

# **Integrating Sustainable Development into Heritage Conservation: An Agenda for Due Diligence by the Business Community\***

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## **1. Introduction**

The international community has embraced the concept of sustainable development since the adoption of the World Heritage Convention in 1972. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has used the platform of the World Heritage Convention (the Convention) together with its intergovernmental framework of the World Heritage Committee (WHC) to seek the protection and conservation of the natural and cultural heritage in crucial contribution to the sustainable development movement. In other words, by identifying, protecting, conserving and transmitting to present and future generations irreplaceable cultural and natural heritage properties of outstanding universal value (OUV), the Convention contributes to the wellbeing of people and sustainability generally.

Whereas sustainable development (used interchangeably with ‘sustainability’ in this article) has not only become a multi-dimensional concept but also very contested<sup>1</sup> and difficult to define in any precise fashion.<sup>2</sup> In its broadest scope, sustainability appears to mean the effect that something in the present has on the options available in the future.<sup>3</sup> Despite the controversy around the concept of

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<sup>1</sup> Guller Aras and David Crowther ‘Sustainable Practice: The Real Triple Bottom Line’ in Guller Aras and David Crowther (eds) *Development in Corporate Governance ad Responsibility - The Governance of Risk* (Emerald Group Publishing Limited, 2013) 4 and 5.

<sup>2</sup> Andrew Key and Taskin Iqbal ‘Sustainability in Large UK Listed Retail Companies: A Sectoral Analysis’ (2018) 23 *Deakin Law Review* 209, 212.

<sup>3</sup> Guller Aras and David Crowther ‘Governance and Sustainability: An investigation into the Relationship between Corporate Governance and Corporate Sustainability’ (2008) 46 *Management Decision* 433, 435.

sustainable development however, there has been a widespread definition as articulated in *Our Common Future*.<sup>4</sup> It is defined as the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. After underscoring the nature of the interlocking challenges in the world ranging from energy, environmental and developmental crises, the Brundtland Report proposed principles to safeguard our common future hinging on the three pillars of economic growth, environmental protection and social equity. With a view to addressing the global challenges of poverty, inequality, climate change, environmental degradation, peace and justice, and building on the 1972 Stockholm Declaration,<sup>5</sup> the 1987 Brundtland Report, the 1992 Rio Declaration<sup>6</sup> and the year 2000 millennium development goals (MDGs),<sup>7</sup> world leaders in 2015 adopted the 2030 Agenda for Sustainable Development<sup>8</sup> setting out yet another<sup>9</sup> 15-year plan to achieve the developmental goals now popularly referred to as the sustainable development goals (SDGs). The SDGs, comprising of 17 goals, 169 integrated and indivisible targets, and 230 indicators, constitute the blueprint to achieve a better and more sustainable future for all.<sup>10</sup>

It has been demonstrated that strengthening the dimensions of sustainable development brings benefits to heritage properties and support their OUV, if carefully integrated within their conservation and management systems.<sup>11</sup> Therefore, taking

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<sup>4</sup> Report of the World Commission on Environment and Development (WCED), *Our Common Future, from One Earth to One World* 1987, annexed to UNGA doc A/42/427 (the 'Brundtland Report').

<sup>5</sup> Stockholm Declaration on the Human Environment in *Report of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14, at 2 and Corr.1 (1972).

<sup>6</sup> Rio Declaration on Environment and Development, in *Report of the United Nations Conference on Environment and Development*, UN Doc. A/CONF.151/26 (Vol. I), 12 August 1992, Annex I. The Rio Declarations from the 1992 United Nations Conference on Environment and Development (UNCED), in Rio de Janeiro, Brazil were re-affirmed at the (another Earth Summit, Rio+10) World Summit on Sustainable Development (WSSD) held in Johannesburg, Republic of South Africa in September 2002. In 2012, the United Nations Conference on Sustainable Development (UNCSD), known as Rio+20 was also held in Brazil as a 20-year follow up to UNCED.

<sup>7</sup> General Assembly resolution 55/2 of 08 September 2000.

<sup>8</sup> United Nations General Assembly *Transforming our World: the 2030 Agenda for Sustainable Development* resolution adopted by the General Assembly on 25 September 2015, UN Doc A/RES/70/1.

<sup>9</sup> This is subsequent to the earlier 15-year plan called the millennium development goals (MDGs) adopted in September 2000 by world leaders at the United Nations Headquarters in New York. General Assembly resolution 55/2 of 08 September 2000.

<sup>10</sup> Nojeem Amodu 'Corporate Social Responsibility and Economic Globalization: Mainstreaming Sustainable Development Goals into the AfCFTA Discourse' (2020) 47:1 *Legal Issues of Economic Integration* 71–104, 77.

<sup>11</sup> See paragraph 3 of the Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention. General Assembly of States Parties to the World Heritage Convention at its 20th session (UNESCO, 2015).

natural and cultural heritage conservation as inextricably linked to, and an important contribution to sustainability, the responsibility for conservation and management of heritage has been placed squarely on state actors (States Parties to the Convention). Even though businesses have also caught on to the idea of sustainable development and companies use sustainability as a catch-all term to encompass a range of actions and activities relating to profitability, the environment and on a few occasions, heritage matters,<sup>12</sup> little attention appears paid to these non-state private organizations as important stakeholders in the realization of the sustainability objectives in the heritage sector. This article highlights the extent to which the legal and regulatory framework of the World Heritage Convention appreciates the prowess of, and important contribution of the business community towards the realization of the Convention objectives. Where policy gaps are identified, the article makes recommendations for integrating improved business-friendly heritage conservation responsibilities within the policy and implementation guidelines towards a sustainable heritage protection and conservation framework.

## **2. Heritage Protection and Conservation: States Parties Duties versus Business Community Responsibility**

There have been several treaties and conventions bordering on heritage protection, conservation and presentation. To mention but a few, there are: the 1951 International Plant Protection Convention (IPPC);<sup>13</sup> the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict together with its Protocols;<sup>14</sup> the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;<sup>15</sup> the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar);<sup>16</sup> the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage;<sup>17</sup> the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);<sup>18</sup> the 1982 United Nations Convention on the Law of the Sea

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<sup>12</sup> Keay and Iqbal, note 2 above at 213.

<sup>13</sup> Available at <https://www.ippc.int>, accessed 10 May 2020.

<sup>14</sup> <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols>

<sup>15</sup> <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention>

<sup>16</sup> <http://www.ramsar.org>, accessed 10 May 2020.

<sup>17</sup> <https://whc.unesco.org/archive/convention-en.pdf> accessed 10 May 2020.

<sup>18</sup> <http://www.cites.org>, accessed 10 May 2020

(UNCLOS);<sup>19</sup> the 2001 Convention on the Protection of the Underwater Cultural Heritage;<sup>20</sup> the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage;<sup>21</sup> the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions;<sup>22</sup> among others. Perhaps the most authoritative source and widely discussed in the heritage sector is the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (the Convention) together with the Operational Guidelines for the Implementation of the World Heritage Convention (the Operational Guidelines) as periodically updated<sup>23</sup> to reflect the decisions of the World Heritage Committee (WHC). The policy framework and guidelines of the WHC has constantly recognized the need for sustainable use of heritage properties<sup>24</sup> and the Operational Guidelines have therefore been constantly targeted at the identification, protection, conservation, presentation and transmission of cultural and natural heritage of outstanding universal value to future generations.<sup>25</sup> To this end, the WHC ensures the inscription of any place, monument, stone or site as a World Heritage Site (WHS) remains an acknowledgment of its value to all peoples of the world, considering its exceptional significance, transcending national boundaries, of common importance to all humanity, and for all men, both present and future generations. In its unifying ideals of making the whole world equal stakeholders in the preservation of the world common heritage for all men, both present and future generations, the Convention places a lot of responsibilities on States Parties. As States Parties are not only expected to identify, nominate, protect, conserve, manage, and ensure transmission of cultural and natural heritage to future generations, they should equally integrate heritage protection into comprehensive planning programmes and coordination mechanisms, giving consideration in particular to the resilience of socio-ecological systems of properties. States Parties should be also saddled with the responsibility of developing scientific and technical studies to identify actions that

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<sup>19</sup> [https://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](https://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm) accessed 10 May 2020.

<sup>20</sup> <https://unesdoc.unesco.org/ark:/48223/pf0000126065> accessed 10 May 2020.

<sup>21</sup> <https://unesdoc.unesco.org/ark:/48223/pf0000132540>, accessed 10 May 2020.

<sup>22</sup> <https://unesdoc.unesco.org/ark:/48223/pf0000142919>, accessed 10 May 2020.

<sup>23</sup> The latest update is the 10 July, 2019 Operational Guidelines for the Implementation of the World Heritage Convention, Doc. WHC.19/01 (Operational Guidelines 2019), available <https://whc.unesco.org/en/guidelines/> accessed 10 May 2020.

<sup>24</sup> World Heritage Committee Decision 43 COM 11A.

<sup>25</sup> The selection criteria for assessing OUV in properties are contained in paragraph 77 of the Operational Guidelines, 2019.

would counteract the dangers that threaten the heritage,<sup>26</sup> and what's more, in relation to sustainability, States Parties are equally expected to mainstream into their programmes and activities related to the Convention the principles of the relevant policies adopted by the WHC, the General Assembly of States Parties to the Convention and the UNESCO Governing Bodies, such as the Policy Document for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention and the UNESCO policy on engaging with indigenous peoples, as well as other related policies and documents, including the 2030 Agenda for Sustainable Development and international human rights standards.<sup>27</sup> The list of responsibilities on States Parties goes on and on.

Although no direct conflict can be identified between the objective of heritage protection within the Convention and the developmental agenda of the other United Nations (UN) agencies generally,<sup>28</sup> the long list of heritage conservation responsibilities solely on States Parties appears in contrast with responsibilities assigned to non-state business actors within other UN agencies and initiatives. The present architecture of the Convention together with the Operational Guidelines appears to discount the unique role played or capable of being played by private organizations towards the realization of the Convention objectives. Put differently, when compared with other sustainability initiatives at the level of the UN, there is a disconnect in the appreciation of the roles played by States Parties and non-state private actors within the UN system. The implementation framework of the Convention surely places considerable, if not too much, emphasis on the capacity and political willingness of States Parties to protect heritage unlike the marked re-distribution and 'load shedding' of similar responsibilities on the business community in UN initiatives such as the United Nations Global Compact (UNGC),<sup>29</sup> or within the Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (UNGPs).<sup>30</sup> Some specific clarifications are given to buttress

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<sup>26</sup> 1972 Convention, arts 4, 5, 6, 11, 12, 16 among others.

<sup>27</sup> World Heritage Committee Decision 43 COM 11A.

<sup>28</sup> James PC, 'Heritage, Identity, Cultural Heritage, Cultural Diversity and Human Rights: Professional Challenges' Presented at Australian ICOMOS —Extreme Heritage Conference, Cairns, Australia, 19–21 July 2007; see also, Vrdoljak AF, 'Indigenous Peoples, World Heritage, and Human Rights' *International Journal of Cultural Property* (2018) 25: 245 – 281.

<sup>29</sup> United Nations Global Compact, <http://www.unglobalcompact.org> (accessed 10 May 2020).

<sup>30</sup> John Ruggie *Final Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises* endorsed as the 'Guiding Principles on Business and Human Rights: Implementing the United Nations' Protect,

this point. For instance, having recognized that globalization has led to the increased power and influence of business corporations beyond commercial activities, especially as compared to the rather dwindling powers of States Parties to effectively discharge internationally recognized responsibilities including the conservation of cultural and natural heritage within their jurisdiction, the UNGC - being the world's largest corporate sustainability initiative – identifies with the responsibility on businesses to demonstrate corporate citizenship by: supporting a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies within their sphere of influence.<sup>31</sup> Further, within the framework of the UNGPs, while Pillar I of the UN business and human rights regulatory initiative recognizes that states hold the duty to protect against human rights harm by third parties, including businesses,<sup>32</sup> Pillar II balances the state obligation with the recognition of the business responsibility to also respect human rights, an obligation which exists independently of States' abilities or willingness to fulfil their own duty.<sup>33</sup> This redistribution of responsibility to businesses (as duty holders alongside state actors) has also occasioned an on-going treaty<sup>34</sup> discourse within the activities of the UN Open-Ended Intergovernmental Working Group.<sup>35</sup> It has simply become warranted because companies can no longer be seen as pure commercial entities having no responsibility beyond making profits. Businesses have played such hugely significant roles beyond

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*Respect and Remedy Framework* A/HRC/17/31, 21 March 2011  
<<http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>> accessed 10 May 2020 (UNGPs).

<sup>31</sup> See the 10 principles of the UNGC.

<sup>32</sup> John Ruggie 'Protect, Respect, and Remedy: The UN Framework for Business and Human Rights' in MA Baderin and M Ssenyonjo (eds) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate, 2010) 528.

<sup>33</sup> UNGPs Principle 11.

<sup>34</sup> Finalising a treaty with direct obligations on businesses has remained a tall order, however. While some scholars contend that the treaty process is ill conceived and probably doomed to fail, others are largely sceptical about its chances, suggesting alternative paths towards re-distributing obligations on the business community to address business-related human rights abuses. Larry Cata Backer 'Moving forward the UN Guiding Principles for Business and Human Rights: between enterprise social norm, state domestic legal orders, and the treaty law that might bind them all' (2015) 38:2 *Fordham International Law Journal* 457; Larry Cata Backer 'Considering a Treaty on Corporations and Human Rights: Mostly Failures but with a Glimmer of Success' in JL Cernic and N Carrillo-Santarelli (eds) *The Future of Business and Human Rights* (Cambridge: Intersentia, 2018) 92 and 93; Surya Deva 'Alternative paths to a business and human rights treaty' in JL Cernic and N Carrillo-Santarelli (eds) *The Future of Business and Human Rights* (Cambridge: Intersentia, 2018) 13-16.

<sup>35</sup> UNHRC, 26th Session 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights' (14 July 2014) UN Doc A/HRC/RES/26/9.

trading that the historical development of some nations are incomplete without underscoring the activities of private organizations. In Africa for instance, the origins of the colonial rule in the British West Africa is deeply rooted in the activities of companies. The Sierra Leone Company for instance governed and administered justice within the British settlements of the Gambia, the Gold Coast (now Ghana) and Sierra Leone.<sup>36</sup> The Royal Niger Company,<sup>37</sup> on behalf of the British Government, exercised juristic powers and governed territories (including Lagos) as contained in its royal charter.<sup>38</sup> In modern societies, the reality of the growing influence and powers of businesses all around the world was equally underscored by a commentator as follows:

Corporations make most everything we consume. Their advertising and products fill almost every waking moment of our lives. They give us jobs, and sometimes a sense of identity. They define communities and enhance both our popular and serious culture. They present the investment opportunities that send our children to college and provide for our old age. They fund our research.... They pollute our environments. They impoverish our spirits with the never-ending messages of the virtues of consumerism. They provide a living, but often not a meaning. And sometimes they destroy us; our retirement expectations are unfunded, our investment hopes are dashed, our communities are left impoverished. The very power that corporations have over our lives means that, intentionally or not, they profoundly affect our lives.<sup>39</sup>

Further, many businesses have grown so much that they can choose where to locate different parts of their activities as States Parties around the world scramble to create favourable legal and regulatory environments to attract developmental projects and investments, and thereby seemingly trading their sovereignty in the legal

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<sup>36</sup> WCE Daniels *The Common Law in West Africa* (Butterworths, 1964) 13, 18 and 19.

<sup>37</sup> For an account of how the Royal Niger Company was established and metamorphosed into the currently existing United Africa Company (UAC) of Nigeria Limited, see George Nwangwu 'The Influence of Companies on the Legal, Political and Economic History of Nigeria' (2018) 9:12 *Journal of Economics and Sustainable Development* 115, 117 – 119.

<sup>38</sup> During the periods 1886 to 1900 when the Royal Niger Company reigned, there were further extension of British power inland, largely through the company's administration, but native resistance to its virtual trade monopoly and the need to strengthen the western border against the French, coupled with the necessity for the suppression of the internal slave trade in the north, proved too much for a commercial venture. The British government eventually took over the administration of the territories in 1900.

<sup>39</sup> Lawrence Mitchell *Progressive Corporate Law*, Lawrence E. Mitchell ed. (Boulder Colorado: Westview Press 1995) xiii.

marketplace.<sup>40</sup> In other words, businesses now make states compete to create favourable investment climate with little sense of responsibility to discharge the states duties such as undertaken under the Convention among other treaties on heritage conservation. Example may also be cited of a State Party like Papua New Guinea (ratified the Convention on the 28 July 1997) for instance where BHP, an Australian-based company, had such a strong influence over the Papua New Guinea government that the government passed laws (understood to have been largely drafted by BHP itself) to protect BHP from legal challenge over its activities there, even though those activities had a profound negative impact on its rights of the people of Papua New Guinea.<sup>41</sup> Beyond the so-called emerging economies however, recent developments also confirm that the immense grip of some corporations over States Parties is global and not limited to any part of the world. Even states in the so-called first world economies also struggle to pass legislations otherwise considered against the business community as a result of intensified activities of powerful corporations' lobby groups.

It is against the backdrop of the foregoing that the international community has come up with a few regulations towards getting businesses to play additional responsibilities beyond profiteering. In addition to the expectations within the earlier mentioned UNGC and the UNGPs, businesses are also now expected to demonstrate commitment to sustainability and commitment to long-term corporate social responsibility (CSR) agenda and the SDGs rather than being fixated on short term investment returns for business owners. Interestingly, the business community has responded well to the new sustainability roles and expectations within the society. Businesses now adopt CSR agendas in pursuit of sustainable development.<sup>42</sup> They provide detailed information on the environmental impact of their operations and share the progress made in relation to topics such as carbon emission, waste reduction, natural and cultural heritage conservation. Key and Iqbal described this commitment in sustainability reporting among UK businesses for instance as entailing:

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<sup>40</sup> Jean-Philippe Robé 'Globalization and the Constitutionalization of the World-power System' in Jean-Philippe Robé, Antoine Lyon-Caen and Stéphane Vernac (eds) *Multinationals and the Constitutionalization of the World Power System* (Routledge, 2016) 53.

<sup>41</sup> Robert McCorquodale 'Corporate social responsibility and international human rights law' (2009) 87 *Journal of Business Ethics* 385, 387.

<sup>42</sup> Michael Kerr, Richard Janda and Chip Pitts *Corporate Social Responsibility - A legal Analysis* (LexisNexis, 2009) 23.



... companies embracing cleaner ways of production, increasing the efficiency of resource use, interacting with social actors in order to improve the performance of businesses in addressing social expectations and redesigning company operations or initiating new ones which give an impetus to a culture of innovation and which ameliorate the position of stakeholders.<sup>43</sup> (citations omitted)

Heritage conservation activities have also been embedded into developmental project planning and such activities are duly reported in corporate reports to stakeholders. In the 2018 Sustainability Report of Royal Dutch Shell Plc, the company notes that:

Managing risks to people and the environment is essential to delivering a successful project... We train our project teams to understand how to use impact assessments to embed sustainability into projects. Project teams are supported by specialists in areas such as biodiversity, waste, air, energy and water management, as well as indigenous peoples' rights, cultural heritage and resettlement...Preserving cultural heritage is an important part of managing social impact.<sup>44</sup>

### **3. Integrating Sustainability into Heritage Conservation: Agenda for Heritage Due Diligence Exercise by Businesses**

From the foregoing, the activities of private organizations in business communities around the world are not, and should not be, all about negative impacts. Businesses play and may be made to play improved role in the society including supporting in the realization of the sustainable protection, conservation and presentation of cultural and natural heritage. This author's review of the provisions of the 1972 Convention and the latest update of the Operational Guidelines shows that perhaps, the necessary attention to the significant contribution of businesses in achieving heritage objectives need to be intensified within the heritage policy and regulatory framework. While no mention whatsoever is made to the responsibility of businesses in the aged Convention itself, the constantly revised Operational Guidelines appear not to have fared fantastically well having made sparse reference to the role of non-state business

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<sup>43</sup> Keay and Iqbal, note 2 above at 214.

<sup>44</sup> See pages 11 and 21 of the 2018 Sustainability Report, Royal Dutch Shell Plc.

actors.<sup>45</sup> This may not be unconnected to the popular (though faulty) assumption that businesses only care about profiteering and little about sustainable development together with its dimensions and pillars. This assumption appears to have pitched the business community against conservationists who sometimes simply assume that businesses do not desire sustainability. The fact that not many private organisations show enough commitments to heritage protection may also not help the situation even though a few businesses demonstrate commitment in their sustainability reports.

Therefore, as a result of the enormous powers, influence and control of the business community over States Parties, the continued emphasis on the role of States Parties within the policy and regulatory framework of the Convention appears no longer sustainable, if the Convention objectives must be realised. The heritage industry therefore needs to take a leaf from other UN initiatives such as the UNGC and the UNGPs and redesign new heritage responsibilities for the business community and hold them to a very high standard of CSR if conservation and management of world heritage will be sustainably achieved. After all, if the heritage sector does not fully embrace sustainability and harness the reciprocal benefits for heritage and society including unique opportunities afforded by private business commitment to sustainability, the heritage sector and practitioners may continue to find themselves as victims of, rather than catalysts for, sustainable development. Consequent upon the foregoing, the following workable interconnected recommendations appear pertinent:

1. The protection of properties of outstanding universal value by States Parties using site management teams generally creates a variety of management challenges. Some of these challenges may be addressed by a change in policy attitude towards the business community. Businesses are commercial enterprises interested in maximizing profits, but not at all costs. Some private organizations and businesses have shown commitment to sustainable development and heritage conservation and may more can. While there is room for improvement and more corporate commitment in this regard, this development at least confirms that the normative foundation and traditional assumptions of heritage policy, legal and

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<sup>45</sup> See paras 40, 123 and 231 of the Operational Guidelines 2019.

regulatory framework which has focused on States Parties responsibilities requires revisiting. Heritage policy makers and practitioners clearly need to solicit and embrace further conservation commitments from the business community.

2. Even where the text of the 1972 World Heritage Convention may take too long for amendments towards reflecting the realities of the powerful role of businesses and how they can effectively support heritage conservation, urgent updates to the Operational Guidelines in this regard appear as the low hanging fruit. The World Heritage Committee should consider revising the Operational Guidelines, re-designing heritage conservation responsibilities by accommodating additional roles (such as specifically proposed in 3 below) for private organisations in the heritage sector. Experience has shown that varying levels of inadequate economic resources or absence of political will plague States Parties in the sustainable conservation of the heritage properties. This is against the stark reality within business communities where sometimes a few corporations control as much economic resources controlled by all countries in some continents combined. This necessitates revisiting the current responsibility framework of non-state actors within the policy and regulatory architecture of the heritage industry.
  
3. Respect for the World Heritage Committee's no-go commitment, not permitting extractives activities within heritage properties is useful. However, the impact or perceived impact of the business community on heritage conservation in the extractive or hospitality industries of emerging economies in Africa need not always be adverse. Pursuant to the recommended updates to the Operational Guidelines suggested in 2 above, and towards facilitating sustainable use of resources and sustainable tourism, the WHC needs to redesign States Parties responsibilities for Environmental Impact Assessments, Heritage Impact Assessments, and/or Strategic Environmental Assessments being carried

out as a pre-requisite for development projects.<sup>46</sup> Specific guidelines for the widespread<sup>47</sup> practice of an effective ‘heritage due diligence exercise’ (HDDE) beyond the strategic environmental or social impact assessments around developmental projects must be integrated within the Operational Guidelines as a responsibility on business communities as opposed to States Parties. Beyond the usual half-hearted and mere box ticking impact assessment reports, this article proposes the HDDE as a genuine, continuous and diligent review of (planned) business operations (beyond developmental projects) towards identifying any negative impacts on cultural and natural heritage and assessing possible measures for the prevention or mitigation of such impacts. Other than in the Operational Guidelines, the requirement for such HDDEs as a responsibility on businesses (though under supervision and scrutiny of competent States Parties representatives), should also be incorporated into domestic heritage legislations across individual states.<sup>48</sup> It is useful to note that businesses within the sustainability framework of the UNGPs are already encouraged to carry out human rights due diligence (not just impact assessment exercise) towards safeguarding business-related human rights abuses. For consistency with other UN initiatives, the HDDE may be integrated into the human rights due diligence framework of the UNGPs. It is recommended that the HDDE should not only be subject of independent third-party audits by States Parties heritage management representatives but also eventually reported within the sustainability reporting framework of the businesses involved. Therefore, rather than the so-called anti-development attitude among a few site managers, turning away business investments opportunities which could assist in addressing poverty within local communities around heritage properties in Africa for instance, States Parties accommodating an effective HDDE responsibilities within their heritage legislations will facilitate better cooperation between the public and private actors and encourage sustainable business investments which do

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<sup>46</sup> See para 118bis of the Operational Guidelines 2019.

<sup>47</sup> See for instance the Western Australian *Aboriginal Cultural Heritage Act 2003*.

<sup>48</sup> Similar, for instance, to the *Aboriginal Heritage Act 1972* (Australia).

not compromise rules and regulations on heritage protection, conservation and presentation.

In conclusion, while the foregoing added responsibility on businesses is justifiable as a result of the enormous powers of businesses even in the sustainability movement, this author does not in any way suggest that the normative framework recognising the primary responsibility for heritage preservation resting on States Parties should be discarded. Just like under the UNGPs, States Parties remain the ultimate duty holders to conserve heritage while businesses ultimately retain their commercial focus of making investment gains but within legal bounds. Therefore, the key recommendation in this article is that a HDDE responsibility (complementary of States Parties duties) for heritage protection may be imposed on businesses both at intergovernmental committee level of the WHC and within the domestic heritage legislation of States Parties. In other words, States Parties alone should not and cannot be heritage conservation duty-bearers; the heritage industry appears suffering from this faulty normative framework and will likely continue to suffer from such policy design hinging everything on States Parties. The world has since developed beyond such regime. Some complementary responsibilities which will not detract businesses from their commercial focus but keeps corporate wealth maximization drive within the legal ambit of cultural and natural heritage conservation requirements therefore seem justifiably appropriate.