Heritage and Naturalized Nature in Central Vietnam’ (2018) 23 TSANTSA – Journal of the Swiss Anthropological Association 24.

Convention on Safeguarding of Intangible Cultural Heritage mentions the International Bill of Human Rights in its preamble and states compatibility with existing international human rights instruments in its Article 2.¹⁵ The 2005 European Council Faro Convention, on the Value of Cultural Heritage for Society, likewise stipulates that the Convention cannot be interpreted in such a way that undermines existing rights (article 6) in a context of recognising the right to culture and heritage (Article 1).¹⁶ While UNESCO copyright concerns were the main subject of the rights language in the World Heritage Operational Guidelines for some time, the last decade has seen a drive by the Advisory Bodies together with like-minded States Parties, the World Heritage Centre, and experts to introduce more explicit wording recognising human rights.¹⁷ In 2015 this also informed the adoption of the World Heritage and Sustainable Development Policy call for ‘human rights-based approaches’. The policy specifically states that ‘States Parties should commit to uphold, respect and contribute to the implementation of the full range of international human rights standards as a pre-requisite for effectively achieving sustainable development’ (UNESCO, 2015).¹⁸

Four qualifying characteristics of the UNESCO World Heritage RBA were adopted by the General Conference of States Parties in 2015. One is the requirement that States Parties adopt a human rights-based approach for their World Heritage activities. From this perspective, working with human rights is not an option but an obligation of States Parties as well as the World Heritage Committee. This qualifies both States Parties and the Committee as duty-bearers, theoretically accountable for their human rights practice or lack thereof. Indeed, the policy commitment goes even further in terms of RBA, promoting World Heritage properties as ‘... exemplary places for the application of the highest standards for the respect and realization of human rights’.

Second, the policy involves commitment to the ‘... full range of international human rights standards’. This formal clarification is important because it explicitly addresses the World Heritage Convention ambition to work with *international* human rights law as a standards framework as well as a commitment to highest standards. This clarifies that States Parties’ due diligence must include both existing domestic legal frameworks and international human rights frameworks (indeed, reflecting wider good practice). It also clarifies commitment to the highest standards available in case of doubt or double standards. Where Indigenous peoples are not recognised by the state, for example, this policy commitment reverts to international human rights standards and their emphasis on Indigenous peoples’ rights to self-identification.

Third, the policy demands that the ‘... full cycle of World Heritage processes from nomination to management is compatible with and supportive of human rights’. Such comprehensive coverage concerns new nominations and existing sites, including inter alia safeguard measures during the nomination process and management requirements

¹⁵UNESCO, ‘Text of the Convention for the Safeguarding of the Intangible Cultural Heritage’ (2003) <<https://ich.unesco.org/en/convention>> accessed 15 July 22.

¹⁶Council of Europe, ‘Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005)’ <www.coe.int/en/web/culture-and-heritage/faro-convention> accessed 15 July 22.

¹⁷Sinding-Larsen, Amund and Larsen, Peter Bille (eds.) (2017), Our Common Dignity Initiative - Rights-Based Approaches in World Heritage- Taking Stock and Looking Forward (Advisory Body Activities between 2011 and 2016), An Advisory Body Report, eds. IUCN, ICOMOS, and ICCROM (Oslo: ICOMOS Norway).

¹⁸UNESCO Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention as adopted by the General Assembly of States Parties to the World Heritage Convention at its 20th session (UNESCO, 2015)

for the full list of 1154 sites. Regarding nomination, timid progress had included the Operational Guidelines and the 2021 nomination format prompting States Parties to identify affected Indigenous peoples, qualify participation and consultation, and demonstrate whether free prior informed consent has been obtained. But what happens to rights issues after a site has been listed? While the World Heritage Centre has an extensive monitoring system of threats affecting World Heritage properties (online since 2012), it is yet to explicitly and separately monitor human rights developments. Human rights violations are clearly a fundamental threat to equitable World Heritage management and need to be acknowledged as such. Although several State of Conservation (SoC) reports, such as those related to the Himalayas, Iraqi marshlands, and Ngorongoro,¹⁹ address rights issues in direct or indirect terms, a more systematic RBA is warranted. Some tentative advancement shows the feasibility of addressing such topics in SoC reporting, but this must now be scaled-up with more systematic attention. Such a move would notably allow for the monitoring and recording of progress being made on human rights issues, which could be a critical carrot for improved state performance.

Fourth, the policy spells out that ‘... relevant standards and safeguards, guidance tools and operational mechanisms for assessment, nomination, management, evaluation, and reporting processes should be compatible with an effective RBA for both existing and potential new properties’. For a Convention whose policy and practical guidelines are under frequent revision – from the Operational Guidelines to the Advisory Body management guidance – this provision calls for ensuring compatibility with *effective* RBA. New provisions and practices are in the making, as discussed above, but they remain partial in terms of coverage and effectiveness.

It does not take much review effort to recognise the room for improvement on all four formal characteristics. With a few exceptions, there is little to indicate that States Parties or the World Heritage Committee actually consider it an obligation and duty to work with human rights. The vast majority of States Parties are yet to adopt rights-based policy language, while rights-related issues continue to be dealt with an uneven way,²⁰ not least in the Committee.²¹ Furthermore, when rights concerns are identified, as in Kaeng Krachan in 2021, there appears to be widespread readiness to overrule Advisory Body recommendations and reports from UN Special Rapporteurs. Suffice to say here that side-stepping human rights obligations is common. Whereas some international human rights standards are evoked, such as the United Nations Declaration on the Rights of Indigenous Peoples, or specific principles taken up, such as the principle of Free Prior and Informed Consent, engagement with standards and mechanisms remains partial, uneven, and fragmented. Except for adopting Free Prior Informed Consent in the operational guidelines and prompting it in nominations, there is little specific reference to wider international human rights standards and good practice such as due diligence, transparency, and accountability. The systematic implementation of RBA for the full World Heritage cycle, in other words, remains a work in progress for

¹⁹UNESCO World Heritage Centre, ‘State of Conservation Information System (SOC)’ <<https://whc.unesco.org/en/soc/>> accessed 15 July 22.

²⁰Peter Bille Larsen (ed), *World Heritage and Human Rights: Lessons from the Asia Pacific and the Global Arena* (Earthscan/Routledge 2017).

²¹Peter Bille Larsen and Kristal Buckley, ‘Approaching Human Rights at the World Heritage Committee: Capturing Situated Conversations, Complexity, and Dynamism in Global Heritage Processes’ (2018) 25 *International Journal of Cultural Property* 85.

both nominations and for existing sites. Finally, the track record of engaging with Indigenous peoples and local community representatives in revising policy and guidance has been patchy, as has been the integration of systemic policy review of tools, mechanisms, and approaches from a human-rights-based approach. While the establishment of the International Indigenous Peoples' Forum on World Heritage in 2017 represented a potential step forward,²² the body remains chronically underfunded.

Does the dire status of human rights in heritage reflect the general state of RBA in UN work, characterised by lofty language, slow implementation, and diluted mainstreaming? Or is it symptomatic of a specific trend and governance dynamic in which the UNESCO Convention has been co-opted by nation state priorities and cultural diplomacy? What further insights do we get about RBA by situating them in a wider UN context? If the expectation was to achieve human dignity through RBA as put forth a decade ago, we need to requalify the nature and practice of rights-based approaches and look beneath or beyond formalism.

3. The Contradictions of Mainstreaming

The UN Development Group operates with a 'Common Understanding', and this was likewise adopted by UNESCO in 2003.²³ Largely aspirational in nature, this calls for programmes, policies, and technical assistance to '... further the realisation of human rights' in '... all programming in all sectors and in all phases'. Programmes and activities should contribute to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.²⁴ Such commitments also stress the universality of human rights and entitlements, as well as emphasising states' responsibilities.²⁵ What is noteworthy in the UNESCO approach is its emphasis on objectives and actions related to internal programming within UNESCO and language around 'mainstreaming'. At this stage, the reader may legitimately wonder why such a series of constitutional, policy, and Convention-specific commitments to human rights and mainstreaming appear to be failing. Some see a linear narrative of implementing human rights through RBA, implying a straightforward roadmap of translating international human rights standards into practice.

In the same vein of thought, we may think of RBA as not only a commitment to mainstream rights, but equally to working towards as a set of specific organisational objectives and actions. In the context of the World Heritage, RBA would thus not only be about a commitment to human rights goals, but include specific policy objectives and operational practices. The World Heritage system involves basic commitments to human rights, as it has elaborated preliminary policy guidance and operational guidelines with tentative rights dimensions. Furthermore, many rights-related activities are being undertaken by states, Advisory Bodies, and the World Heritage Centre. Yet so far these various elements have not formed a coherent, clear, or practical approach; instead, contradictions

²²International Indigenous Peoples Forum on Climate Change (IIPFCC), 'On The Blog' (2022) <www.iipfcc.org/> accessed 15 July 2022.

²³UN Sustainable Development Group, 'The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies' (*United Nations*, September 2003) <https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf>.

²⁴UNESCO, 'Strategy on Human Rights' (UNESCO 2013).

²⁵Savitri Goonesekere, 'A Rights-Based Approach to Realizing Gender Equality' (1998) <www.un.org/womenwatch/daw/news/rights.html>.

prevail. The UNESCO sphere is not alone in this respect. Two decades of RBA in wider multilateral organisational and domestic spheres reveal a field of complexities, contradictions, and confusion about its meaning and practical significance. Although a central tenet of RBA is the move from irregularity toward the application of rule-based standards, critical rights literature challenges such a linear assumption.

The adoption and implementation of RBA has been a system-wide UN prerogative since the turn of the millennium, calling for the translation of normative commitments into practice. Yet the last two decades reveal diverse trajectories in different institutional contexts. For many researchers, this signals a need to shift away from the political philosophy and formalism of rights towards better understanding what shapes practice. Accountability and capacity challenges are frequently raised for other UN agencies criticised for being poorly equipped politically and technically to implement a rights agenda, pointing to gaps between commitments and reality.²⁶ The mainstreaming of human rights has been described as ‘... profoundly ambiguous in its effects’,²⁷ and results are said to be ‘... uneven, ill explored and the whole process is still little understood’.²⁸ Just as so-called realists²⁹ have long challenged the emancipatory potential of international human rights mechanisms,³⁰ the heritage community is coming to grips with the fact that recognition is far from a panacea or quick fix for deep-running challenges.³¹ The point here, however, is not to simply locate the World Heritage Committee and States Parties among a club of low performers in the human rights field, but rather to deepen the conversation about factors shaping rights-based practice. Where structuralist and institutional analysis may be informative about the politics, the multilateral dynamics, and the nation-state contextual factors shaping rights outcomes, they offer only limited insights into the potential of human rights language as a transformative practice.

The aim in subsequent paragraphs is therefore to interrogate that overall practice through a set of simple yet crucial qualifying questions, teasing out various dimensions and the transformative potential of human rights in the World Heritage field. To facilitate this, the conceptual framing combines a sociolegal reading of rights practices as ‘vernacularized’ versions of authoritative legal texts³² with a set of what I call transformative questions.

4. Vernaculars of Human Rights-based Approaches

It may seem paradoxical to speak of vernacular RBA given the universalist nature of human rights and the mainstreaming ambition outlined in the previous section. Yet

²⁶Sanae Fujita, ‘The Challenges of Mainstreaming Human Rights in the World Bank’ (2011) 15 *The International Journal of Human Rights* 374; R Thomas and V Magar, ‘Mainstreaming Human Rights Across the WHO’ (2018) *Human Rights in Global Health: Rights-Based Governance for a Globalizing World* 109.

²⁷Martti Koskeniemi, ‘Human Rights Mainstreaming as a Strategy for Institutional Power’ (2010) 1 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 47.

²⁸Gerd Oberleitner, ‘A Decade of Mainstreaming Human Rights in the UN: Achievements, Failures, Challenges’ (2008) 26 *Netherlands Quarterly of Human Rights* 359.

²⁹Qualifying the term realism needs another debate. For the sake of argument, we here rely upon the qualification from political science.

³⁰Jack Donnelly and Daniel Whelan, *International Human Rights* (Routledge 2020); Margaret McGuinness, ‘Exploring the Limits of International Human Rights Law’ (2005) 34 *Georgia Journal of International and Comparative Law* 393.

³¹Bahar Aykan, ‘Saving Hasankeyf: Limits and Possibilities of International Human Rights Law’ (2018) 25 *International Journal of Cultural Property* 11.

³²Peggy Levitt and Sally Merry, ‘Vernacularization on the Ground: Local Uses of Global Women’s Rights in Peru, China, India and the United States’ (2009) 9 *Global Networks* 441.

concepts of vernacularism offer an approach sensitive to local forms of agency, context, and the act of translation that are central to re-asserting the transformative potential of rights-based heritage practice.

While human rights do offer a particular vernacular validating rights-claims in heritage-making dynamics, it is far from certain that the adoption of rights language creates any legal certainty. Nor am I directly concerned here with the vernacular of heritage,³³ even if analysis reveals how terms or combinations of terms are adopted by local actors and experts.³⁴ Human rights may offer grammars of heritage justice, yet if subject to neglect and denial, these can be transformed and neutralised into grammars of injustice. Rather than suggesting human rights as a distinct moral vernacular, the idea of human-rights vernacularisation therefore points to human rights going through processes of local translation. This prompts attention to the role of specific take-ups, adaptations, and working approaches in shaping practices.

If the adoption of human-rights language may give the impression of overall acceptance, even of some level of commitment, it reveals little about the interconnected dimensions shaping RBA on the ground. The following sections and questions seek to help diagnose and requalify how rights are dealt with from a practical perspective. While human rights often are perceived as lofty concepts, difficult to handle in specific work contexts, the following transformative questions have been developed and used in training sessions to help ground and potentially re-right conditions in specific World Heritage contexts. Starting with a discussion of why practitioners need to bother with rights and power, subsequent questions explore what rights are concerned, who is affected, as well as where and how rights matter in a specific heritage context. Presented as a set of practical questions built up around the World Heritage acronym (WH), it aims to simplify a set of complex characteristics and opportunities to key factors shaping RBA in practical and significant ways. The underlying observation here is that by asking such questions practitioners can start connecting rights language to site-specific issues and opportunities for transformative action in the World Heritage field. Given the polarised nature of human rights, unpacking its heritage implications has proven helpful for practitioners to start rethinking their own practice. Where most practitioners consider themselves to be on the 'good side' of human rights, realising that RBA are not merely about violations but also about positive contributions to empowerment is an important starting point for re-righting practice.

The 5 WHs – Transformative Questions

- (1) Why bother with rights-based approaches?
- (2) What rights matter and how?
- (3) Who is concerned, and whose rights and values matter?
- (4) Where do rights matter?
- (5) Whose premises, what does it take, and what are the outcomes?

³³Scott Hawken, 'The Urban Village and the Megaproject: Linking Vernacular Urban Heritage and Human Rights-Based Development in the Emerging Megacities of Southeast Asia' (2011) 50 Policy 67.

³⁴Oscar Salemink, 'Introduction: Heritagizing Asian Cities: Space, Memory, and Vernacular Heritage Practices' (2021) 27 (8) International Journal of Heritage Studies 769.

5. Why Bother with Rights-based Approaches? From Formality to Power

Why bother with human rights? RBA may be considered a duty established by the highest decision-making body of the Convention, and UNESCO has a constitutional commitment to human rights that supersedes any discussion by the States Party or the Committee. In addition, the literature reveals multiple pros and cons of RBA compared to other grammars of social justice. Gready, for example, distinguishes between four different arguments, from the strategic use of law to building accountability and repoliticising development as a matter of rights rather than benevolence.³⁵ If the formal rule-based approach already provides an answer by locating human rights as a duty, moral reasoning has long driven engagement with RBA in the heritage field as part of the means and remedial measures to address power imbalances and social injustices produced in the World Heritage field. A good example involves work since 2011 with the World Heritage Advisory Bodies (ICOMOS, IUCN, ICCROM) to explore rights-based approaches to heritage management – called ‘Our Common Dignity’ – as vehicles for more inclusive and just heritage practice,³⁶ couched in diplomatic terms.

If we acknowledge that heritage processes are *powerful* either in an empowering or disempowering sense, then the recognition and respect of rights form part of what structures or potentially restructures such power relations. Using RBA to tackle power imbalances raises questions of definition. What do we mean by power? In the heritage field, it may from a Weberian perspective be considered as the ability of heritage actors to exercise their will over others. Foucauldian approaches to discourse, power, and truth point to critical questions about who shapes ideas about what heritage is and what it isn’t, which values are deemed significant and who may rightfully engage in heritage processes. Both themes are well-rehearsed in the critique of expert/state power and authorised heritage discourse.³⁷ Addressing power inequalities in the World Heritage, furthermore, is becoming ever more urgent for a global normative field and practice increasingly shaped by political elites, nationalist cooptation and neo-liberal heritage practice.³⁸ Heritage and rights, in this sense, is not about nostalgia towards the past, but a historically grounded response to contemporary forms of injustice and a vehicle for identifying power imbalances and crafting more just heritage practices.

Rights-based approaches can address (or ignore) such power differentials, which often shape – and are shaped by – multiple dimensions of world heritage processes; the power to determine ‘significant’ outstanding values, the power to enable or silence voices, the power to set management and protection mechanisms, financial power, benefits distribution and much more. To put it simply, the power choice is one of either taking it for granted, and thereby cementing hierarchy, state or corporate power hegemonies, or conversely, investing in empowering local stewards as rights-holders – and beneficiaries – of the heritage process. The assumption – or rather aspiration – of rights-based approaches is, in this respect, is about their ability to level the playing field from the

³⁵P Gready, ‘Rights-Based Approaches to Development: What is the Value-Added?’ (2008) 18 *Development in Practice* 735.

³⁶Amund Sinding-Larsen and Peter Bille Larsen (eds), ‘Our Common Dignity Initiative: Rights-Based Approaches in World Heritage’ (ICOMOS Norway 2017).

³⁷Laura-Jane Smith, *The Uses of Heritage* (Routledge 2006).

³⁸Lynn Meskell, ‘UNESCO’s World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation’ (2013) 54 *Current Anthropology* 483.

nature of determining values, over multiple forms of interpretation, but also about striking more equitable decision-making in cases of conflict or contested perspectives.

6. What Rights Matter and How?

A key question raised by practitioners concerns what and *how* human rights matter. Far from a trivial question this concerns which rights issues are identified as relevant and how they are taken up in the World Heritage equation in conjunction with the recognition of rights-holders. Whether recognition as rights-holder (vs merely being a stakeholder) makes a difference in practical terms boils down to what rights are attached to being reframed as a rights-holder (entitlements), and whether and how they are taken seriously by both national and global society. Elsewhere, Buckley and I have proposed considering Committee decisions as

... particular nodal points, or 'composites' of multiple intersecting contextual conversations and actors, far beyond the 21 elected member states engaged in the formalities of decision making.³⁹

As a starting point, the number of heritage nomination dossiers, Committee decisions, and State of Conservation reporting that establish explicit references to the realisation of human rights remain a minority. Among these what rights issues are identified and how they are addressed remains highly context-specific and partial in their coverage. Decisions about what to focus on are not isolated phenomena in a World Heritage process, but integral to broader webs of values, relationships, and country-specific governance dynamics. While Advisory Body signalling of rights issues has been on the increase, intersections appear more as a kind of risk management, damage mitigation, and safeguard practice than an explicit objective to make a positive contribution. This, in part, at least reflects a path-driven history of human rights appearing as a policy add-on, in part responding to social conflict, and negotiated discursive result rather than a systematic unification of two universalist projects.⁴⁰

What rights issues are considered pertinent and documented in heritage analysis are intimately connected to – yet simultaneously also detached from – the documentation of values and the specifics of the heritage gaze. As a consequence the wider social context with its distribution of rights, power and privileges are rarely addressed explicitly as a heritage concern, leaving heritage making as a *de facto* conservative exercise. The resulting invisibility of social inequalities, historical grievances, and divides illustrates the continuous divide between heritage and rights spheres.

How human rights come to matter or rendered invisible is the obvious next question. What the Kaeng Krachan case – and similar cases of displaced forest rights⁴¹ – demonstrate is that documentation and analysis are up against competing narratives, hierarchies

³⁹Peter Bille Larsen and Kristal Buckley, 'Approaching Human Rights at the World Heritage Committee: Capturing Situated Conversations, Complexity, and Dynamism in Global Heritage Processes' (2018) 25 *International Journal of Cultural Property* 85.

⁴⁰Peter Bille Larsen (ed), *World Heritage and Human Rights: Lessons from the Asia Pacific and the Global Arena* (Earthscan/Routledge 2017).

⁴¹Peter Bille Larsen, 'World Heritage and Ethnic Minority Rights in Phong Nha Ke Bang, Vietnam: Domesticating Cosmopolitan Assemblages' in Larsen PB (ed), *World Heritage and Human Rights: Lessons from the Asia Pacific and the Global Arena* (Earthscan/Routledge 2017).

of voice and value. Beneath the overall heritage narratives are very real consequences for rights displacement and power, but also gentrification, privileges, resource control, and prestige. The history of parks and people in Thailand is not only one fraught with top-down driven displacement and power by government agencies, but also one of catering to market-demands for eco-tourism landscapes. The Dong Phrayayen-Khao Yai Forest Complex, another World Heritage site, was prior to COVID a major site of tourism with some 1.5 million visitors a year.⁴² In such cases, the rights implications to access, manage, and control benefits are massive, yet rarely discussed in explicit terms.

Identifying what human rights matter is not only one of spotting gross human rights violations but recognising that World Heritage for good or for worse may impact a wide range of social, economic, and cultural as well as civil and political rights. There are real, and very practical, questions to identify which human rights are considered and the scope, standards, and criteria for addressing the human rights under consideration. Mapping such intersections is rarely done on a systematic basis. There is yet to be a practice of systematically conducting a human rights impact assessment or diagnosis in a Convention framework elsewhere strongly geared towards the formalisation of both values and impacts. Rather, there is more of a tendency to stick to a narrow rights-based framework, where rights are limited to procedural box-ticking interpretations employing safeguards such as Free Prior Informed Consent⁴³ without engaging with the full set of human rights implications of a given area. There is today only very partial understanding of the legal obligations to respect, protect, and fulfil and what this means for heritage authorities in terms of progressive realisation and non-retrogression. Gradually getting towards more systematic monitoring of duty-bearer responses starting from initial nomination discussions to regular State reporting remains work in progress.

7. Who is Concerned, and Whose Rights and Values Matter?

Who is concerned and whose human rights matter in World Heritage? These two simple questions are often answered only partially and yet are of obvious importance to tackle the human rights heritage nexus in a more head-on matter. This requires departing from the win-win rhetoric of world heritage discourse and shifting to a far more structured identification of winners and losers both prior to and as a result of heritage designation.

From one perspective, the underlying idea is how rights-based approaches support duty-bearers to realise their obligations and enable rights-holders to make their claims to entitlements. This, as a matter of principle, covers everyone prompting attention to the principles of equality, non-discrimination, fairness, and justice in institutional arrangements. In practice, however, only a minority are ever recognised as rights-holders in the World Heritage equation. Part of this is a matter of path-dependent identification of rights issues, in the first place. Whereas World Heritage has traditionally been a field of expert and state involvement with communities as potential beneficiaries, diverse categories such as cultural bearers, owners, managers, stewards, communities,

⁴²Hansa Manakitsomboon, 'Top Ten National Parks Thailand by Number of Tourists 2020' (*statista*, 12 May 2022) <www.statista.com/statistics/1040668/thailand-top-ten-national-parks-by-number-of-tourists/>.

⁴³Peter Bille Larsen, 'Contextualising Ratification and Implementation: A Critical Appraisal of ILO Convention 169 from a Social Justice Perspective' (2020) 24 *The International Journal of Human Rights* 94.

and stakeholders evoke partially overlapping fields of concern, but also one of confusion in terms of identifying and working with rightsholders. How social actors are characterised, embedded, and powered in heritage systems differs. Disparities in terms of whose values are reflected in value statements are characteristic not only between different types of sites, but also different regions and political contexts.

Consider the contrast between the heritage recognition of Nelson Mandela's 27 years of imprisonment on Robben Island, South Africa, and the lack of attention to Porlajee 'Billy' Rakchongcharoen's arrest and forced disappearance in Kaeng Krachan, Thailand. The Robben Island prison features as a World Heritage site and national symbol pushed by the State Party, while in Kaeng Krachan the denial of recognition and rights is a dark symbol of silence, an elephant in the exclusionary natural heritage space. One rights-holder is evoked by the state, the other hidden away as part of the heritagisation process. This of course does not leave South Africa off the hook either. Monumental approaches to rights and freedom, as Marschall has argued, may not address continuous practices of social exclusion.⁴⁴ In parallel to her questioning of post-South African apartheid heritage products as '... visualizing the dark apartheid past and the heroic struggle for liberation', we may challenge the outcomes of World Heritage human rights commitments as creating new 'rightified' heritage products with their own sets of issues and contradictions, yet nonetheless fragmented in their recognition of whose rights are recognised and taken up. A particularity of the World Heritage system has been its growing recognition and work with (certain) Indigenous Peoples and their rights compared to other rights-holders. Whereas Indigenous representatives and their support organisations have a longstanding track-record of framing World Heritage claims in human rights categories and language,⁴⁵ engagement from wider groups of farmers, fisherfolks, and religious minorities have been less systematic – and frequently overlooked. Systematically identifying rights-holders is central to building more coherent practice across the World Heritage system and in turn strengthening the identification of duty-bearer obligations, accountability requirements, and capacity needs.

8. Where do (Human) Rights Matter?

Upon initiating consultations with Advisory Bodies a decade ago, certain professionals were quick to dismiss human rights as something only encountered by others – other colleagues, other types of sites, other regions of the world.⁴⁶ The recognition of *where* human rights matter on the global World Heritage map remained biased towards countries and sites where existing representative organisations, national mechanisms, and civil society organisations had already identified human rights issues. Other sites were off the hook, in a certain sense, making it particularly difficult to expect human rights infringements emerging from the nominations and reporting in authoritarian regimes, for example. Indeed, it could even be argued that the World Heritage system

⁴⁴S Marschall, 'The Long Shadow of Apartheid: A Critical Assessment of Heritage Transformation in South Africa 25 Years On' (2019) 25 *International Journal of Heritage Studies* 1088.

⁴⁵Stefan Disko and Helen Tugendhat, 'World Heritage Sites and Indigenous Peoples' Rights' (IWGIA, 2014); J Donnelly and DJ Whelan, *International Human Rights* (Routledge 2020).

⁴⁶Peter Bille Larsen, 'Discussion Paper: Advisory Body Evaluations of World Heritage Nominations in Relation to Community and Rights Concerns' (June 2022) <www.icomos.org/images/DOCUMENTS/Secretariat/2013/World_Heritage_and_Human_Rights/2013_0722_A_F_Peter_BL_DiscnPaper.pdf>.

has largely favoured countries hiding human rights issues away over countries tackling them in a public and transparent manner. This challenge persists.

Documentation and analysis of human rights impacts is yet to be adopted systematically in the World Heritage system, leaving identification of human-rights issues dependent upon national measures. The very same World Heritage Committee members may recognise and praise Indigenous involvement, such as the much-cited case of Pimachiowin Aki, a site whose nomination was Indigenous-driven, while ignoring Indigenous rights at other sites.⁴⁷ The highly uneven identification of rights issues and rights-holders points to global disparities in terms where rights issues are taken up. Many local organisations in the Global South lack the resources and networks to take actively participate and raise their voices in global policy, such as in the World Heritage Committee. Certain voices may be raised through expert reports, which nonetheless remain a highly unsatisfactory approach towards building a more inclusive and equitable system.

Another major issue is whether only new nominations are subject to human rights screening, or whether the rights implications of existing World Heritage sites are also addressed. Consider, for example, the large number of existing natural sites imposed on Indigenous peoples' territories without their consent or their involvement in shaping culturally relevant and inclusive value statements. Such sites are found across the Global North and South, revealing a protected area legacy that has been difficult to undo. Whereas in certain national or subnational areas processes are underway to rename and redress such colonial legacies of imposition and exclusion,⁴⁸ such legacies are perpetuated and even deepened in others, as evidenced by the recent increasing displacement of the Maasai in Ngorongoro and Loliondo. While debates around restitution are central in contemporary efforts to decolonise museum policy and practice, the policy principles of redress, reconciliation, and restitution are quietly ignored in the World Heritage system. Faced with public criticism, UNESCO responded to the Ngorongoro critique by saying that it had '... never at any time asked for the displacement of the Maasai people'.⁴⁹ Whether this is entirely correct is debatable; nonetheless, could it insist more on upholding a rights-based framework? UNESCO has spoken timidly of the '... importance of meeting the development needs of local communities', but it has also more explicitly reiterated Committee decisions calling for equitably governed consultative processes with rightsholders' participation as consistent with international norms.⁵⁰ The crux of the matter is that what fundamentally qualifies as participation and consultation – and other rights – is in dire need of a shared global framework grounded in internationally recognised human rights. To effectively re-right the system, the Convention framework needs to systematically incorporate human rights objectives in its State of Conservation work.

⁴⁷Peter Bille Larsen, 'World Heritage and Ethnic Minority Rights in Phong Nha Ke Bang, Vietnam: Domesticating Cosmopolitan Assemblages' in Larsen PB (ed), *World Heritage and Human Rights: Lessons from the Asia Pacific and the Global Arena* (Earthscan/Routledge 2018).

⁴⁸Ben Boer and Stefan Gruber, 'Legal Frameworks for World Heritage and Human Rights in Australia' in Peter Bille Larsen (ed), *World Heritage and Human Rights: Lessons from the Asia Pacific and the Global Arena* (Earthscan/Routledge 2017).

⁴⁹UNESCO, 'Ngorongoro: UNESCO Has Never at Any Time Asked for the Displacement of the Maasai People' (21 March 2022) <<https://whc.unesco.org/en/news/2419/>> accessed 4 July 2022.

⁵⁰See footnote 43.

9. Whose Premises, What Does It Take, and What are the Outcomes?

As argued elsewhere, how heritage and human rights intersect cannot be isolated from wider contexts of expert-driven regimes, nationalist heritage mobilisation, and the rise of market-oriented approaches that shape contemporary World Heritage practice.⁵¹ Uneven engagements with human rights can, at least partially, be understood from the hegemonic worlding practices of selective history writing and nation-building, with state-led heritage regimes and commercial tourism gazes driving new nominations in the first place.

Heritage may perpetuate rights legacies and inequalities, just as it can potentially play a role in building more equitable relationships. Exploiting the transformative potential of the World Heritage machinery as a vehicle for positive change entails unpacking and identifying the deep-running inequalities and power asymmetries shaping the distribution of rights and wrongs. Beyond rewriting the legal context, re-righting requires understanding how human rights sit within existing regimes and power arrangements. Whether this concerns the exclusionary effects of privatisation and investments or vice versa, the potentials for legal recognition and empowerment offered under new democratic regimes, it necessarily requires a far more structured analysis of drivers, winners, and losers as part of the nomination process. Not addressing differences and trade-offs means obscuring power dynamics and the very premises necessary to identify tangible opportunities and enabling conditions for more equitable practice. Indeed, while some people consider human rights language as unnecessarily lofty, risky, and somewhat of a cul-de-sac for finding common ground, recent events testify to the importance of rights-based frameworks to develop clear rules-based common ground. During the final edits of this paper, the longstanding conflict between Maasai and conservation authorities in Ngorongoro escalated to new levels of confrontation and violence. The cases demonstrate not only the high social costs involved, but also make the absence of an effective rights-based approach abundantly clear.

10. Concluding Remarks: From HR Rhetoric to Effective Mechanisms

In the World Heritage context, RBA are paradoxically adopted as policy imperatives while being repeatedly undermined in practice. An analysis of rights-based vernaculars in the World Heritage arena reveals multiple ambiguous articulations of human rights and heritage. RBA are not only about responding to violations, but about building values and management approaches that are more socially just and culturally relevant. Stories of success from the Saami in Lapponia, the Mirarr in Kakadu or the Indigenous Wet Tropics, and the Anishinaabe First Nations of Pimachiowin Aki demonstrate that World Heritage can build on but also mutually reinforce heritage and rights.

Where policy documents prescribe four clear commitments to comprehensive RBA, these tend to be undermined by institutional traps, dilemmas, and unresolved questions shaping the actual practice of RBA. Recent decision-making by the World Heritage Committee is illustrative of the ambiguity of RBA. In this sense, rights infringements are not exceptional, but symptomatic of a deep-running governance challenge. As a result the

⁵¹Peter Bille Larsen (ed), *World Heritage and Human Rights: Lessons from the Asia Pacific and the Global Arena* (Earthscan/Routledge 2017).

World Heritage Committee, hosted by a UN body constitutionally committed to human rights, is experiencing a legitimacy crisis; urgent attention should be given to re-establishing its credibility, not least by putting its emergent track-record of practice under scrutiny. If heritage is a contemporary grammar of the (extra)ordinary, can human rights become incorporated as ordinary systematic ways of dealing with the outstanding World Heritage sphere? If the latter is often celebrated in other-worldly enchanted odes to outstanding places, it is time to render the system accountable in a more down-to-earth manner. The challenges are multiple, ranging from silo tendencies, lax implementation, and political sensitivities to highly uneven treatment by a global governance mechanism in crisis.

Despite ambitious policy aspirations, World Heritage currently tolerates and operates a two-speed system where heritage sites that reinforce human rights violations are recognised – even celebrated – on par with sites making an active effort to mitigate risks and enhance the realisation of human rights. It is time to reform this rights-based approach, which de facto singles out those who table challenges and implicitly rewards those who hide rights violations away. It is also time to ask who watches the watchman and engage with the systemic failures at stake.

It is not surprising that some people are more likely than others to see their human rights neglected and even violated as part of World Heritage efforts, but the inconsistency and unevenness with which the World Heritage Committee, a UN body, applies international human rights is clearly below standard. A practical need exists for the Committee to move from grand-standing monumental approaches to human rights and heritage towards levelling the playing field and reinforcing the everyday techno-politics of bringing human rights into heritage processes and mechanisms.

As UNESCO turns 75, it is time to remember the purpose for which the organisation hosting the World Heritage Convention was created. Now more than ever, the meta-values of tolerance and human rights that led to the birth of UNESCO need to be revived as the core principles guiding its work, including that of World Heritage. Fortunately, not everything depends on institutional progress. While the structural conditions discussed above pose real constraints on building more equitable RBA, a practice-centred approach reveals multiple opportunities to boost rights-based action. As the growing body of innovative nominations and pioneering Advisory Body actions demonstrate, there is no need to wait for the Committee to get its act together.

Accepting that heritage processes are powerful, in both empowering and disempowering senses, leads to real choices about whether to contribute towards cementing inequalities and state or corporate power hegemonies, or, conversely, to contribute towards true paradigm change by building more equitable relationships. A rights-conducive world heritage system would be a major enabling global condition, and by systematically asking transformative questions, heritage practitioners and communities can help elucidate the conditions and choices involved in re-righting world heritage practice.

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