

# Understanding Rights Practices in the World Heritage System: Lessons from the Asia Pacific

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## **Final Report: Executive Summary**



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## Abstract

This research project sought to identify major factors shaping, preventing or enhancing the implementation of rights-based approaches in the World Heritage system in general and in the Asia-Pacific regions in particular. It combines analysis and case-studies of World Heritage sites and legal frameworks in Australia, Nepal, Philippines and Vietnam together with analysis of global policies and decision-making processes. Undertaken in partnership with ICOMOS and IUCN, two Advisory Bodies to the World Heritage Convention, the research has played a significant role in stimulating debate and generating knowledge about the multi-faceted intersection between human rights and world heritage processes.

Peter Bille Larsen.  
Project coordinator.

# The Executive Summary

## 1. The research plan

### 1.1. Introduction

This research project is about generating a better understanding of the intersection between World Heritage and Human Rights with a focus on the Asia Pacific region and global level processes. It involved an international research team composed of anthropologists, legal scholars, architects and heritage practitioners. The research team<sup>1</sup>, coordinated from the University of Lucerne, involved researchers from Vietnam Academic of Social Sciences, Kathmandu University, Norwegian Technical University, Deakin University, Quang Binh University, University of Sydney and the University of Queensland as well as independent scholars from the region. It was undertaken in close partnership with the International Council on Monuments and Sites (ICOMOS) and the International Union for the Conservation of Nature (IUCN) as well engaging with institutional representatives from UNESCO, the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) and the Office of the High Commissioner on Human Rights. The team consisted of a part-time coordinator position in Lucerne, two student assistants and national teams of three to four researchers.

### 1.2. Problem statement and research questions

This research project addressed the interface between World Heritage and Human Rights. The World Heritage system concerns cultural and natural heritage around the world considered of outstanding universal value. Spread across 160 countries, more than 1000 “properties” are today recognized as World Heritage. Literature has increasingly pointed to the critical, yet problematic, nature of heritage recognition in relation to human rights concerns. Site recognition may affect communities living within the areas and their human rights in multiple ways. This research complements existing case studies and documentation of rights challenges in specific World Heritage sites (Disko and Tugendhat, 2013) as well as descriptions of the international policy context and its recent evolutions (Oviedo and Puschkarsky, 2012). Whereas both rights and heritage have consensual connotations, the concepts separately and together reveal complexity (Gillespie, 2013, Logan, 2007) involving moving boundaries and contested terrains. The research in response sought to offer further analysis and policy debate to clarify the issues, intersections and rights at stake, conflict areas and implications of implementing a rights-based approach in the UNESCO World Heritage context.

Based on dialogues with IUCN and ICOMOS, key policy actors in the World Heritage system including the “Our Common Dignity initiative” this research partnership was established to encompass both international and national level research and dialogue. At the global level, both the policy dimension and decision-making processes were targeted for further research. At the country level, the Asia-Pacific region was chosen for in-depth analysis given the complexity of the rights and heritage in the region, high population densities and the growing emphasis on heritage making.

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<sup>1</sup> For a full list of team members, see [http://www.snis.ch/project\\_understanding-rights-practices-world-heritage-system-lessons-asia-pacific](http://www.snis.ch/project_understanding-rights-practices-world-heritage-system-lessons-asia-pacific).

**Overall research question:** What are the major factors shaping, preventing or enhancing the implementation of rights-based approaches in the World Heritage system in general and in the Asia-Pacific region in particular?

The overall research question sought to empirically document *significant* factors shaping, hindering or facilitating the articulation of human rights in the World Heritage system at site, country and international levels with a specific focus on the Asia-Pacific region. It was clear from the start that the international convention context – through the World Heritage Convention as well as international human rights standards – raised legal questions, but the ambiguous field between international standards and local practice also prompted attention to a wider set of social and cultural dynamics, an important terrain for anthropological analysis. As a result, we structured research around **three specific research questions:**

1. How are key rights issues being articulated in national and international heritage standards, legislation and policy frameworks and what are the legal implementation factors at different levels preventing or enhancing the realization of rights?
2. What are the socio-cultural values, informal practices and institutional conditions shaping, facilitating or impeding the realization of rights at site, national and international levels?
3. What are the critical needs and opportunities at site, national and international levels for strengthening the realization of rights in the World Heritage system?

Initial arguments considered included that:

- a. Rights performance was likely to be determined by both international and national conditions given the inter-related nature of the World Heritage system.
- b. The articulation of rights involves a negotiated process between authorized heritage and other claims for legitimacy.
- c. Implementation of rights was likely to vary considerably depending on the types of rights and the relative influence of rights-holders to take part in heritage decision-making.
- d. The effectiveness of rights-based approaches was likely to be determined by the extent to which the international system reflects national dynamics and is fully geared to implementation.

### 1.3. Research approach, schedule and methodology

The methodology involved a 2-year research multi-pronged process combining anthropology, heritage studies, legal studies and case-study research culminating in a transdisciplinary policy dialogue held in Switzerland. The multi-pronged approach involved collaborative legal and anthropological research at site, national and international levels. In each country, specific World Heritage sites were chosen for in-depth case-studies combined with interviews of heritage scholars and the organization of national level roundtables or workshops. The latter offered the dual purpose of both sharing intermediate research results to the national policy community as well as offering collective forums to debate about further needs and opportunities in the policy arena. This corresponded to the third methodological leg of the

project namely to stimulate collective deliberations and knowledge production by both policy makers and researchers.

## 2. Results and analysis

The project resulted in comprehensive legal analysis of the four project countries, case studies from four different World Heritage sites and science-policy dialogues at both country and global levels. The first research question sought to understand how rights issues are being articulated in national and international frameworks. Initially coordinated by legal scholars in Switzerland together with legal experts in the four project countries, the analyses, summarized in policy briefs<sup>2</sup> and forthcoming book chapters, offer insights into how rights are being articulated in national and international heritage policy frameworks. From a comparative perspective, the relationship between the human rights and the World Heritage field generally remains poorly articulated in current legal and regulatory frameworks. This is only starting to be clarified in a more systematic and consistent manner. Research, based on historical reviews, and interviews with key actors, confirmed the emergence of World Heritage as a particular governance field largely operating in isolation from wider human rights commitments. Where rights are articulated in a more explicit manner, they largely reflect domestic processes, civil society action and jurisprudence. Whereas later heritage instruments and standards, such as the 2003 Convention on Intangible Heritage, stress human rights compatibility, the World Heritage Convention dating back to 1972 has been somewhat of a “late-comer” to articulate this relationship in an explicit manner. For decades, neither the Convention text, nor later guidance defined social safeguards and standards in relation to human rights despite constitutional commitments of UNESCO. Only recently have rights implications become more recognized with the World Heritage Committee starting to articulate the relationship in more explicit terms through a recently adopted policy<sup>3</sup> and new operational guidance (see discussion further below). This recent shift at the global level is discussed in detail both in legal research (Morawa and Zalazar, forthcoming) as well as collectively by researchers and policy makers (Caux Declaration produced by the research project and referenced in UNESCO debates).

Legal research demonstrated considerable diversity within and among countries. World Heritage specific legislation remains the exception, and thus needs to be understood in diverse sectoral regimes further rendered complex across different jurisdictions as argued and exemplified by the Australian analysis (Boer and Gruber, forthcoming). While the lack of explicit articulation in relation to human rights as such is shared across heritage legal frameworks in all countries studied, they nonetheless differ in terms of how specific rights topics are addressed. There are multiple, yet rarely harmonized, references and commitments to social equity, consultation and participation, which currently frame and contribute towards shaping how rights are articulated in practice. This leads to specific legal implications and opportunities. The analysis of Vietnamese legal frameworks, for example, points to a number gaps and challenges in legal frameworks for both natural and cultural heritage (Nguyen, forthcoming). The Philippines review, for example, notes how the association between heritage and human rights in the management of World Heritage Sites is not obvious yet, despite the existence of a strong legal framework for human rights protection, and of cultural heritage (Malilong and Villanueva, forthcoming). One important finding is the constantly evolving nature of heritage and human rights frameworks in the region. Whereas it is sometimes

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<sup>2</sup> <http://projects.snis.ch/rights-world-heritage-system/policy-briefs/>

<sup>3</sup> [whc.unesco.org/document/139747](http://whc.unesco.org/document/139747)

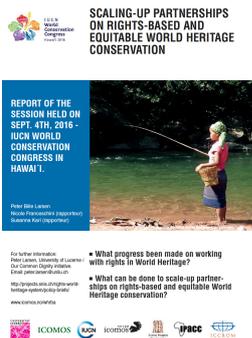
assumed that Asia-Pacific human rights framework remain relatively weak, recent constitutional developments in Vietnam and Nepal (Adhikari, forthcoming) illustrate the changing legal frameworks and opportunities for reworking heritage and rights frameworks. Understanding the heritage and human rights interface is, however, constituted by much more than a legal and technical field. In this respect, analysis of institutional and decision-making processes revealed multiple rights articulations equally shaped by the interface between expert realm, diplomatic process, tourism and infrastructure development.

The second research question precisely sought to determine the socio-cultural values, informal practices and institutional conditions shaping, facilitating or impeding the realization of rights at site, national and international levels. A global level event ethnography of the World Heritage Committee meeting (in Bonn, 2015) was instrumental in shedding light on the multiple ways human rights are spoken about and dealt with in intergovernmental heritage processes (Larsen and Buckley, forthcoming). At the site-level, case-studies of specific World Heritage properties revealed distinct human rights concerns and the kinds of factors shaping their articulation. The case-studies were revelatory, in fact, not just about values, practices and institutional conditions, but equally of broader historical, economic and social conditions at stake. While World Heritage may at times appear as islands of protection, rights articulations are also reflective of wider contextual dynamics. The case study of Vigan, one of the oldest Spanish colonial cities in the Philippines, served to discuss and problematize the development assumptions associated with World Heritage designation (Dürr et al., forthcoming). The historic city is not only considered the best-preserved Spanish colonial city in Asia, but equally in 2012 won UNESCO recognition as „best practice“ for its management. Sara Dürr, Malot Ingols and Bettina Beer interrogate the development narratives and realities of local people touching upon the complexity of social transformation, heritage and change of World Heritage.

Ian Lilley, Kristal Buckley and Helena Kajlich offer an overview of indigenous rights in Australian World Heritage sites and takes us to Fraser Island or *K'gari* as it is known by its Traditional Owners, the Butchulla people, who recently obtained Native Title to the area. Illustrative of the diversity of reconciling indigenous rights, values and World Heritage in Australia, the case-study points to the complexity not merely of recognizing rights, but also of setting-up and connecting management institutions, plans and decision-making responsive to indigenous rights and values. The Vietnamese case study, in turn, of Phong Nha Ke Bang National Park in Vietnam, among other things, served to illustrate the common phenomena of rights being articulated by the sectoral nature conservation regime tending to exclude and alienate customary stewards from heritage arena and their land and resource rights (Larsen, forthcoming). Complementary research and debates including exploring nature culture interlinkages and rights implications together with Quang Binh university.

Rights articulation are not static but emerge and are expressed differently as argued in the Nepali case-study of the Kathmandu valley by Sudarshan Raj Tiwari, Hans Christie Bjonness and Pranita Shrestha (Tiwari et al., forthcoming). The contingent nature of rights articulations was clear both in the theoretical framework as well as the shifting heritage and livelihood realities affected by the earthquake, which shattered the country in 2015. As a result, field research and focus in Nepal, for example, evolved to include a specific focus on World Heritage and rights in post-earthquake situation revealing a socially and culturally differentiated picture of rights and heritage intersections.

In addition to site-level case studies, interviews were also undertaken with national level actors seeking to link local, national and international frameworks. Such findings were important to complement and bridge case-study insights with findings of broader relevance to other World Heritage sites in the country and wider frameworks. A study by Nghiem Hoa, in Vietnam, for example points to a number of important rights concerns identified in a rapid assessment of additional World Heritage sites. Interestingly, there are important parallels and difference among the highly diverse natural and cultural heritage lists that make up the World Heritage list in the respective countries. Furthermore, the Asia-Pacific region as a whole illustrates the diversity and complexity of the intersection ranging from major rights infringements to heritage as a rights instruments and vice-versa.



The third research question concerned the identification of critical needs and opportunities at site, national and international levels for strengthening the realization of rights in the World Heritage system. While difficult to here summarize the multiple opportunities identified<sup>4</sup>, they were summarized in key policy briefs, to stimulate debate both locally and internationally. As the global policy picture evolved during the research process with the adoption of a sustainable development with a strong human rights component (thanks in part to the project contributions), we also sought to adapt the collective research process to reflect these developments. Specifically, we co-organized collective policy debates on implementing the new policy commitments and scaling-up rights-based work.

## 2.1 Results and expectations

Intermediate results in terms of starting a process to identify, document and analyze rights dynamics in both specific sites and international processes was generally perceived as useful among experts, local stakeholders as well as institutional actors involved. Expectations about analysis were largely met at both national and global levels not least given initial worries that perceived sensitivities with the topic could render it difficult to undertake fieldwork on the topic. The results clearly demonstrate the relevance and “do-ability” of targeted analysis to uncover significant rights dynamics not covered by standard assessment and monitoring.

The project also succeeded in facilitating producing academic analysis, which offers a better understanding of the diversity of rights issues in sites and legal frameworks in specific countries as well as that of global processes. Collective analysis and the “Caux call for action” produced by the researchers and partner institutions has been instrumental in framing current policy deliberations to move from overall human rights commitments towards a nuanced approach taking into account socio-cultural diversity and multiple rights concerns. Ethnographic attention to rights dynamics was instrumental in capturing a range of informal dynamics not accessible otherwise. Legal analysis, in turn, offered a particular systematic gaze to review existing policy frameworks and their interrelationship with international standards.

The research process also revealed the complexity of addressing the intersection between heritage and human rights frameworks. As rights dimensions of heritage are only rarely articulated, it sheds light on the complexities of dealing with different institutional, social and

<sup>4</sup> <http://projects.snis.ch/rights-world-heritage-system/policy-briefs/>

political domains both for researchers as well as policy makers. Project team members have on multiple occasions played a broker role by using research results to trigger dialogue and debate. Whereas, we expected to strengthen the comparative dimension on specific rights dimensions to be more straightforward, this remains work to be undertaken notably by putting a stronger emphasis on comparison within each country. The complexities of different legal systems rendered this comparative less evident than initially expected. This being said, the diversity of case studies offered an important basis for contrasting cases and identifying significant drivers of change.

## 2.2. Information regarding the practical application of results;

The relevance of the research results for on-going policy discussions and practical application largely surpassed expectations. There was a genuine interest to learn from and debate the research results at both country and global levels. In Vietnam, policy dialogues organized with where research results were presented mobilized massive interest and co-funding from UNESCO, NGOs, and national media. Agencies in charge of heritage were open to policy findings and informal dialogues were held around possible implications future policy and regulation building. In Nepal, Philippines and Australia, debate among agencies and heritage practitioners was equally fruitful (see relevant policy briefs). At the global level, intermediate findings from research have continuously fed into both policy development and action planning. The research project coordinator was furthermore invited to form part of the UNESCO expert group contributing towards developing a sustainable development policy for the World Heritage convention (adopted in November, 2015). Research team member have equally contributed to training and dialogue processes. The collectively produced “Caux statement and call for action” has been referred to in UNESCO deliberations. The demand was well-beyond the initially planned activities, in part, contributing to a somewhat longer project implementation period, but also multiple follow-up opportunities.

## 2.3 Questions that merit further exploration (scientific, practical, methodological) or that have arisen as a result of the research;

The ambition to clarify the factors shaping rights leaves further work in part shaped by the broadened understanding established through the research, yet also remains work in progress given that it concerns a “moving target” rather than a stabilized field. It was, for example, clear that the policy framework evolved considerably during the research raising new questions about structuring dynamics. If indeed, one considers the full range of social, economic and cultural as well as civil and political rights this raises multiple fields, where further research is merited. The World Heritage field, for the moment, only addresses a small fraction of human rights concerns. Furthermore, there are multiple calls to expand research into other countries from the West Asia (the Middle East), Africa and Latin America and consider additional topics such as high-profile cases of heritage destruction, massive human rights abuses towards addressing rights concepts and dynamics in different cultural and political contexts. On a practical level, there is an expressed need from partners for follow-up activities on the ground in some of the sites as well as at the global policy level. This includes calls for developing further knowledge and training products, which may be used to build the capacity of heritage professionals and community representatives on better understanding and responding to the rights-dimensions of heritage conservation. At the national level, there was a high demand for further further site-level research. While case study research has been undertaken in

complementary processes, notably through or in complement to the Our Common Dignity project, this knowledge continues to remain fragmented. At the global level, there are continuous requests for presentations and training support at both regional and global levels. There are also specific calls for further research into key themes and rights field such as those linked to consultation and consent measures.

## 2.4 Practical and policy recommendations that follow from the results obtained;

Policy recommendations were integrated into the the project design both in terms of outreach to policy makers, engagement and the elaboration of specific policy products. There are multiple recommendations for sites, country level as well as global level processes<sup>5</sup>. At the international level, these are summarized in the “Caux call for action”, whereas they at the site and national level are evident in the respective policy briefs for individual World Heritage sites and legal frameworks. The research partnerships with IUCN and ICOMOS as well as contacts to ICCROM and UNESCO at different levels is now crucial to ensure that research and analysis is mobilized in future policy and programming discussions at both national and global levels. Individual and institutional commitments are important for this to happen. Human rights are rarely priority concerns for countries eager to secure rapid listing, yet resolving them equitably are, on the other hand, a real issue for heritage managers and communities living with heritage and management decisions on an everyday basis.

## 2.5 Information regarding past and expected publications and other activities (articles, books, conferences, workshops, etc.).

The research project has produced both country and global level policy briefs, which are readily available and have been disseminated through international processes. The project team organized one global dialogue on the research topic followed by two well-attended side-events at major international for. The first event, a two-day, science policy interface specifically sought to share policy briefs with the key institutions and actors. The meeting resulted in the “Caux call for action”, which was later referred and used by the World Heritage Committee in its deliberations on rights, communities and sustainability<sup>6</sup>. In addition, side-events were organized at the World Heritage Committee in Turkey and the World Conservation Congress in Hawaii to share research findings and recommendations with both States Parties and civil society. The first side-event specifically involved a global dialogue on the side event focuses on rights-based approaches (RBA) in the sustainable development policy<sup>7</sup>. The second side-event resulted in a dialogue on scaling-up rights-based approaches in World Heritage<sup>8</sup>. In addition, policy-briefs have been shared in a number of additional policy and training venues including Advisory Body action planning, rights-based training undertaken by the Our Common Dignity initiative and training on people-centered approaches by ICCROM. Given the particular timing of the project, there has been and continues to be a high demand for project results among heritage agencies and policy makers. In each country, national level dialogues, roundtables or workshops were organized. Formats varied according to specific opportunities,

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<sup>5</sup> <http://projects.snis.ch/rights-world-heritage-system/policy-briefs/>

<sup>6</sup> Not only is the report available from the World Heritage Centre, [whc.unesco.org/document/139985](http://whc.unesco.org/document/139985), its conclusions have also helped inform background discussions on further planning.

<sup>7</sup> <http://projects.snis.ch/rights-world-heritage-system/2016/07/10/306/>

<sup>8</sup> <http://projects.snis.ch/rights-world-heritage-system/2016/09/26/read-summary-from-scaling-up-rights-workshop/>

given our limited financial capacity. Yet, all led to unveiled significant concerns about rights issues among heritage managers, specialists and community representatives. Finally, a number of further publications of an academic nature are in the pipeline. On the one hand, we are under contract with Earthscan and Routledge to deliver a manuscript with contributions not only from this research project, but equally so with contributions from other colleagues working in the region (Cambodia, China, Malaysia and Myanmar). This volume is expected to offer multiple target audiences, such as students, practitioners and policy makers, insights into the complexity of rights and heritage intersections in the Asia-Pacific and an in-depth assessment of the cultural, political and legal implications raised. We are hoping to use the book launch, also, to organize national and regional follow-up debates. In addition to this key academic output, a number of other academic publications are equally in the making for specific journals and book projects. These will be forwarded to SNIS on a running basis, as they are published.

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