

## Human Rights and World Heritage in Vietnam: Towards a national agenda

On November 26 and 27, 2015, more than 80 participants from government agencies, world heritage site managers, academia and civil society met in Ha Noi to discuss about challenges and opportunities to strengthen participation and rights-based approaches in the 8 World Heritage sites of Vietnam. The workshop was co-organized by the Ministry of Culture, Sports and Tourism, UNESCO Representative Office, University of Lucerne, and the Viet Nam Academy of Social Sciences (VASS) as a timely response to the adoption of the new UNESCO policy on Sustainable Development. Chaired by Vice-Minister Dang Thi Bich Lien and Professor Vo Khanh Vinh - Vice-President of VASS, participants debated the challenges involved to link heritage and rights and discussed recommendations for next steps.

A team of researchers from University of Lucerne, VASS and Quang Binh University in Viet Nam has identified the disconnect between the human rights system and the world heritage management process the most challenging factor in achieving sustainable development goals. The research combined desk studies, field visits to different heritage sites and consultation of stakeholders, including local people living in these sites. Preliminary findings from a legal analysis, an analysis of the national context and cross-cutting issues in world heritage sites in Viet Nam, and a study looking closely at the case of Phong Nha Ke Bang National Park informed collective discussions during the workshop.

### Summary of research findings

All human rights are equally important and inter-dependent, but not all rights are affected the same way under the World Heritage process. The research

looked specifically at four topics: rights to resources (land and livelihoods), including customary rights; right to participation in decision making related to people's life, right to take part in cultural life, and situations of special groups identified as vulnerable e.g. people of ethnic minorities, women or the poor. It explored how rights are understood and practiced at the national and local level in a broad term and in the specific context of the world heritage process: from the planning and nomination to the recognition and management of the site.

The world heritage process in Viet Nam has not yet been properly informed by human rights principles and standards. Even though the national human rights discourse has been emerging forcefully with the revision of the Constitution 2013, the language of rights remained in a circle of legal professionals working on legal reform. When it comes to practical matters of everyday life and management, very few people - of both government officials and citizens - would spontaneously find human rights relevant in the practices of the world heritage management. Some considered that human rights were luxury or too abstract for their work. Site managers tended to focus on their goals of heritage protection and rely on the existing system to solve other matters. Sometimes, if the potential conflict was high risk, manager tried to look away rather than dealing with the risk in clear terms. In this context, human rights needs were hardly taken into consideration during the decision making on the planning and management of a heritage site. The restriction placed on the exercise of traditional livelihoods activities and certain cultural practices deemed as "inappropriate" was justified as for the

protection of the heritage but not treated as how limitations of rights should be carefully taken in due process. Indeed whether these activities were recognised as rights exercise was not even debated, nor whether these restrictions were constitutional.

The Cultural Heritage Law provides that heritage is an asset of the people managed by the State. Local people are rarely recognized rights to be the owner of the heritage neglecting their rights to participation and benefits. In contrast, they are often seen as duty-bearers with protection responsibilities or sometimes as beneficiaries of social development support.

Recognizing the important roles of local communities and local people for the successful heritage management process site managers became in the meeting spoke of growing empathy with the situation of local groups, especially those of special situations such as the poor or ethnic minorities. They called for an official recognition of the role and rights of local people to be able to participate more effectively in the decision making. Some sites came up with initiatives to dialogue with local residents for better management solutions: In Hoi An, the tradition of having town meetings of residents in the community to form code of conducts and regulations and open dialogue between local authority and residents made an integral part of decision making process. In Hue, managers set up hot-line so that resident could connect directly with authorities in charge of heritage management. But overall, the formal introduction of consultation and dialogue mechanism and a grievance procedure would minimize human rights risk and help to address individual cases-which often has

significant human rights implications.

### **Highlights from the workshop discussion**

Participants emphasized the importance of the discussion, given the lesson several sites learned that local people living in and around the heritage site play a key role in the management and development of the site. The workshop was appreciated as a timely response from the national level to the adoption of the UNESCO Policy for the integration of a sustainable development perspective into the processes of the World Heritage Convention.

It was recognised through that the foundation for community participation and human rights was set strongly in the Constitution 2013 and informed by several researchers and practitioners in Viet Nam for the last decade. However, site managers commented that the current fragmented legal framework is challenging for them to put into practice.

For one, how a local community is defined, how their legitimate representative is selected, and whether a procedure or a model of practice is available are instrumental questions. Where the ownership of a heritage is not clearly defined and conflicts between conservation and use exist, site managers and local community request for a more useful guidance and an enabling framework, not only in terms of financial but methodology: how to balance rights and duties, benefits and interests of different stakeholders.

Emerging good practices were shared across sites and conditions. For instance town hall meetings with residents of Hoi An ancient town, or benefit sharing schemes tested under the Pilot Program on the benefit

sharing mechanism in special use forest. It was concluded that while building these schemes was resource-demanding, strong engagement with local people and sometimes dealing with local residents on a case-by-case consultation and dialogue was key to successfully mobilizing and distribution of benefits. It was recommended by researchers that in these dialogues, the role of an effective mediator or facilitator should be filled, ideally by independent institutions with good capacity.

In this context, the role of the local government to integrate different aspects of heritage management and human rights practices was very important. It is essential to take a comprehensive approach to heritage management as the process itself is sophisticated and involved several stakeholders.

*“To adopt a community-based approach has become an obligation of the member state with the recent UNESCO Sustainable Development Policy. We have not yet fully recognized the role of local community and addressed it properly in the legal framework and policies. We need a good decree now, and in the next 4-5 years the Law on Heritage should be amended to form a strong and adequate foundation for the realization of the right of people. People should be informed about their rights and understand what benefit they are entitled from the exercise of their rights.”*

**Dr. Dang Van Bai, Vice-chairman of the National Council of Heritage and member of the World Heritage Council.**

*“The first meeting with local residents was organised in 1985, and many others followed. In these meetings, we discussed and agreed on a code of conduct or regulations,*

*such as on commercial advertisements. As people participated in great details, they practice it strictly once a regulation is adopted. The meeting with locals is now organised twice a year. Meanwhile if a resident comes up with a request, we provide advice on what to do to fit with the heritage framework. We are like friend to our residents, and we work on individual cases.”*

**Mr. Nguyen Van Son, Vice-chairman of the People's Committee of Hoi An Town.**

*“The right to participation and consultation was founded by the Constitution 2013, but it lacks a mechanism and proper procedure to be realised.... Participation of the people before, during and after the nomination is essential for the successful management and sustainable development in a world heritage site.”*

**Professor Vo Khanh Vinh, Vice-president of VASS.**

*“When we say, the forest belongs to the people, we should be able to answer the question of what benefits people could enjoy from the forest: whether they could take timber to build their house, or hunt some animals. Indigenous ways of living do not harm biodiversity, instead indigenous people understand how nature works, and supporting conservation. We should recognize their rights to continue their ways of living, and create conditions for them to exercise their rights. They should be able to share the benefit as part of the value chain, and be paid for forest protection.”*

**Mr. Le Thanh Tinh, Director of Phong Nha Ke Bang National Park.**

## POLICY RECOMMENDATIONS

- **Customary land and resource rights should be formally acknowledged** in accordance with international standards. This is particularly urgent in the context of traditional use and settlement areas of indigenous ethnic minorities. Any guidance on the world heritage process should include consideration of human rights needs and measures to realise these needs.
- **Supporting customary livelihoods and traditional cultural practices** should be an integral part of the policy and intervention allowing for sustainable development grounded in longstanding practices and knowledge.
- **Equitable benefit-sharing arrangements should be facilitated**, and where possible, the role of facilitators as independent institutions should be encouraged.
- **Institutionalizing consultation mechanisms and introduce a grievance procedure** as an integral part of the heritage process would allow for more systematic engagement with rights holder
- **Engaging indigenous and local communities in effective co-management and supporting community management of heritage** through respecting their traditional institutions and arrangement of resources utilization.
- **Rights and needs-based approaches to culture**, including respecting the right to enjoy and take part in cultural life without being commercialized.

## POLICY MESSAGE

The meeting revealed a growing consensus about the need for being more effective in recognition and realization of human rights of people living in and around World Heritage sites. Through analysis on policy frameworks and evidence presented by researchers and reflections by site managers and experts, it was agreed that:

- ◆ The understanding and adopting a human rights-based approach in the management of world heritage properties appeared to be a new issue inspired by the emerging human rights discourse in Viet Nam. Researchers, educators, managers and should work together to bring in evidences and analysis to better inform decision making, to form good practices and ultimately to achieve sustainable development.
- ◆ The role of local people, community and their rights in the heritage management process need to be fully recognized by the legal framework and supported in management practices: not only that the local people and community bear the responsibility in the safeguarding of the heritage, they are also rights-holders, and in many cases, the owner of the heritage. The development of the legal framework, in particular the introduction of a new *decree* on world heritage management and other guidelines for implementation, or the future amendment of the Law on Cultural Heritage should adopt this approach.
- ◆ Local people should be able to participate more actively and effectively in the making of any decision related to the enjoyment of spiritual and material benefits from the heritage. To enable this process, people should be more informed about their rights related to the heritage management process. A communication mechanism should be established, which should be sensitive to human rights needs and pay special attention to the right to access to the heritage, right to traditional livelihoods, right to information, right to participation in cultural life and public life, and right to legal aid and remedy, among others.

## KEY CONCEPTS

The UNESCO Policy for the integration of a sustainable development perspective into the processes of the World Heritage Convention was adopted by the General Assembly of the States Parties to the Convention at its 20th Session (Paris, 2015), by its Resolution 20 GA13.

Viet Nam's Constitution was amended in 2013 with a significant recognition of human rights and set forth a foundation for the protection and promotion of human rights in the on-going legal reform.

A *decree* in the Vietnamese legislation is a legal document issued by the Government to guide the implementation of a law. A decree on world heritage management is under the drafting process lead by the Ministry of Culture, Sports and Tourism.

## Vietnam's properties inscribed on the World Heritage List

Name of the WH site	Cultural/Natural Heritage (C/N)	Year of Inscription (Criterion)
Complex of Hue Monuments	C	1993 (iv)
Ha Long Bay	N	1994 (vii), 2000 (viii)
Hoi An Ancient Town	C	2000 (viii)
My Son Sanctuary	C	1999 (ii, v)
Phong Nha Ke Bang National Park	N	2003 (viii), 2015 (ix)
Central Sector of the Imperial Citadel of Thang Long - Hanoi	C	2010 (ii, iii, vi)
Citadel of the Ho Dynasty	C	2011 (ii, iv)
Trang An Landscape Complex	Mixed	2014

Photo: A man showed his documents to file a complaint about the wrong compensation for his daughter's land taken during the zoning of Trang An to nominate to the World Heritage list (Photo taken by Nghiem Hoa).



By law, anyone who has registered as a resident in a rural commune is entitled for agricultural land allocation or compensation. This man's daughter got married to a man from the neighboring commune. Her marriage did not legally affect her entitlement. However, when making the list of compensation, local authority did not take her case into consideration based on their understanding that she moved to her husband's neighboring commune and no longer entitled for a piece of agricultural land nor compensation in her home commune.

The complaint took 7 years to settle an additional compensation for the complainant, while the land was already taken before the communication started. Several women in the area who married and moved out to neighboring communes faced a similar situation, but did not feel confident to file a communication. They did not receive any assistance or guidance from any institution. Legal aid is available free of charge for people living under the poverty line as provided by the Law on Legal Aid.