

# OAS Project for Enhancing the Socio-Economic Impact of Cultural Heritage in the Caribbean

## Component 2 – Heritage Legislation

### DEVELOPING NATIONAL HERITAGE LEGISLATION: DISCUSSION PAPER

December 15, 2015

**Introduction.** This paper has been prepared as the basis for discussion on developing national heritage legislation for the nations of the Eastern Caribbean. It sets forth a framework for consideration of the issues at the upcoming meeting on January 18-19, 2016 in Barbados.

An effective national program for heritage conservation must be founded on a sound legal basis. This is most commonly found in a comprehensive national law that prescribes the scope of heritage assets recognized in the program, a variety of tools to protect and enhance the resources, and an administrative structure to carry out the provisions of the law. National heritage laws have become widespread and, understandably, vary significantly in scope, complexity, and impact. However, there are common elements that can be found in all effective programs that should be included in any national legislative framework.

When looking for models for the nations of the Eastern Caribbean, countries that share the English common law heritage and governmental precedents are the primary candidates. In adapting their laws and administrative systems, though, it is important to acknowledge the dramatic differences in the size of the nations, the extent and nature of their patrimony, and, perhaps most importantly, the governmental capacity to administer heritage laws and programs. For example, while Great Britain, Canada, Australia, South Africa, and the United States have highly-developed preservation systems, it must be recognized that they embrace vast expanses of territory with hundreds of thousands, indeed millions, of historic places and apply their legal protections and incentives through multiple layers of government supported by substantial public funding and bureaucratic structures.

Nevertheless, the principal elements of these programs do provide useful guidance to developing national legislation on a smaller scale, tailored to local needs and capabilities. This discussion draft identifies those elements, offers commentary, and poses questions on considerations for their effective use.

**Overview on a national heritage law.** At the outset, it is important to define the scope of the legal tools under consideration. Heritage is a broad topic and its conservation takes many forms. Art, music, food, literature, dance, and traditional lifeways are essential manifestations of a nation's heritage as are the built and natural environments that are often inextricably intertwined with culture, tradition, and religion. For the purposes of the current project, heritage is defined as the immovable physical aspects of a nation's culture and history. Museum

objects and collections and movable tangible heritage warrant different treatment for the most part, as do the arts and other cultural expressions that are not place-based.

That is not to say that intangible heritage should be excluded from consideration. On the contrary, it plays an important role when intangible values are associated with a site or a place. For example, in the United States, the cultural importance Native Americans ascribe to a mountain or a lake may pertain to traditional religious practices and beliefs, so that the recognition and protection of that place must include those intangible values. Legal systems can and should recognize the intangible dimensions of significance in order to fully assess and protect the values of a historic place.

Examining the laws of other nations pertaining to the immovable cultural heritage, there are a number of common elements that emerge. They are designed to provide specific functionality for a national heritage program, although precisely how they achieve that must necessarily vary on the circumstances of each particular nation. Governmental organization, political tradition and realities, social structure, economics, and legal heritage, in constitution, legislation, and judicial interpretation, all shape the laws and their implementation.

There are also international standards for cultural heritage programs. They include a variety of conventions, charters, and declarations. While not binding (unless a nation is party to a convention), they do set forth a variety of “best practices” to which a national program might aspire. They include UNESCO conventions and recommendations along with doctrinal documents adopted by the International Council of Monuments and Sites (ICOMOS). These documents are listed in the appendix with links to their text. It should be noted that there are also a host of similar documents adopted on a regional basis, the European Union being an excellent example.

**Key features of a national heritage law.** The following listing provides a topical outline for a national heritage law. It forms the outline for the substance of this discussion paper, which will elaborate on the specifics of each topical area.

1. *Statement of policy and purpose.*
2. *Definitions.*
3. *Heritage authority.*
4. *Heritage register.*
5. *Protective process.*
6. *Financial assistance.*
7. *Management of publicly-owned heritage sites.*
8. *Management of other government-owned historic properties.*
9. *Government agency programs.*
10. *Authority for regional and local government programs.*
11. *Archaeological resource protection.*
12. *Emergency situations.*
13. *World Heritage Convention participation.*

14. *Public and stakeholder engagement.*
15. *Private law authorizations.*
16. *Creation of non-profit preservation entities.*

**Developing guidance for legislation.** This section examines each of the foregoing areas and poses comments and questions for discussion at the Barbados meeting. Addressing them will provide direction for the further development of legislative recommendations, adapting international models to the specific needs of Caribbean nations. The answers to these questions should inform the consultants as to local conditions that would influence the utility of various legislative components. They should not be looked at as all-inclusive but rather as a stimulus to and guide for further discussion and analysis. There are obviously many more specific questions and issues for each topic. The goal of the upcoming meeting is to deal with the more important directional issues, recognizing that each area will receive much more detailed and in-depth examination as the project moves forward.

*Statement of policy and purpose.* This provides the policy underpinnings for a national heritage program and is useful in discerning the intent behind specific provisions. The statement or statements should reflect the views of the state as the value of its heritage and the goals it wishes to achieve in its preservation program.

-What special considerations regarding policy may be found in the nations of the region?

*Definitions.* These are essential to the application and interpretation of the substantive provisions of the legislation. Key items, such as historic or heritage property, have fairly consistent definitions in national laws, but some nations have terminology unique to their jurisdiction.

-Are there special terms that should be addressed for the host countries?

*Heritage authority.* A central authority administers the provisions of the heritage legislation. This can take many forms, influenced by the nature of the program, the national political structure, and available resources. Sometimes it may be an independent heritage agency; often it may be part of a larger cultural agency or ministry or a parks authority. Alternatively, a quasi-governmental national trust may be given the powers of a heritage agency.

-What are the factors that would influence the selection of a model in the host countries?

-Are there government constructs that have been particularly effective or ineffective?

*Heritage register.* A comprehensive list of properties that are subject to the protective and assistance provisions of the legislation is foundational. There are many basic questions to be addressed in establishing the legal framework for a register.

- What is the scope of the register and what qualifies for listing?
- What are the criteria for listing, ranging from definitions of significance to standards of integrity or authenticity?
- What is the administrative process for designation?
- How are property owners and the public engaged in the designation process?

*Protective process.* A primary purpose of national heritage legislation is to protect recognized historic properties from harm. The nature and extent of protections can vary greatly and be administered by different levels of government.

- Does the protective process at the national level have a counterpart process at the local or regional level or is it the sole protective process for the nation?
- What is the extent of protection provided?
- What entities and actions are covered by it?
- How is a heritage protection process aligned with or integrated into other planning and environmental protection processes?
- How are private property rights, public interest, and competing government policies accommodated in the process?
- Who administers the process and what is the extent of their authority?
- What legal recourse is there from decisions?

*Financial assistance.* A common feature of national heritage programs is the provision of public financial assistance for preservation of non-publicly owned historic properties. Assistance may range from direct grants to a variety of indirect incentives, usually embodied in tax rules.

- What are the needs for financial assistance?
- What are the budgetary and political realities that shape the prospects of a grant or loan program?
- What might be the sources of funds for grants or loans?
- What tax incentives are viable and likely to be effective given the tax structure of the host nation?

*Management of publicly-owned heritage sites.* Heritage sites managed for preservation and interpretive purposes are usually under the control of a heritage agency or other public organization.

- Is there an existing entity in the host nation that owns and manages heritage sites for conservation purposes?
- What is the best model for the host nation, given governmental structure, financial considerations, and political realities?

*Management of publicly-owned historic properties.* Quite often historic properties are owned by government agencies for mission use, not for preservation per se. They may not be covered

by generally-applicable preservation laws and require special procedures for management and protection.

How much control should a preservation authority have over the management of the property?

How does a preservation system balance agency mission with conservation goals?

*Government agency programs.* The conduct of the wide range of government programs has significant effects on heritage resources and a national law can integrate preservation concerns into their administration. Heritage legislation can encourage those programs to promote preservation goals.

What types of government programs might be covered?

Should legislative provisions offer incentives for activities that further both agency mission and preservation goals?

*Authority for local government programs.* Depending on the national governmental structure, a national heritage law may authorize local or provincial units of government to carry out heritage programs. Alternatively, the national legislation may govern activities at the municipal level.

If the national legislation empowers local government, what should be the content and extent of powers given to local government?

What, if any, national oversight should be exercised?

*Archaeological resource protection.* Archaeological resources present special preservation challenges and often have additional or tailored protective processes in national heritage laws. Underwater resources are a subset of this topic.

Should the process be the same for resources on publicly-owned lands as on private property?

What should be the extent of regulation?

Who owns the artifacts?

*Emergency situations.* Most national laws make special provision for dealing with emergencies and disasters.

Are there special considerations for nations in the region?

*World Heritage Convention participation.* A national heritage law can specify how a nation will participate in the convention and meet obligations as a signatory. This often includes special provisions for the protection of World Heritage Sites, including buffer zones.

Is this kind of legislation relevant to nations in the region?

*Public and stakeholder engagement.* The participation of individuals and entities with a direct interest in decisions affecting historic properties is an essential element of heritage legislation in a democracy. A national heritage law should provide for appropriate disclosure of information on heritage resources and actions affecting them and establish procedures for public and stakeholder participation in preservation processes.

What should be the extent of this participation?

What are the national norms for public participation in host nations?

*Private law authorizations.* National legislation may provide specific authority for such protective legal techniques that are created by agreement among private parties, such as conservation easements and restrictive covenants.

Are these kinds of legal tools used in nations in the region?

Does current law adequately support their use?

*Creation of non-profit preservation entities.* Authority for a national non-profit organization, often a National Trust, is often found in national heritage legislation. The nature and authority of such bodies can vary significantly. Examples do exist in the region, such as the Barbados National Trust.

Are there features unique to the region that should be considered in a national heritage law?

**Conclusion.** The foregoing discussion is not exhaustive, but hopefully will guide a constructive dialogue on the development of suggestions for heritage legislation. It would be useful for participants to identify further questions on the topics that they believe need to be addressed at the initial discussion.

## **APPENDIX: INTERNATIONAL CONVENTIONS, CHARTERS, AND OTHER DOCTRINAL DOCUMENTS ON CULTURAL HERITAGE**

The following are links to key documents regarding international standards and guidance for cultural heritage protection and management. These links are live in the electronic document.

### **UNESCO Documents**

[Recommendation on the Historic Urban Landscape, including a glossary of definitions](#)  
10 November 2011

[Convention on the Protection and Promotion of the Diversity of Cultural Expressions](#)  
Paris, 20 October 2005

[Convention for the Safeguarding of the Intangible Cultural Heritage](#)  
Paris, 17 October 2003

[UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage](#)  
17 October 2003

[Convention on the Protection of the Underwater Cultural Heritage](#)  
Paris, 2 November 2001

[UNESCO Universal Declaration on Cultural Diversity](#)  
2 November 2001

[Recommendation on the Safeguarding of Traditional Culture and Folklore](#)  
15 November 1989

[Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas](#)  
26 November 1976

[Convention concerning the Protection of the World Cultural and Natural Heritage](#)

Paris, 16 November 1972

[Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property](#)

Paris, 14 November 1970

[Convention for the Protection of Cultural Property in the Event of an Armed Conflict](#)

The Hague, 14 May 1954

**ICOMOS Documents**

- Joint ICOMOS – TICCIH Principles for the Conservation of Industrial Heritage Sites, Structures, Areas and Landscapes - 2011
- The Valletta Principles for the Safeguarding and Management of Historic Cities, Towns and Urban Areas - 2011
- ICOMOS Charter on the Interpretation and Presentation of Cultural Heritage Sites - 2008
- ICOMOS Charter on Cultural Routes – 2008
- Charter on the Built Vernacular Heritage - 1999
- International Cultural Tourism Charter - Managing Tourism at Places of Heritage Significance - 1999
- Charter on the Protection and Management of the Underwater Cultural Heritage - 1996
- Charter for the Protection and Management of the Archaeological Heritage - 1990
- Charter for the Conservation of Historic Towns and Urban Areas (***The Washington Charter***) - 1987
- The Australia ICOMOS Charter for the Conservation of Places of Cultural Significance - (***The Burra Charter***) (Australia ICOMOS) – 1981
- Historic Gardens (***The Florence Charter***) - 1981
- International Charter for the Conservation and Restoration of Monuments and Sites (***The Venice Charter***) - 1964

