

# TRAINING REPORT

▶ HERITAGE AND RIGHTS

African Regional Pilot Training Course, Ditsong Museum, South Africa,  
13-17 March 2017

Ntsizi November ▶ Department of Environmental Affairs ▶ 3/29/2017



# HERITAGE AND RIGHTS

African Regional Pilot Training Course, Ditsong Museum, South Africa, 13-17 March 2017

## ABOUT THE PILOT TRAINING COURSE

Between 13 and 17 March 2017, about 21 participants from across nine African countries, attended the ground-breaking African Regional pilot training course on heritage and rights that was undertaken within the context of *“Our Common Dignity: Towards a Rights Based Approach”* hosted at Ditsong Cultural History Museum in Pretoria, South Africa. Our Common Dignity initiative was started in 2007 by the International Council for Monuments and Sites (ICOMOS) Norway as a national initiative and was later expanded into an international collaboration with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Advisory Bodies i.e International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), ICOMOS and International Union for Conservation of Nature (IUCN) in 2011 – in close contact and dialogue with the UNESCO World Heritage Centre, in Paris, France. The first pilot training course on the complex topic of Human Rights and Heritage Management for the European Region was in Oslo, Norway in March 2016. The recent African Regional training course that was provided in South Africa, was a follow up and was facilitated by Associate Professor Stener Ekern of the Norwegian Centre for Human Rights based at the University of Oslo in Norway with the support of Peter Larsen, a

lecturer at Lucerne University in Switzerland, Shireen Said, a South African advocate with extensive experience in rights issues acquired while working with the United Nations Development Programme (UNDP), Leburu Andrias from the Indigenous Peoples of Africa Co-ordinating Committee (IPACC) based in Botswana and Ntsizi November from both the Department of Environmental Affairs and ICOMOS South Africa who also project managed the training course. These series of regional training courses are the result of a collaboration between the “heritage world” and the “human rights world”.

## ABOUT PARTICIPANTS TO THE TRAINING



Participants for this particular course came from across the African continent after being recommended by the African World Heritage Fund. More countries were invited, but participants from the following countries were the only ones who made it to the course, namely, Benin, Botswana, Democratic Republic of Congo, Mauritius, Namibia, South Africa, Swaziland, Tanzania, and Zimbabwe.

## THE PRUPOSE OF THE PILOT TRAINING COURSE

The recent African Regional pilot training course on heritage and rights, was a follow up to a

similar course that was offered in Oslo, Norway in March 2016. Broadly, the course covered:

1. General introduction to the International Human Rights System, including its institutions and mechanisms;
2. Specific introduction to relevant Cultural Rights and texts, as well as the UN and UNESCO Institutional Framework;
3. Human rights-based approach planning tools for heritage management; and
4. Discussions of various case studies provided by participants.

### THE PROGRAMME

The training programme lasted for a week that started on the 13<sup>th</sup> ending on the 17<sup>th</sup> March 2017. Four days were dedicated to class learning and one day, that is, a Wednesday was used for a field excursion to Lilieslief Farm, Hector Pieterse Monument and Vilakazi Street in Soweto as well as Constitution Hill. The programme is attached hereunder as Annexure 1.

### SUMMARY OF DAILY LESSONS

#### Day One: Monday

#### Opening and welcome

**Ms Vanessa Bendeman**, Chief Director: Corporate Legal Support and Litigation in the Department of Environmental Affairs, not only welcomed all the participants who attended the course, but also recognized the invaluable contributions of all the partners to the African Regional Pilot Training Course (listed later in this report) for making the event possible. She always extended a warm South African welcome to the course facilitators, especially Professor Stener Ekern and Peter Larsen who travelled all

the way from Europe to share their knowledge with the African continent.

**Advocate Sonwabile Mancotywa**, Chief Executive Officer of the South African National Heritage Council, delivered a welcome speech of the day.

#### Lesson One: Hist/Phil/Pol/Legal Intro to HR and IHRL by Associate Prof Stener Ekern

Prof. Ekern provided a lecture that commenced with a deconstruction of the concept of human rights that compared the English Official Version with the Tzeltal Idiomatic Version by focusing on commonalities and areas of difference of these versions.

According to Prof Ekern, in terms of the *English Official Version*, all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Similarly, the *Tzeltal Idiomatic Version* articulates that all human beings, from the moment they are born, already possess the respect and well-being of the world and have the same understanding of the heart's thinking and desire a great, mutual respect.

The lecture, also clarified that the areas of difference of these versions are on style; concepts used; institutional frameworks, e.g. family and community versus individual and nation-state; and contract-based personal relations versus relation based persons.

In addition to contrasting of the aforementioned concepts, the lecture considered the following three additional definitions relevant to RBA, namely:

- A law-oriented definition: That branch of international law which is concerned with the protection of individuals and groups against violations of their internationally

guaranteed rights, and with the promotion of these rights (Burgenthal 2009)

This was followed by consideration of the *“History of Human Rights”*, whereby Prof Ekern reflected on how the phenomenon acquired its present form. He demonstrated how the concept evolved over time with its roots in antiquity and the enlightenment period up to its modern conceptualization.

The lecture also considered mechanisms used to enforce human rights, such as national and international laws; political and coercive mechanisms; international courts; soft (diplomacy) mechanisms; and individual complaints procedures, among others.

### **Lesson Two: International Human Rights System, UN, OHCHR, UNESCO by Associate Prof Stener Ekern**

This lecture illustrated the United Nation System by providing, first, an overview of the following charter and charter-based bodies:

- The General Assembly
- The Security Council
- The OHCHR
- The ICJ
- Human Rights Council

The lecture also outlined the workings of the Special Procedure or Complaint Procedure, established by the Human Rights Council but operated by the OHCHR. Something to note is its victim-oriented and confidential nature.

The other area the lecture considered is the treaty-monitoring bodies of the UN system which are quasi-judicial bodies receiving “communications” and emitting views. Examples of these bodies are the Human Rights Committee and the Committee on the Rights of Children.

Then the lecture moved to an overview of the relevant cultural human rights. Without limiting the importance of the other rights, for the purpose of this report the right that “everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits” is worth highlighting for an obvious reason.

Prof Ekern, in his lecture, also outlined the specific mechanisms concerning the protection of cultural heritage provided by United Nations Educational, Scientific and Cultural Organisation (UNESCO). Within this context, UNESCO agreements and conventions from 1954 to 2005 were noted, with special reference to the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (popularly known as the World Heritage Convention).

The UNESCO mission and strategic objectives 1,7 and 8 contained in the Medium-Term Strategy of 2014-2021 as well as the UNESCO complaint procedure 104 for dealing with alleged violations of human rights were expatiated upon in detail. It was also noted that Procedure 104 is not a treaty-based mechanism, but a decision of the UNESCO Executive Board.

In light of the fact that human rights occur within the context of the rule of law, various understandings of what the law is, were considered as well. These ranged from an understanding of the law as *“a set of enforceable rules of conduct which set out guidelines for the way individuals and society behave”* to the law as *“that element which binds members of the community together in their adherence to recognised values and standards”*.

A comparative analysis of the sources of law in Norway and South Africa was also provided as well as a reflection on the sources of international law.

### **Lesson Three: Culture and Group Formation by Associate Prof Stener Ekern**

This lecture started by observing cultures as anthropological struggles. In light of this, culture was considered both as “that complex whole” (Boas, ca 1920) and also as “the interpretative turn (ca 1985)” which looked at culture from “shared meaning” to “contested meanings”.

According to Prof Ekern, whatever the cultural stuff is, it can be studied as:

- (a) The representations (emblems, symbols) we use for social navigation, prompting rules of social behaviour; and
- (b) Representations we use for belonging, prompting social affiliation or membership.

The lecture also outlined the levels of meaning and identity of “heritage” which can also be used for determining rights for access, such as:

- Locals;
- Nationals;
- Specialists; and
- Foreigners and general public (universal).

In addition, the lecture provided an understanding of heritage meaning from a top-down perspective (e.g. outstanding value) and bottom-up (collective memory or embodiment of our values).

The lecture concluded with drawing of links between human rights and cultural heritage. This was done through consideration of relevant rights for preserving heritage, such as:

- Freedom of expression (ICCPR 19 & 22)
- Right to education (ICESCR 13)
- Right to participate in cultural life (ICESCR 15)

- Right to protection of artistic, literary and scientific works (ICESCR 15)
- Right to develop a culture (1966 UNESCO Declaration on International Cultural Cooperation; African Charter 22)
- Right to equal enjoyment of common heritage (African Charter 22)
- Right to respect for cultural identity (Algiers Declaration 14)
- .. and 50 more rights ‘with a cultural dimension’

### **Lesson Four: Group Work**

Based on the lessons learnt from the preceding three lectures, participants were grouped into four diverse groups to apply the theory acquired on their prepared individual cases.

#### **Day Two: Tuesday**

### **Lesson Five: Heritage Concept and (Possible) Rights Implications by Peter Larsen**

In this lecture, Peter Larsen observed that in one of the possible ways to accommodate the rights based approach, the Operational Guidelines for the implementation of the World Heritage Convention will need to be amended.

The obligation to promote and protect human rights is addressed in Article 1 of the UNESCO Constitution. In line with this Constitution, UNESCO has committed to the mainstreaming of human rights in its work and has agreed to adopt a human rights based approach to programming.

According to the lecture, to ensure policy coherence in conserving and managing World Heritage properties, State Parties should commit to uphold, respect and contribute the implementation of the full range of international human rights standards as a pre-requisite to effectively achieve sustainable development.

Furthermore, State Parties should also:

- Ensure that the full cycle of World Heritage processes from nomination to management is compatible with and supportive of human rights;
- 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;
- Develop, through equitable participation of concerned people, relevant standards and safeguards, guidance tools and operational mechanism for assessment, nomination, management, evaluation and reporting processes compatible with an effective rights-based approach for both existing and potential new properties;
- Promote technical cooperation and capacity building to ensure effective rights-based approaches.

#### **Lesson Six:** Group Work

#### **Lesson Seven (A): Unpacking the rights package carried by Juristic Persons' in engagements by Ntsizi November (inspired by Leif Wenar's 2005 article on the Nature of Rights)**

According to Ntsizi November, the rationale for this lecture was founded on the need for a proper understanding of the rights package that a juristic person (or representative of a legal entity) carries whenever he/she undertake engagements - more so that heritage practice has a potential to infringe on human rights.

In order to systematically realize the aim of the lecture, a surgical analysis tool, that is, the *Hohfeldian* Incidents Framework was adopted.

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This framework is based on the view that all assertions of rights can be understood in terms of four basic elements, named after Wesley Newcomb Hohfeld and known as the *Hohfeldian* Incidents, that is, privilege, claim, power and immunity.

According to the lecture, *Hohfeld* identified two fundamental rights assertions, which are expressed as follows:

1. "A has a right to *phi*", and
2. "A has a right that B *phi*"

An application of these assertions together with the four *Hohfeldian* Incidents was as follows:

#### The privilege

Starting with the first assertion, "A has a right to *phi*", the word "*phi*" was simplified in the lecture as meaning to "act or perform". According to the lecture, this rights assertion indicates that the person performing this act is given a privilege or liberty or license. For example, an Environmental Management Inspectorate (EMI) in the South African context, has the legal right to confiscate a protected species that a suspect cannot prove its origin. The EMI's having the legal right to confiscate the protected species, implies that he has no legal duty not to confiscate the protected species.

This privilege is, according to the lecture, of the category of a single privilege. What is important about a right that is a single privilege is that it confers to a person an exemption from a general duty. Sustaining this example further, while ordinary citizens have a duty not to confiscate protected species, EMIs have a privilege-right to confiscate illegally acquired protected species.

Some assertions within the form "A has a right to *phi*" can indicate a paired privilege (meaning two privileges in one right). Using the *Hohfeldian* Framework's assertion of rights, this paired privilege is asserted as follows:

“A has a Y right to phi” implies both “A has no Y duty not to phi” and “A has no Y duty to phi.”

A paired right vests the right-holder with both exemption and discretion, or choice, concerning some action.

#### The claim

According to the lecture, another assertion provided by the *Hohfeldian* Framework is that “A has a right that B phi”. This second assertion implies the presence of a duty in the second party with respect to a right held by a right-holder. This observation, highlighted the second *Hohfeldian* Incident known as a claim. This therefore, means that for every right claimed, there is a duty on the second party affected. As an example, your right that I not strike you correlates with my duty not to strike you.

#### The power

In addition to the foregoing, communities and everybody else have the right to alter their privileges and claims, and the right that nobody alters their privileges and claims. According to the *Hohfeldian* model, this is a higher order incident and is known as the power. To have a power is to have the ability within a set of rules to create, waive, or annul some lower order incidents, such as privilege and claim. An example of this right is, in a restaurant you have the customary right (power) to waive your claim to be served a sample of the wine before the bottle is poured, thereby annulling the waiter’s customary duty to serve you this sample. This therefore means that all rights that are power confers authority.

Just like privileges, power can be single and paired. A statutory power to do something is single, but if it gives you the power to waive, it is paired. Rights that are paired powers are thus both authorizing and discretionary.

#### The Immunity

According to the lecture, because powers can range over the rights of others, clearly such powers must not be unlimited. Meaning that, one person will have an immunity whenever another person lacks the ability within a set of rules to change her normative situation in a particular respect. Immunity is the fourth and final *Hohfeldian* Incident. An example of immunity is that, a witness granted a right against prosecution gains an immunity against being indicted for certain crimes.

#### **Lesson Seven (B): ICOMOS and its Ethical Principles by Ntsizi November (on behalf of Benedicte Selfslagh)**

This lecture attempted to provide a generic understanding of ICOMOS as an organisation; what the organisation does; and the ethical principles that inform the conducts of the organisation’s membership.

According to the lecture, the need for the establishment of an organisation such as ICOMOS was considered in 1931, 1957, 1964 before it was established in 1965 in Warsaw. The first task of the founders was to reach out to all regions and cultures in the world. Today, all regions of the world have foot prints of ICOMOS and the next move is to have the organisation be embraced by all cultures, particularly in Africa as it appears more work is still to be done in the region. ICOMOS has about 9000 members, in more than 100 countries (= most accurate figure, from the list of voting members).

Membership in National Committees vary from 10 to more than 500 (Belgium, Australia, United States) and the largest committee is ICOMOS France (1300 members). 30, 50, 100, and 200 are regular sizes for National Committees. With the exception of some larger National Committees,

the majority of them work **with volunteers only** (even in South Africa)

In Belgium, there are 2 subcommittees set up according to the language (Dutch or French) - otherwise members would not understand each other - with a coordination system between the 2. This might be an interesting system for other countries with many languages and cultural diversity.

The system of National Committees is not working well in Africa, but various solutions could be considered:

1. Individuals can still adhere to ICOMOS even when there is no National Committee in their country. All they have to do, is to submit their candidature to the International Secretariat (The Bureau considers those applications). Such members have now voting rights at the ICOMOS international General Assembly: this is a new provision of the Statutes as amended in 2014!
2. There is the possibility to recognise a group of members of neighbouring countries as a transnational committee.
3. The 3rd possibility is to work with a set of 'simplified standardised statutes', and work informally at local level, while being formally recognised at international level.

Apart from National Committees, there are International Scientific Committees (about 28)

- grouping members from all over the world who are experts in a specific domain
- ISCs exist on materials (e.g. wood, earthen architecture), on types of heritage (e.g. underwater cultural heritage, fortresses, shared heritage) and on practices and techniques (e.g. legal and administrative issues,

interpretation, risk-preparedness, training)

In addition, there are Working Groups, such as

- the WG on Syria and Iraq,
- **Our Common Dignity** or RBA!

The lecture also hinted on some ICOMOS activities undertaken at international and national levels as well as by the scientific committees.

Classic organisational structure of ICOMOS that is composed of the following was presented:

- General Assembly + Board
- General Assembly = composed of ICOMOS voting members (from the National Committees and countries where there is no National Committee)
- General Assembly = highest body, it decides on strategic options and elects board (= green arrow)
- Board is accountable to General Assembly (= red arrow)
- Advisory Committee with 2 chambers: the National Committee Presidents, and the ISC Presidents (forming the Scientific Council)
- Advisory provides "advice" to Board and General Assembly
- International Secretariat, based in Paris, provides services to all statutory bodies
- The Board gives main directions to the International Secretariat (green arrow)
- The International Secretariat is accountable to the Board (red arrow)

The presentation concluded with some extracts from the Ethical Principles chosen with regards to the rights based theme.

**Lesson Eight: World Heritage and human rights by Peter Larsen**

The lecture observed that to accommodate the rights based approach, the Operational Guidelines for the implementation of the World Heritage Convention will need to be amended.

The obligation to promote and protect human rights is addressed in Article 1 of the UNESCO Constitution. In line with this Constitution, UNESCO has committed to the mainstreaming of human rights in its work and has agreed to adopt a human rights based approach to programming.

According to the lecture, to ensure policy coherence in conserving and managing World Heritage properties, State Parties should commit to uphold, respect and contribute to the implementation of the full range of international human rights standards as a pre-requisite to effectively achieve sustainable development.

Furthermore, State Parties should also:

- Ensure the full cycle of World Heritage processes from nomination to management to be compatible with and supportive of human rights;
- 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;
- Develop, through equitable participation of concerned people, relevant standards and safeguards, guidance tools and operational mechanism for assessment, nomination, management, evaluation and reporting processes compatible with an effective rights-based approach for both existing and potential new properties;

- Promote technical cooperation and capacity building to ensure effective rights-based approaches.

**Day Three: Wednesday (Field Trip)**

**Lesson Nine: Lielisleaf Farm; Hector Peterson and Vilakazi Street; and Constitution Hill**

Prior to departure, the participants were advised to look for answers to the following questions during the field trip:

1. What rights issues and concerns are raised?
2. How are they being talked about?
3. How are they being dealt with (if at all)?

**Day Four: Thursday**

**Lesson Ten: What is HRBA? RBA, Dilemmas and Opportunities in Heritage Management by Peter Larsen**

The lecture started by raising the following additional questions to the ones raised before the field trip:

- How much can we uncover in a quick visit?
- What may have missed?
- What deserves further attention?
- Who else could – or should – we be talking to?

The lecture attempted to answer the complex question of what a rights-based approach is. In light of this, a rights-based approach was considered, among others, as an approach normatively linked to promoting and protecting human rights; an approach that puts marginalized and vulnerable groups at the core of heritage action; and an approach that contribute to the development of the capacities

of 'duty-bearers' to meet their obligations and of 'rights-holders' to claim their rights.

Based on the afore-mentioned understanding of RBA, the lecture made a statement and asked a question thereafter: "We're already doing it- we just don't call it human rights or rights-based approach: yes or no? The yes response was premised on the difference of language and framing and the no answer was based on persisting inequalities. The neutral answer argued that much is being done, but we can do better.

Thereafter, the lecture demonstrated how the core principles of respect, protect and fulfil human rights could be translated into the heritage arena. For instance, the principle of respect of human rights could be translated as simply avoiding that heritage processes interfere with enjoyment of human rights.

The main question of the lecture was "What will it take to construct a practical RBA approach for a heritage area that makes a difference?"

The CARE's definition of RBA was used to illustrate framing and different operational choices.

According to CARE, a rights-based approach is *"an approach that deliberately and explicitly focuses on people achieving the minimum condition for living with dignity (i.e. achieving their human rights). It does so by exposing the roots of vulnerability and marginalization and expanding the range of responses. It empowers people to claim their rights and fulfil their responsibilities. A rights-based approach recognizes poor, displaced and war-affected people as having inherent rights essential to livelihood security rights that are validated by international law."*

The lecture noted legal approaches (standards of practice); specific working mechanisms; rights-

specific action; and capacity building as operational approaches to actually achieve the RBA.

In addition, a self-assessment tool was introduced to attempt to create an understanding of the rights challenges and opportunities. The assessment raised questions on the problem; the risk, vulnerability; entitlement and what can realistically be done.

The lecture also advised that one of the ways of engaging rights-holders in the process, is by creating enabling conditions for rights-holder engagement.

The lecture also noted that RBA is a reiterative process with opportunities throughout the heritage cycle. However, rights are no panacea, but a different way of working.

The lecture concluding by illustrating how dilemmas are opportunities and opportunities are dilemmas.

### **Lesson Eleven: Learning from RBA in Africa: recent developments by Shireen Said**

Lessons provided by Shireen relating to the RBA, centred on recognition of the indigenous peoples plight in Africa. Examples from Botswana, Republic of Congo, Kenya and South Africa were used.

#### Botswana

In the case of Botswana, the lecture provided a reminder of the official country visit of June 2005 by the African Commission's Working Group on Indigenous Peoples in Africa (Working Group on Indigenous People). Without limiting the significance of other recommendations, the lecture elaborated on the recommendation for adopting a participatory approach when formulating development policies with a bearing on Basarwa having regard to international treaty obligations.

### Congo

In the case of the Republic of Congo, it was noted that in 2011, the country enacted Law No. 5-2011 on the Promotion and Protection of the Rights of Indigenous Populations.

As a result of this law, the Republic of Congo has joined the Central African Republic as the only two countries in Africa to have domestic legislations that specifically protect the rights of indigenous peoples by enacting the new national law on the rights of indigenous peoples in Congo. The law aims to protect the rights of Babongo, Baaka and other indigenous groups by recognizing not only their citizenship, but also the **protection of sites with cultural or spiritual significance for indigenous peoples; and sharing of benefits arising from the use and exploitation of traditional knowledge; among others.**

### Kenya

In the case of Kenya, efforts to address the plight of the Endorois were highlighted in the lecture. The important decision of the African Commission for Human Rights that was taken, at its 46th session, in November 2009, affirming the right of ownership of the Endorois to their ancestral lands around Lake Bogoria, was recalled in this regard.

### South Africa

In the case of South Africa, it was highlighted that the Traditional Authorities Bill, once enacted will for the first time include Khoi-San leadership institutions in the official South African legal system.

### **Lesson Twelve: Okavango Delta experience by Leburu Andrias**

The case of the Okavango Delta, inscribed on the World Heritage list under natural criteria in June 2014, was made by Leburu Andrias. According to Leburu, delta has been inhabited for hundreds of

years by different groups, with the oldest San groups to live in the area being the //Anikhwe and Bugakhwe.

The nominated property incorporates the main Delta and wetland system, as well as the Panhandle of the Okavango River, and the Moremi Game Reserve. Large part of the Ramsar site is incorporated in the buffer zone.

Unfortunately, according to Leburu, motivation for World Heritage status provided no details of cultural assets that exist in the Delta and identity of the custodians of these cultural systems and resources. This led to no reference made as to how the biodiversity knowledge held by the different peoples of the Delta could be effectively used to assist with conservation and wildlife management.

It was noted that throughout the delta nomination process, IPACC tried to advocate for consideration of the cultural assets of the delta on behalf of the indigenous peoples.

In addition to the afore-going, the other key concerns of the indigenous peoples which manifested in the delta were:

- Separation of natural and cultural heritage in policies, legislation, or administrative structures.
- Centralized governance structure that does not respect FPIC of indigenous peoples.
- Management concepts that use a “site-based” approach, where culture and nature are seen as two distinctive elements that are totally isolated from each other.

Leburu also highlighted that, with rapid development and urbanization of Botswana, the younger generations are showing less interest in traditional knowledge and skills, and there is

widespread concern that these practices are slowly disappearing.

As elsewhere in traditional Africa, modes of life in rural Botswana are invariably tied to the land in direct ways, manifesting themselves variously as agropastoralism, hunting and gathering, fishing or combinations of these.

Each mode of life is associated with distinctive practices, technology and cognition of beliefs about environment, all of which have a strong bearing on how the environment is used and managed.

“In mitigation, the State Party continues to engage indigenous peoples and local communities, their traditional leaders and other stakeholders to implement a holistic research programme that can inform whether the cultural components would meet the requirements of World Heritage.”

Para. 81 of the 2008 Operational Guidelines of the WHC states: “Judgments about value attributed to cultural heritage ... may differ from culture to culture ... The respect due to all cultures requires that cultural heritage must be considered and judged primarily within the cultural contexts to which it belongs”.

Leburu noted the opportunities for heritage as the following:

- Need to recognize the cultural heritage of indigenous peoples and local communities within the site.
- Engage them in the management of the site.

“Efforts should centre on ensuring that indigenous peoples living in the property are included in all communication about the World Heritage status of the property and its implications, that their views are respected and

integrated into management planning and implementation.”

### Day Five: Friday

#### **Lesson Thirteen: Group Work: Applying HRBA on our own work and possible action opportunities**

At the end of the course on Friday and also immediately after the conclusion of the training, six written cases that explain the complex relationship of heritage and rights were provided by the participants. A summary of these cases is given hereunder:

1 Spitzkoppe in Namibia, from Helvi Elago. The case illustrates well a number of key conflicts between different actors and different kinds of actors or interests on various levels. And different kinds of objects, too. Not least, Helvi has an interesting story to tell about the difficulties a state agency might run into when implementing a protection programme. She has detailed, firsthand knowledge.

2 Great Zimbabwe in Zimbabwe, from Todini Runganga. Also a very interesting case in which different interests and rights mix. I also get the impression that Todini is capable of delivering an academic and empirically grounded discussion. What I do not know is to what extent studies on this case are already published. It is a famous site. But then Todini might zoom in on one of the various HR issues he mentions, make use of his local knowledge and thus avoid duplication.

3 ‘Human remains’ and ‘trophy heads’, South Africa, by Thabiso Thabathe. An intriguing and very interesting case. It combines a very complex mix of differing rights as well as differing traditions and philosophies or political ontologies. I have never seen this issue discussed before (but then I am still a novice in museology)

so I would absolutely like to see this complex mix being de-mixed, as it were ...

4 Cradle of Humankind, South Africa, by Malebogo Khwinana. Also a good case of rights v rights. I suspect Malegobo also has firsthand experience from the field and can tell an interesting story about negotiations between different landholders and national and international interests.

The other two remaining cases were a bit outside of the theme of focus of the course and thus are not included in this summary.

#### CONCLUDING REMARKS: RECOMMENDATIONS

1. Develop innovative practical steps to follow up on this training course
2. Follow up on case studies presented at the training
3. Compile a list of potential funders for further possible heritage and rights work
4. Foster partnerships and mobilisation of resources for rights and heritage initiatives
5. Promote and encourage networks on rights and heritage
6. Initiate and support student exchange initiatives and programmes
7. Noting that rights and heritage are moving targets and are not absolute, consider integrating alternative dispute resolution (ADR) mechanisms to resolve challenges
8. Design networking webpage, eg facebook, whatsapp, etc, to promote sustained interactions on heritage and rights
9. Investigate linkages with heritage course that was offered in South Africa by the Department of Arts and Culture and the National Heritage Council
10. Investigate inclusion of community representatives in similar future initiatives

11. Encourage sharing of lessons in home countries (each one teach one)
12. Encourage setting up of national chapters of ICOMOS

#### ACKNOWLEDGEMENTS

The efforts of Nicolette Nunes, Ntumba Kongolo, and Nangamso Mbeki in making the success of the pilot training course are acknowledged as well as the support of Ditsong Museum, Lilieslief Farm, Constitution Hill and Hector Pieterse Museum

#### PARTNERS TO THE PILOT TRAINING COURSE

Partners to the pilot training course on heritage and rights were the Department of Environmental Affairs, the International Council on Monuments and Sites (ICOMOS) South Africa, ICOMOS Norway, the African World Heritage Fund, the South African National Heritage Council, and the Norwegian Centre for Human Rights.

#### THE ROLES OF PARTNERS

##### ICOMOS Norway

ICOMOS Norway introduced the possibility of a partnership with ICOMOS South Africa for convening the African Regional pilot training in heritage and rights in South Africa. Towards this partnership, ICOMOS Norway provided seed funding that was mainly used to fly participants from across the African continent.

##### ICOMOS South Africa

ICOMOS South Africa introduced and facilitated partnerships with other partners for the African Regional pilot training course on heritage and rights. This included agreements on which parts

of the logistics each of the partners will readily take up as their responsibility. The organisation also worked with the African World Heritage Fund to identify participants from outside South Africa.

#### National Heritage Council (NHC)

The National Heritage Council arranged for the venue and related catering for the training, as well as organisation of the field excursions to Lielisliel Farm, Hector Pieterse Museum and Vilakazi Street, and Constitution Hill.

#### African World Heritage Fund (AWHF)

The African World Heritage Fund facilitated bookings and paid for flights of participants traveling from outside South Africa. The AWHF will also assist with an audit report of the contribution from ICOMOS Norway that was used to finance the flights of participants.

#### Department of Environmental Affairs

The involvement of the Department to the training course was within the context of an agreement signed on 7 July 2014 on behalf of the Government of South Africa by the Department of Environmental Affairs (DEA) with the African World Heritage Fund (AWHF). The agreement stipulated the annual financial contributions of the DEA to the African World Heritage Fund.

In addition, the agreement also committed the department to annually organize, in partnership with the AWHF two (2) capacity building and awareness activities of Sub-Regional Scope about World Heritage issues in Africa.

Hitherto, one regional workshop on World Heritage Buffer Zones was held at Swadini Forever Resort, Hoedspruit in Mpumalanga Province on 18-20 October 2016. As a result, the recent training became the second capacity building activity to be undertaken by the

department in partnership with the African World Heritage Fund within the context of the aforementioned agreement.

UiO  Norwegian Centre for Human Rights  
University of Oslo



# HERITAGE AND RIGHTS

## Pilot Training Course

13 – 17 March 2017, Pretoria



ICOMOS SA

### *Course Programme*



**INSTRUCTION TO PARTICIPANTS:**

NB. All participants are requested to prepare for discussing challenges and dilemmas in their own daily heritage work. Specifically, you are encouraged to:

- bring specific issues and cases where you deal with social concerns and rights issues in your everyday - or future – (heritage) work. This may relate to specific groups or a particular management aspect or process.
- raise some of the questions, opportunities and challenges you experience and would like to develop further.

NB. We consider the training course a safe space to raise on-going questions and concerns. Please be ready to make a brief (15 min) presentation to introduce colleagues from other countries your (heritage) case. A short power point may be useful.

The idea is ... to empower participants to apply newly acquired theoretical knowledge directly to their work. In this way the course organisers will get a more precise handle on how HRBA will affect heritage work and facilitate in order to develop an ever better tool. This logic will be particularly visible during the last phase of the course when in group work and in plenary sessions the task is to make a summary of "typical dilemmas" in heritage work and reflect on how HRBA will benefit this work.



Monday 13 March	Tuesday 14 March	Wednesday 15 March	Thursday 16 March	Friday 17 March
<b>INTRODUCTION INT. HR SYSTEM, CULTURE, HERITAGE</b>	<b>CULTURE, UNESCO, HERITAGE, ICOMOS</b>	<b>HUMAN RIGHTS-BASED APPROACHES</b>	<b>CASE STUDIES</b>	<b>IMPLEMENTATION</b>
0900: Welcome <i>November, Ekern, Larsen</i> 0910: Introductions <i>(participants)</i> 0940: Hist/Phil/Pol/Legal Intro to HR and IHRL <i>Stener Ekern</i>	The Heritage Concept and (Possible) Rights Implications  <i>Peter Larsen</i>  0900: Group work contnd	Excursion to proposed WH site, Soweto.  09:00 Leaving the Hotel  10:00 Lielisleaf Farm  12:00 Hector Pieterse Museum	0900-1030: What is HRBA? RBA, Dilemmas and Opportunities in Heritage Management RBA and World Heritage: recent developments  <i>Peter Larsen</i>	0900-1030:  Applying HRBA on our own work and possible action opportunities  Individual and group presentations
1045-1100: <i>Short Break</i>	1045-1100: <i>Short Break</i>		10.30-10.45: <i>Short Break</i>	1030-1045: <i>Short Break</i>
1100-1230: International Human Rights System, UN, OHCHR, UNESCO <i>Stener Ekern</i>	1100-1230: Group presentations of cases		1045-1230 (cont.) Learning from RBA in Africa: recent developments <i>Shireen Said</i>	1045-1230: Presenting and discussing next steps by participants
1230-1330: Lunch	1230-1330: Lunch	Lunch @Sakhumzi	1230-1330: Lunch	1230-1330: Lunch
1330: Culture, Group Formation and heritage  <i>Stener Ekern</i>	1330-1500: The Work of ICOMOS Unpacking the rights package carried by Juristic Persons' in engagements <i>Ntsizi November</i>	Constitution Hill	1330-1500: (cont.)  Okavango Delta experience <i>Leburu Andrias</i>	Closing Session & Course Evaluation
1445-1500: <i>Short Break</i>	1500-1515: <i>Short Break</i>	Drive to Pretoria	1500-1515: <i>Short Break</i>	
1500-1600: Group formation and group work	1515-1600: World Heritage and human rights <i>Peter Larsen</i> <i>Intro to field-visit and what to be looking for...</i>		1515-1630: Group work III:  Impact of HRBA on our own work	

**READING MATERIAL:**

**1) General intro to HR:**

Thomas Buergenthal, Dinah Shelton and David P. Stewart: *International Human Rights in a Nutshell*, St. Paul, MN: West Press, 2009, chapters 1-2, pp 1-159.

Heiner Bielefeldt, 'Philosophical and Historical Foundations of Human Rights', in Catarina Krause and Martin Scheinin (eds.), *International Protection of Human Rights: A Textbook*, Åbo Akademi University, 2009, pp 3-18.

The OHCHR webpages: relevant treaties and mechanisms

**(2) About 'culture':**

Thomas Hylland Eriksen, *Ethnicity and Nationalism. Anthropological Perspectives*, London: Pluto Press, 2010, chapters 1-3, pp 1-69.

Jane Cowan, 'Culture and Rights after Culture and Rights', *American Anthropologist*, Vol 108 (1), 2006, pp 9-24.

**(3) About UNESCO:**

The UNESCO Webpages, including:

UNESCO's medium term strategy 2014-2021 (37 C/4)

UNESCO's procedure for dealing with alleged violations of human rights

**(4) About heritage:**

Rodney Harrison (ed.), *Understanding the Politics of Heritage*, Manchester University Press, 2010, Chapter 1: What is Heritage?, pp 5-42.

Janet Blake, *International Cultural Heritage Law*, Oxford University Press, 2015, Chapter 8: Cultural Heritage and Human Rights, pp 271-312.

Report of the Special Rapporteur in the field of cultural rights. A/HRC/31/59 3 February, 2016.

**(5) About ICOMOS**

ICOMOS Ethical Principles

<http://www.icomos.org/en/178-english-categories/news/8716-our-common-dignity-rights-based-approach-13-17-march-2017>

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