

RESEARCH REPORT

UNESCO WORLD HERITAGE SITES AND RIGHTS IN VIETNAM: UNDERSTANDING THE ISSUES AND LOOKING FORWARD



Ha Long bay



Hoi An Town



My Son Sanctuary



Complex of Hue Monuments



Phong Nha Ke Bang NP



Citadel of the Ho Dynasty



Citadel of Thang Long (HN)



Trang An Landscape Complex



TABLE OF CONTENTS

CONTENTS

Page

Introduction	02
Peter Bille Larsen, Nguyen Linh Giang, Nghiem Hoa, Nguyen Duy Luong	
 Result on world heritage and human rights in Vietnam:	 06
Nguyen Linh Giang	
1. Fair hearing, participation, and consultation	07
2. Resources, property and land	08
3. Development and livelihood	09
 Human Rights and World Heritage in Vietnam: Towards a national agenda	 14
Summary of research findings	15
Highlights from the workshop discussion	16
POLICY RECOMMENDATIONS	19
POLICY MESSAGE	20
KEY CONCEPTS	20
 Balancing rights and responsibilities of the local people in the World Heritage process in Viet Nam: summary of a rapid assessment	 21
Nghiem Hoa	
I – Introduction	22
II – World heritage process and human rights in Viet Nam: An overview	23
III – Rapid assessment of rights issues: findings from the field	26
IV – Conclusions and Recommendations	33
 Case-study: Ethnic minority rights and World Heritage in Vietnam:	 37
The case of Phong Nha Ke Bang	
Peter Bille Larsen	
Land, resource and property rights	37
Livelihood rights and right to development	38
Indigenous, ethnic minority and cultural rights	39
Rights to participation, consultation and consent	39
 Quang Binh University cultural mapping pilot experience in Phong Nha Ke Bang	 43
Tran The Hung, Cao Thi Thanh Thuy, Phan Thanh Quyet, Nguyen Huu Duy Vien, Phan Nu Y Anh.	
 Summary of Workshop documents: "The Phong Nha-Ke Bang World Heritage, Opportunities and Challenges for Preserving and Promoting the Cultural Values of Minorities Living in the Heritage Area - Right-based approach"	 48
 Caux call for action on rights-based approaches in World Heritage (Caux, Switzerland, January 19, 2016)	 50

INTRODUCTION

How do we reconcile World Heritage management and protection in Viet Nam with the rights of the people and communities living within or in their proximity? Public attention and tourism numbers reaching the 8 sites making up World Heritage in Vietnam are unprecedented raising multiple social, environmental and economic challenges, but also new opportunities, NGO interest and strong governmental support. How can national and provincial authorities secure a policy and regulatory framework that is not only once geared towards effective protection and management, but equally towards equitable development for local communities and ethnic minorities living in the areas?

The reports found in this compilation are the result of a collaborative effort between the University of Lucerne, Switzerland and the Vietnam Academy of Social Sciences alongside collaboration with the UNESCO Hanoi office, Quang Binh University and authorities to explore the human rights dimension of World Heritage in Viet Nam.

Combining field studies, a legal review and policy discussions, our research sought to identify key human rights issues, explore the current legal framework and stimulate debate on possible next steps. The legal review by Nguyen Linh Giang demonstrates the necessity to amend and supplement Vietnamese legal framework in accordance with the provisions of the recently adopted UNESCO policy on Sustainable Development in order to protect the human rights of people living in World Heritage sites, especially concerning the right to participation and equitable benefit-sharing.

In-depth case study research was undertaken in the Phong Nha Ke Bang National Park. This National Park was initially listed as World Heritage 2003 for its geological values later expanded with other natural criteria in 2015. However, the social context, cultural values and living heritage particularly of ethnic minorities was only dealt with in a limited manner. Management emphasis has tended to only stress natural protection criteria and enforcement.

As the research demonstrates, there are significant rights issues related to customary livelihoods, ancestral lands and resources, participation in decision-making and benefit sharing.

As the discussions in this volume demonstrate, there is growing interest among management and local authorities to better address the cultural values and rights of ethnic minorities and other local communities in the area. Although local authorities and other organizations have sought to improve livelihoods, there is an urgent need to better link policy and practice to enable the ethnic groups to maintain their culture and customary practices.

The policy brief included here emphasizes the urgent attention needed to the rights implications of World Heritage designation and management particularly for the ethnic minorities. Faced with a deficit of customary land, resource and livelihood rights,

communities with long-standing ancestral connections and indigenous heritage pay the cost and reap few of the benefits from World Heritage designation. As the collaborative research with University of Quang Binh (QBU) demonstrates, there is also a need to better document and understanding the deep cultural history of natural heritage sites like Phong Nha Ke Bang.

The comparative research demonstrates the commonality of human rights needs to be recognised and addressed more properly in world heritage nomination and its management. Given the emphasis on national pride, the protection responsibilities of the local community and its members is often underlined, but not always their rights nor their vulnerabilities. Our rapid assessment identified human rights risks and vulnerabilities in the following areas: the realisation of cultural rights, right to access to the heritage, right to livelihoods (including land and resources) and right to a fair and effective participation in the decision making and benefit sharing, labour rights in the business sector, and right to effective remedies.

Our research also identified emerging good practices, where the management authorities were able to take a pro-active approach towards different groups of among local communities and work with them based on their distinctive characteristic and relationship with the site. Although it was rarely formulated as a human right-based approach per se, these types of people-centred approaches helped to increase local participation in the decision making and implementation. Whereas both challenges and emerging practices are recognized among by the local authorities and managers, problem-solving tends to be oriented by a needs-based approach rather than rights-based approach. There is therefore a need to build capacity of government officials on human-rights based planning and management in the field of World Heritage. It is also important to raise awareness of local people about their rights and the process of world heritage so that they become able to claim for their rights or exercise them in the process.

To share and debate these findings with the wider heritage community, a national conference on World Heritage and rights was organized in cooperation with UNESCO in Hanoi. The results were encouraging, as demonstrated by the workshop report included here, and generated considerable media attention. Not only is there international momentum to reconcile rights and heritage in the recently adopted Sustainable Development policy (reproduced here), Vietnamese heritage professionals, civil society and authorities all recognize the need to strengthen both site-based attention and policy measures.

Rights-based approaches are a crucial ingredient in supporting new management approaches, which allow to recognizes the deep cultural connections people have with the cultural and natural landscapes making up World Heritage. They enable people to take part in the process of management, protection and sharing benefit from Heritage. Rights-based approaches are therefore at the heart of integrating sustainable development in the future plans for the Vietnam's World Heritage system. In the immediate term, there is a need to take human rights issues into account when drafting, amending and supplementing the laws and regulations related to both cultural and natural heritage management in each country. Yet beyond policy reform, there is an urgent need and opportunity to address rights both in future

nominations and in the management of existing World Heritage site. Our knowledge of rights challenges may still be in the making, yet what is known already suggests early action to put local rights-holders at the centre of heritage management and build more equitable approaches. Both central and provincial authorities are crucial players to facilitate this process in the individual sites, where local people rarely have the voice and capacity raise their concerns.

In the long-term, it is therefore necessary to build effective mechanisms that ensure the rights of people living in the World Heritage are integrated both in nominations and management. When people have the right to manage and to share benefit from Heritage, they may even protect the heritage as their homes.

Today, the gap between official heritage management and the everyday struggles of ethnic minorities and other communities to maintain their values and practices. At site-level, action plans are urgently needed to recognize and protect the cultural diversity and living heritage. From a rights-based perspective, it is not enough to address what is considered valuable from a global perspective, but equally important recognize the living culture, ethnic diversity and values in management.

At the national level, it is key to raise understanding of international human rights standards and human rights based approach to decision makers at the central level and professionals at the site level. At the site level, it is crucial to build capacity of management staff in terms of practical implementation approaches – including having access to knowledge and tools. These tools, for instance, could include a safeguard procedure, guidelines for conducting consultation, and a set of good practices in relation to information disclosure. A communication mechanism could also be established at the national level for people to claim their rights if they feel being violated. It is essential to encourage the small community of heritage management and human rights professionals to work closely in the development of these tools and policies to identify knowledge gaps and sharing lessons learned.

Further research is needed to better understand how human rights risks are evolving in Vietnamese world heritage sites and how to address them in specific contexts. Given the fast pace of economic development, the linkage between infrastructure, development and tourism projects in world heritage sites and their impacts on the realisation of human rights needs to be further examined and monitored. While it is challenging to conduct a comprehensive human rights study, it is both feasible and urgent to address vulnerabilities of people faced with relocation and land-withdrawal projects, for example. Rights-based approaches are about putting their voice and well-being at centre of heritage management. At the international level, Viet Nam has a pioneer role in championing the new Sustainable Development policy for World Heritage. Now is the time to translate this commitment into practice and better conditions for the women, children, ethnic minorities and indigenous peoples living in the areas concerned.

_____ June 2017 _____

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PRELIMINARY RESULT ON WORLD HERITAGE AND HUMAN RIGHTS IN VIETNAM:

A legal review

By Dr. Nguyen Linh Giang

POLICY MESSAGE

Vietnam's current natural and cultural heritage legislation presents major gaps, as shown by the legal review of the country's policies towards World Heritage and Human Rights related issues. Vietnam's legislation and World Heritage regulations should be adapted in accordance with the provisions of the recently adopted UNESCO policy on Sustainable Development. The latter would encompass provisions on the right of participation of people and communities. In particular, there is a need to build specific legal provisions regarding the rights of ethnic minorities living within or next to world heritage sites. There is equally a need for further policy development on benefit-sharing, participation and co-management specially regarding special use forests.

Human rights based approaches within the world heritage system is a completely new theme in Vietnam. The country's World Heritage legislation currently involves different bodies of law for natural and cultural heritage, which have evolved since Vietnamese independence in 1945. Since the 1980s awareness regarding human rights issues has increased, yet, protection mechanisms in Vietnam are still incomplete. Heritage legislation reveals several shortcomings if approached from a human rights-based perspective. So far, Vietnamese legal documents fail to clearly express the relationship between human rights and heritage.

Since joining the World Heritage Convention, the legislative framework for heritage preservation in Vietnam has continuously evolved. The most important legal instrument in this field is the 2001 Cultural Heritage Act, which was amended and supplemented in 2009 and its guiding instruments. In the natural heritage field, other than the application of the Cultural Heritage Act, related legal documents such as the Law on Environmental Protection, Law on Biodiversity, Law on forest protection and development, Land law and the

guiding instruments thereof are applied.

By analyzing the Vietnamese legislation, it is our aim to explore the linkage between human rights and law related to world heritage. Among the many sources examined figure Vietnam's Constitution, laws and sub-law related to the management of both cultural and natural heritage. The aforementioned analysis is carried out through the human rights- based approach, giving special consideration to four different themes: Fair hearing, participation, consultation; resources, property, land; development, livelihood and ethnic minority rights.

1. Fair hearing, participation, and consultation

This group of rights is expressed by the provisions relating to the right to lodge complaints, initiate lawsuits and right to denunciations as well as questions of the right of access to information; right to participate in decision-making process specified in the relevant laws.

1.1. Cultural Heritage

- ***Law on Cultural Heritage***: Organizations and individuals have the right to lodge complaints, initiate lawsuits, and to denounce acts which violate Vietnamese legislation on cultural heritage. The current legislation still lacks provisions regarding the right to participate in discussions and decisions of individuals and communities related to the heritage they own or preserve.

- ***Construction Law***: Construction planning in general and in World Heritage sites in particular shows discrepancies between national interests and the interests of the community affected. People have the right to comment to construction planning or to adjustment of construction planning.

1.2. Natural Heritage

- ***Law on Environmental Protection and its Decrees***: It grants the periodical publication of information with regard to environmental issues at least once a year.

The law recognizes local communities representatives' right to request producers and companies environmental information regarding their operation. Furthermore, the law also enables them to request state management agencies to furnish the public with the results of investigations, inspections; to take part in the environmental evaluation and to implement all necessary measures in order to protect rights and interests of any residential community. Both organizations and individuals are entitled to file a complaint or lawsuit against any breach of environmental protection. Moreover, the role of consultation and supervision of the residential community involved is recognized.

Thus, the Law has recognized the peoples' right of accessing information as well as the State's obligation to provide information. In fact, people do not have because the Law on Information access has just been approved and will come into force from July 1st 2018.

- ***Law on forest protection and development***: Disputes shall be solely settled at a court of law. The current legislation contains no provisions enabling the participation of the local community affected by the project at hand, nor requires its consent for the project completion.

+ ***Decree 23/2006/ND-CP*** on the implementation of the Law on Forest protection and development and Decree 117/2010/ND-CP on the organization and management and the special use of the forestry: No rules concerning the participation of citizens in the planning and reforming forestry regulations.

+ ***Decision 126/QĐ-TTg*** on pilot share interest in management, protection and sustainable development and the special use of forest's resources in some provinces. It lays out the principle of benefit sharing, as voluntarily agreed between the company's management board and the communities in question. Possible disputes arising between the communities, households, individuals and the management board shall be resolved by the management council by means of reconciliation. The thus reached decision allows a number of rights for people (communities, households and individuals) such as the right to have representatives

in the Management Board; the right to participate in discussions and decisions about benefit

FEATURED CASE STUDY

Phu Giay (Vu Ban district, Nam Dinh province) is a famous historical and cultural relic site in the North of Vietnam. In early 2015, the People's Committee of Vu Ban district - the management authority - issued new regulations on management of the relic site. Accordingly, the person in charge of incense matter (who is a custodian of Phu Giay and offers incense in this relic site) will have a term of 5 years. Meanwhile, traditionally, local people will elect this person from those who are of moral excellence and significant contributions in conservation and restoration of this relic site. He/she will perform this task until the end of his/her life without being replaced if he/she still wins the trust of people. Opposing this policy of Vu Ban district, local people prepared a petition with over 1,500 signatures and submitted it to the Department of Heritage, the Ministry of Culture, Sport and Tourism. The Department of Heritage then delivered this application to the Department of Culture, Sports and Tourism of Nam Dinh province to settle within its jurisdiction.

This case has shown that the regulations on management of relic sites must respect the customs and beliefs of the locals. Without getting the consent of the people, these provisions will not be implemented in practice.

sharing; the right to participate in monitoring the implementation mechanisms.

This pilot is implemented till December 2015. After concluding and evaluation of this pilot project, this model could be implemented across the country. This is a good sign that promises to bring more benefits to the people in special-use forest zones in general and people living in natural heritage sites in particular.

- **Land Law:** Land users have the right to file an administrative complaint or lawsuits regarding possible violations of their lawful land use rights and other infringements thereof. Generally speaking, the relevant law recognizes the right to file a complaint or lawsuit, although it does not guarantee a fair hearing.

Citizens have the right to supervise and report on wrongdoings and violations in the land management and use by themselves or through representative organizations. They also have the right to access to land information system of the State, but this right is limited as people have to wait for the coming into force of Law on Information access.

- **Law on Biodiversity:** The right to

discuss and participate in decision-making with regard to policies and operations in conservation zones is recognized in Decree 65/2010/ND-CP on detailing and guiding a number of articles of the Biodiversity Law.

2. Resources, property and land

2.1. Cultural heritage

The ownership right and copyright over cultural heritage are defined by Civil Code and Law on Cultural Heritage. The State protects the lawful rights and interests of owners of cultural heritages.

2.2. Natural heritage

- **Law on Cultural Heritage:** This Law does not contain any provisions on traditional use of forests or productive land within the heritage sites.

- **Law on forest protection and development:** The law protects the ownership rights of both individuals and households, as well as the exploitation and benefit rights of village communities. The latter also have the right to transfer, donate, lease, mortgage, provide guarantee or contribute capital with, their value according to law provisions; individuals may bequeath their forest use rights. Only households and individuals are seen as forest owners. The village population communities who have the same customs, practices and traditions of close community association with forests in their production, life, culture and belief, do not have the right of forest owners but they still have the right to manage, exploit and benefit from allocated forests.

- **Land Law:** Taking the rights-based approach, the most resilient issues of the Vietnamese Land Law are those related to property rights. Since all of people do not possess the land where they live, they can be unilaterally resettled by the government.

In general, ownership of land is always a hot issue in Vietnam. Vietnamese people do have ownership over the forests resources or the house they live in. Nevertheless, they cannot own the land upon which the forest grows or their house stands. It affects the rights and interests of people.

3. Development and livelihood

This group of rights is expressed by the provisions relating to the right to labor, business right, right to exploit resources, right to compensation as specified in the relevant laws.

3.1. Cultural Heritage

State agencies, organizations and individuals have the responsibility to protect and promote the values of cultural heritages. Organizations and individuals that own or manage relics, collections and/or museums have the business right.

Vestiges, antiques and national precious objects under the ownership of the State, political organizations or socio-political organizations must be managed in museums and must not be sold, purchased, donated nor presented as gifts. Vestiges and antiques under other ownership forms may be purchased, sold, exchanged, donated or bequeathed as inheritance at home and abroad. National precious objects under other ownership forms may only be purchased, sold, exchanged, donated and bequeathed as inheritance in the country.

3.2. Natural Heritage

- **Law on Biodiversity:** Within conservation zones, households and individuals have the rights to lawfully exploit the natural resources found therein; to participate in and benefit from business and service activities; to enjoy policies on incentives, support, compensation and resettlement under law; to observe the Regulation on management.

+ **Decree 65/2010/ ND-CP** details and offers guiding principles to interpret the Biodiversity Law. The same aims at the preservation of people's livelihood in conservation zones, including: Right to work, right to participation and the right to receive benefits from commercial, exploitation activities in conservation zones have been calculated in this Decree.

- Law on forest protection and development 2004 The households and individuals have the rights to exploit the forests; to enjoy the added value of forests. In case of recovery the entire or part of the forests, forest owners shall be compensated for their labor fruits, investment results or recovered property.

The population of village communities shall have the right to exploit and use forest products and other forest yields for public purposes and domestic use within the community; to enjoy the fruit of their labor and investment the profits thereof; to be provided with technical guidance and capital supports according to the State's policies; to be compensated for the fruit of their labor and investment results for forest protection and development.

+ **Decision 126/QĐ-TTg** on pilot share interest in management, protection and sustainable development of special-use forest: Communities, households and individuals have the rights to exploit, use of resources, breed animals and plants in the allowed list that is defined in the agreement; to participate, implement the agreement and make recommendations to the management board; to be improved knowledge on forest protection, nature conservation and sustainable development of the special-use forests.

- Land Law: Land users have the rights to enjoy the results of their labor and investment on land; to receive the State's guidance and assistance in the improvement and fertilization of agricultural land; to be protected by the State against others' infringements of their lawful rights and benefits involving land; to receive compensation when land is recovered by the State; exercise the rights to exchange, transfer, lease, sublease, inherit, donate, mortgage land use rights and to contribute to land use rights as capital; have the right to fair compensation, whenever the State nationalizes their land.

In general, livelihood has been noted in related legal texts but the benefit of people living in heritage sites is still limited. It is necessary to adopt the legal texts that are basis for share interest in management of heritage sites.

- Law on Environmental Protection: Organizations and individuals have the responsibilities and right related compensation for environmental damages.

4. Indigenous/ tribal/ ethnic minority rights

Ethnic minority groups are a vulnerable group in society. Ethnic minority groups living within heritage sites are most vulnerable as so many of their rights have been limited, while at the same time they do not benefit out of it, even when their familiar living environment becomes part of the world's heritage list.

The Vietnamese Constitution states that all the ethnicities are equal; all acts of discrimination against and division of the ethnicities are prohibited. Every ethnic group has the right to use its own spoken and written language, to preserve its own identity, and to promote its fine customs, practices, traditions and culture. The State shall implement a policy of comprehensive development and create the conditions for the minority ethnicities to fully utilize their internal strengths and develop together with the country. These above mentioned constitutional provisions will be specified in the legislation to implement the policies of the state for ethnic minority people. These regulations can be applied to protect rights of minority groups living within a world heritage area.

Equality of rights and non – discrimination and the right to preserve the own identity of minority groups has been affirmed and specified in many other Vietnamese legal documents. Moreover, to ensure the livelihood of ethnic minorities, the State of Vietnam issued special preferential policies for these areas, which have been expressed in many legal documents.

In general, the policies on ethnic minorities of the State of Vietnam seek to be comprehensive and covering issues such as livelihood, culture and ensuring civil rights. However, ensuring the rights of minorities in practice, is much more difficult. The Vietnamese State still has to find a viable solution in order to strike the balance between development and the preservation of national cultural identity

The right of minorities to participate in the decision-making process for issues, which have a direct effect on them has not been considered by the current legislation. Although legal aid and legal education programs for ethnic minorities are implemented, their results are limited.

DEFINITIONS

Human rights: *There is no human rights definition in Vietnamese Constitution. The article 14 of this Constitution stipulates:* [L]
[SEP]

1. *In the Socialist Republic of Vietnam, human rights and citizens' rights in the political, civil, economic, cultural and social fields shall be recognized, respected, protected and guaranteed in accordance with the Constitution and law.*

2. *Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being.*

Heritage: *In Law on Cultural Heritage of Vietnam, there is not a definition on heritage in general, there are definitions on intangible cultural heritages, tangible cultural heritages, historical – cultural relics and famous landscapes and beauty spots.*

Related to the world tangible cultural heritages, there are two definitions:

- *Tangible cultural heritages are material products of historical, cultural or scientific value, including historical-cultural relics, famous landscapes and beauty spots, vestiges, antiques and national precious objects.* [L]
[SEP]

- *Historical-cultural relics are construction works and sites, as well as vestiges, antiques and/or national precious objects pertaining to such works and sites and having historical, cultural and/or scientific value.* [L]
[SEP] *Related to the world natural heritages, famous landscapes and beauty spots are natural sceneries or places where exists a combination of natural scenery and architectures with historical, aesthetic and/or scientific value.* [L]
[SEP]

Ethnic minorities: *Decree 05/2011/ND-CP dated 14 January 2011 on Ethnic minorities work defines: Ethnic minority group means an ethnic group with a population smaller than that of the ethnic majority group within the territory of the Socialist Republic of Vietnam. . Vietnamese legal texts use only the term “ethnic minority”, the term “indigenous” or “tribal” are not used in Vietnam. In Vietnam, there are 54 ethnic groups. In which, Kinh is the ethnic majority group that accounts for 86% of the population. The remaining ones are 53 ethnic minorities.* [L]
[SEP]

POLICY IMPLICATIONS RESEARCH

An overview of Vietnamese legal texts shows that people's participation rights is a common challenge for many sectors. When it comes to heritage, there is virtually no legislation or regulatory guidance providing for people's participation or benefit-sharing other than general obligations of citizens to protect heritage. In particular, local communities do not have the right to participate in the design, drafting and implementation of regulations and zoning arrangements of heritage management. In order to promote and protect the rights of people living within world heritage sites, the Vietnamese Government may consider the following recommendations:

With regard to human rights law and World Heritage, a stronger emphasis on the right to participation is needed. People's participation in the process of drafting legal texts, law implementation and monitoring the activities of state bodies is a key right, which needs to put into practice in heritage legislation. In order to increase the role of people living within heritage areas, at local level, it is necessary to build on local democracy regulations and more specifically create participatory mechanisms and spaces in World Heritage management as such. This could involve a specific regulation to link the right to participation of people in local matters in general and in management and protection of world heritage in particular. Furthermore, there is a need for a stronger and inclusive mechanism ensuring minority rights. This needs to address not only the livelihoods, but also the right to participation as well as right to education, right to health care and development both through national and provincial policies. Related to legal texts on he

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 ^[U]_[SEP] 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.**

Name of the WH site	Cultural/ Natural Heritage(C/N)	Year of Inscription (Criterion)
Complex of Hue Monuments	C	1993(iv) ^{[L] [SEP]}
Ha Long Bay	N	1994 (vii), 2000(viii)
Hoi An Ancient Town	C	2000(viii) ^{[L] [SEP]}
My Son Sanctuary	C	1999 (ii, v) ^{[L] [SEP]}
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		2014Mixed

POLICY RECOMMENDATIONS^{[L] [SEP]}

- **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.<sup>[L]
[SEP]</sup>

- **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.

<sup>[L]
[SEP]</sup> - **Equitable benefit-sharing arrangements** should be facilitated, and where possible, the role of facilitators as independent institutions should be encouraged.<sup>[L]
[SEP]</sup>

- **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<sup>[L]
[SEP]</sup>

- **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.<sup>[L]
[SEP]</sup>

- **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.* [L] [SEP]

◆ *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.* [L] [SEP]

◆ *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.* [L] [SEP]

KEY CONCEPTS [L] [SEP] **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.

[L] [SEP] *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.* [L] [SEP] *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.* [L] [SEP]



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 felt confident to file a communication. They did not receive any assistance or guidance from^[1]_{SEP}

BALANCING RIGHTS AND RESPONSIBILITIES OF THE LOCAL PEOPLE IN THE WORLD HERITAGE PROCESS IN VIET NAM:

Summary of a rapid assessment.

By **Nghiêm Hoa**

I – Introduction

This is a summary of the findings from a fact-finding rapid assessment on the variety of rights issues encountered in the World Heritage process in Viet Nam. The approach of the study is to identify factors which shaped the understandings and practices of human rights in the world heritage management process, through a desk study and interviews with stakeholders. The desk study reviewed relevant legal documents, studies and case laws in the crossing of three topics: human rights, cultural heritage management and natural heritage management. The field work was conducted in three sites: Hue, Phong Nha Ke Bang and Trang An.

This was a part of an international and inter-disciplinary collaborative research organised under the SNIS (Swiss Network for International Studies) project “Understanding Rights Practices in the World Heritage System: Lessons from the Asia Pacific”. In Viet Nam, the national research included three components: a legal review of the national legal framework, a case study of Phong Nha Ke Bang World Heritage site, and a review of the national context and trends shaping the crossing point of world heritage management and human rights in practices. A National Roundtable Dialogue was organised in November 2015 in partnership with UNESCO Representative Office in Viet Nam and the Viet Nam Academy of Social Sciences. Preliminary findings and recommendations of the national research were made available at <http://projects.snis.ch/rights-world-heritage-system/policy-briefs/>

In line with the global research design and national research methodology, this study did not attempt to identify and discuss an exhaustive list of human rights issues in the eight World Heritage sites in Viet Nam. The international study sought to understand rights practices in four specific areas: land, resource and property rights; livelihood rights and right to development; indigenous, ethnic minority and cultural rights; and rights to participation, consultation and consent. The issue of indigenous and ethnic minorities is addressed extensively in the separate case study of Phong Nha Ke Bang. The findings of this research component showed that property rights are strongly inter-related with cultural rights and livelihoods rights. In addition, across sites and issues, the problem of lacking proper remedies came up as an important topic.

This paper is structured around those topics listed above. Following a general discussion on the perceptions of rights by stakeholders, it then discusses findings on rights to access to the heritage site and its resources, including rights to culture and livelihoods; rights to participation, consultation and consent; safeguards and remedies in the case of human rights violations. We argue that as the world heritage inscription is promoted as a national pride,

the protection responsibilities of the local community and its members became focus, but not their rights nor their vulnerabilities in the world heritage process. Human rights seemed not properly addressed in this process also because in the broader national context, the human rights discourse emerged only in the recent decade and there is a lack of effective human rights institutions. As a result, human rights needs of different groups and individuals in the world heritage process were neglected, and remedies were not provided adequately. We recommend the world heritage system in Viet Nam to take a full implementation of a human rights-based approach following the Policy for the Integration of Sustainable Development in the World Heritage Convention.

II –World heritage process and human rights in Viet Nam: An overview

The revision of the Constitution adopted in 2013 marked a third wave of the national engagement with international human rights regime, yet a significant gap exists in both theory and practices. The new human rights discourse rised in international dialogues and debates at the national level as new laws are being elaborated under the new Constitution. However the discussion remained in a narrow space of goverment officials, law makers,a small circle of academic and limited civil society actors. It has not yet been transferred to the grassroot level nor daily language, in which the term “human rights” is still viewed as sensitive although “less a taboo question”¹ or unfamiliar or formal.² A preferred term would be “quyền lợi” (benefits). There is no Constitutional Court, nor a qualified National Human Rights Institution in place. At the court, constitutional rights were hardly invoked in a verdict, needless to say any direct reference to international human rights standards to which Viet Nam is a state party. Access to remedies was also noted as a challenge for human rights redress in Viet Nam in general, as noted by different UN mechanisms.³

Besides international human rights law, other international instruments such as UNESCO Conventions or the Convention on Biodiversity took a smoother path to integrate in the national thinking and legal approach toward the position of individuals and community. Viet Nam accessed the World Heritage Convention (WHC) in 1987, and by January 2016 the country has eight inscribed sites.⁴The inscription of a site was often extensively celebrated and described in the public as an international recognition for a Vietnamese property, a national pride of cultural or natural outstanding values.

¹ Interview V4 with a national officer.

² In Kinh’s language (the administrative language of Viet Nam, often referred to as Vietnamese language), the two terms are interchangeable. However in the official language, interestingly “nhân quyền” (human rights) was previously used in defensive context such as rejections of international criticism, and “quyền con người” (rights of human beings) was used officialy in the Constitution and the legal system.

³ For instance, as noted by the Special Rapporteur on Freedom of Religion or Belief in his visit in 2014, and by other UN Treaty Bodies in their concluding observations, most recently CESCR in 2014 (E/C.12/VNM/CO/2-4) and CERD in 2012 (CERD/C/VNM/CO/10-14)

⁴A full list and documentation of these sties following the World Heritage Convention’ standards is available at <http://whc.unesco.org/en/statesparties/vn>

In Vietnam, cultural heritage is legally defined as “a precious property of the community of Vietnamese nationalities, constitutes part of the mankind’s cultural heritage and plays a great role in our people’s cause of national construction and defense”.⁵ This definition prescribes the most important role of cultural heritage as a national property: for national construction and defense. For all natural resources, including most importantly, land, forest, and geographical resources – which is in general become the core of a natural heritage site, the principle “the State exercises the unified management over a property belong to the entire population’s ownership” presumed.⁶ In the case of a natural heritage site, the core zone often includes a special use forest.⁷ A common property such as a forest traditionally managed by a community could potentially also be “recognised” as a special use forest – to which the consequence is the management body turned into a state authority, as provided by Decree 117/2010/ND-CP.⁸ In this case, the instrument does not yet prescribe any process to ensure how former owners could involve in the new arrangement of the state entity. The site becomes under the auspices of “The State (who) uniformly manages and disposes of”.⁹

There is now a new dynamic towards granting more space for the exercise of other forms of ownership and access to heritage in the legal framework. The revision of the Law on Cultural Heritage in 2009 provides protection for private and collective ownership.¹⁰ However legal protection for these forms is rarely realised due to the lack of a comprehensive framework in which “community” is not yet recognised as a legal entity.¹¹ The Law on Biodiversity (2008) also gives more access and control for non-state actors and promotes the principle of benefit sharing (article 4), or opens up for the possibility to recognise individuals or community legally residing inside a protected area (article 7 and 9).¹² In practices, efforts to demonstrate an exception of collective ownership applied for a community were made in protected areas from a range of pilot projects on co-management and benefit sharing.¹³ However, the dominant weight of the state ownership in the legal framework and in its interpretation remain preference. The application of this national legal framework simplified a process of official recognition of a natural or cultural site equivalent to making it a state-controlled

⁵The Preamble of the Law on Cultural Heritage, Law No. 28/2001/QH10 of June 29, 2001. The Law was revised 2009. The prevailing law keeps this definition. The translation of the law (2001) in English is available at http://moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=9469 accessed 10/9/2016.

⁶See Land Law, Law No. 45/2013/QH13 dated 29/11/2013 (Article 1),

⁷Law on Forest Protection and Development No.29/2004/QH11, article 4.

⁸As provided by Decree 117/2010/ND-CP article 5(c).

⁹Law on Forest Protection and Development No. 29/2004/QH11, Article 6.1

¹⁰See article 5 of the Law on Cultural Heritage.

¹¹The prevailing Civil Code Law No. 91/2015/QH13 dated 24/11/2015 recognised collective ownership by a community (Article 211) but does not recognise community as a legal entity, which effectively challenges the exercise of ownership over a property. For natural resources such as forest or biodiversity in the case of special use or special protection, private or collective ownership were neither realized.

¹²For instance, international human rights law treated force eviction as human rights violation per se, therefore should be avoided. Together with the principle of protection of indigenous and local knowledge by the Convention on Biodiversity, it could make legalising residence in the forest a preference than relocation, taking into account conservation needs.

¹³Decision No 126/QĐ-TTg in 2012

property. As a result, the rights of individuals and small communities to own, access and making decision related to the site were undermined.

The Law on Cultural Heritage provided rights and responsibilities of individuals and organisations towards cultural heritage in chapter 2 (article 14, 15 and 16), most importantly in article 14.¹⁴ Staff of management board across sites and local authorities offered a mixed interpretation of the meaning of this provision: it was clear that para (1) and (2) were about rights of individuals and organisations to own and access cultural heritage, it was not clear whether para (3), (4) and (5) were about rights or obligations, or both. In some interviews, site managers referred to these actions as rights and entitlements. Even if all five provisions could be understood as “rights”, interestingly their implementation would require administrative measures from the government to be effective. The interpretation of human rights to have a “negative” nature, which means rights-holders need positive actions of the state to realise their rights, most notably a legal framework to enable the exercise of rights within this framework, is quite common in Viet Nam.¹⁵ This approach was not conducive for the exercise of rights and fundamental freedoms as human rights are not seen as prerequisite, but need some level of approval by the state power for their existence and exercise. From the rights-based approach, the role of individuals and local communities is seen in their own agency to exercise their rights in numerous forms.

This approach of state-control is realised in the management structure of heritage sites. As an administrative organ belong to the government, staff of these management boards must be civil servants. Community members could be invited to different consultations, depending on the willingness of the management board. However, in these consultations, direct participation is rare as “local communities” were represented by the authorities at commune or village level. It was noted in 2013 during the visit of the UN Special Rapporteur in the field of cultural rights that local authorities, even though being local, do not necessarily represent all the local people. She suggested for more substantive and direct participation of local communities in the management of cultural heritage, a theme equally relevant for World Heritage.¹⁶

¹⁴ Article 14 reads: “Organizations and individuals shall have the following rights and obligations: 1. To lawfully own cultural heritages; 2. To visit and study cultural heritages; 3. To respect, protect and promote the values of cultural heritages; 4. To promptly notify places where vestiges, antiques, national precious objects, historical-cultural relics, famous landscapes and beauty spots are discovered; and hand over vestiges, antiques, national precious objects found by themselves to the nearest competent State agencies; 5. To prevent or request the competent State bodies to prevent or promptly handle acts of undermining, appropriating or illegally using cultural heritages.”

¹⁵ The United Nations’ Human Rights Council’s Special Rapporteur on Freedom of Religion or belief during his visit to Viet Nam in 2014 noted that a broad restriction and the narrow administrative framework could hindered the exercise of the right to freedom of religion or belief in both the legal framework and in practices. See UN Document No. A/HRC/28/66/Add.2. His comment was relevant for the realisation of other substantive rights as well, as a common norm in Viet Nam is to wait for a legal framework to prescribe what can be done and cannot be done. For instance, the exercise of freedom of assembly or organising demonstration was often denied, suspended, or even illegalised by administrative agencies given no relevant law is yet available.

¹⁶ UN Special Rapporteur in the field of Cultural rights. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, Addendum: Visit to Viet Nam (18–29 November 2013). Report at the UN Human Rights Council 28th Session dated 29/01/2015. UN Document No. A/HRC/28/57/Add.1. para.64.

In contrast with the weak role of local community and individuals in this system, the private sector has an increasing participation and power in the heritage nomination and management. Depending on the nature of the contract, the company would be endowed with exclusive access and control to a large area of a site (like in Trang An, Phong Nha Ke Bang, and Ha Long Bay), or in the form of a license to operate (like in Hoi An, or Hue). A private company could be invited in the management board and have high influence on the decision making of the board. This trend was marked as a positive development by the government officials as a form of partnership. However its potential impacts on the conservation and management of the heritage and its human rights impacts are not yet foreseen by decision makers and other stakeholders.

In general, the world heritage process often introduced several protection measures which restrict the exercise of rights in the site, for instance access to the site, using or exploiting resources in the site, or conducting new construction or development. These measures were deemed important to realise the protection goal of the site, and to some extent their social impacts were anticipated which led to the introduction of some mitigation. However their human rights dimension was hardly taken into account. In the light of the new Constitution 2013, the legality of these measures is challenged by an expert “Any restriction of human rights would have to be inline with Article 14 paragraph 2 of the Constitution.”¹⁷ It effectively makes any restriction promulgated by a ministry or provincial-level agency unconstitutional. In reality, without a constitutional protection mechanism in the country, it would take this challenge a long way to arrive successfully in the world heritage process.

III –Rapid assessment of rights issues: findings from the field

In summer 2015, a joint mission of all the research team went to Phong Nha Ke Bang to test our approach and conduct the case study. After that, two individual visits to Hue and Trang An were conducted by the national researcher. During these visits, we conducted indepth interviews with site managers, local authorities, business people, and local residents in general. Within a limited timeframe and available resources, the three site visits were meant to include a cultural heritage site, a site which has the longest history of inscription among others, a site of the urban context (Hue), a mixed heritage site (Trang An), a site which was the newest inscription among others (Trang An and Phong Nha Ke Bang – for the second inscription on the criterion (ix), a natural heritage site and a site with residents of ethnic minorities or indigenous peoples (Phong Nha Ke Bang). Another short visit to arrange further contacts in Ha Long Bay was made, but it then had to cancel due to health conditions of the national researcher. Therefore, references to Ha Long Bay or other world heritage sites where

¹⁷ Dr. Vo Khanh Vinh, co-chairman of the Workshop “Community participation and rights-based approach in world heritage sites in Viet Nam” suggested this challenge. The Workshop is part of the national research. See “UNESCO Representative Office in Viet Nam, Viet Nam’s Academy of Social Sciences, University of Lucern. Workshop Proceedings. 26/11/2015.

Article 14 para.2 reads “Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being.” Translation of the Constitution 2013. Access at <http://vietnamnews.vn/politics-laws/250222/the-constitution-of-the-socialist-republic-of-vietnam.html#ws8fDFI3VuHXkIGy.97> on 12/08/2016

field work was not conducted were observations from available literature. When this text refers to Phong Nha Ke Bang, more details are addressed in the specific case study of the site.

In site interviews, we were interested in key questions of how stakeholders explained their positions and roles in the management of a world heritage property by laws and by practices, in their view what would be relevant rights and duties and who beared them; what were formal and informal standards and practices, and how they were formed. We also looked for cases and practices which involved individuals from vulnerable groups such as minorities groups of religions or believes, or ethnics, or women or children in the context of world heritage management. Through analysing these cases, we try to understand possible human rights impacts on them in the heritage management process and how these impacts might have been anticipated and addressed, or not. When possible, the formal languages of human rights were refered to in discussions with stakeholders and people on the ground in order to understand how it was perceived as relevant in the daily life. While keeping in mind that human rights issues are broader than human rights languages, it was important to try to refer to the formal language to assess how respondents find it a direct and relevant issue, at least in the discussion with officials who have obligations to observe human rights.

3.1 General perception of rights

Stakeholders at the national level and site level (including both site managers and local people) hardly responded directly to the question what rights were relevant in the context of the world heritage process. A few people spelled out some constitutional rights, mostly those economic and social ones such as right to education or right to health care, or poverty reduction etc.,¹⁸ but they did not comment or give an example how constitutional rights were practiced in the specific context of world heritage management to their knowledge. “There is no right in here, as no one really asked for anything, we just followed what the state told us to do” (male, 60 years old, traditional keeper of a site).¹⁹ Interviewed villagers had similar comments, that they were not sure what rights they had and what were relevant to the context of the world heritage, sometimes they mistakenly took rights as power or authority, as these words were the same in the short form in Vietnamese language.²⁰ A few officials explained that human rights or constitutional rights were unfamiliar concepts due to a lack of rights awareness by the people and limited capacity by the government and stakeholders to provide knowledge on the topic.²¹ Human rights and human rights risks analysis were not a required component in the nomination process, neither seen as a relevant subject in the management exercise of the world heritage. Site managers mentioned they were not aware of any case or complaint in which human rights or constitutional rights were envoked, nor if they have any human rights obligation when exercising their duties beyond their duties to protect the site.

¹⁸ Interview No.21 with a site manager and No.4 with a national officer.

¹⁹ Interview No. 17 with a traditional keeper of the site.

²⁰ Interview No.14 (group of women) and No. 16. (In Vietnamese language, “quyền” could be understood as rights, or a shorten word for power (quyền lực) or authority (thẩm quyền).

²¹ Interview No.1, No.21 and discussion at the National Workshop.

Despite the ambiguity in the general discussion of human rights or constitutional rights, when a formal recognition of a substantive right existed, it has weight in protecting people's property or benefits during the world heritage management process. This is the case of more than 3,000 households in Hue with legal power to negotiate a full compensation if being relocated. Similarly, owners of ancient houses in Hoi An who have a strong position to participate in the making of management decision, especially in sharing benefits from ticketing and other services.²² The conflict between legal rights of locals and the protection measures was considered by site managers in Hue as a major challenge to achieve the heritage management goal. The same issue was characterised by authorities as an advantage to nurture people's participation in achieving the heritage management goal in Hoi An.

This was not the case of customary rights. Without any legal protection, a community with some extent of recognised customary rights might face different responses from the management. In Ha Long Bay, as a result of an increasing concern by the World Heritage Committee about the impact of floating villages on the outstanding universal value of the property, the government changed their approach from supporting these villages to relocating about 450 households to the mainland. The relocation was commended by a monitoring mission as a positive response to the concern of the Committee.²³ However no assessment and recommended measures from a human rights perspective were made regarding the relocation of more than 1,000 people as fishing communities to the mainland, a situation which would involve high human rights risks. The impact of the fishing communities on the outstanding universal value of Ha Long Bay, as concerned by the Committee, was indeed not compared carefully with the volume of impacts by massive tourism and industrial development of the Bay area, including impact of the mining industry, to set priority for interventions.²⁴

In the development of the management framework for an inscribed property, the human rights lens was hardly taken. Government officers could "making a favour ("tạo điều kiện") to the locals as these were poor people" if sometimes they decided to look away when local people access the protected site or taking resources from the site, an act which became illegal under new protection regulations.²⁵ This informal arrangement, in fact, posed a risk to both enforcement officers of neglect of their duties of protecting the site, and locals of being charged as violating protection regulations. Local people did not have much power to negotiate the making of new regulations which would illegalise their daily livelihoods activities or placing new economic cost on their access to the site, lesser chance they would invoke, for instance, the Constitution to defend their access. They could only continue these activities by the "empathy" ("thông cảm") of enforcement officers based on personal

²² Discussion at the National Workshop.

²³ IUCN. 2013. Report of the reactive monitoring mission to Ha Long Bay (Viet Nam). 6 to 10 November 2013. Pp16-17.

²⁴ In 2015, the management board of Ha Long Bay, supported by USAID, introduced a new project to help fishing villagers and people who were relocated to the mainland to generate new income from engaging with tourism development and access to the market.

²⁵ Personal conversation with forest rangers in Tan Trach commune, interview No. 7 with forest ranger in Trang An and interview No.21 with Park Manager.

preference. These situations were therefore resolved from a needs-based approach and based on personal preference.

3.2 Rights to access to the heritage and its resources, including rights to livelihoods and cultural rights.

The inscription of a site in the World Heritage List often resulted in the introduction of new arrangement for the site management, including a ticketing system for visitors, or a strict protection policy which made people no longer be able to access to the site freely the way they used to be. Depends on the implementation, sometimes a staff could make exceptions for spiritual or religious access by the locals. However these exceptions are not formalised in official management policies, which seem to focus on the touristic and economic values. Cultural experts and anthropologists have been warning about a selective cultural conservation policy, in which decisions are made to conserve certain cultural practices but not some others. Staff across different sites were very interested in collecting and “refining” traditional rituals, festivals or cultural practices which were considered highly attractive to tourists as a product. Sometimes what were valued by local community were different from the experts’ views. In the Hoa Lu Festival in Trang An for instance, villagers used to enjoy an open market place in the old courtyard, in addition to the rituals and the performance activities. But recently the market place during the festival was removed as it was not considered by experts and the provincial authorities an “authentic” part of the traditional festival and the provincial authorities found it “complicated” to arrange security service for the market place.²⁶ Although such an administrative decision might be fully comply with the heritage protection framework, it did not take into account the aspect of the right to freedom to participate in the cultural life of the locals, nor the element of the right to “the development of the cultural heritage” as suggested by the UN Special Rapporteur on cultural rights.²⁷

While there is significant growth of the private sector involved in tourism and recreational services across both cultural and natural heritage sites such as Phong Nha - Ke Bang, Ha Long Bay or Trang An, individuals living inside and surrounding the core zones of these sites were restricted from access to natural resources in the site, which have been an important part of their livelihoods. The relocation of fishing villages in Ha Long Bay to the mainland was an example of a measure to implement the strict protection policy in the core zone. In Trang An, local people used to get in the cave areas and the surrounding wetland to plant rice, fishing, hunting, collect fuel woods and herbs. Incomes from these activities were not significant in the view of the local authorities and people with stable jobs, however was key for poor people in the villages.²⁸ These activities were no longer allowed when the site became recognised and more importantly the site was contracted to a private company for management. Notably, the poorest people who relied the most on natural resources found themselves in the group that is struggling the most for alternative livelihoods.

²⁶ Personal communication with the group of villagers and commune staff.

²⁷ See UN Document No. A/HRC/17/38, para 60.

²⁸ Interview No. 22 with Park Manager, No. 10 with company manager, and group conversation with villagers.

Development projects for public infrastructure (roads and irrigations) and private business (lodging, accommodation and recreational services) also took away agricultural land from peasants. Cases of unfair compensation in land withdrawal were found. In addition, with or without adequate compensation for agricultural land, these peasants were forced to seek other livelihoods options rather than agriculture. Not everyone was successful in this transformation process. However, no assessment from the government or a third-party to get a clear understanding of the social impacts, vulnerability and income securities of such process was available. And there seems to be no public safety net made for those who failed looking for alternative livelihoods.

In this transformation, sometimes traditional institutions by local community helped to defend their income security and power. The case of boat riders arrangement in Tam Coc is an example. In Tam Coc, the mechanism of boat arrangement among villagers helped them to remain owners of the boat service even when the company came into the arrangement of the site. In Trang An, as the site is under the control of the company, there are certain risks on livelihoods and labour rights for local people when they were offer the job as boat rider to compensate on the loss of their rice field. Tam Coc could be seen as having elements for a future “good” model of balancing power, co-management, sharing resources and benefits in the site, if it is recognised at all by stakeholders and management authorities. However, the desire to get more profits and to “organise tourism in a professional manner” from the private sector and even from the management board might undermine such models with the participation of the local people as the private sector gradually takes over. In Tam Coc for instance, the company seemed not to want local people to continue planting rice on the banks of the river tour: “Peasants do not really benefit much from rice planting here, they only wanted to keep their land.. We could take over the land and plant the rice in a more organised way to make the landscape more beautiful.”²⁹ There is no mechanism yet in place to balance the business motivation and sustainable livelihoods of the local communities or to protect vulnerable groups from getting marginalised among rapid development projects.

3.3 Right to participation in decision makings, consultation and consent.

Following the recognition of a site as a world heritage, its formal management structure often get strengthened with more power and attention from the highest level of the province and national experts. In Trang An for instance, as political attention increased, traditional institutions and leaders sometimes lost their stake for direct participation and influence in the management decision of the site. “Now all organisational matters were decided from above. The local authorities receive direction and implement these directions. The festival is organised by the provincial level, there is an organising committee headed by the province. With that high level involvement, there are more resources [to organise activities].”³⁰ But the traditional keeper of the site – who was hired on a temporary contract as a low-level staff of the management board - was no longer invited to important meetings to decide how the festival would be organised, because he is now only a subordinate staff in the board. “The organising committee could pay for pupils from the local secondary school to run the mock

²⁹ Interview No.11 with a company staff.

³⁰ Interview No.17 with the traditional keeper of the site.

battle”. The performance used to be participated by the locals on a voluntary basis. “The locals used to have some rights, for instance they would witness the inventory [of the property] or any other activities. They presented, and they kept a record [of the inventory]. Now they do not care any more. As the government took over, the government now manages the site and runs the ticketing, the locals do not get any benefit so they do not care any longer.”³¹

In the management process, several restrictions were made towards the protection goal of the site. For natural heritage site, the core-zone was often a protected area of special uses forest or national park. In this case a consultation process legally exists to provide local communities with information about future restrictions and re-define their role from forest users to forest protectors. In a political culture where most decisions were made top-down,³² the locals, however, did not have much power to negotiate in this process: “If people say no, we will try to convince them until they agree.”, noted a provincial officer in Phong Nha Ke Bang.³³ Had any group been protected by the principal of “Free, prior and informed consent”, they would have at least the right to say no, be recognised and respected.

Access to information is key to enable individuals to participate in the decision making. Without a Law on Access to Information³⁴ and almost no mechanism existed to monitor fragmented requirements of information disclosure, it was extremely difficult for an ordinary individual to request information from a public institution. In land-withdrawal situations, which might involve several households and a long timeline, full and completed information about different decisions and compensation was sent to the commune authorities and to representatives of the community, not directly to each individual affected household.³⁵ For one man in Chi Phong village of Trang An who wanted to get a full record of the land-withdrawal and compensation decisions, it took him 3 years to request necessary information without any official response from different levels of provincial authorities. He eventually was able to gather enough information from different sources, mostly via personal relations. He then found out that his daughter was compensated wrongly, only five years after the compensation was completed. It took another four years for him to claim back what his daughter should be legally paid. Notably, in this case, the man did not seek for any legal assistance as he was concerned that he could not afford a private one, and he said he was not confident on the public legal aid.³⁶ In this case, without proper access to information to get a full understand of the impact of the world heritage process, there was no meaningful participation by the local people in the making of an important process which affected their rights to land and livelihoods. Moreover, obtaining the redress of wrongdoing was often unjustly costly in terms of time and resources for the victim.

In contrast, Hoi An ancient town is often referenced as a positive example of direct participation by local residents in the making of decisions on the management of the town,

³¹ Interview No.17 with the traditional keeper of the site.

³² Interview No. 4 with national officer of?.

³³ Personal conversation.

³⁴ The Law on Access to Information was finally introduced in 2016 and will come to effect in July 2017.

³⁵ Group interview, No. 14. with women.

³⁶ Interview No. 16 with villager.

including benefit sharing from ticketing or management of specific property. This was possible, as explained by the site manager, thanks to the manageable size of the population of a few hundred house-owners.³⁷ Indeed the population in Hoi An was not much more smaller comparing to the number of residents in the corezone of other sites. They could enjoy more recognition of their property rights in the world heritage process. It might also be because the management board have been working with specific interest groups of local residents by the characteristic of relationships with the heritage. The diversified and interest groups-oriented approach employed in Hoi An was a good practice which should be considered in other sites to improve the participation by local groups in the management of the site, through which people's reality and vulnerability could be better understood and addressed.

3.4 Human rights safeguarding and remedies

Till recently, a safeguarding procedure for human rights or social impact assessment and monitoring was not a clear requirement set by both the World Heritage Convention and the Vietnamese domestic legal framework for the nomination of a property to the World heritage list. Without such requirement, it was not possible to expect that human rights risks of the world heritage process would be properly anticipated and taken into account in the management planning and execution. In a context like Viet Nam where human rights institutions may be considered pre-mature, and civil society weak, it was even more challenging for stakeholders to take an initiative to develop such a system for the world heritage process without incentives from the international system.

As a safeguarding procedure is not in place, vulnerability of certain groups including women, poor people, ethnic minorities and indigenous peoples, children and other minorities (possible religious minorities) was unknown during most of the world heritage nomination and management processes reviewed. Consequently, no prevention measure are available, which would eventually make the financial and social cost of learning and redressing their situation increased.

Holders of recognised legal rights (such as in the case of land use right by residents in Hue) could utilize the existing legal framework and the justice system to defend their rights or negotiate for a more favourable terms. But in addition to these groups, there are other groups or situations where certain human rights were not yet legalised in the domestic framework, such as the case of indigenous peoples, or customary rights. More generally, we might talk about only a fraction of human rights issues being framed as legal rights in heritage policy and frameworks. In these cases, the absence of a human rights focus and remedy mechanism increased the vulnerability and made access to remedies more distant. As Viet Nam did not participate in any international human rights complaint mechanism, what was designed to address human rights violation at the international level when domestic measures exhausted is unfortunately also not available for Vietnamese people. Site managers, even though not using human rights languages, pointed out that only through ensuring social justice of people, the world heritage site could be well protected and nurture sustainable development.

³⁷ Discussion at the National Workshop.

IV – Conclusions and Recommendations

4.1 Conclusions

The world heritage process in Viet Nam involves enormous political interest and changes in the legal and social economic setting of the site, which ultimately had impact – both positively and negatively – on the lives of millions of people living in and surrounding world heritage sites. In the enthusiasm of receiving the world recognition, which economic growth was strongly expected to follow, human rights risks of institutional, economic and social changes have been left unknown. This neglect was due to an absence of any social or human rights safeguarding procedure in the course of the world heritage nomination and maintenance, especially in the context where effective national human rights institutions were missing.

Preliminary findings of this rapid assessment identified human rights risks and vulnerabilities in the following areas: the realisation of cultural rights, right to access to the heritage, right to livelihoods (including land and resources) and right to a fair and effective participation in the decision making and benefit sharing of local communities in these world heritage sites, unaddressed issues of labour rights in the business sector, and right to effective remedies. Without an effective remedy mechanism which fully adopt international human rights standards, it could not be expected that these violations or risks of violations would be addressed timely and effectively.

Still, there were good practices where the management of sites were able to take a pro-active approach towards different groups of among local communities and work with them based on their distinctive characteristic and relationship with the site. Although this was not a human right-based approach per se, these types of people-centred approaches helped to increase local participation in the decision making and therefore made the implementation of such decisions less controversial.

For both positive and negative examples of human rights practices in different sites, to some extent relevant issues were recognised by the local authorities and managers of world heritage sites as social problems for a small group of local residents related to the management of world heritage sites. However the approach to recognise and solve these problems was more on a needs-based rather than rights-based approach. The need to build human rights capacity of government officials in Viet Nam is in general a crucial and urgent gap to be filled. It is also important to raise awareness of local people about their rights and the process of world heritage so that they could be able to claim for their rights or exercise it along the course.

The introduction of the Policy for the Integration of a Sustainable Development Perspective into the process of the World Heritage Convention³⁸ could be instrumental in addressing human rights needs in the World Heritage sites of Vietnam. The Policy calls State Parties of

³⁸ The policy was adopted by the General Assembly of the States Parties to the Convention at its 20 Session (Paris, 2015), by its Resolution 20 GA 13.

the Convention to adopt a human rights-based approach in the process of nominating and managing world heritage sites. It suggests actions in four areas: “i. Ensure that the full cycle of World Heritage processes from nomination to management is compatible with and supportive of human rights; ii. Adopt a rights-based approach, which promotes World Heritage properties as exemplary places for the application of the highest standards for the respect and realization of human rights; iii. Develop, through equitable participation of concerned people, relevant standards and safeguards, guidance tools and operational mechanisms for assessment, nomination, management, evaluation and reporting processes compatible with an effective rights-based approach for both existing and potential new properties; iv. Promote technical cooperation and capacity-building to ensure effective rights-based approaches.” (pp.7) Taking into account the distance between the international and domestic human rights system in Viet Nam as mentioned in part 3.1, it is essential to provide incentives such as developing tools and model of cooperation for the country to translate the policy into actions.

4.2 Recommendations

At the national level, it is key to raise understanding of the international human rights standards and human rights based approach to decision makers at the central level and professionals at the site level. At the site level, it is crucial to build capacity of the staff to take the approach to implementation – including having access to knowledge and tools to practice. These tools, for instance, could include a safeguarding procedure, a guideline for conducting consultation, and a set of good practices in information disclosure. A communication mechanism should be made available at the national level for people to claim their rights if they feel being violated.

A procedure to assess social impacts of the nomination and management process of a site should be introduced. The procedure could be formed as a set of indicators for safeguarding human rights as a part of the nomination. In line with the Policy for the Integration of a Sustainable Development Perspective into the process of the World Heritage Convention, such procedure is also applicable for existing sites on the frequent reporting exercise. This reporting requirement could be done better at the international level as a reporting requirement of the Convention. However, initiatives could take place at the national level to review some of the key decisions made in light of recommendations from the Committee, such as an impact assessment of relocation programs in Ha Long Bay and other sites.

Given the importance of access to information for meaningful participation, in line with the new Law on Access to Information, good practices in information disclosure regarding the nomination of a world heritage and the management of existing properties should be developed and shared among sites. Analysis from the safeguarding procedure and assessment should be made accessible for the public, including information of human rights risks and mitigations.

Together with information disclosure practices, a procedure to conduct public consultation for decisions made during the nomination and management of sites should be developed. These tools could also be introduced in the development of national policies and legal

framework for the management of world heritage sites, such as the decree on world heritage management and nomination, or in the anticipated revision of the Law on Cultural Heritage. In terms of stakeholder participation, it is essential to encourage the small community of heritage management and human rights professionals to work closely in the development of these tools and policies to identify knowledge gaps and sharing lessons learned.

As this study only a rapid assessment in three sites, more in-depth research is needed in these sites and other sites to better understand how human rights risks developed and how to address them. In a fast pace of economic development, the linkage between development projects in world heritage sites and their impacts on the realisation of human rights needs to be further examined and monitored. While it is challenging to conduct a comprehensive human rights study, it is feasible to examine vulnerabilities of different groups such as people in relocation projects, people affected by land-withdrawal projects, women, children, ethnic minorities and indigenous peoples living in the areas concerned.

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ETHNIC MINORITY RIGHTS AND WORLD HERITAGE IN VIETNAM:

The case of Phong Nha Ke Bang (policy brief)

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Phong Nha Ke Bang is known for its spectacular landscapes and caves. Whereas tourism in recent years has boosted the provincial economy, poverty and the neglect of rights of the very people living in the heart of the World Heritage site remain important challenges. Land, resource and property rights

remain a significant concern. World Heritage processes have encouraged park expansion into and restrictions on customary use areas and livelihoods of highly vulnerable groups, yet also led to significant new “heritage” resource rights given to third parties. While ethnic minorities are requested protect sites and facilitate tourism, they have yet to equitably involved in governance and benefit-sharing arrangements. Given the strong provincial emphasis on securing equitable development, a comprehensive rights-based approach in line with the Vietnamese constitution is urgently needed.

Phong Nha Ke Bang is known for its spectacular landscapes and caves. What is less understood concerns the vulnerabilities and rights of the ethnic minorities in the area. Whereas tourism in recent years has boosted the provincial economy, poverty and the neglect of rights among the very people living in the heart of the World Heritage site remain important challenges.

Land, resource and property rights

Allocation processes within the national park and its buffer zone have been slow and face major limitations. World Heritage zone only covers some 0.16 % of the whole park and is limited to the main agricultural designation has intensified processes of park expansion into and restrictions on customary use areas of highly vulnerable groups, yet also led to significant new “heritage” resource rights given to third parties. A case in point concerns the Arem, one of Vietnam’s smallest ethnic minority communities in numerical terms, currently confined

POLICY MESSAGE

The neglect of customary rights in World Heritage site of Phong Nha Ke Bang are undermining the customary livelihoods, tenure security and cultural survival of some of the most vulnerable ethnic minority communities in Vietnam. Land and resource rights appear biased towards statutory property rights and a run to develop new business rights vs. a human rights approach that would take into account the specific vulnerability and customary resource rights of ethnic minorities. There is an urgent need to recognize customary resource, livelihood and benefit-sharing rights as a fundamental governance approach for building equitable development in the area.

to a small resettlement area in the Southernmost part of the park. As hunter-gatherers indigenous to the area, their customary lands extend over large parts of the core zone. For a long time rights were neglected and park authorities sought to work around the issues through lands in the resettlement area and many old fallow lands now “belong to the park”. informal acceptance and subsidy schemes. A recently delineated “inner bufferzone” (2015) represents a first step to recognize community rights of the Arem within the park, yet does not reflect local needs and customary rights. Covering some 200 ha, forest land is limited to 41 ha for the whole community, whereas shifting cultivation amounts to 186 ha (PNKB Management Board 2015). The inner buffer

Core customary use areas involve a much larger and extensive area of the cave systems, fallows and forest areas, which are yet to be

adequately mapped out and age complex, where customary forest use areas important for gathering forest products, intangible cultural values and other purposes remain unrecognized. Of particular concern, are the customary forest areas of the Ruc, Sach and MaCoong. Whereas project support has led to community forest land allocation outside the park, recognized areas are relatively small, closed off for use and correspond to less than 10 % of the park area rather than creating a viable forest space for sustainable use. In contrast, World Heritage has led to an explosion of both state-run and private tourism initiatives granted access and exploitation rights to the very caves and forest areas increasingly closed off for customary use. Land and resource rights appear biased towards statutory property rights and a run to develop and new business rights vs. a human rights approach that would take into account the specific vulnerability and customary resource rights.

Given the strong provincial emphasis on securing equitable development practice benefiting local communities, there is an urgent need to revisit how customary land and resource use rights can be recognized in the Phong Nha Ke Bang area.

Livelihood rights and right to development

Despite growing incomes from more than 3 million tourists coming to Quang Binh in 2014 (estimated to increase by 25 %), poverty levels among the ethnic minorities living in or near the World Heritage remain alarmingly high. Restrictive special use forest regulations have put significant limitations to customary livelihoods, a process intensified, yet overlooked, by World Heritage recommendations. Poorly adapted development projects and subsidy schemes have not compensated for undermined livelihood security and rights to

development. Customary livelihoods are perceived as unsustainable, hindering more culturally sensitive and ecologically relevant approaches. There is an urgent recognized. Similar infringements have taken place in relation to other ethnic minority communities of the World Heritage need to recognize customary livelihood rights as a fundamental strength for building sustainable development in line with the Vietnamese constitution to counter discrimination and promote mutual development. The issue of benefit-sharing has become a burning issue as business operations around World Heritage status have increased. A common narrative suggests the “trickling down” of benefits. Our research found a systematic neglect of hiring local ethnic minorities in tourism operations, while on the other hand, promoting ethnic minority villages as a tourism attraction. Whereas guides and companies aim generally offer gifts and left-overs to communities encountered, this cannot be considered an equitable approach to benefit-sharing. While ethnic minorities are being requested to take further part in protecting sites and facilitating tourism access, they have yet to equitably involved in tourism governance and benefit-sharing arrangements other than as exotic attractions on the trail.

Indigenous, ethnic minority and cultural rights

Cultural diversity is receiving growing attention from the management board and provincial authorities. Still, there is a lack of a systematic approach to cultural diversity and the specific vulnerabilities of ethnic minorities under immediate threat. The cultural significance of the World Heritage property in terms of sacred sites, historical sites and customary use areas is not being recognized beyond a narrow set of settlement areas. There is today a stark contrast between the tourism economy and the cave discovery boom and the customary use of caves by ethnic minorities, whose customary rights to use these are being neglected. The strictly protected zones are limited to eco-tourism activities, cave discovery etc. completely ignoring the cultural use of the area and the rights of traditional stewards in taking part in decision-making process about their current use and development. The cultural diversity is at risk due to immediate threats of language loss, negative effects of development projects and misguided tourism expansion. The transformation of settlement areas, among the Arem and Ruc, into tourism sites presents an immediate threat of turning communities into a living museum unless sensitive approaches. A rights-based approach to culture is now critical to secure long-term sustainable solutions that build on indigenous knowledge systems and practices.

Rights to participation, consultation and consent

Phong Nha Ke Bang is illustrative of several planning processes employing some level of “participation” in design and implementation of activities including provincial experiments with implementing Free Prior and Informed Consent (FPIC). Still, many approaches in practice, have been limited to organized information sessions after decisions have been made. In particular, the World Heritage designation process, park expansion and re-nomination process cannot be said to qualify as a transparent and equitable consent-based process. While FPIC was sought applied in Quang Binh through GIZ-supported activities, it ended up being implemented as a kind of planning instrument for already allocated community forestry land rather than reflecting a rights-based approach as such.

Overall, research also revealed a top-down approach to regulation building and significant levels of “dis-informed” consent about the role and importance of community forests. World Heritage processes have led to considerable growth of management institutions and human resources. Whereas there has been some basic data gathering on socio-economic indicators, critical vulnerability and rights dimensions have been overlooked. Furthermore, opportunities to test new community-driven approaches are yet to be sought implemented at an appropriate scale.

There is a common emphasis on co- management understood as cooperation between government agencies rather than creating space for engagement with communities. Participation in management is limited to temporary forest protection contracts and an overall call for people to take part in forest protection. Important opportunities include community zoning, management and consultation mechanisms under the umbrella framework of World Heritage management. There is an urgent need to institutionalize consultation and participation mechanisms in planning, management and implementation modalities. This being said, there has over the years been a wide interest among PNKB management authorities to explore alternative zoning and management arrangements. This is not only supported under the World Heritage convention, but is being actively encouraged in the new Sustainable Development policy, which encourages “equitable governance arrangements, collaborative management systems and, when appropriate, redress mechanisms;” Given the role, discussed above, in terms of World Heritage-triggered processes, exploring new co-management arrangements could be a way forward.

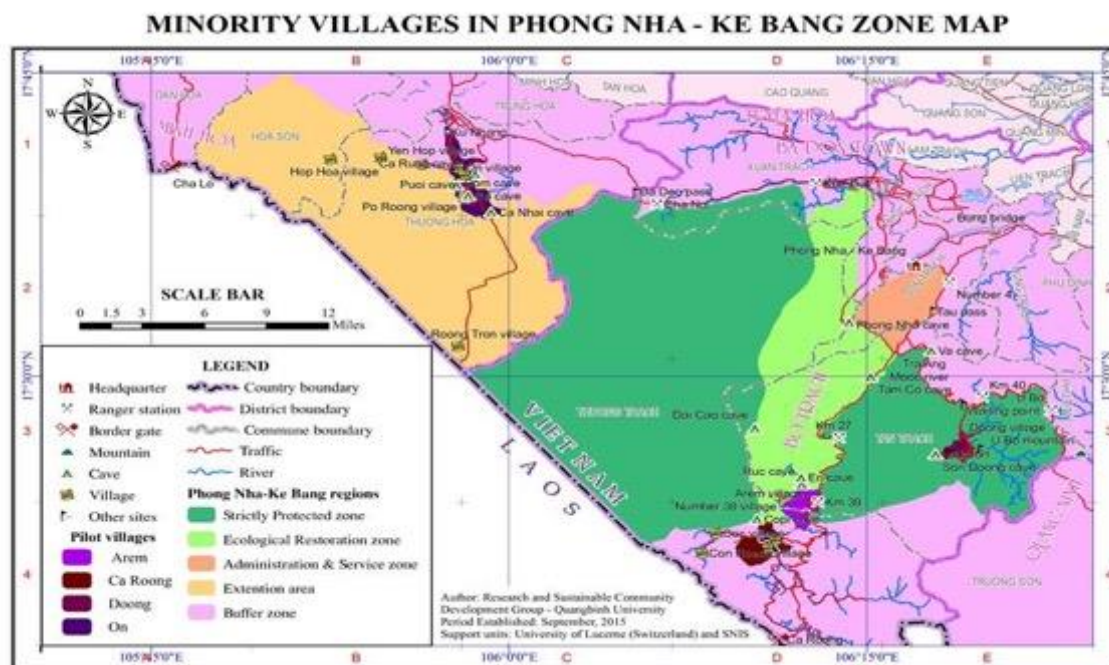


Figure 1 Map of ethnic minority communities taking part in pilot cultural mapping activity undertaken with Quang Binh University (Source: GIS Unit, QBU)

KEY QUESTIONS

Primary forest or cultural landscapes?

The figure of 84 % primary forest cover in PNKB is being continuously reproduced in official documents, yet is hardly realistic given the significance of historical and contemporary use of the forest landscape. The negative effect of this myth of pristine forest cover, however, has been the systematic neglect of significant transformations across the PNKB landscape and the right of communities to take part in decision-making.

From discovery to recognition

Recent histories of cave “discovery” and intensive tourism development have systematically neglected and ignored the long- standing cultural use, significance and customary stewardship by ethnic minorities in the area. The effects have been immediate in terms of closed access, no influence over use and the control of tourism by outside agencies (whether public or private). There is an urgent need for provincial authorities to recognize customary use and stewardship and explore alternative management and benefit-sharing models.

Indigenous ethnic minorities

There is a strong local concept of indigeneness in terms of Quang Binh ethnic minorities having i) ancestral presence ii) distinct cultures and livelihood practices and therefore iii) entitled to particular rights. Ethnic minorities are repeatedly described as indigenous to the area, and there is a clear sense of recognizing longstanding use, knowledge, settlement areas and practices. Forest guard stations and management have implemented informal responses often recognizing the importance of customary livelihoods. Future steps could involve a systematic approach to recognize and support ethnic minorities in the area building on lessons learned from the implementation of ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples in terms of recognizing customary rights.

From management perspectives, these include the situation of the Lam Xon in the Dong Doong community. While they equally live within the core zone and the same commune as the Arem, their rights remain unsettled. Further attention also needs to be drawn to the customary use rights of the Ma Coong in Thuong Trach commune (Bo Trach district), as well as the customary relationships of the Ruc, May, Khua and Sach in Minh Hoa district.

POLICY IMPLICATIONS RESEARCH

The neglect of customary rights in World Heritage processes are undermining customary livelihood and tenure security of some of the most vulnerable ethnic minority communities in Vietnam. Reaping few of the new heritage-derived benefits and business opportunities, management authorities are increasingly facing the challenge of reversing trends of cultural loss, marginalization and deepening inequalities.

Concrete steps towards a rights-based approach are needed for planning, management and remedial measures. Whereas some rights issues experienced predate UNESCO listing, it is clear that World Heritage processes have deepened the social deficit. Ethnic minorities, particularly those indigenous to the Phong Nha Ke Bang area, have borne the costs of protected area expansion and stricter conservation measures without reaping any of the new benefits emerging from World Heritage designation. Over the years, provincial and park authorities have sought in various ways to reach out through subsidy mechanisms, infrastructure development and awareness raising. It is now particularly important and urgent to reach out to the most vulnerable groups, recognize their customary rights and apply concrete measures to mitigate the rights deficit ranging from land, resource and livelihood rights issues towards more equitable participation and governance mechanisms. This is particularly true for small ethnic minority groups like the Ruc and the Arem, whose very cultural survival is under severe threat. Unless immediate action is undertaken to create adequate conditions to protect their customary lands and livelihoods, support culturally sensitive development policy and practice, the living cultural heritage con

Further Reading

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UNESCO Phong Nha Ke Bang World Heritage site:

<http://whc.unesco.org/en/list/951> World Heritage Outlook:

<http://www.worldheritageoutlook.iucn.org/search-sites/-/wdpaid/en/900883> Phong Nha Ke

Bang World Heritage web-site: <http://phongnhakebang.vn/vi> Project web-site for updates:

<http://projects.snis.ch/rights-world-heritage-system/>

QUANG BINH UNIVERSITY CULTURAL MAPPING PILOT EXPERIENCE IN PHONG NHA KE BANG: A BRIEF OVERVIEW

I. General introduction:

As part of the cooperative effort with the University of Lucerne, Quang Binh university faculty and students undertook pilot cultural mapping efforts in the Phong Nha Ke Ka Bang area.

Phong Nha - Ke Bang has not only the extraordinary value of geology, geomorphology and biodiversity but also the awesome culture of ethnic minority groups. It is inhabited by Kinh, Bru-Van Kieu and Chut ethnic minorities. Bru - Van Kieu ethnic include Van Kieu, Tri, Khua, Ma Coong groups; Chut ethnic communities include the Sach, May, Ruc, Arem, Ma Lieng. Chut and Bru - Van Kieu people with many special culture characteristics. Among minority ethnics, Van Kieu people are the most populous. In contrast, Arem and Ruc population have the smallest minority populations of our country. Regarding residential locality, ethnic groups are scattered, relatively isolated in the valleys besides rivers and streams, close to the rich water resources and favorable fertile land in the green immense forest of Phong Nha - Ke Bang national park. Most of the residents live in the buffer zone, apart from a small group of Van Kieu ethnic (Doong hamlet – Tan Trach commune) and the Arem ethnic group reside in the core area.

Each ethnic group has a particular movement history and hamlet formation in the area. They have separate characteristics in terms of the source, origin, culture embodied in customs, habits, and production activities under the "mode of economic activity by milpa cultivation, hunting and gathering "[1] which is still kept up to date.

Overall, the two ethnic groups of the Bru - Van Kieu and Chut reflect cultural diversity – this should be taken into account in the conservation and promotion of nature, and the outstanding values of the world natural heritage Phong Nha – Ke Bang national park. However, information, and data on these ethnic groups remain very modest on the website of the Phong Nha – Ke Bang

national park. The value of geology, geomorphology and biodiversity can be exploited and preserved better when the the humanistic value of the residents in these ethnic minority areas are considered. Because more than anyone, they themselves - the owners of the land with the local knowledge and their traditions are the real special cultural inhabitants, which should be preserved and promoted in parallel with the natural values of Phong Nha – Ke Bang.

II. Research Methods

1. Document analysis

2. Community-based research, fieldwork with community applying PRA method and semi-structured interview:

2.1. Getting to know and meet people who have important positions in the community.

2.2. Field work with locals using GPS to position landmarks, marking living areas. Exchange, in-depth interview with locals about the history, the legends, customs, habits associated with objects, geography phenomena or culture, local language in the GPS data collected places. The research process was initiated with a pilot process in the Doong hamlet (Tan Trach commune), then the researchers were divided into 03 small groups to work independently in 03 hamlets: Ca Roong, Arem and On. Researchers included both lecturers and students.

2.3. Meeting locals: After collecting data, making surveys, and interviewing with residents and building local cultural maps, the researchers conducted meetings to explore and verify information in the native community.

2.4. Establish local cultural map with community involvement.

III. Timing and field of the study:

1. Duration: Period from Feb 25 until May 30, 2015

2. Location: The Doong hamlet (Tan Trach commune, Bo Trach district) - a pilot study. See Arem (Tan Trach, Bo Trach district), the Ca Roong hamlet (Thuong Trach commune, Bo Trach district), On hamlet (Thuong Hoa commune, Minh Hoa district).

IV. Results:

Implementing the research plans in the hamlets, the research team of Quang Binh University obtained the following results:

1. Pilot database to build a GPS map of the local culture:

The team has gathered initial data in terms of spatial data and attributes of all 04 hamlets:

a. The spatial data on natural conditions (topography, rivers, lakes, forests, ...); on the economic - social – cultural conditions (hamlets boundary, the boundary of the spiritual area, living areas, ghost forests, the sacred forests, livelihood areas, population distribution, etc).

b. The spatial data on the movement history of the hamlets from 1945 up to now.

Based on data collected during field work, the team conducted data verification and normalization in separate classes, which will be convenient for management and using.

c. Additional data associated with spatial data included legends, stories, regarding the sites, lands, rivers, mountains, rocky valleys, waters, trees, sacred forests, ghost forests together with media images (video clips, images), sounds (clips, recordings) and writing (taking notes). This led to fairly detailed descriptions of the geographical position, movement history of the hamlets, the as well as the volatility of livelihood in the process of moving. The customs, traditions, festivals, site names connected legends, lores are compelling and exciting stories.

2. Export data, editing of the map:

Basing on proven, standardized data, and linking spatial, attribute data, study group edited 01 location maps of the hamlets in Phong Nha - Ke Bang. For the Ca Roong, the Doong, the Arem hamlet, each has 01 general geography maps, 01 livelihood area map. These maps are edited in 02 version (in both Vietnamese and English).

3. The full report

A report was prepared offering an overview about the cultural diversity of some ethnics in Phong Nha - Ke Bang region. Descriptions included natural conditions, economic - cultural – social conditions of the studied hamlets. Using

thoroughly information sources from the survey, field-work process so that the full report would provide the readers with an overview of the cultural diversity in the hamlets visited. They have their own unique characteristics, distinct identity of roots, origins, cultural characteristics evident through their customs, habits and production activities. Moreover, the full text also allows readers to have quite detailed insight into local culture, land and residents in every hamlet. The natural conditions, natural resources as well as reveal distinct identities, but many common traits among the cultures of Bru – Van Kieu and Chut. What different in this report compared to other articles or other studies published in other media is an attempt represent more comprehensive issues.

4. Some issues drawn from the research results:

4.1. With the gained results and the linking data, we may have a full overview as well as specific knowledge of each hamlet.

4.2. The complex process of community presence throughout the Phong Nha Ke Bang area and shifting settlement patterns also an interesting story. Today, only elders or the leader of the hamlets know the movement history. The younger generation have poor knowledge of their origin and history, culture in general. The youngsters live according to the practices, customs and festivals just merely like the way the adults in the hamlets do. This is a notable point when implementing culture conservation activities in these hamlets because the profound understanding of origin, culture, etc can enrich the residents' pride, which makes them love more and know how to preserve the cultural beauty of their own hamlets' beauty.

In terms of the mapping work, maps of culturally important places and historical occupation areas remain "work in progress" due to the difficult terrain, limited resources and deep forest topography. Some positions need further verification. For example: Since 1945 for example, the Arem have lived and moved through several areas currently not immediately visible. More work is urgently needed to complement this cultural mapping work both in historical terms (e.g. where they come from before 1945), but also in terms of cultural livelihood practices and traditional collection areas. This would offer an important basis for community-based conservation planning..

PROVINCIAL WORKSHOP:

"The Phong Nha-Ke Bang World Heritage, Opportunities and Challenges for Preserving and Promoting the Cultural Values of Minorities Living in the Heritage Area - Right-based approach"

Summary of workshop report



Figure 2: Provincial workshop on June 29, 2016

This section of the report includes some of the research results and outputs from the first steps of collaboration between the University of Quang Binh (Vietnam) and the University of Lucerne (Switzerland).

This cooperation started in early 2015. Key components of cooperation are (1) to conduct joint-research in the fields of natural and cultural aspects, (2) to support students their professional practice and enhanced solid academy skills (3) jointly publish a working paper, articles from the research findings and co-organise workshop to share, discuss about the results and inform the results to the policy makers. A research team was established in February 2015 to conduct first tasks which were to start documenting and mapping out the cultural geography and cultural landscapes of ethnic minority communities living in the Phong Nha – Ke Bang World Heritage area from a historical perspective with the understanding that dynamics are increasingly deemed important to understand the community and ecological dynamics and the relationship with World Heritage designation. 4 research sites were identified including: Doong village, Arem village, Ca Roong cluster of villages and the Ruc cluster of villages. These 4 sites were selected considering the diversity of ethnic minorities (the Van Kieu, the Arem, the Macong, and the Ruc) who are living in the PNKB region. A meeting was held in June 2015 among the research team members to discuss the preliminary results, draft baselines maps of 4 sites were created which included different cultural, historical, and resource related features. Cultural values and challenges were also studied and presented in a preliminary report.

A national workshop on “Understanding rights-based approaches in World Heritage” was co-organised in Hanoi, Vietnam by the Vietnam Academy of Social Sciences, UNESCO

Vietnam, UNESCO National Committee and the University of Lucerne (Switzerland) in November 2015 (see separate summary chapter).

In order to promote reflection around the field results of the research team, a provincial workshop took place on 26 June 2016 at the University of Quang Binh province, Vietnam. This workshop was co-organised by the University Quang Binh (Vietnam) and the University of Lucerne (Switzerland) together with key provincial actors. The participants of this workshop included governmental institutional departments such as: the Provincial Department of Foreign Affairs, Provincial Border Army, Provincial Department of Forest Protection, National Park authorities, Provincial Committee for Ethnic Minority Affairs, Provincial Department of Culture, Sport and Tourism, Authorities of relevant districts, communes; representatives of ethnic minority groups and village elders, representatives of private sector, researchers and representatives of local media.



Family of Mr. Cao Vên, (the RUC ethnic)

The workshop had 3 main sections including (1) presentations of research results, legislative frameworks related to World Heritage, existing research in the related sites and sub-ethnic groups (2) Presentations of the current status and challenges in protection and promotion of cultural values of the ethnic minority groups living in Phong Nha-Ke Bang National Park and (3) Group discussions and presentations of discussion results.

The participants of the workshop proposed 11 recommendations as the general aspects, 13 recommendations for sustainable activities (such as tourism development) in the areas while the cultural values of the ethnic minority community are need to be respected and preserved; and 4 recommended solutions to strengthen the participatory natural resource management in the areas.

This provincial workshop allowed for the sharing of findings, which were not only important for local decision makers, researchers and local villagers but also provided insights and informed UNESCO and the international World Heritage community in its policy deliberations on how to secure the recognition and respect of rights of indigenous peoples and local communities.

CAUX CALL FOR ACTION ON RIGHTS-BASED APPROACHES IN WORLD HERITAGE

(Caux, Switzerland, January 19, 2016)



The science policy dialogue organised by the project with the participation of researchers, heritage and human rights practitioners generated substantial discussions and a call for action to strengthen equitable approaches to rights in World Heritage processes. The call for action can be accessed [here](#):

We the participants of the international dialogue on «Understanding rights practices in the World Heritage system: lessons from the Asia-Pacific and the global arena» met in Caux, Switzerland from January 18 to 19, 2016. The meeting was organized by the University of Lucerne in cooperation with ICOMOS, ICCROM and IUCN with support from the Swiss Network for International Studies, ICOMOS Norway and the Swiss National Science Foundation.

We recall the outcome and statements of the two Oslo workshops, in 2011 and 2014, on rights-based approaches in the World Heritage system organized by the Common Dignity initiative.

We welcome the recent changes agreed to the Operational Guidelines for the World Heritage Convention (Bonn, 2015) regarding the rights of indigenous peoples, free prior and informed consent and the recognition of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and also the adoption of the Sustainable Development policy³⁹ by the 20th General Assembly of States Parties to the World Heritage Convention (November 2015), requesting *inter alia* States Parties “to uphold, respect and contribute to the implementation of the full range of international human rights standards as a prerequisite for effectively achieving sustainable development”. We note that further specific changes to the Operational Guidelines are contemplated in light of the adoption of the policy to translate the principles of the policy into actual operational procedures.

We note that the Sustainable Development policy requests States Parties “to ensure that the full cycle of World Heritage processes from nomination to management is compatible with and supportive of human rights” and consider this new policy framework a turning point toward building more equitable and effective sustainable conservation and good governance approaches.

We further commend the Sustainable Development policy recommendation to “adopt a rights-based approach, which promotes World Heritage properties as exemplary places for the application of the highest standards for the respect and realization of human rights”.

We acknowledge and welcome the growing interest from Special Procedures of the UN Human Rights Council, in particular the Special Rapporteurs on cultural rights, environment and human rights, and the rights of indigenous peoples, in addressing World Heritage issues.

We welcome the work of the Advisory Bodies (ICCROM, ICOMOS and IUCN) to the World Heritage Committee (hereafter ‘the Committee’) in the past years in jointly addressing the opportunities and challenges of developing more inclusive World Heritage approaches.

Being mindful of the new momentum represented by the above, we presented and discussed case-study research, legislative reviews and the results of national dialogues on human rights and World Heritage conservation from selected countries in the Asia-Pacific region. This research is demonstrating the significance of taking into account local context, rights claims and local values as a starting point for bridging human rights and heritage protection, conservation and management.

We recognize, from the lessons learned at the workshop, that challenges in respecting and supporting the rights of indigenous peoples and local communities and other groups in the World Heritage context, at the national level, include inadequate legal frameworks, under-resourced institutions, lack of awareness among government officials, communities and organizations, lack of participation and monitoring mechanisms and processes:

Our meeting confirmed the need for, and feasibility of, strengthening the World Heritage system by ensuring its full compatibility and compliance with human rights obligations. In

³⁹The full title is «Policy for the integration of a sustainable development perspective into the processes of the World Heritage Convention » hereafter listed as the “Sustainable Development policy”.

the interest of operationalizing the human rights aspects of the UNESCO Sustainable Development policy:

1. We encourage the Committee, the Advisory Bodies and States Parties to build a common language and conceptual framework aimed at fully implementing human rights, taking into consideration claims made in local contexts, and in accordance with recognized international standards.
2. We recommend States Parties adopt systematic and comprehensive legislative frameworks, approaches and policies recognizing the needs and rights of people and groups on topics such as benefit-sharing, participation, livelihoods and culture, taking into account their vulnerabilities and capacity for resilience.
3. We recommend the Committee and the World Heritage Advisory Bodies devise mechanisms to address these issues across the World Heritage cycle, including upstream processes providing early advice on nominations, periodic reporting by States Parties on implementation of the Convention and the monitoring and policy mechanisms of the Convention, learning from the best practices of the United Nations and regional human rights implementation mechanisms.
4. We recommend the Committee, the Advisory Bodies, UNESCO and the States Parties comply with international human rights standards when reviewing the processes of nomination and states of conservation. We further recommend they advance a heritage nomination and conservation approach that is fully supportive of the rights of people and relevant communities, that empowers them as legitimate stewards of heritage, and that supports their lives and cultures as part of excellence in heritage management.
5. We encourage the World Heritage Centre and the World Heritage Advisory Bodies to build capacity in the field of rights-based approaches to the nomination and conservation of World Heritage sites, including through the development of guidelines, training activities and educational awareness materials on key topics and mechanisms, such as Free Prior and Informed Consent. It is also necessary to develop guidance on how to deal with local contexts where the legacy of past injustices may have created suspicion and reluctance with regard to World Heritage nomination and management processes.
6. We strongly encourage the use of a human rights-based framework in World Heritage processes involving third parties such as NGOs, the private sector and public-private partnerships.
7. We recommend engaging with rights-holders and local authorities in devising community-driven and holistic management approaches to World Heritage properties bridging nature and culture as well as tangible and intangible heritage even in the absence of enabling legal frameworks.
8. We underline the importance of inclusive approaches, notably with regards to indigenous peoples, ethnic minorities, women, youth and disadvantaged groups living within, in the vicinity of, or with links to World Heritage sites.

9. We encourage civil society organizations to engage with the World Heritage system for strengthening the management of the properties and implementation of the Convention.
10. We further encourage States parties, Advisory Bodies, technical and research institutions, and other interested partners to continue the process of giving full effect to human rights and sustainability standards, *inter alia*, by actively fostering research, dialogue, cooperation, pilot projects and studies in order to further advance rights within the World Heritage processes.