

SARAWAK HERITAGE SOCIETY

The comments presented below should be read as initial and non-exhaustive comments by the Sarawak Heritage Society on the proposed Bill as circulated for tabling at the November 2019 Session of the Sarawak State legislative Assembly.

SARAWAK HERITAGE BILL 2019

Review and Discussion

1. **Overall institutional set up for heritage management**

The Bill reflects a choice of keeping the overall responsibility and management of Sarawak cultural heritage (museums and out-of-Museum heritage) under the Sarawak Museum Department (SMD).

This contrasts with the set-up which SHS had advocated to the Sarawak Government: an institutional delineation between museums management and out-of-museum heritage management, with a suggestion to set up two separate boards, each led by a director or commissioner.

Based on the observation that the current set up has led to a strong unbalance in favour of the management of Museum related activities, SHS foresees a risk of continuance of such imbalance, in particular with the high Operation and Maintenance load generated by the New Sarawak Museum Campus.

If heritage management comes under the Sarawak Museum Department (SMD), the core question that remains is : will the SMD be adequately resourced - in terms of finance, organization structure, skilled human resource to carry out both museum management and heritage management? The present situation where heritage issues are not well addressed is a direct consequence of SMD not having adequate resources and therefore only able to support key museum functions.

2. The **main innovations** introduced by the bill appear to be (i) the setting up of a Heritage Council; (ii) the setting up of a Heritage Trust Fund; (iii) a widening of scope to include intangible and underwater heritage; (iv) updated provisions on the registration of heritage assets. The Bill also introduces an option for the Sarawak Museum Department to appoint agents to manage museum facilities or declared historical sites/monuments.

3. Sarawak Heritage Council (SHC)

SHS sees this as a positive step in view of overseeing heritage management as a whole, and poised to move towards a long-term state where the SHC can take on the responsibility of “Telling the Sarawak Story”.

However, in this respect, there are several ambiguities in the Bill. For one, SHC’s powers, and the relationship of the SHC and the SMD administration do not appear to be clearly stated. Will the SHC have a dedicated support administration with human resource commensurate with its mandates? What “teeth” does SHC really have? The Bill does not state desired outputs or performance indicators.

SHS’s initial understanding is that the Council is to be essentially an advisory committee with no executive powers, presumably meeting a few times a year. If so, it is likely to be challenging for SHC to deliver on its mandates, such as policy and strategy advice to the Government, public engagement, preparation, adoption and implementation of management plans.

4. Heritage Trust Fund

Similar questions arise on the proposed Heritage Trust Fund and its governance, in particular the linkage with the SHC and with the SMD administration: it is unclear who manages the Sarawak Heritage Trust Fund – SHC or Director, SMD? The areas that the Trust Fund can or cannot be applied to is also not set forth.

SHS’s understanding is that this would be specified in forthcoming Rules.

5. Heritage Register

In a positive step, the Bill makes way for a **unified Register** to replace the two concepts of ‘Register’ and ‘Schedule’ of the current ordinance.

The **rationale of the categories of ‘antiquities’ and ‘heritage’** proposed by the bill (age and the existence or not of documentation) is however debatable. It is disconnected with the opportunity to categorize items in relation to their intrinsic importance and thus the levels of protection they warrant.

Other points:

. The **SMD, and the Minister** (in case of appeal) appear to be the **sole decision makers on registration**. There doesn’t appear to be provisions for the Heritage Council to handle inputs on heritage items from the community, e.g. provisions for nomination or heritage assets by the public, as observable in many countries. This would have been welcome.

. **Increased free access by the public to the Register** through publication on the web (except, understandably, for a limited range of national/State security-sensitive registered items) would be desirable.

. **Registration of heritage items and land titles:** The Bill reiterates that preservation notices/orders issued with respect heritage-registered items “have effect of a special condition of land title” (sections 33.3, 41.6, 51.3). There may remain a need to ensure that the Director of Lands and Survey is bound to inscribe the special condition in the land registry for the concerned title.

. **The intention appears to be that gazetting is a condition of effectiveness of the registration.** If this understanding is correct, it would have been worthwhile to make this requirement explicit. On this aspect, the need, as SHS understands it, for any publication in the Gazette to be approved by cabinet may continue to be a handicap to timely registering, as the experience of gazetting under the current ordinance has shown (no items appear to have been gazetted since the coming into operation of the ordinance in 1993).

6. **Integration of heritage management into the urban planning system and development applications process**

An important issue of the past has been the disconnect between heritage management and Sarawak’s planning system and regulations. Heritage management entities need to have a say in the development of urban/rural planning policies, strategies and plans and in the processing of development applications involving registered heritage assets. SHS notes the Sarawak Museum Director is to “advise and co-ordinate with the local planning authority the Council and other bodies at all levels” To ensure effectiveness, this may need to be stated reciprocally in the regulations on development planning.

In this respect, **legislation on heritage management ought to provide for mandatory Heritage Impact Assessments** whenever development permits are applied to in heritage sensitive settings. The drafting of the Bill appears to have missed out this important tool, which has been increasingly adopted in other countries.

Also, an overall **clause requiring the Lands and Surveys and the State Planning Authority to give effect to provisions of preservation notices or orders** would have been welcomed (such provision seems to appear in the bill for one specific case: the refusal, by the Minister, of permits to carry out prohibited acts - Section 36.3.b).

7. **Museums Management**

The introduction of an option to **appoint Managing Agent(s)** by SMD seem to **suggest that outsourcing will be a key strategy** going forward, in particular for the new Sarawak Museum Campus. Outsourcing can indeed help complement Government management capacity. The perimeter of the functions to be outsourced (“non-core” activities like security, cleaning, waste collection, souvenir shops, etc., or inclusion of “core” activities like curation, research, exhibit management, planning etc.), the procurement system,

the contract terms and performance monitoring need to be defined very carefully using lessons learnt from elsewhere. This will probably generate a large workload for the SMD in the short term, which SHS hopes will not jeopardise the operationalization of the provisions on out-of-museum heritage management.

8. **Intangible heritage**

Intangible heritage is an important part of Sarawak's cultural heritage but there are hardly any provisions directing its management in the Bill.

9. **Registration of, and trade in antiquities.**

The Bill reproduces more or less provisions of the current ordinance. Some of them, such as the compulsory registration of any antiquity more than 50 years by non natives, or the requirement for antiquity dealers to submit listing of stock inventories and updates thereof appear highly constraining, with little benefit to the Government, and are very likely to remain barely enforceable.

10. **Penalties**

Several clauses that mention fines, jail term and other penalties seem to be replicated from the current ordinance. They could have warranted reviews and updates to ensure overall consistency with the severity of the offences.

11. **Exemptions**

Section 78, which provides room for discretionary exemptions to any provision of the ordinance, appears also replicated from the current ordinance. This clause is highly questionable and may affect the overall credibility of the ordinance.

12. **Overall coherence**

A number of concepts, definitions and areas/provisions remain unclear, overlapping or duplicative. Some of the concepts such as 'antiquities' have in many countries been replaced by more modern vocabulary. More streamlining would have been welcome for clarity and to favour understanding of the intentions of the legislator. Examples: clause 40 and 46; or several apparently overlapping clauses on appeal.

