Community Rights and Rural Landscape Protection: the Experience of Lahemaa National Park in Estonia

Ave Paulus
ICOMOS Estonia
Cultural heritage specialist in the Environmental Board of Estonia
PhD candidate (University of Tartu, Estonia)
ave.paulus@artun.ee

Aleksei Kelli
Professor of Intellectual Property Law (University of Tartu, Estonia)

Introduction

The system of contemporary cultural heritage protection cannot function without taking into account the rights of heritage communities and heritage creators. The case study aims to address the interaction of rural heritage protection and local community rights. The authors propose a preliminary conceptual framework of rights of local communities in cultural heritage and rural landscapes specifically. The model is exemplified via the specific case of Estonian Lahemaa national park (Lahemaa NP), where cultural and natural heritage are under state protection since 1971. Heritage is embodied there by 72 village communities. Lahemaa National Park Protection rules from 2015 inter alia specify that conservation objective is to protect cultural heritage characteristic of the Northern Estonia, traditional cultural landscapes, sustainable use of environment, agricultural land use and traditional coastal fishing, balanced use of the environment, region-specific settlement structure, farm architecture and folk culture (§ 1.(1)1). It covers the tangible and intangible heritage and cultural landscape protection.¹

One reason to use Lahemaa as an example is that the leading author has participated in the development of the framework of cooperation for all stakeholders in Lahemaa and therefore she has practical insights and experience which can be shared. Lahemaa NP was a pioneer in

¹ Lahemaa NP Protection Rules explanatory memorandum (2015) defines cultural heritage and landscapes in the following way: „Cultural heritage – an environment formed by the interaction of man and nature, characteristic and distinctive tangible and intangible cultural heritage of the region, traditional human activities related to the environment and its expressions in the material heritage and folk culture. Cultural landscape - the landscapes formed by the interaction of man and nature with the natural and cultural values and processes that preserve them“.
Estonia, and five other national parks followed the same pattern of governing, cultural heritage inventories and management of the parks. Lahemaa experience is presented through the proposed legal model. It aims to offer a potential framework for the conceptualisation of community rights.

The following figure visualises the model:

Figure 1. Rights of local community and individuals in cultural heritage protection

The authors demonstrate the procedural and substantive rights of local communities in the cases of protection of rural landscapes of Lahemaa in the field of material heritage (private versus public interests), cultural landscapes (for example nature use rights) and intangible heritage (exclusive rights).

1 Right-holders and nature of rights

The starting point for the creation of the model is the identification of the right-holder. It is also relevant and practical for everyday cooperation as well. On the one hand, we have an individual as the right-holder; on the other hand, we have a community as a collective right-holder. The local community consists of individuals (community members). A crucial issue is how to define community members who have the rights. An approach used in Lahemaa NP case is to identify community member via permanent and actual residency (and/or land ownership) to a specific area, as described in the statutes of Lahemaa NP Cooperation Council (2011).² Community representatives are village elders and other persons elected by the local community members.

Rights of community and individuals have a similar character. By their nature, they are

² The council is a management body.
personal, non-waivable, non-transferable and of unlimited duration. This means they are connected to specific individuals (residents and local communities) and these rights cannot be transferred to third parties. To have these rights, one needs to be a resident or own property in the area in case of Lahemaa. Residents and local communities do not necessarily need to exercise their rights, but they cannot waive them as well. The rights do not have time limits. Both types of rights arise from the enactment of laws and regulations (law says that local community can decide or do certain things), historical tradition (e.g. certain activities such as fishing has been the privilege of local fishermen) and community decision. Rights of locals and community are limited by public and private interests.

2 Rights of the community

The community has a different set of rights. Firstly, the community defines, governs and protects cultural heritage. Secondly, the community has the right to be asked prior to informed consent. The exercise of the right pre requires the existence of several other rights, such as the right to be informed and involved. Thirdly, the community has the exclusive rights to their cultural heritage and intangible heritage.

The Lahemaa community acts through the Lahemaa NP Cooperation Council, which consists of all rights-holders and duty-bearers, as well as voluntary stakeholders and experts. The local community of Lahemaa NP (approx. 10000 landowners and local inhabitants) is represented there via regional groups and village elders. It factually governs and manages Lahemaa NP cultural landscapes.

Different rights of the community are exercised the following way:

(1) constitutive rights: the right to define and preserve the heritage

Participation in different inventories can be used as an example of the exercise of constitutive rights by local communities. During the last decade, there were more than 15000 participants in cultural heritage public activities, workshops, seminars, restoration and educational deeds by members of Lahemaa NP community. More than 100 cultural heritage objects and landscapes were preserved, information boards, routes, books, web-pages were developed.

The following inventories where locals participated can be named on Lahemaa NP cultural heritage (2008-2021): sacred natural sites (2007-2009), architecture (Välja 2010, Hiob 2012), settlement structure (Välja 2010, Hiob 2012), historical land cover (Sepp 2010), architectural contest “21st Century Lahemaa” (2012). The following Lahemaa NP cultural heritage inventories are underway: Memoriscapes (Memoriscapes 2008-2021), traditional agriculture
(Sepp 2019), traditional fishing (Kelli et al. 2019-2020). These inventories were pilot projects in Lahemaa. All other Estonian national parks followed the same pattern.

Lahemaa NP Rules on zoning (Lahemaa National Park Protection Rules 2015) were changed due to local community demand via Cooperation Council meetings and decisions and based on scientific studies (Figure 2), Lahemaa NP Managemen Plan 2016-2025 as well (2016).

![Lahemaa NP Zoning according to Lahemaa NP Rule 2015.](image)

**Figure 2. Lahemaa NP Zoning according to Lahemaa NP Rule 2015.** Yellow, pink and green - cultural landscapes in different limited management zones where the interaction of man and nature is the primary objective. White – special management zones with natural succession as the primary objective, red – reserves with no access to humans.

**(2) procedural rights: the right to be informed and the right to be asked free prior informed consent**

The right to be informed and asked informed consent are prerequisites for the exercise of constitutive rights.

The right to be asked a prior free informed consent concerning heritage preservation is the core right held by the community. The exercise of this right requires that the right holder has all the necessary information. If there is not sufficient information needed for decision making, then there can be no informed consent. The consent has to be given freely without any pressure. The model of how to define informed consent can be taken from other fields. For instance, the General Data Protection Regulation (GDPR) defines consent as “any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data.
relating to him or her” (Art. 4 (11)). The burden of proof of the acquisition of consent should be on the duty bearer similarly to data protection law (see GDPR Art. 7 (1)).

Here again, we can rely on the Lahemaa example to explain the involvement of local communities and the right to be asked consent.

The Lahemaa NP Protection Rules (2015) and Management Plan 2016-2025 were drafted together with local communities (5 years, more than 50 meetings, approximately 600 proposals). Due to the involvement of Lahemaa community, the Rules of Lahemaa NP and Management Plan have been changed and have a strong acceptance among local communities as for cultural heritage protection.

Protection of Lahemaa NP settlement structure and architecture were the main themes under discussion in this process. A concise analysis of the state of architecture values was done during the period 2010-2012. Altogether more than 10000 buildings were analysed, 2500 valuable vernacular architecture items listed (e.g., valuable buildings of Soviet period shown in Figure 3). Architectural contest on new building ideas in historical settlements was carried out in 2012-2013 together with the Union of Estonian Architects, universities and locals. During the contest 30 different works were submitted from top architects. Discussions on building regulations took place to cover every single village. Regulations for buildings, made in cooperation with and accepted by the local communities, are stipulated in Lahemaa NP Protection Rules and Management Plan. Lahemaa Architectural Council was formed to deal with more significant architectural issues.
Figure 3. Zoning of Lahemaa NP architecture and settlement structure. Võsu Soviet modernist values – very valuable buildings (red and orange), buildings of milieu value (yellow), destructive reconstructions (purple).

In 2016-2019, there was a legal case Lahemaa landowner versus State (Environmental Board of Estonia) concerning construction requirements. Lahemaa NP Protection rules and Management Plan giving specific protection to Lahemaa village structure were upheld in all court instances up to the Supreme Court of Estonia.

(3) exclusive rights: the rights concerning intangible heritage

The concept of an exclusive right is well known in the field of intellectual property (IP). For instance, according to the Estonian Copyright Act, “an author shall enjoy the exclusive right to use the author’s work in any manner, to authorise or prohibit the use of the work in a similar manner by other persons” (§ 13 (1)). The concept of an exclusive right is slightly different here from IP rights. When economic IP rights are usually transferrable (they can be sold), then exclusive rights in this context are connected to a specific community.

The idea behind the exclusive right is that there could be valuable intangible cultural heritage held by the community of a specific location. Lahemaa NP Protection rules declare that intangible heritage and folk culture of the area are under state protection (§ 1.(1)1). The issue here is the question of who should benefit from it. The authors are aware that the community’s exclusive rights cannot ignore intellectual property laws. However, the existing intangible heritage is often digitised or materialised, relying on public finances. The financing body can foresee specific licensing schemes giving preference to local community.

We can use the pioneering project titled „Lahemaa memory scapes” as an example (Lahemaa memory scapes 2007-2021). It is a large scale inventory of traditional folklore and culture of 72 villages. During the project thousands of written stories and photos were collected, hundreds of movies with locals made, web maps on national parks memory spaces was made, local folklore and books and brochures on the cultural heritage of villages were published, information boards were made. In the period 2008-2012 the Environmental Board and Estonian Literary Museum were leading the process, from 2014 onwards local communities organise and

---

3 Lahemaa NP Protection Rules explanatory memorandum defines folk culture as “a comprehensive set of intangible heritage based on traditions, including expressions such as language, folklore, music, dance, folk art, ethnographic crafts and other types of traditional culture, as well as community activities, rituals and festive events. Folk culture is made up of cultural phenomena that are unique to the area, as well as cultural phenomena that have arisen and have been despised for three generations”.
direct the process. The scientific institutions and experts are involved only as partners. Local communities were given exclusive rights to use these materials.\(^4\) The inventory is very popular among locals – web-page, maps, books, information boards, and so forth are made during the process as well as workshops and maintenance works for keeping “their own” heritage. In all other national parks of Estonia, the same inventory has been done, and the results are seen in the national parks’ memory scapes web map.

Another and more complex issue concerns the introduction of a specific right protecting traditional knowledge, which is being targeted in the process of rights of heritage communities. This issue is not dealt within the framework of this article.

3 Rights of the individual community members

Local individuals have the right to participate in cultural life, the right to enjoy the property and the right to resource use (land and nature). Due to the general nature of cultural and property rights, reasons of space and focus of the paper, the authors do not address them here.

The authors’ focus is on the right to use of specific natural resources. The idea behind these rights is that local community members should have priority to use local resources. The objects of these rights are outlined as follows:

**Traditional fishing.** One possible approach to support traditional coastal fishing in Lahemaa is to introduce traditional fishing rights for permanent residents of traditional fishing villages. The legal mechanism to protect traditional fishing tradition is to adopt the regulation in Lahemaa NP protection rules. Currently, an analysis is underway. The first results are expected at the beginning of 2020. The analysis concerns the definition of traditional fishing, its values and protection measures, local fishers as right holders, legal implementation of the fishing rights. The research relies on comparative examples (models in other countries) of fishing or from other fields. The aim is to propose and test potential solutions for Lahemaa NP which can later be extended to other Estonian national parks.

**Traditional land use and pasture lands.** The main protection aim of cultural landscapes in the limited management zone (see Figure 2) is the protection of the traditional interaction of nature and man. The Environmental Board of Estonia has commissioned an analysis of historical land use and cover of Lahemaa NP (see Sepp et al., 2010). The analysis period covers

\(^4\) There are myriad of issues here which need to be addressed. For instance, when the right to use intangible heritage is given to the community then the question arises who exactly is entitled to exercise the right. However, due to reasons of space they are not addressed here.
150-200 years. Measures of protection proposed by the inventory suggest that open landscapes should be kept open, but former agricultural landscapes not in use anymore should not be restored. It is about 9000 hectares of former traditional pasture lands (see Figure 3) now in covered with forest mainly for political reasons (Figure 3). During the work of Lahemaa NP Cooperation Council on the management plan, locals made a strong stand to have a possibility to restore traditional agricultural landscapes, where there are no specific natural values and is the will of the owners/locals. It was discussed, and the outcome of the discussion is written in the management plan: previous open landscapes that are overgrown can be restored by the initiative of locals based on the inventory of natural values. There are financial mechanisms and EU subsidies for restoring seminatural habitats (traditional pasture lands). Currently, another analysis of the protection measures of traditional agriculture is underway.

Figure 4. Lahemaa land cover analysis. Yellow - open traditional pasture lands in 1971 and 2010

Traditional forestry. Lahemaa NP Cooperation Council has worked on that subject for some years. There is a considerable difference as to the qualitative or economic approach. The former should be promoted and in favour of local villagers. The main aims are: (1) local villagers must have historical rights of working in the state forests in their community lands; (2) promotion of traditional forest work with horses and qualitative approach; (3) financial support for such „handicraft“ forest work (that is of great use for other traditional handicrafts – boat building, traditional log houses and so forth). The problem of prioritising locals in state nature protection works and forest works is not yet solved. The impact of forest cuts in Lahemaa NP is seen in Figure 5.

---

5 There are relating to equal treatment in public procurement law and so forth which are not discussed here.
4 Conclusions

The authors present a preliminary model for the conceptualisation of community rights of cultural heritage protection. The model provides a theoretical framework to systematically map and develop further the system of cultural heritage protection. The case of Lahemaa is used to provide concrete examples and test the model. Lahemaa NP rural landscapes management process throughout last decade is an excellent example to show the procedural and substantive rights of local communities in the cases of protection of material heritage, cultural landscapes and intangible heritage. Lahemaa NP is pioneering in taking into account local community rights, analogous rights and procedures are now implemented in all Estonian national parks via same mechanisms: cooperation councils, legislation, management plans and scientific inventories.
References:


