

Guidance Note 8 corresponds to Performance Standard 8. Please also refer to Performance Standards 1–7 as well as their corresponding Guidance Notes for additional information. Information on all referenced materials appearing in the text of this Guidance Note can be found in the Bibliography.

Introduction

1. Performance Standard 8 recognizes the importance of cultural heritage for current and future generations. Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage, this Performance Standard aims to ensure that clients protect cultural heritage in the course of their project activities. In addition, the requirements of this Performance Standard on a project's use of cultural heritage are based in part on standards set by the Convention on Biological Diversity.

Objectives

- **To protect cultural heritage from the adverse impacts of project activities and support its preservation.**
- **To promote the equitable sharing of benefits from the use of cultural heritage.**

GN1. The objectives of Performance Standard 8 aim to preserve and protect cultural heritage by avoiding, reducing, restoring, where possible, and in some cases compensating for the adverse impacts that projects might cause to cultural heritage. In addition, private sector projects can play a role in promoting awareness of and appreciation for cultural heritage. Where the project proposes to use the cultural heritage of a community, Performance Standard 8 seeks to ensure that the development benefits accruing from the commercial use of cultural heritage flow equitably to the Affected Communities.

Scope of Application

2. The applicability of this Performance Standard is established during the environmental and social risks and impacts identification process. The implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Environmental and Social Management System (ESMS), the elements of which are outlined in Performance Standard 1. During the project life-cycle, the client will consider potential project impacts to cultural heritage and will apply the provisions of this Performance Standard.

3. For the purposes of this Performance Standard, cultural heritage refers to (i) tangible forms of cultural heritage, such as tangible moveable or immovable objects, property, sites, structures, or groups of structures, having archaeological (prehistoric), paleontological, historical, cultural, artistic, and religious values; (ii) unique natural features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls; and (iii) certain instances of intangible forms of culture that are proposed to be used for commercial purposes, such as cultural knowledge, innovations, and practices of communities embodying traditional lifestyles.

4. Requirements with respect to tangible forms of cultural heritage are contained in paragraphs 6–16. For requirements with respect to specific instances of intangible forms of cultural heritage described in paragraph 3 (iii) see paragraph 16.

5. The requirements of this Performance Standard apply to cultural heritage regardless of whether or not it has been legally protected or previously disturbed. The requirements of this Performance Standard do not apply to cultural heritage of Indigenous Peoples; Performance Standard 7 describes those requirements.

GN2. Tangible cultural heritage is considered a unique and often non-renewable resource that possesses cultural, scientific, spiritual, or religious value and includes moveable or immovable objects, sites, structures, groups of structures, natural features, or landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic, or other cultural value. Further descriptions of different tangible cultural heritage examples are included in Annex A.

GN3. Integration of cultural heritage preservation and protection into the project's assessment process and management systems is essential because damage to cultural heritage can result from activities other than direct excavation or refurbishment of buildings. Some project aspects may also impact cultural heritage in less direct ways, for example, by increasing erosion to a coastal site, or building a road into a previously inaccessible area. Impacts on the natural environment that may affect the sustainability of tangible cultural heritage may require special attention. Impacts on the natural environment may affect the biodiversity or the ecosystem processes that affect things like sacred groves or cultural landscapes. The client should consider these possible impacts and address them through appropriate measures. As per Performance Standard 1, paragraph 7, the "risks and impacts identification process will be based on recent, social, and environmental baseline data at an appropriate level of detail," and when deemed necessary, it should include an adequate pre-project cultural heritage baseline reconnaissance and information gathering process, which could be field- or desk-based depending on the project and likely presence of cultural heritage.

GN4. The screening phase of the risks and impacts identification process should identify the extent and complexity of potential cultural heritage risks and impacts in the project's area of influence (see paragraph 8 of Performance Standard 1). If the screening indicates potential adverse impacts, further analysis will be necessary to ascertain the nature and scale of these impacts and proposed mitigation measures. The breadth, depth, and type of analysis should be proportionate to the nature and scale of the proposed project's potential adverse impacts on cultural heritage resources. Competent professionals should be retained to carry out such analysis as part of the assessment.

GN5. The assessment should generally address potential adverse impacts to cultural heritage and, where possible, opportunities for its enhancement. In cases where cultural heritage is deemed a significant issue, a focused assessment may be necessary even if a full-scale social and environmental impact assessment is not required. The project's Environmental and Social Management System and Management Program as outlined in Performance Standard 1, should reflect identified issues. For ground disturbing projects, depending on the project location, it may be appropriate to develop a chance find procedure that addresses and protects cultural heritage finds made during a project's construction and/or operation phases (see paragraph 8 of Performance Standard 8). Further process guidance on the heritage aspects of the assessment can be found in Annex B.

GN6. Data collection and other assessment studies should be undertaken to avoid, minimize, and mitigate potential project impacts to cultural heritage resources. Sites containing cultural heritage should not be excavated or otherwise disturbed unnecessarily. Best international practice recommends that cultural heritage be left undisturbed if at all possible. If excavation in the course of the project cannot be avoided, competent cultural heritage professionals, local and/or international, should carry out excavations or other activities in accordance with internationally recognized practices.

GN7. When in doubt about whether something is cultural heritage, the client should seek the knowledge and advice of local and/or international competent experts, government authorities, and members of local communities. The knowledge of local communities is particularly important for identifying cultural heritage that may be tied to the natural environment and not evident to outsiders.

GN8. Determining whether knowledge, innovations or practices of commercial value are the intangible cultural heritage of a community requires tracing that knowledge back to its community of origin. International practice now expects people developing products with origins in the natural environment to know where the intellectual property originates (see paragraph 16 of Performance Standard 8).

GN9. Performance Standard 8 applies to cultural heritage that has been undisturbed as well as disturbed. The client may undertake measures for the protection of already-disturbed cultural heritage that are different from measures for the protection of untouched cultural heritage. Many types of cultural heritage cannot be put back once they have been disturbed, but they may still be valued.

GN10. Where the cultural heritage of Indigenous Peoples is being impacted or used for commercial purposes, please refer to Performance Standard 7 and its corresponding Guidance Note.

Requirements

Protection of Cultural Heritage in Project Design and Execution

6. In addition to complying with applicable law on the protection of cultural heritage, including national law implementing the host country's obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage, the client will identify and protect cultural heritage by ensuring that internationally recognized practices for the protection, field-based study, and documentation of cultural heritage are implemented.

7. Where the risk and identification process determines that there is a chance of impacts to cultural heritage, the client will retain competent professionals to assist in the identification and protection of cultural heritage. The removal of nonreplicable cultural heritage is subject to the additional requirements of paragraph 10 below. In the case of critical cultural heritage, the requirements of paragraphs 13–15 will apply.

GN11. While clients may be in compliance with applicable national law, they should measure the risks associated with a project that might not comply with a host country's obligations under an international convention that the host country has signed, but not yet ratified. A company may, for instance, have a concession associated with a particular cultural heritage site, which may be revoked by the government to meet the terms of a convention once it has been ratified.

GN12. The client should apply internationally recognized practices to site surveys, excavation, preservation and publication, in addition to compliance with national law. An internationally recognized practice is defined as the exercise of professional skill, knowledge, diligence, prudence and foresight that would reasonably be expected from experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally. Where the client is in doubt on what constitutes internationally recognized practice, international peer reviewers are able to provide guidance.

GN13. Performance Standard 1, paragraph 19 states that "The process of identification of risks and impacts will consist of an adequate, accurate, and objective evaluation and presentation, prepared by competent professionals. For projects posing potentially significant adverse impacts or where technically complex issues are involved, clients may be required to involve external experts to assist in the risks and

impacts identification process.” This requirement is particularly important for issues related to cultural heritage because they often require a very specialized level of knowledge of the project area and the subject matter.

GN14. The findings of the cultural heritage component of the assessment should generally be disclosed as part of, and in the same manner as, the relevant assessment documentation. Exceptions to such disclosure, however, should be considered where the client, in consultation with persons with relevant expertise, determines that disclosure would compromise or would jeopardize the safety or integrity of the cultural heritage involved and/or would endanger the source of information about the cultural heritage. In such cases, such sensitive information relating to these particular aspects may be omitted from the assessment documentation.

Chance Find Procedures

8. The client is responsible for siting and designing a project to avoid significant adverse impacts to cultural heritage. The environmental and social risks and impacts identification process should determine whether the proposed location of a project is in areas where cultural heritage is expected to be found, either during construction or operations. In such cases, as part of the client’s ESMS, the client will develop provisions for managing chance finds¹ through a chance find procedure² which will be applied in the event that cultural heritage is subsequently discovered. The client will not disturb any chance find further until an assessment by competent professionals is made and actions consistent with the requirements of this Performance Standard are identified.

¹ Tangible cultural heritage encountered unexpectedly during project construction or operation.

² A chance find procedure is a project-specific procedure that outlines the actions to be taken if previously unknown cultural heritage is encountered.

GN15. The chance find procedure is a project-specific procedure that outlines what will happen if previously unknown heritage resources, particularly archaeological resources, are encountered during project construction or operation. The procedure includes record keeping and expert verification procedures, chain of custody instructions for movable finds, and clear criteria for potential temporary work stoppages that could be required for rapid disposition of issues related to the finds. It is important that this procedure outlines the roles and responsibilities and the response times required from both project staff, and any relevant heritage authority, as well as any agreed consultation procedures. This procedure should be incorporated in the Management Program and implemented through the client’s Environmental and Social Management System. As with cultural heritage identified during the environmental and social impact assessment, consideration should be given, where feasible, to alternative siting or design of the project, to avoid significant damage.

Consultation

9. Where a project may affect cultural heritage, the client will consult with Affected Communities within the host country who use, or have used within living memory, the cultural heritage for long-standing cultural purposes. The client will consult with the Affected Communities to identify cultural heritage of importance, and to incorporate into the client’s decision-making process the views of the Affected Communities on such cultural heritage. Consultation will also involve the relevant national or local regulatory agencies that are entrusted with the protection of cultural heritage.

Community Access

10. Where the client's project site contains cultural heritage or prevents access to previously accessible cultural heritage sites being used by, or that have been used by, Affected Communities within living memory for long-standing cultural purposes, the client will, based on consultations under paragraph 9, allow continued access to the cultural site or will provide an alternative access route, subject to overriding health, safety, and security considerations.

GN16. Since cultural heritage is not always documented, or protected by law, consultation is an important means of identifying it, documenting its presence and significance, assessing potential impacts, and exploring mitigation options. Requirements on the community engagement of Affected Communities can be found in paragraphs 25 through 33 of Performance Standard 1.

GN17. For cultural heritage issues, the following groups may be relevant for consultation:

- Historical or traditional users and owners of cultural heritage
- Traditional communities embodying traditional lifestyles
- Ministries of archeology, culture, or similar national or heritage institutions
- National and local museums, cultural institutes, and universities
- Civil society concerned with cultural heritage or historical preservation, areas of environmental or scientific interest; Affected Communities; and religious groups for whom the cultural heritage is traditionally sacred

GN18. The client should make special efforts to consult with the historical or traditional users or owners of tangible cultural heritage, especially inhabitants of the area impacted by a project within the host country, since the interests of these users or owners may be different than the desires expressed by competent experts or government officials. The client should also be aware that some sacred sites may be used by communities not resident in the area and who may only visit periodically. The client should provide early notification and engage with such groups regarding possible public use, relocation of or other adverse impacts on cultural heritage resources. The consultation process should actively seek to identify concerns of these users or owners of tangible cultural heritage, and, where possible, clients should take these concerns into account in the way their project manages cultural heritage.

GN19. Where a construction or operating site contains cultural heritage or prevents access to cultural heritage, the client should offer continued access to the Affected Communities, subject to overriding health, safety and security concerns. Where health, safety, or security is a consideration, alternatives to open access should be identified through community consultations. Alternatives may include alternative access routes, specifying dates and times when access will be provided, providing health and safety equipment and training for specified users of the site, or other measures that balance access with health, safety or security measures. The agreements with Affected Communities on access should be documented. The provisions of paragraph 10 are not intended to foreclose possible impacts on the tangible cultural heritage from the project; they are only intended to grant access to that heritage where it will remain during a part or the whole life of the project.

Removal of Replicable Cultural Heritage

11. Where the client has encountered tangible cultural heritage that is replicable³ and not critical, the client will apply mitigation measures that favor avoidance. Where avoidance is not feasible, the client will apply a mitigation hierarchy as follows:

- **Minimize adverse impacts and implement restoration measures, in situ, that ensure maintenance of the value and functionality of the cultural heritage, including maintaining or restoring any ecosystem processes⁴ needed to support it;**
- **Where restoration in situ is not possible, restore the functionality of the cultural heritage, in a different location, including the ecosystem processes needed to support it;**
- **The permanent removal of historical and archeological artifacts and structures is carried out according to the principles of paragraphs 6 and 7 above; and**
- **Only where minimization of adverse impacts and restoration to ensure maintenance of the value and functionality of the cultural heritage are demonstrably not feasible, and where the Affected Communities are using the tangible cultural heritage for long-standing cultural purposes, compensate for loss of that tangible cultural heritage.**

³ Replicable cultural heritage is defined as tangible forms of cultural heritage that can themselves be moved to another location or that can be replaced by a similar structure or natural features to which the cultural values can be transferred by appropriate measures. Archeological or historical sites may be considered replicable where the particular eras and cultural values they represent are well represented by other sites and/or structures.

⁴ Consistent with requirements in Performance Standard 6 related to ecosystem services and conservation of biodiversity.

GN20. Where the client has encountered tangible cultural heritage that is replicable and not critical, the client will first seek to minimize or eliminate adverse impacts and to implement restoration measures that aim to maintain its value and functionality. If minimization of impacts and/or restoration are not possible in situ, then the client can consider restoration at a different site. In considering minimization and restoration, the client may engage international, national, and local expertise. Considerations around relocation of physical cultural heritage may also involve the host country government. In identifying local expertise, the recommendations of the Affected Communities with respect to recognized cultural heritage practitioners, such as elders, priests, mediums, and traditional healers should be given key consideration.

GN21. Where impact reduction and restoration are not feasible, the client must provide a justification for that determination based on a competent expert's review of the circumstances, and only then can compensation be considered as a way to address the impact on tangible cultural heritage. Compensation is only paid to Affected Communities using tangible cultural heritage for long standing cultural purposes. It is not given for removal of archeological material from cultural horizons that pre-date the current Affected Communities or for other cultural heritage that has not been used within the living memory of the community. Compensation is also not given for loss of intangible cultural heritage. Mitigation measures for identifiable project impacts on intangible cultural heritage may be considered under Performance Standard 1.

Removal of Non-Replicable Cultural Heritage

12. Most cultural heritage is best protected by preservation in its place, since removal is likely to result in irreparable damage or destruction of the cultural heritage. The client will not remove any nonreplicable cultural heritage,⁵ unless all of the following conditions are met:

- **There are no technically or financially feasible alternatives to removal;**
- **The overall benefits of the project conclusively outweigh the anticipated cultural heritage loss from removal; and**

- **Any removal of cultural heritage is conducted using the best available technique.**

⁵ *Nonreplicable cultural heritage may relate to the social, economic, cultural, environmental, and climatic conditions of past peoples, their evolving ecologies, adaptive strategies, and early forms of environmental management, where the (i) cultural heritage is unique or relatively unique for the period it represents, or (ii) cultural heritage is unique or relatively unique in linking several periods in the same site.*

GN22. Non-replicable cultural heritage is best protected by preservation in place, since removal of the cultural heritage will result in irreparable damage or destruction of the heritage. Examples of non-replicable cultural heritage may include an ancient city or temple, or a site unique in the period that it represents. Accordingly, projects should be designed to avoid any damage to cultural heritage through removal or project related activities, such as construction. Where avoidance is not feasible, no alternatives to removal exist, and the project benefits outweigh the loss of cultural heritage, the client should remove and preserve the cultural heritage according to the best available technique. The best available technique proposed by the client or its competent expert will benefit from a peer review by international external experts to ensure that no better, feasible techniques are available. Best available technique is required because the removal of the cultural heritage will effectively mean its destruction. In addition, prior to removal of the cultural heritage, the client should consult the historical or traditional owners and users of the cultural heritage, as provided in paragraph 9 of Performance Standard 8, and take their views into account.

GN23. Loss of non-replicable tangible cultural heritage is a loss of a public good, not just for the present generation, but for future generations as well. Thus, consideration of project benefits, for the purpose of Performance Standard 8, should focus on the public benefits of the project, particularly for those who may have immediate ties to the heritage. The analysis should also look at whether those benefits are sustainable beyond the life of the project. Any lost benefits that would otherwise arise from commercial or other use of the site based on its existing cultural heritage should also be taken into account.

Critical Cultural Heritage

13. Critical cultural heritage consists of one or both of the following types of cultural heritage: (i) the internationally recognized heritage of communities who use, or have used within living memory the cultural heritage for long-standing cultural purposes; or (ii) legally protected cultural heritage areas, including those proposed by host governments for such designation.

14. The client should not remove, significantly alter, or damage critical cultural heritage. In exceptional circumstances when impacts on critical cultural heritage are unavoidable, the client will use a process of informed consultation and participation of the Affected Communities as described in Performance Standard 1 and which uses a good faith negotiation process that results in a documented outcome. The client will retain external experts to assist in the assessment and protection of critical cultural heritage.

15. Legally protected cultural heritage areas⁶ are important for the protection and conservation of cultural heritage, and additional measures are needed for any projects that would be permitted under the applicable national law in these areas. In circumstances where a proposed project is located within a legally protected area or a legally defined buffer zone, the client, in addition to the requirements for critical cultural heritage cited in paragraph 14 above, will meet the following requirements:

⁶ *Examples include world heritage sites and nationally protected areas.*

- ***Comply with defined national or local cultural heritage regulations or the protected area management plans;***
- ***Consult the protected area sponsors and managers, local communities and other key stakeholders on the proposed project; and***
- ***Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area.***

GN24. Cultural heritage is considered critical when it is part of a legally-protected cultural heritage area. In addition, when internationally recognized cultural heritage is critical to a people who continue to use it for long-standing cultural purposes, such heritage may be considered critical, even if it is not legally protected. To be considered critical, the cultural heritage must be internationally recognized prior to the proposal of the project. When such cultural heritage is used for long-standing cultural purposes, and where the loss or damage of such heritage could endanger the livelihoods, or cultural, ceremonial, or spiritual purposes that define the identity and community of the Affected Community, the requirements under paragraph 14 of Performance Standard 8 apply. Performance Standard 8 is intended to allow such users to participate in decisions about the future of that heritage and to negotiate equitable outcomes that may not only outweigh any loss, but provide important benefits.

GN25. The client is strongly advised to avoid any significant damage to critical cultural heritage. If it appears that a project may significantly damage critical cultural heritage, the client may proceed with such activities only after a good faith negotiation with and a documented process of informed participation of the Affected Communities. Good faith negotiation generally involves for each party: (i) willingness to engage in a process and availability to meet at reasonable times and frequency in ways acceptable to all parties; (ii) provision of information necessary for informed negotiation; (iii) exploration of key issues of importance; and (iv) willingness to change initial position and modify offers where possible.

GN26. The client will document (i) the mutually accepted process between the client and the Affected Communities, and (ii) evidence of agreement between the parties as the outcome of the negotiations. This requires agreement by the culturally appropriate decision-making body within the Affected Community. The appropriate decision-making body will be identified through a social analysis performed by an external expert and the decision-making body will be seen by the majority as both their legitimate representative and as able to enter into a valid agreement. Agreement does not necessarily require unanimity and may be achieved even when individuals or sub-groups explicitly disagree. However, the benefits coming from an agreement must be shared by everyone in the Affected Communities, irrespective of whether they supported the project or not.

GN27. Projects in legally-protected areas (such as World Heritage Sites and nationally protected areas) may range from tourism projects that actually support the objectives of cultural heritage protection, to mining projects that will need to be carried out with considerable sensitivity. Such projects are expected to provide additional assurances beyond meeting applicable national laws. All regulations and plans applicable to the protected area should be respected in project design and execution. The assessment should identify and address these requirements. A process of information disclosure, informed consultation and participation with relevant stakeholders should be carried out, including the protected area's managers and sponsors. Further, the project should contribute to the conservation of cultural heritage, including the biodiversity or ecosystem processes that may support that conservation. Where the project has no intrinsic contribution, additional programs should be undertaken to promote and enhance the conservation aims of the protected area, including the biodiversity or ecosystem processes the natural environment provides in support of cultural heritage protection. These may range from support for the protection and conservation of the area as a whole, to specific projects to restore or enhance

specific, important features. [The United Nations Education, Scientific and Cultural Organization's \(UNESCO\) World Heritage List](#) provides additional information on World Heritage Sites.

Project's Use of Cultural Heritage

16. Where a project proposes to use the cultural heritage, including knowledge, innovations, or practices of local communities for commercial purposes,⁷ the client will inform these communities of (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will not proceed with such commercialization unless it (i) enters into a process of informed consultation and participation as described in Performance Standard 1 and which uses a good faith negotiation process that results in a documented outcome and (ii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions.

⁷ Examples include, but are not limited to, commercialization of traditional medicinal knowledge or other sacred or traditional technique for processing plants, fibers, or metals.

GN28. For the purposes of Performance Standard 8, intangible cultural heritage refers to cultural resources, knowledge, innovations and/or practices of local communities embodying traditional lifestyles. The area of intangible cultural heritage and its commercial development is the subject of current international discussions, with international standards emerging slowly. The one exception is in the commercial use of genetic resources derived from the traditional knowledge of traditional communities, as reflected in the Convention on Biological Diversity. The Bonn Guidelines and the Akwé: Kon Guidelines issued under the Convention on Biological Diversity provide useful guidance in this area. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization will enter into force once fifty countries have become signatories. Once translated into the national law and regulations of the signatory country, projects using a local community's traditional knowledge of genetic resources will need to have their prior and informed consent to do so.

GN29. Examples of commercial development include commercialization of traditional medicinal knowledge or other sacred or traditional techniques for processing plants, fibers, or metals. Performance Standard 8 also applies to locally-sourced industrial design. With respect to expressions of folklore, such as sale of art or music, the requirements of paragraph 12 of Performance Standard 8 do not apply. Such expressions should be treated in accordance with national law.

GN30. Where such resources are proposed for commercial development, the client will investigate whether ownership of local knowledge is individual or collective prior to entering into any agreements with purported local intellectual property holders. Such resources are often collectively held, and decisions about their access or use may require the participation of the broader collectivity, including women and other subgroups. As part of the process, the client should determine the ownership of the resource and who has the rights and responsibilities to enter into an agreement on behalf of the owner(s). The outcomes of the determination of ownership may vary according to the circumstances. In some instances, traditional, collectively-held elements may be combined with innovative, individually-created elements. In these cases, individual innovation should be identified and treated as individual ownership, whereas the collective elements may be handled through the same principles as for collective ownership. Where it has been determined that the ownership is collective and good faith negotiations depend substantially on community representatives, the client will make every reasonable effort to verify that such persons do, in fact, represent the views of local intellectual property holders and that they can be relied upon to faithfully communicate the results of negotiations to their constituents. The client should use an external expert

and unbiased information to carry out good faith negotiations with local traditional knowledge holders, even if the ownership of the knowledge is in dispute. The client should document the process and the successful outcome of a good faith negotiation with the Affected Communities on the proposed commercial development, in addition to any requirements pursuant to national law. Some national laws require the consent of Affected Communities in this regard.

GN31. The client will document (i) the mutually accepted process between the client and the Affected Communities, and (ii) evidence of agreement between the parties as the outcome of the negotiations. This requires agreement by the culturally appropriate decision-making body within the Affected Community. The appropriate decision-making body will be determined through a social analysis conducted by an external expert, and the decision-making body will be seen by the majority as both their legitimate representative and as able to enter into a valid agreement. Agreement does not necessarily require unanimity and may be achieved even when individuals or sub-groups explicitly disagree. However, the benefits coming from an agreement must be shared by everyone in the Affected Communities, irrespective of whether they supported the project or not.

GN32. If the client wishes to exploit and develop any knowledge, innovation or practices of local communities embodying traditional lifestyles for commercial purposes, and to protect any intellectual property created from such development, the client may be legally required to disclose or publicly release the source of the materials. This disclosure may not be required where the client can show independent discovery. Examples include genetic materials proposed for medical application. Because such materials may be used for sacred or ritual purposes by Affected Communities, and may be held secret by such communities or designated members, even where there is an agreement with the community based on good faith negotiations, the client should take care before proceeding to secure the secrecy based on the principle that only those who need to know will be aware of the use of the materials, and in any event, enable the Affected Communities to continue to use the genetic materials for customary or ceremonial purposes.

GN33. Where a project proposes to exploit, develop, and commercialize intangible cultural heritage, Performance Standard 8 requires that the client shares the benefits accruing from such use with the Affected Communities. Benefits may include development benefits in the form of employment, vocational training, and benefits pursuant to community development and similar programs.

GN34. Clients should be aware that use of traditional or local names or images, including photographs and other media, can be sensitive. Clients should conduct an assessment of the potential risks and/or rewards to consulting with the relevant communities before using them even for such purposes as naming project sites and pieces of equipment. Companies should also be aware that the use of certain art or music may be culturally sensitive and should, again, assess the potential risk and/or rewards before their use.

Annex A

Tangible Cultural Heritage Resource Types

A. *Archaeological Site*: Concentrated and patterned physical remains of past human activity, especially human settlement. A site may include artifacts, plant and animal remains, structural remains, and soil features. It may be a large ancient city completely or partially buried by surface soils or other sediment or the ephemeral and superficial remains of a temporary nomad camp or other short-term activity. Sites may be underwater, including shipwrecks and flooded habitation sites. Although all sites, as well as isolated (off site) finds, are a record of human activity, the importance of an archaeological site may vary widely according to site type and condition. In general, while sites may be identified by surface remains or suggestive topography, the characteristics of a site and its cultural or scientific importance cannot be identified based on surface examination alone.

B. *Historic Structure*: Also referred to as historic monuments, this category includes above ground architectural features (e.g., house, temple, market place, church) that have reached a designated age or have other characteristics, such as association with an important event or person, that make them “historic” and therefore worthy of consideration as a heritage resource. As with archaeological sites, the importance of a historic structure will vary widely according to the age, type and condition of the structure. Some historic structures may have associated archaeological deposits thereby making them both historic structures and archaeological resources. A historic structure may be abandoned or occupied.

C. *Historic District*: This is a contiguous assemblage of historic structures and associated landscape features that constitute a heritage resource extending over a larger area than any single structure. Integrity and thematic interest are the key considerations for defining and determining the importance of a historic district. Temple precincts, graveyards, urban neighborhoods, and sometimes entire villages or towns can be classified as historic districts. Historic districts may contain thematically un-related or “non-contributing” structures that may or may not merit protection in their own right. Historic structures and districts may require protection from direct physical impacts but should also be considered in their visual dimension. Possibly discordant construction in or near a historic district or structure might require special design considerations to mitigate “visual” impacts to heritage resources.

D. *Historic or Cultural Landscape*: This is an area where traditional land-use patterns have created and maintained landscape features that reflect a particular culture, life-way, or historical time period that merits consideration as a heritage resource. A historic landscape may include historic monuments and archaeological sites as well. Integrity and uniqueness are most relevant for judging the importance of this type of resource. While a historic landscape may share aspects of a historic district, the term typically refers to a non-urban area with heritage value. This resource type may also include culturally important natural features such as sacred lakes, forests and waterfalls. Sacred trees, for instance, are common in Africa.

E. *Artifact*: A portable object that is created by past human activity and becomes part of an archaeological site or isolated archaeological find. Most archaeological artifacts lose substantial cultural and scientific value when removed from their “context” in the ground. Archaeological artifacts, in context or not, are most often the property of the national government. Their scientific collection and use is controlled through a permitting process administered by national heritage authorities. National law and international treaty forbid the sale and export of archaeological artifacts. An object removed from a historic structure will have the same legal status as an archeological artifact.

Annex B

Process Guidance

A. *Cultural Heritage Feasibility Studies* -- It is good practice to identify possible heritage issues and costs at the start of the process of identification of environmental and social risks and impacts through project screening or feasibility studies. This is especially true for large infrastructure or resource extraction projects such as pipelines, mines, hydroelectric dams, regional irrigation systems, highways, or any project that involves substantial grading, excavation, or large-scale changes in hydrological patterns. These studies should involve comparison of general project features against known or anticipated heritage baseline conditions in the proposed project area. Competent heritage experts and project planning and/or engineering staff should be included on the study work team(s). The purpose of these types of studies is to identify any “fatal flaw” issues, such as major cost or design constraints. Findings of these types of studies typically remain confidential until the public consultation phase of the environmental and social impact assessment process.

B. *Cultural Heritage Aspects of the Environmental and Social Impact Assessment Process* -- For projects with known or potential heritage issues, the assessment often includes the following elements: (i) a detailed description of the proposed project including its alternatives; (ii) heritage baseline conditions in the project’s area of influence; (iii) an analysis of project alternatives in relation to the baseline conditions to determine potential impacts; and (iv) proposed impact mitigation measures, which may include avoidance or reduction of impacts by project design changes and/or the introduction of special construction and operational procedures, and compensatory mitigations such as data recovery and/or detailed study.

C. *Expertise Needed for Assessment Studies* -- Where heritage issues are identified, a competent heritage expert(s) will normally be needed on the assessment study team. It will be most useful to recruit those with general expertise in the heritage field and experience with the environmental planning or heritage management process. While a particular type of heritage specialist (e.g., a Middle Bronze Age Pottery expert) may be needed to address certain finds or issues, an expert with a broad perspective (e.g., a cultural geographer) will normally be most suitable.

D. *Permitting and Approval of Assessment Studies* -- In most cases, heritage assessment studies will need to be formally permitted by the appropriate national heritage authority. Further, because national heritage law often lacks detailed implementing regulations, required heritage protection measures may need to be formulated as a project-specific agreement that is negotiated and signed by a project representative and the heritage authority. Although the client has the prerogative to employ heritage specialists it finds most appropriate, it should be noted that both the investigations and the individuals performing such studies may have to be acceptable to national heritage authorities.

E. *Disclosure and Consultation* -- Early and detailed public disclosure of project heritage data, including the methodology, findings and analyses of the assessment heritage team, is integral to the planning and consultation model of the assessment. Findings of the cultural heritage component of the assessment should be disclosed as part of, and in the same manner as, the assessment report, except where such disclosure would jeopardize the safety or integrity of the physical cultural resources involved. In such cases, sensitive information relating to these particular aspects may be omitted from the assessment’s public documentation. The client may need to undertake discussions with a host country’s heritage agency to establish an acceptable compromise between the need for public consultation on heritage issues and the traditional prerogatives of the national heritage authority.

F. *Purpose and Scope of Assessment Studies* -- It is important that the client and the national heritage authority have a mutually shared understanding of the purpose and appropriate scope of heritage assessment studies. Data collection and other assessment studies are undertaken in order to avoid, minimize, and mitigate potential project impacts to cultural heritage resources. A general 'capacity building' effort, which might be of benefit to the project and a country's heritage program, may be the building of the regulatory capacity of the heritage authority in ways that relate specifically to the client's project.

G. *Project Design and Execution* – Necessary avoidance and mitigation measures identified through the assessment process should be incorporated into the project's Management Program and executed in coordination with other required project action items. Unlike most other environmental resources, direct impact to heritage is typically localized to the area of project construction activity, making a project's area of influence more geographically limited than for other resources such as critical habitat, a natural water supply, or endangered species. Thus, it is often possible to avoid impacts to heritage by minor project design changes. Because cultural heritage is non-renewable, its protection is best accomplished by "preservation-in-place." This method is generally preferred over removal, which is an expensive and partially destructive process. As with pre-implementation phase measures, the client may need to engage heritage consultant(s) to implement the part of the Management Program related to heritage matters (i.e., Cultural Heritage Action Plan).

Annotated Bibliography

Several of the requirements set out in Performance Standard 8 relate to the following international agreements and to the accompanying guidance and recommendations:

CBD (Convention on Biological Diversity). 1992. "History of the Convention." CBD, New York. <http://www.cbd.int/history/>. The website provides information about the establishment of the convention, lists of signatory nations and biodiversity experts, and other useful data.

———. 2004. "Akwé: Kon Guidelines." Secretariat of the CBD, Montreal. <http://www.biodiv.org/doc/publications/akwe-brochure-en.pdf>. The brochure provides voluntary guidelines for conducting cultural environmental and social impact assessments regarding developments that are proposed to take place or are likely to have an impact on sacred sites and on lands and waters traditionally occupied or used by indigenous or local communities.

———. 2011a. "Nagoya Protocol (COP 10 Decision X/1) on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity." CBD, New York. <http://www.cbd.int/abs/>. The international agreement aims at sharing the benefits arising from the use of genetic resources in a fair and equitable way. When in force, it will supersede the Bonn Guidelines.

———. 2011b. "The Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities." Secretariat of the CBD, Montreal. <http://www.cbd.int/decision/cop/?id=12308>. Also one of the Nagoya COP 10 Decisions, the code provides voluntary guidelines on working with local and indigenous communities with respect to the traditional knowledge and resources they use.

CBD (Convention of Biological Diversity) and UNEP (United Nations Environment Programme). 2002. "Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization." Secretariat of the CBD, Montreal, and UNEP, Washington, DC. <http://www.biodiv.org/doc/publications/cbd-bonn-gdls-en.pdf>. The brochure provides guidelines about establishing legislative, administrative, or policy measures on access and benefit sharing and about when to negotiate contractual arrangements for access and benefit sharing.

UNESCO (United Nations Educational, Scientific and Cultural Organization). 1970. "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property." UNESCO, Paris. http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html. The legislation shows the contents of this particular convention.

———. 1972. "Convention Concerning the Protection of the World Cultural and Natural Heritage." UNESCO, Paris. <http://whc.unesco.org/en/conventiontext/>. The convention establishes a system of collective identification, protection, and preservation of cultural and natural heritage, and it provides both emergency and long-term protection for cultural and natural heritage.

———. 2001. "Convention on the Protection of Underwater Cultural Heritage." UNESCO, Paris. <http://unesdoc.unesco.org/images/0012/001260/126065e.pdf>.

———. 2003. "Convention on the Safeguarding of Intangible Cultural Heritage." UNESCO, Paris. <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>. The convention ensures the safeguarding of international cultural heritage, and it strengthens solidarity and cooperation at regional and international levels in this field.

World Bank. 2011. "Cultural Heritage Country Files." World Bank, Washington, DC. These data files contain valuable information for clients that are in the initial phases of project development and are concerned with possible heritage issues and constraints in the host country. The files contain existing, readily available technical and contact information and a checklist of additional information that should be obtained.

———. 2011. "World Heritage List." UNESCO, Paris. <http://whc.unesco.org/pg.cfm?cid=31>. The list from the Convention Concerning the Protection of the World Cultural and Natural Heritage now consists of 936 properties. It thus forms part of the cultural and natural heritage that the World Heritage Committee considers as having outstanding universal value. It also provides additional information about World Heritage Sites.

———. 2002. *Physical Cultural Resources Safeguard Policy Handbook*. Washington, DC: World Bank. This book contains instructions for implementing The World Bank's Operational Policy 4.11—Physical Cultural Resources. It also has broader utility as a general guide for treating physical cultural resources as a component of Environmental Impact Assessment (EIA). The Handbook provides a definition of *physical cultural resources*; describes how they are integrated into the EIA; and includes specific guidance for project financing agencies, borrowers, EIA teams, and EIA reviewers. It also discusses common impacts on physical cultural resources of projects in several sectors, including hydroelectric power, roads, urban development, cultural heritage, and coastal zone management. Written for the nonspecialist, the Handbook is designed to assist professionals who participate in all phases of development projects, including identification, preparation, implementation, operation, and evaluation.