

# DRAFT Local Rights in World Heritage Sites: Learning from Post-Earthquake State of Kathmandu Valley WHS

The huge devastation caused by the 2015 Gorkha Earthquake in Kathmandu Valley World Heritage Site (KVWHS) threatened the integrity and reduced the density of its attributes. The danger to the property and the potential consequences of improper and inadequate rescue, recovery and rehabilitation works were so huge as to alarm the World Heritage Committee (WHC) to consider whether KVWHS should be put in the list of Sites in Danger. For Nepal and the State Party, the disaster could not only potentially cause loss of national identity, it had already caused serious negative consequences on its tourism economy which depended significantly on this base cultural resource.

Abrupt and massive destruction and damage of the Kathmandu Valley World Heritage Property caused by Gorkha Earthquake 2015 provided a rare research context to study the case of local rights through the spectrum of emergence, expression and realization as they happened in a squeezed frame of time the site went through rescue and recovery and prepared for restoration actions.

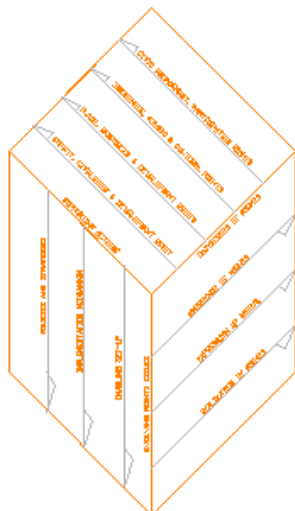


Fig 1: The three way analytical diagram

## Right to Place, Resources and Property

The destructive shaking of the Earthquake brought down many residential houses and damaged many more in and around the Monuments Zones of KVWHS making the residents run for safety to open spaces like courtyards and squares close to their homes. The desperate situation saw the people demanding their right to space and place for emergency shelters in heritage zones and in safe heritage monuments. Social solidarity, 'both vertical and horizontal', was observed in general, although in some cases the sharing and access to semi-public and public spaces appear determined by the power play of traditional caste and social hierarchies.

The fact that much of customary rights to a heritage place have been challenged by modern legal ownership arrangements came to the fore during this fieldwork. The customary right to place of weaker

social group gets impeded first when more than one user group are associated with rituals and maintenance of monuments. This was evident in the conflict of entitlement rights brewing among three customary user groups, e.g. the Kapali, the Jyapu and the Joshi following the earthquake damage to spaces of the Bhimsen Sattal traditionally used by the stronger social groups as they started looking for alternatives.

The integrity of place is at risk through overuse, public control and formal state ownership. A discussion on community, municipality and state rights and responsibilities within PMZ and return to communal ownership rights should be started.

In relation to ownership issues, local CBOs opine and argue that all national heritage monuments should belong to the local community rather than to the State as they can provide surveillance and security at all times. Evidently, there is a great lack of trust between traditional social groups, CBOs and the State and local government institutions and offices.

The key issues of right to place thus appear to stem from

- user-rights to space after residing for generations
- caste-based conflicts for rights to use religious space

## Right of Civic Engagement, Community Consultation and Participation

Community involvement in the rescue and recovery efforts in the heritage sites in immediate aftermath of the Gorkha Earthquake was exemplary and extensive in all the three monuments zones observed in this research. They were typically engaged in retrieving wooden and metal architectural and art and craft pieces and bricks in safe place and to remove debris from in and outside MZs. In case of PMZ, Kathmandu Valley Preservation Trust managed the inventory of the elements of monuments. The efforts of the local community in recovery and cleaning exemplified good attitude of the user community in safeguarding heritage. The secure and safe recovery of precious wood and metal

craft and art pieces from the temples and monuments demonstrated a sense of responsibility towards the heritage and highlighted the conscious participation of the community in the rescue, recovery and conservation of heritage in the time of disaster.

The initial enthusiasm was soon transformed into demands of rights of participation and consultation in the stabilization and reconstruction works and managing that situation, particularly at Kasthamandap and KMZ became a serious public relation exercise for political leaders arriving at the scene for 'coordination and mobilization'. The emergence and expression of such rights were often seen as hindrance by the WHS management. Officers in the State Party management set-up at Hanuman Dhoka, KMZ, felt that the demands of engagements of all sections of society cannot be fulfilled and such wholesale engagement could even be detrimental to the process of conservation of heritage itself. The chief officer, however, agreed that representations can be made in case of monuments with which the community is linked through clear intangible practices, provided that the representatives follow the basic principles of heritage management as per 'the regulations of the WHS'.

In Patan MZ, where local representative groups were set up even prior to the earthquake, one of the key NGO, the Mangal Tol Sudhar Samiti, remained unsatisfied with the level of level of their engagement in the consultation processes followed in renovation works undertaken by the State Party. The NGO claims that their advice and participation have contributed in many ways like supervision, quality control, etc., in DOA sponsored post-earthquake stabilization and repair works. But our observations were that whereas quite a few CBOs claimed no consultation rights, they also did not pursue implementation of standards of restoration practice as well as working to WHS regulations. The right of community engagement and participation need to be strongly realized in order to save the livingness because the community is the bearer and practitioner of the faith based intangibles.

One of the key gender inequality issues identified is lack of access of women in the intangible management activities

carried out by the traditional socio-cultural trust of the Guthi. The organization and management of traditional activities has been a preserve of the Guthi, whose membership is limited to male elders of the family or clan. However, participation of younger female members is increasing visible in musical troupes or cultural event management.

The emergence and expression of the above community and local rights of engagement, participation and consultation has also exposed the conflict brewing between local, national and international institutions and their areas of authority. In the case of stabilization, rescue and recovery of the structure and painting in an interior wall of Shantipur, one of the listed monuments in SMZ, the differences came to the fore when the local community sought to limit access of foreign experts to the lobby room of the severely damaged building citing customary right of entry only to the ordained priests of the temple. While it may be agreed that under normal circumstances, local expertise may have been available, the current situation was far from ordinary and state of available expertise and skill and the new demanding standards of conservation did not match. On other hand, it's not only technical and physical aspects that make heritage monuments stand out, the role of mystical and tantric practices and need to preserve them can also not be denied.

Sometimes, the conflict between local and state organizations appears to rise from claims over the same resource.

### **Indigenous, Ethnic and Cultural Rights**

Local rights in KVVHS following the Gorkha earthquake disaster have emerged strongly out of local people and community's attempt to hold festivals, ritual worship and other socio-cultural functions of the monuments and the associated intangibles in time. Rights have also emerged from functions of the traditional trust organization of the 'guthi'.

The first set of rights issues appear to have emerged in the cultural practice and continuity aspect as festivals which are triggered by the lunar calendar/seasonal nature quickly followed the earthquake event of 25 April 2015. Matsendranath Chariot festival, Mataya and Krishna Janmastami celebration in Patan, Gajatra in Bhaktapur and Indrajatra in Kathmandu generated most initial concerns. The monument of Kashthamandap in Kathmandu has generated a great lot of socio-cultural emotions in KMZ.

Ethnic integrity and cultural practice proved to be post-earthquake uniting and mitigating forces within the Newar ethnic group. This opens opportunity for PMZ as well as other MZs of KVVHS to embrace a wider 'heritage community' and contribute to multi-ethnic solidarity.

The local community came to realize that the damage, destruction and debris in streets and public spaces and even the temporary stabilization works can cause serious infringement and interference in the use of WHS in realization of traditional and customary rights, including those critical in defining the ethnicity, identity and indigenosity of the local community.

Local residents and heritage activists took offence at soil testing for Char Narayan temple and shoring in Krishna Mandir, triggered by the thought that mundane technical actions like soil tests impair the idea of holy site land. Props that shored bulging facade of street side houses were seen an obstacle to upcoming festivities, gatherings and processions of Krishna Janmastami. However, both these expression of rights by the local residents and activists seemed quite unnecessary as compared to the technical, safety issues which were the primary reasons for both soil testing and shoring after the earthquake.

While the importance of keeping intact faith related mythical or mystical practices in saving the authenticity and local value of the heritage is recognized, the case of restriction to entry to Shantipur may also be seen as dogmatic. Very often, the right to access and observation of sacred images and sanctum of monuments has been limited by the priests citing legends and practices. National experts have called for state intervention to remove such restrictions so that a climate for appropriate conservation of tangibles is developed even for the sake of preserving the intangible practices. Some well educated priests have also granted temporary relief from such practices so that 'technical works may be properly done'.

### **Safety, Livelihood and Development**

The ravages of the Gorkha Earthquake has brought out the safety issue in the local community from two basic contexts: (a) The damaged public heritage structures standing in public streets and squares and the perceived threat of collapse and consequent harm, (b) The legal demand of use of traditional materials and structure while rebuilding the damaged residential buildings with heritage value and fear that they may not be resistant enough in future earthquake.

The safety concerns from the first context has put pressure on the Government Agencies like DOA and Municipality to pull down the so called unsafe structures and monuments in all of PMZ, KMZ and SMZ rather than to stabilize and strengthen and consolidate for conservation and preservation of historic and other values.

Requirement of use of traditional materials and methods of construction and preservation of the facade and form of residential houses forming the backdrop of the MZs and their buffer have been a legal building bye-law requirement as imposed by DOA at the

## **"A Right of Place - A Case Story of the Kapali Caretaker of Bhimsen Sattal at PMZ"**

Guthi Samsthan is the legal owner of both the Bhimsen Temple and the Sattal at the back. But at least three families belonging to different social groups are associated as users of these built spaces as they perform cultural duties in the Bhimsen Temple. The perception and practice of ownership and customary right of use of space in performing the ordained duties is clear and speaks of the long standing agreement between the different social groups such as the Kapali (caretaker), the Joshi (priest) and the Jyapu (cultural owners).

It is claimed that the Kapali caretakers have been residing in the Sattal behind the Bhimsen temple for more than ten generations performing their cultural duty of taking care of the temple complex. But they have no legal rights. The caretaker family feels that some sort of right to place accrues to them as customary users since generations in the past. After having lived and served it for generations without official remuneration, they feel their claim of right is just.

The main priest of the temple comes from a Joshi family. The priest is required to perform all the rituals in the temple and is paid a nominal remuneration through the Guthi Samsthan. The Joshi earns major livelihood from other contemporary profession and also does not claim right to live in the temple. The Kapali caretaker, who has to spend fulltime in the premises because of the nature of work itself is, however, not directly remunerated but live off the offerings from the devotees.

Every year, for three days, Jyapu families occupy the sattal on the eve of 'Ghoda Jatra' to celebrate a feast. However, this year, presumably after their houses collapsed due to earthquake, the Jyapus did not vacate the spaces after the celebrations and continue to take possession of it. However, both the Joshi priests and caretaker Kapali family felt that they owned the sattal in many ways as the Kapali family has been residing in the sattal for many generations and together with the priest carried out all the religious activities/daily responsibilities of the temple. They have requested the Guthi Samsthan to resolve this issue.

KVVHS have been a bone of contention between clients, architects, municipality and DOA's WH management. The owners have always had less preference for conservation and more for modern building using modern materials. Conservationists have concluded that unless stringent measures to save the remaining heritage value of residential buildings damaged by the earthquake is taken and enforced with appropriate incentives and public funding, the loss

will be irreplaceable and permanent. However, the owners wish to construct new claiming right to live in safety.

There has been some efforts conserving traditional buildings and making adaptive reuse of it as restaurants, hotel, lodges. But most of people have not been able to make such benefit of being in heritage zone as they can't afford traditional building materials such as wood.

The rise in the cultural tourism industry in the MZs have opened up new avenues of livelihood in these areas. Adapting the traditional buildings and heritage homes into tourist class restaurants and rooming facilities with tastefully done interiors while retaining the heritage ambience of exterior facade and form have been an encouraging trend. Such innovative and heritage sensitive ways of renovating heritage buildings with compatible modernity make livelihood actions in WHS sustainable from both

heritage and livelihood perspectives. Policies to support and subsidize such positive developments need to be strongly pursued.

Local people and community organizations are also aiming at sharing tourism revenue with Government as a right as they are struggling to collect funds for religious activities making up the large portion of the intangible heritage.

The Constitution guarantees the right to life, property, equality and equal protection of laws, right against 'untouchability' and discrimination, right to freedom of religion, right to privacy, right to information, right against exploitation, right to language and culture, right relating to health, food, housing, rights of Dalit, senior citizens, and so on. All these rights have their important bearing in the context of post earthquake management of World Heritage Rights. They provide firm grounding to what the Nepal policy Brief has described as Right to Place, Resources and Property, Right to Civic Engagement, Community Consultation and Participation, and Indigenous Ethnic and Cultural Rights. When these rights are violated, the remedies are guaranteed. However, the Constitution does not state any specific right to disaster relief. It has to be discovered from the right to life and other important rights guaranteed by the Constitution.

## POLICY MESSAGE

The massive destruction caused by the 2015 Gurkha Earthquake on the listed monuments and disruption of associated intangible faith based practices that made KVVHS a living heritage, had immediately and seriously damaged Nepal's prime cultural tourism resource while impairing local, ethnic and national identities and taking away livelihoods of many in the local community. Within three months of the disaster, the international body entrusted to monitor the state of preservation of WHS, the WHC, had taken up debating whether to list the KVVHS property as in Danger based on observed situation and potential loss of integrity and authenticity that may yet come if Nepal failed to put up an effective, adequate and appropriate rescue, recovery, rehabilitation and reconstruction action.

Similar thoughts but with more constructive objectives of saving and protection of what was left prompted local community to volunteer in large numbers in rescue and recovery of heritage. Local values were highlighted in debates that ensued. Discussion forums and formative literature saw emergence and expression of various local rights such as (a) the right to place, resource and property, (b) right of engagement, consultation and participation, (c) right to cultural continuity and diversity, and (d) right of safety, livelihood and development had emerged. In order that these local rights be further articulated and realized, the following National policy initiatives have been recommended:

- i) To start repositioning the WHS as a field of local rights and responsibilities from its present reflection as a field of expert defined values protected by a bundle of regulations set by the State Party as guardian
- ii) To consider decentralization of authority and responsibility for implementation of rights perspectives within KVVHS and start discussions with all stakeholders at community, local government and state party levels.
- iii) To start a community participatory site management program led by a modern day avatar of the traditional Guthi with focus on intangible assets and attributes of the people and place
- iv) To prioritize financial support to the local community in their celebration of faith based intangible practices and to deliberately promote cultural continuity and ethnic diversities
- v) To put in place ways of equitable sharing of income from heritage with the local community and to augment their involvement in heritage industries.
- vi) To make the WHS a creative place of the present generation of local people allowing its cultural advances to accrue as heritage in the future as rightful as the heritage from the past.
- vii) To address the urban poor. In particular marginalised female headed households (FHH) call for measures to reduce vulnerability and work towards sustainable livelihood and cultural rights also within KVVHS.
- viii) To respond to the critical need for secure housing for poor citizens and earthquake victims; and address conservation and development challenges of the historic urban fabric within KVVHS.
- ix) To secure diversity of ethnic rights and duties to maintain their integrity within KVVHS and the pluralistic Nepalese nation.

## Clarification of local terms and practices

Guthi: A traditional trust like social organization organized at the community and clan level to perform specific socio-cultural activities. It was endowed with land resources and had a community based self-perpetuating organization with agenda triggered by season/lunar calendar events.

2015 Gorkha Earthquake: The destructive earthquake that hit central Nepal mountains on April 25, 2015 is named Gorkha Earthquake after its epicenter location, Gorkha.

Patan Monuments Zone (PMZ): The seven locations making up the KVVHS are called Monuments Zone (MZ), hence Patan Durbar Square site is abbreviated as PMZ. Likewise, Kathmandu Durbar Square is KMZ, Swoyambhu is referred as SMZ.

Kapali, Jyapu, Joshi social groups: So named ethnic groups traditionally organized into societies to perform their part in cultural activities. Seventeen such groups are still active in Patan.

Bhimsen Sattal, Kasthamandap, Hanuman Dhoka: Names of individual monuments in various MZs.

Mataya, Krishna Janmastami, Gaijatra, Indrajatra: Names of festivals celebrated in Kathmandu Valley.

Entry Restrictions: Some priests and religious leaders ban technicians and others to enter or observe some sanctum and sacred rooms quoting divine rules and mystical practices such as Tantra etc. This has made impossible proper assessments or restorations.

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