

# International Council on Monuments and Sites (ICOMOS)

## FEEDBACK ON WORLD BANK DRAFT ENVIRONMENTAL AND SOCIAL FRAMEWORK

**DRAFT FOR CONSULTATION JULY 30, 2014**

### Environmental and Social Standard 8. Cultural Heritage

#### Introduction

1. ESS 8 recognizes the importance of cultural heritage for current and future generations, as a source of valuable scientific and historical information, as an asset for economic and social development, and as an integral part of people's cultural identity, practices and continuity. ESS 8 aims to ensure that the Borrower protects cultural heritage throughout the life of the project, and does not introduce any new risks to cultural heritage.
2. ESS 8 recognizes the importance of respecting national and international laws and regulations relating to cultural heritage, including those laws and regulations that relate to the cultural heritage of Indigenous Peoples.

#### Objectives

- To protect cultural heritage from the adverse impacts of project activities and support its preservation.
- To ~~address~~ incorporate cultural heritage as an integral aspect of sustainable development.
- To promote the equitable sharing of benefits from the use of cultural heritage.

#### Scope of Application

3. The application of this ESS is established when any project located in, or in the vicinity of, a cultural heritage site officially recognized by the borrower as local or national cultural heritage, through previous documentation, or law or otherwise during the environmental and social assessment described in ESS1 or during stakeholder consultations described in ESS 10.<sup>1</sup>
4. The term "cultural heritage" includes movable or immovable objects, structures and features, structures, groups of structures, and natural features and landscapes (whether designed, evolved or associative) that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural significance. These features may be located in urban or rural settings, and may be above or below ground, or under water. ~~resources which people identify, independently of ownership, as a reflection and expression of their constantly evolving values,~~

**Commented [1]:** Should this be 'officially recognized by the borrower' – what if they don't officially recognize it?

<sup>1</sup> ESS8 also applies to projects specifically designed to support the management or conservation of cultural heritage.

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~~beliefs, knowledge and traditions.~~ Cultural heritage may be valued at the local, regional or national level, or within the international community. The term cultural heritage shall include intangible forms of culture, such as cultural knowledge, innovations, and practices of distinct cultural communities, under the circumstances otherwise provided for herein.

5. ESS 8 applies to projects that are likely to have adverse impacts on cultural heritage. Notwithstanding this, ESS 8 will always apply when the relevant project:

- (a) Involves construction, demolition, renovation, blasting, excavation or movement of earth, modification of the ground surface, tunneling, mining, modification of waterways (rivers, streams, etc.) modifications of water run-off, significant excavations, demolition, movement of earth, flooding, fracking or other changes in the physical environment; or
- (b) Is located in, or in the vicinity of, a recognized cultural heritage site.

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6. The requirements of ESS 8 apply to cultural heritage regardless of whether or not it has been legally protected or previously identified or disturbed, nor regardless of its existing condition.

7. Should the requirements of ESS8 differ from the provisions under ESS7 that are applicable to cultural heritage of Indigenous Peoples, the provisions of ESS7 will apply.

**Requirements**

**A. General**

8. The environmental and social assessment, as set out in ESS1, will consider direct, indirect and cumulative project-specific impacts on cultural heritage both short and long term including the life of the project. Through the environmental and social assessment, the Borrower, in consultation with credentialed, accredited and internationally recognized independent cultural heritage experts and, where indicated, disaster management experts specializing in the protection of cultural heritage, will determine whether the proposed activities of the project are in areas where cultural heritage exists, or is likely to exist, or may impact cultural heritage in any way (e.g. structurally, visually, aesthetically, OUV, etc).

9. The Borrower will avoid impacts on cultural heritage. When the Bank and cultural heritage stakeholders agrees with the Borrower's assessment that avoidance of impacts is not possible, the Borrower will identify and implement measures to minimize impacts on cultural heritage that are agreeable with the cultural heritage stakeholders, and Bank, and are in accordance with the mitigation hierarchy. ~~Where appropriate, the~~ Borrower in consultation with credentialed experts in cultural heritage management and preservation, and the stakeholders associated with the cultural heritage site/structure will develop a Cultural Heritage Management Plan.<sup>2</sup> This Plan shall include a disaster

<sup>2</sup> The Cultural Heritage Management Plan will include an implementation timeline and an estimate of resource needs for each mitigation measure. This may be developed as a stand-alone plan or, depending on the nature and the scale of the risks and impacts of the project, be included as part of the ESCP.

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management plan component based on a hazard/risk assessment and integrated into the Cultural Heritage Management Plan.

10. If the environmental and social assessment determines that the project may, at any time during the life of the project, have impacts on cultural heritage, the Borrower will: (a) retain credentialed, accredited and internationally recognized independent cultural heritage and disaster management experts~~competent professionals~~ to assist in the identification and protection of cultural heritage; and (b) ensure that internationally recognized practices for field-based study, documentation and protection of cultural heritage are implemented, including by contractors and other third parties. As part of the internationally recognized practices, the Borrower will develop a chance find procedure<sup>3</sup> for managing chance finds,<sup>4</sup> which will be included in all contracts relating to construction of the project.

11. The Borrower will, on the basis of the consultation with stakeholders described in paragraph ~~14.4~~ below and applicable legal requirements, finance, develop and implement appropriate measures<sup>5</sup> agreed upon by all stakeholders to address impacts on cultural heritage, taking into account the additional requirements set out below for specific categories of cultural heritage.

12. Mitigation measures will be set out in the legal agreement (including the ESCP) and reviewed by the Bank to ensure conformity with the purposes and requirements of this ESS and others referenced herein; if not in conformity, the Bank will require the Borrower as a condition of loan approval to revise the measures to achieve conformity.

#### **B. Identification of Stakeholders and Consultation**

13. The environmental and social assessment will identify all relevant stakeholders for cultural heritage that is known to exist or is likely to be encountered during the life of the project, through the application of ESS10. Stakeholders will include: (a) project-affected communities within the host country who use, or have used within living memory, the cultural heritage for longstanding cultural purposes; (b) relevant national or local regulatory agencies that are entrusted with the protection of cultural heritage; and (c) relevant nongovernmental organizations and experts, including national and international professional and scientific bodies and cultural heritage organizations.

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<sup>3</sup> A chance find procedure is a project-specific procedure that outlines the actions to be taken and the procedures to be followed if previously unknown cultural heritage is encountered. Such procedure will include a requirement to notify relevant competent bodies of found objects or sites; to train project personnel on chance find procedures; to fence off the area of finds to avoid any further disturbance possibility; and to not disturb any chance find further until an assessment by competent professionals is made and actions consistent with the requirements of this ESS and national law are identified. Chance find procedures are an addition to and not a substitute for a comprehensive suite of procedures to protect cultural heritage.

<sup>4</sup> Archaeological material encountered unexpectedly during project construction or operation.

<sup>5</sup> Appropriate mitigation measures include include comprehensive field survey and subsurface sampling (including excavation); systematic data recovery, recording and analysis, chance find procedures; measures for strengthening the capacity of national and subnational institutions responsible for managing cultural heritage affected by the project; establishment of a monitoring system to track the progress and efficacy of these activities; establishment of an implementation schedule and required budget for the identified mitigation measures; and cataloguing of finds.

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14. The Borrower will consult with stakeholders, and encourage them to participate in identifying and assigning value<sup>6</sup> to cultural heritage affected by the project,<sup>7</sup> assessing potential impacts, and exploring avoidance and mitigation options.

**Disclosure and Confidentiality**

15. The Borrower, in consultation with the Bank and credentialed, accredited and internationally recognized independent cultural heritage experts ~~and persons with relevant expertise~~, will determine whether disclosure of information regarding cultural heritage required under the ESSs would compromise or jeopardize the safety or integrity of such cultural heritage. In such cases, sensitive information may be omitted from public disclosure.

**Community Access**

16. Where the Borrower's project site contains cultural heritage or prevents access to previously accessible cultural heritage sites, the Borrower will, based on consultations with users of the site, allow continued access to the cultural site, or will provide an alternative access route acceptable to the stakeholders. Continuing access will be designed taking into account health, safety and security considerations, as well as impacts on the cultural heritage.

**C. Provisions for Specific Types of Cultural Heritage**

**Archaeological Sites and Artefacts**

17. Archaeological sites comprise any combination of structural remains, artifacts and ecological elements. A site may be located entirely beneath, partially above, or entirely above the land or water surface. Most archaeological sites are completely hidden from view. Only very rarely is there no archaeological material in any given area, even if such material is not known to or recognized by local people or recorded by national or international archaeological agencies or organizations. ~~Archaeological sites comprise any combination of structural remains, artifacts and ecological elements. A site may be located entirely beneath, partially above, or entirely above the land or water surface.~~

~~18. Where there is evidence of past human habitation in the area of the project, the Borrower will conduct a surface survey to document, map and investigate archaeological remains.<sup>8</sup> The Borrower will document the location and characteristics of archaeological sites and artifacts discovered during the life the project and provide such documentation to the national or subnational cultural heritage authorities.~~

<sup>6</sup> The value of tangible cultural heritage is identified and assigned significance according to the value systems and interests of affected groups and stakeholders with an interest in the protection and appropriate use of the tangible heritage.

<sup>7</sup> The Borrower will ensure the inclusion and cooperation of the various stakeholders through a dialogue with the appropriate authorities, including the relevant national or local regulatory agencies entrusted with the protection of cultural heritage, as well as credentialed, accredited and internationally recognized independent cultural heritage experts, to establish the most effective means for addressing the views and concerns of the stakeholders and involving them in the protection and management of the cultural heritage.

<sup>8</sup> The Borrower will employ credentialed, accredited and internationally recognized independent cultural heritage experts ~~relevant experts~~ and adopt an appropriate, feasible, cost-effective method.

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We strongly recommend that this section be reworded: It should be standard procedure that inventory and evaluation of cultural resources be integrated into all World Bank projects, and that a mitigation plan be prepared if there is a possibility that such resources might be damaged or destroyed. This should be done for all projects, not just for those in which there is prior evidence of past human habitation in the project area. Such evidence is absent, in many cases, simply because an area has not been surveyed in a way that complies with established archaeological protocols.

Tangible cultural resources are an irreplaceable store of scientific and historical data, the value of which can only be preserved if they are left intact and in context. All tangible cultural resources are not of equal importance; therefore, after a thorough inventory of tangible cultural resources has been conducted and this inventory has been carefully documented, tangible cultural resources should be evaluated in terms of their potential for inscription on the World Heritage List and on registers or gazetteers kept by regional or national cultural management and preservation organizations.

For all projects, therefore, the following should be conducted:

1. Background research: This must include a review of all documents relevant to archaeological resources that might be located in the project area, and interviews with subject matter experts and other groups and individual with a legitimate interest in the material culture, including archaeological resources that might be affected by the proposed project.

2. Inventory: Inventory must be conducted by

a.) Examination and analysis of existing aerial and satellite imagery and the acquisition of other such inventory that might assist in the inventory of archaeological resources and the later evaluation of the significance of these resources.

b.) Examination of the ground surface by pedestrian survey.

c.) Sub-surface sampling of areas where the ground surface is obscured by vegetation. This might include the use of geophysical prospection technologies, such as ground penetrating radar (GPR) or magnetometry.

The above must be conducted in compliance with internationally accepted protocols for such investigations. Among these protocols are found standards for documentation of fieldwork and findings, including cataloging and curation of artifacts, documentation of immovable features, in situ preservation of immovable features, preservation of artifacts that are collected during fieldwork, and reporting standards.

3. Evaluation: Archaeological resources found during inventory must be evaluated in terms of their potential for inscription on the World Heritage List and on registers or gazetteers kept by regional or national cultural management and preservation organizations.

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4. Mitigation: Any possible damage to archaeological resources that are found to be eligible or potentially eligible for inscription on the World Heritage List and on registers or gazetteers kept by regional or national cultural management and preservation organizations must be mitigated by either redesign of the project in ways that prevent such damage, or by complete documentation, which will include comprehensive excavation, of any resource where such redesign is not possible.

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19. In accordance with internationally accepted standards for archaeological heritage management and in consultation with recognized experts in archaeological heritage management, ~~t~~The Borrower will determine if archaeological remains and artifacts discovered during the life of the project require: (a) documentation only; (b) excavation and documentation; or (c) conservation in place; and will manage them accordingly. The Borrower will determine ownership and custodial responsibility for artifacts in accordance with national and subnational law, and will arrange for their identification and storage to enable future study, analysis and publication by experts.

**Cultural heritage Historical Structures and Features**

20. ~~Historic Cultural heritage~~ structures and features are sites, structures, objects and ensembles single or groups of architectural works in their urban or rural setting as evidence of a particular civilization, a significant development or a historic event. Historic structures include single or groups of landmarks, monuments, buildings, structures, open spaces, routes, and corridors within human settlements ~~buildings, structures and open spaces constituting human settlements~~ that are recognized as cohesive and valuable from an architectural, prehistoric, aesthetic, spiritual or contemporary socio-cultural perspective.

21. When the project has an direct impact on ~~single or groups of~~ cultural heritage structures or features, the Borrower will identify appropriate mitigation measures, which may range from documentation, to conservation or rehabilitation in situ, to ~~relocation and conservation or~~ rehabilitation. During any rehabilitation or restoration of cultural heritage structures or features, the Borrower will ensure that the authenticity of form, construction materials and techniques of the structure(s) are maintained, and that no new hazards or risks are introduced either during the rehabilitation work, nor thereafter.<sup>9</sup> This shall be conducted by a recognized disaster management consultant specializing in protection of cultural heritage, and agreed upon by all cultural heritage stakeholders.

22. The Borrower will preserve the physical, spiritual and visual context of ~~individual or groups of historic cultural heritage~~ structures or features by ~~considering the~~ appropriateness siting and effect of project infrastructure and other elements proposed for location within the range of sight.

**Cultural Landscapes including Natural Features with Cultural Significance**

23. Cultural heritage includes cultural landscapes, including designed landscapes created intentionally, organically evolved landscapes either relict or continuing and associative landscapes with powerful

<sup>9</sup> In accordance with applicable national and subnational laws and/or zoning regulations as supplemented by any gap filling measures required hereunder.

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religious, artistic or cultural associations. Cultural landscapes also include historic urban landscapes (HULs).

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26. Natural features may be imbued with cultural heritage significance.<sup>10</sup> Often the designation of cultural significance is kept secret, known only to a specific local population, and associated with ritual activities or events. The sacred character of such heritage may pose a challenge in determining how to avoid or mitigate damage. The value of such heritage may reside in small local groups or minority populations, and be of limited significance beyond the local context.

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~~27-24.~~ The Borrower will identify ~~natural features with cultural heritage significance~~ cultural landscapes affected by the project, the population that values such features, and the individuals or groups with authority to represent and negotiate regarding the location, protection and use of the heritage place(s). ~~The Borrower will determine whether it is possible to transfer the cultural heritage and/or sacred characteristics of a place to another location. If this is the case, the agreement that is reached will respect and enable continuation of the traditional practices associated with such transfer.~~

~~28-25.~~ If the location, characteristics, or traditional use of ~~natural features with cultural heritage significance~~ associative landscapes are held in secret by the affected communities, the Borrower will respect the need for confidentiality.

**Movable Cultural Heritage**

Movable cultural heritage includes such objects as: historic or rare books and manuscripts; paintings, drawings, sculptures, statuettes and carvings; modern or historic religious artifacts; historic costumes, jewelry and textiles; fragments of monuments or historic buildings; archaeological artifacts; and natural history collections such as fossils, bones/skeletons, skins/pelts (including stuffed specimens) shells, flora, or minerals. Discoveries and access resulting from a project may increase the vulnerability of cultural artifacts to theft or abuse.

~~29-26.~~

The Borrower will identify movable cultural heritage objects that may be endangered by the project and make provisions for their protection throughout the life of the project. The Borrower will inform religious or secular authorities or other recognized custodians and experts with responsibility for oversight and protection of the cultural heritage items ~~artifacts~~ of the schedule for project activities and alert them regarding the potential vulnerability of movable cultural heritage ~~artifacts~~. The Borrower will

<sup>10</sup> Examples include sacred hills, mountains, landscapes, streams, rivers, waterfalls, caves and rocks; sacred trees or plants, groves and forests; carvings or paintings on exposed rock faces or in caves; and paleontological deposits of early human, animal or fossilized remains.

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take permanent measures to guard against theft and illegal trafficking of cultural heritage items artifacts affected by the project and will notify relevant authorities of any such activity.

30-27.

**D. Commercialization of Intangible Cultural Heritage**

31-28. Where a project intends to use cultural heritage, including knowledge, innovations or practices of local communities, for commercial purposes, the Borrower will inform the affected communities of: (a) their rights under national law; (b) the scope and nature of the commercial development and the potential impacts; ~~and~~ (c) the potential consequences of such development and impacts, and d) mitigation measures to be put in place by the Borrower to address each of these.

32-29. The Borrower will not proceed with the project unless it: (a) carries out meaningful consultation as described in ESS10; (b) provides for fair and equitable sharing of benefits from commercialization of such cultural heritage, consistent with customs and traditions of the affected communities; and (c) identifies mitigation measures according to the mitigation hierarchy and agrees these with the stakeholders.