

Policy Recommendations on World Heritage and Human Rights in the Philippines

This policy brief on world heritage and human rights is based on research conducted in 2015 to 2016. After the conference on World Heritage and Human Rights in Caux, Switzerland in January 2016 (see Caux Call for action), new developments that could have potential effects on World Heritage Sites in the Philippines have taken place. These are the inclusion of culture in the 2017-2022 Philippine Development Plan, the filing of bills in the Senate creating a Department of Culture, and the release of the decision of the Supreme Court in *Knights of Rizal v. DMCI Homes* (G.R. No. 213948, 25 April 2017). This case stated that there is no law protecting the sightlines and vistas of heritage sites and upheld the power of Local Government Units to enact zoning ordinances.



The Rice Terraces of the Philippine Cordilleras can be found in the Ifugao Province, Cordillera Region, Philippines

Given the foregoing, the policy implications from the research taking into account recent developments are as follows:

There is a need for a specific law or policy on World Heritage Sites.

When each of the six World Heritage Sites in the Philippines was inscribed in the World Heritage List, there was (and still is) no specific Philippine law or policy governing World Heritage

Sites. Lacking such, matters like budgets, incentives, and rights and duties are not immediately clear, identifiable or accessible. Given this situation, World Heritage activities, or guidance for site or environmental protection in the World Heritage context has been sought and based on the 1972 *World Heritage Convention* and recommendations from the Committee as well as the 1987 Philippine Constitution,

presidential decrees or proclamations, statutes and regulations deemed relevant and applicable (such as the *National Integrated Protected Areas System Act of 1992* (hereafter NIPAS), the *Indigenous Peoples' Rights Act of 1997* (hereafter IPRA), the *Local Government Code of 1991*, local laws or ordinances, and site-specific management plans.



The Sto. Tomas de Villanueva Church, most commonly known as Miag-ao Church in Iloilo, Philippines

A specific World Heritage Sites law may help clarify the situation and conditions for dealing with the rights dimension as well as consolidating the standards and basis for the designation and management of sites recognised for their Outstanding Universal Value. Such a policy, in line with the recently adopted Sustainable Development policy for World Heritage, could provide a framework for clearly linking heritage values, human rights and development planning at multiple levels. This could be done by an amendment to Republic Act No. 10066 or the *National Cultural Heritage Act of 2009* which included World Heritage as one of the categories under 'Cultural Property' (sec. 4). Important provisions on World Heritage Sites, however, are missing. Specific categories are mentioned in some provisions of the law, but

not World Heritage Sites; as such there is still confusion as to whether such provisions apply to World Heritage Sites.

Pending the amendment of the *National Cultural Heritage Act of 2009*, an Executive Order or guidelines issued by the NCCA Technical Working Council can address gaps in the law.

The 2012 implementing rules and regulations of the *National Cultural Heritage Act of 2009* attempted to fill in some gaps in the law, allowing the National Commission for Culture and the Arts to visit and monitor World Heritage Sites and ensure that they have a Conservation Management Plan in place. However, other areas including the selection or nomination procedure, monitoring

and evaluation, mechanisms, and budgetary concerns remain unaddressed.

Also under the laws and implementing rules, the potential for conflicting decisions among government bodies is high. Under the *Local Government Code of 1991*, cities and municipalities have the power to issue zoning ordinances. This has implications for the rights of stakeholders who might have to deal with conflicting instructions from various agencies and Local Government Units. Some cultural World Heritage Sites such as the Paoay Church and the Santa Maria Church in the province of Ilocos Sur are both National Cultural Treasures and National Historical Landmarks. This means that the National Museum and the National Historical Commission of the Philippines both have

jurisdiction over them. Multiple designations create overlapping responsibilities, but also complexities and uncertainties in terms of addressing rights issues.

The *National Cultural Heritage Act of 2009* also gives cultural agencies regulatory powers over World Heritage Sites and authority to issue Cease and Desist Orders and Compulsory Repair Orders. The apparent ambiguities in the law regarding the authority of the National Commission on Culture and the Arts to issue such Cease and Desist Orders to protect

cultural properties, and whether World Heritage Sites are covered by such protection measures, are clarified in the 2013 *Rule of the [National Commission for Culture and the Arts] on Pleading, Practice and Procedure in Heritage Cases*. Clear legal bases or rules on authorities and jurisdiction are necessary to prevent violations of the right to due process, and the rights to life and property. Processes for protecting human rights and due process are embedded in the Bill of Rights in the 1987 Constitution and these rights could be asserted should

any action by the state involving World Heritage Sites affect any party adversely.

Pending such amendment, a policy guideline could further clarify authorities, responsibilities and coordination between and among the National Commission for Cultural and the Arts, cultural agencies, and the UNESCO National Commission of the Philippines, including Local Government Units. The role of each national agency and Local Government Unit must be specified for better accountability. This could be done through an Executive Order issued by the President.

Even without such an Executive Order, the existing Technical Working Council under the NCCA Sub-commission on Cultural Heritage that is tasked to deal with all built heritage and cultural landscapes issues can create protocols at the NCCA as to how all government and non-government stakeholders in cultural World Heritage Sites can meet regularly, submit reports to NCCA regularly and obtain resources for conservation in a rational manner through the involvement of all stakeholders in making management decisions about a site. It can include among its priorities a system that will put together data and information about all Philippine World Heritage Sites including critical social aspects. Among the most urgent is to study the cultural heritage issues and concerns in natural World Heritage Sites covered by the National Integrated Protected



The Church of Our Lady of the Assumption, most commonly known as the Santa Maria Church, can be found in Santa Maria, Ilocos Sur, Philippines



Saint Augustine Church or Paoay Church, located in Paoay, Ilocos Norte, Philippines

Areas System Act of 1992 (Republic Act No. 7586) especially as they relate to the rights of indigenous cultural communities whose ancestral domains sometimes overlap with the sites.

Should a Department of Culture be created, a bureau or office therein should be given the specific responsibility for World Heritage Sites.

The Philippine Development Plan for 2017-2022 mentions the creation of a Department of Culture as among the priorities of the current administration. The bills pending in the Senate do not specify the administrative structure of the proposed Department of Culture. To better address issues concerning World Heritage Sites, a bureau or office in the Department of Culture should be created for this purpose. This bureau of office

may be charged with all responsibilities for all matters related to World Heritage Sites including social equity aspects and rights dimensions. This way, there will be only one national agency in charge of all World Heritage Sites and issues of overlapping jurisdictions can be avoided through clear coordination mechanisms and policy guidance.

Cultural rights should be explicitly recognized as among the basis for the management of World Heritage Sites.

The current legal and policy frameworks on heritage and human rights offer important opportunities for better integration of rights-based heritage practices. Still, the association between heritage and human rights in the management of World Heritage Sites, and of cultural and natural

heritage in general, is not obvious yet. From conservation areas overlapping with ancestral domains to questionable consultation measures, agreement building or contradictory decisions, much work remains to deal with the specific complexities of rights in the World Heritage Sites of the Philippines.

There is a need to address the management and protection of the Philippines' World Heritage Sites in terms of both natural and cultural heritage. A specific World Heritage policy or legislation is needed since performing the state obligations under the Convention could mean additional burdens for communities, and for Local Government Units. This new policy should explicitly state that rights, specifically cultural rights, are the basis for equitable management and protection. It

could even highlight specific policy measures known to be relevant such as IPRA, especially its consent provisions given the overlap between ancestral territories in several World Heritage sites. Development plans created by national government agencies as well as those created by Local Government Units, indigenous communities or groups in ancestral domains, and other bodies should be required to have provisions that treat heritage and rights issues more systematically.

Spaces for genuine participation of all stakeholders in World Heritage Sites should be created.

To ensure genuine participation of all stakeholders in planning, implementation, monitoring and evaluation of all programmes, projects, and activities, spaces that facilitate rights-based participation, whether individually or as a group, should be created. This may include reinforced consultations at the *barangay* level as well as work with local arts and culture councils of the Local Government Units and national level heritage processes.

Strong mechanisms must be created to ensure that these voices are heard and considered at the different levels involved. Participation of all relevant stakeholders must also be ensured from the initial stages, including as part of the nomination process for World Heritage Site, through to management and monitoring. Such rights-based approach may be incorporated as a safeguard measure in the system for implementing development plans.

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