

March 1, 2015

The World Bank  
Executive Committee on  
Development Effectiveness  
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Washington, DC 20433  
United States  
safeguardconsult@worldbank.org.

Re: Environmental and Social Framework Consultation

Ladies and Gentlemen:

The International Council on Monuments and Sites ("ICOMOS") is pleased to have this opportunity to present to the members of the World Bank's Executive Committee on Development Effectiveness, staff and counsel this feedback on the Environmental and Social Framework documents released by the Bank for consultation on July 30, 2014. We applaud the World Bank's stated goal of strengthening its approach to the management of environmental and social risks in a manner that will support sustainable development through standards that are clear to those impacted by the projects it finances, those who implement, and those holding the Bank to account. We appreciate the opportunity to be included in the consultation, particularly as it regards cultural heritage.

ICOMOS wishes to commend and appreciate the World Bank's concern for identifying, protecting and managing cultural heritage in development projects, and the fact that it has been a leader in policymaking, influencing international and regional financial institutions in this regard. We also wish to express our deepest regard for the members of the World Bank staff with whom we have interacted during this consultation, especially Ms. Alexandra Bezeredi, Ms. Arlene Fleming, Ms. Ishanlosen Odiaua, and Mr. Guido Licciardi. In each case we have found these persons to be constructive, professional and knowledgeable and we have appreciated the chance to work with them.

*ICOMOS, Cultural Heritage and Sustainable Development*

ICOMOS is a global non-governmental organization that works for the conservation and protection of cultural heritage places. Its mission is to promote the conservation, protection, use and enhancement of monuments, building complexes and sites. ICOMOS is the Advisory Body to the World Heritage Committee for the Implementation of the World Heritage Convention of UNESCO on cultural heritage. As such, it reviews the nominations of cultural world heritage of humanity and ensures the conservation status of properties.

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More broadly, ICOMOS is a network of experts that benefits from the interdisciplinary exchange of its members, among which are architects, historians, archaeologists, art historians, geographers, anthropologists, economists, engineers, lawyers and town planners. The members of ICOMOS contribute to improving the preservation of heritage, the standards and the techniques for each type of cultural heritage property. Much of this work of ICOMOS is conducted through its network of International Scientific Committees, several of which collaborated in the preparation of these comments.

It is crucial to note that heritage is best understood not as element which must be safeguarded during development but as an assets which drives development when properly leveraged. Indeed, ICOMOS has been at the forefront globally in considering the role of heritage in sustainable development, culminating in an international symposium held in Paris in 2011 which resulted in the Paris Declaration on "Heritage as a Driver of Development." This Declaration forms part of a series of initiatives and actions that have been undertaken by ICOMOS over many years in order to promote a development process that incorporates tangible and intangible cultural heritage as a vital aspect of sustainability, and gives a human face to development.

Of particular note in regards to the foregoing is the ICOMOS conference held at Moscow and Suzdal in Russia (1978), which included the sub-theme 'Historical Monuments as a Support to Economic and Social Development.' The scientific symposium entitled 'No Past, No Future', at the Sixth General Assembly of ICOMOS in Italy and the scientific symposium on 'The Wise Use of Heritage' held in Mexico in 1999 further explored the subject. The work and reports of Nara (1997), Xi'an (2005) and Quebec (2008) helped to develop the heritage concepts of 'authenticity', 'context' and 'spirit of place'. An important step has been the work of ICOMOS in developing Charters that have become international benchmarks, especially for UNESCO and its Member States, including the ICOMOS International Cultural Tourism Charter developed in 1977 and updated in 1999.

Among the key conclusions of the Paris symposium was that heritage - with its value for identity, and as a repository of historical, cultural and social memory, preserved through its authenticity, integrity and 'sense of place' - forms a crucial aspect of the development process; that it is necessary to take up the challenge of conserving this fragile, crucial and non-renewable resource for the benefit of current and future generations; and that among the indispensable roles heritage plays in sustainable development and urbanization, is fostering socio-economic regeneration; increasing the density of urban cores while containing the anarchic spread of new buildings; enhancing tourism benefits by preserving cultural resources as a fundamental asset of long term tourism development; strengthening social fabric and enhancing social well-being, and enhancing the appeal and creativity of regions.

In 2011, ICOMOS at its triennial international general assembly also adopted Resolution 17GA 2011/27 on ensuring that culture and cultural heritage are acknowledged in sustainable development and that considered “that culture and cultural heritage, its conservation and enrichment, should be declared a major vehicle (the “fourth pillar”) for sustainable development” at the Earth Summit then planned for Rio de Janeiro in 2012. Following the 2012 Earth Summit, ICOMOS participated actively in the so-called Rio+20 process, towards the development of the UN Post-2015 development Agenda. As a result of work by ICOMOS, UNESCO and many others, the July 2014 Outcome Document prepared by the UN General Assembly Open Working Group on Sustainable Development Goals includes a targets on making cities and human settlements inclusive, safe, resilient and sustainable by strengthening efforts to protect and safeguard the world’s cultural and natural heritage; and on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all by devising and implementing policies to promote sustainable tourism which creates jobs, promotes local culture and products.

#### *The World Bank Environmental and Social Framework*

We understand that this new proposed Framework would replace a number of existing Operational Policies/Bank Procedures, including the existing cultural heritage policy (adopted in 2006), Operational Policy (OP) 4.11 – Physical Cultural Resources. The proposed new Framework includes five elements, key components of which are *The World Bank Environmental and Social Policy* (the “Policy”) and the *Environmental and Social Standards* (the “ESS”). The Policy sets out the requirements that the World Bank must follow regarding projects it supports through investment project financing. The ESS set out the requirements for Borrowers relating to the identification and assessment of environmental and social risks and impacts associated with projects in which the Bank invests.

The Policy states that Bank projects are “expected to meet the requirements of the ESSs in a manner and within a timeframe acceptable to the Bank”. They require Borrowers to conduct and environmental and social assessment of projects in accordance with ESS Standard 1 (“ESS1”). The Policy supports the use of existing legal environmental and social frameworks but may require Borrowers to adopt measures actions that address gaps. The Bank will conduct ESS due diligence, including to determine whether a project is capable of being developed in accordance with the ESSs. The Policy also requires Borrowers to consult with stakeholders consistent with ESS10. Under the Policy, projects are classified as High Risk, Substantial Risk, Moderate Risk or Low Risk and special safeguards apply to High Risk projects.

The ESSs are made up of 10 standards. ESS8 is dedicated to Cultural Heritage. ESS8, however, must be read in the context of the other ESSs. For example, ESS1 addresses Assessment and Management of Environmental and Social Risks and Impacts. This includes the required development of an Environmental and Social Commitment Plan (“ESCP”). Assessments are to be “commensurate and proportionate” with the project classification assigned by the Bank. Environmental and Social Assessments must take account of all “relevant” risks and impacts, including to cultural heritage. A mitigation hierarchy is created which “favors” avoidance over minimization and provides for compensation/offset where “technically and financially feasible”. ESS10 (discussed in greater depth below) covers Stakeholder Engagement.

In addition, a separate regime -- ESS7 -- covers Indigenous Peoples. ICOMOS has a long standing concern for the traditional knowledge and cultural heritage of Indigenous Peoples and notes that ESS7 (Paras. 26-27) provides protection for cultural heritage “that is relevant to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples’ lives,” with a special focus on associative landscapes.

#### *Feedback on the Draft Framework*

The feedback of ICOMOS on the draft Framework is organized into two components. The first component is the following narrative discussion of critical themes and issues, both regarding the Framework itself but also the context in which Framework will be implemented. Attached hereto are two sets of textual edits being requested by ICOMOS, one covering ESS8 and the other ESS1 and ESS7. These two components together constitute our feedback. At the outset, we wish to say that we appreciate the holistic approach of the World Bank’s draft Environmental & Social Framework and the integration of Standard 8 – Cultural Heritage into the framework. Standard 8 (together with Standards 1, 7 and 10) contain many elements of which we approve and we acknowledge the clear care with which they were prepared.

Against that backdrop, we offer the following observations:

1. Definition of cultural heritage in Standard 8.

A key area of concern with the proposed Standard 8 is the proposed definition of cultural heritage. The current, proposed definition is as follows:

The term “cultural heritage” is defined as resources which people identify, independently of ownership, as a reflection and expression of their constantly

evolving values, beliefs, knowledge and traditions. Cultural heritage may be valued at the local, regional or national level, or within the international community.

We also note with concern that it fails to utilize terms that are broadly used in other international contexts and doctrines and the resulting definition being too vague to be effective. ICOMOS believes the current definition found in OP 4.11 has proved workable and this is a better starting point for the new ESS8. This definition is as follows:

Cultural heritage includes movable or immovable objects, sites, structures, groups of structures, and natural features and landscapes 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. Their cultural interest may be at the local, provincial or national level, or within the international community.

While OP4.11 may be a better starting point than the new proposed definition, OP4.11 itself may nonetheless need to be updated to reflect a broader definition of cultural heritage and to align with international standards. In the attached markup of the draft ESS8 we have proposed some specific wording changes.

In addition to those specific changes, we wish to raise as a concept the issue of intangible cultural heritage. Particularly in view of the widespread adoption by State's parties of the 2003 UNESCO Convention on Intangible Cultural Heritage, intangible cultural heritage has become an internationally recognized element of cultural heritage. We note, for example, Section 3 of the International Finance Corporation's Performance Standard 8 on cultural heritage, which states in relevant part "[f]or the purposes of this Performance Standard, cultural heritage refers . . . and (iii) *intangible forms of culture, such as cultural knowledge, innovations, and practices of distinct cultural communities.*" (emphasis added).

We also note the European Bank for Reconstruction and Development's Cultural Heritage Safeguard<sup>i</sup> which states: "Although potential impacts on intangible cultural heritage might be less obvious than impacts on tangible cultural heritage, they may be of equal significance. If the environment is crucial for maintaining traditional skills, knowledge and beliefs, any relocation or detachment could trigger the loss of less commonly spoken dialects and languages and the loss of cultural practices and ultimately result in the disintegration of a community."

The 2003 UNESCO Convention on Intangible Cultural Heritage offers the following additional guidance on the definition of intangible cultural heritage:

“Intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.

As noted at the outset, ICOMOS applauds the desire of the World Bank to have clear standards and we also understand the desire to have efficient processes. While the concept of intangible heritage encompasses a potentially broad array of resources, as the European Bank has said, in their breadth and consequence, these elements of heritage represent significant resources, the loss of which ultimately result in the disintegration of a community and indeed the very tangible heritage the draft ESS8 clearly is meant to address. For this reason, we believe the broad exclusion of intangible heritage (outside the context of ESS7) cannot be squared with the Bank’s stated goal of protecting people and the environment. A variety of tools exist to incorporate intangible heritage in an efficient manner, including, for example, reliance on governmental registries of intangible heritage, comprehensive mitigation strategies and others. ICOMOS stands ready to work with the World Bank to craft suitable language.

## 2. Role of Experts.

The current ESS8 draft identifies “relevant nongovernmental organizations and experts, including international cultural heritage organizations” simply as one of the stakeholder to be consulted (Paragraph 13). ICOMOS believes ESS8 should be revised to support an expert-facilitated and multi-stakeholder approach to surveying and assessing the potential impact on cultural heritage of Bank projects, and subsequently to prepare plans for avoidance, minimization, or mitigation of impact and any other efforts to monitor or evaluate the project. We suggest Borrowers be required to use credentialed, accredited and internationally recognized independent cultural heritage experts in the case of projects that are High Risk or Moderate Risk as it regards cultural heritage. Other specific recommendations to this effect are noted in the attached mark-up



3. Bank Due Diligence.

Policy 23 requires the Bank to review the Borrower's existing ES Framework (e.g. aspects of the country's policy, legal and institutional framework, including its national, subnational, or sector implementing institutions and applicable laws, regulations, rules and procedures, and implementation capacity, which are relevant to the environmental and social risk and impacts of the project, including presumably cultural heritage). In the event the Bank finds gaps in a Borrower's ES Framework, it may require gap-filling measures. In view of the structure of the proposed, new ESS8, the Bank reviews contemplated by Policy 23 appear to be extremely important to the proper workings of the cultural heritage safeguards. For this reason, we think the elements to be reviewed in the cultural heritage context and the standards to which Borrowers are to be held must be further developed at this Policy stage. For example, ES Frameworks should be in accordance with international best practices, charters and doctrines such as the Venice Charter and the 1994 Nara Document on Authenticity.

The need to flesh out the standard to which Borrower's ES Frameworks will be held is rendered even more important by what appears to be an overreliance in the current draft on Borrowers self-determinations. For example, in ESS8, Paragraph 9 dictates that the Borrower will avoid impacts on cultural heritage. Yet, the Standard is vague at best on when and how the Bank will examine a Borrower's determination that the avoidance of impacts is not possible or the adequacy of measures designed to minimize, mitigate, or provide compensation for impacts on cultural heritage, in accordance with the mitigation hierarchy.<sup>ii</sup>

ICOMOS believes that Framework should unambiguously provide that the Bank must review and approve of the Borrower's assessment that avoidance of impacts is not possible, and also of the mitigation hierarchy -- at least where High Risk or Substantial Risk projects are involved. Whether "self-certification" by the Borrower on these points is sufficient in the case of Moderate Risk or Low Risk projects should depend on whether the Borrower's ES Framework has been deemed adequate following review under Policy 23 and/or whether gap-filling measures had been taken. Where a country's ES Framework has not been found to be adequate, the policies should tend towards requiring that the Borrower's determination on avoidance of impacts and adequacy of mitigation be expressly reviewed and approved by the Bank on all projects. ICOMOS also suggests that project directly or indirectly impacting a UNESCO World Heritage site or World Heritage Tentative List site be automatically defined as High Risk.

In general, ICOMOS's comfort with Borrower self-certification for non-High Risk projects depends on the rigorousness of the Policy 23 reviews. We thus have not provided

express language on these points but rather express the general view that the less rigorous the review of the cultural heritage elements of EF Frameworks, the greater the need for required Bank review and approval of Borrower determinations under Paragraph 9.

4. Stakeholder Consultation.

ESS10 identifies a number of elements of engagement including stakeholder identification and analysis, stakeholder engagement planning, disclosure of information, consultation and participation, grievance acceptance and response, and ongoing reporting to project-affected communities. The application of ESS10 to the requirements of ESS8 is potentially problematic. For example, Paragraph 3 provides that “the application of [the Cultural Heritage ESS] is established during the environmental and social assessment describe in ESS1.” This statement does not seem to give adequate weight to the fact (itself acknowledge later in Paragraph 14) that stakeholder consultations which are not part of the ESA could reveal important (additional) information about cultural heritage. As a result, ICOMOS proposes the following:

**In ESS8, Paragraph 3, add the bolded phrase so the sentence reads: “The application of this ESS is established . . . ; during the environmental and social assessment described in ESS1, *or during stakeholder consultations described in ESS 10, . . .*”**

5. Readiness of the World Bank’s client countries to implement Standard 8.

The capacity of client countries and other Borrowers is an essential consideration as the ESSs are first and foremost their responsibility. This issue of capacity is of keen concern vis-à-vis Standard 8 given that in some countries cultural heritage authorities are not routinely involved in development planning and implementation even when national legislation requires their participation. Cultural heritage institutions often are poorly funded and inadequately staffed. The Policies implicitly recognize these limitations, for example in Policy 23 which addresses inadequacies in countries’ existing legal frameworks and Policy 30 which contemplates an analysis of “the capacity and commitment of the Borrower to develop and implement the project in accordance with the ESSs.”

The World Bank, with its commitment to capacity building, has the power to proactively address this problem with cultural heritage capacity in cost effective ways, through technical assistance and knowledge sharing. With its convening power, the Bank can bring together development planners; project proponents; and environmental, social and cultural authorities, in order to facilitate the holistic approach set forth in its



Environmental & Social Framework in general, and the effective implementation of Standard 8 in particular.

ICOMOS could be an important strategic partner in this process. ICOMOS and select ICOMOS National Committees could work to increase the capacity of Borrowers and client countries, for example to (a) undertake EIAs that consider all direct, indirect and cumulative project-specific impacts on cultural heritage (as called for in ESS8, Paragraph 8); and develop and implement appropriate measures to address impacts (as called for in Paragraph 11). ICOMOS could also provide expertise allowing for the execution of the cultural heritage elements of the review provided for in Policy 23.

In the meantime, we request that the following language currently found in OP 4.11.16 be added to the new Policy: “When the borrower’s capacity is inadequate to manage cultural heritage that may be affected by a Bank-financed project, the project must include components to strengthen that capacity.”

6. Specific Guidance for Standard 8.

The *World Bank Physical Cultural Resources Safeguard Policy Guidebook* created for use in implementing OP 4.11 should be revised to provide guidance for Standard 8. This Guidebook, recognized internationally as a unique and valuable resource, has been available in English, French, Spanish, Arabic, Chinese and Portuguese. The *Physical Cultural Resource Country Profiles*, also developed at the World Bank, are another valuable resource for facilitating implementation of Standard 8. The Bank should encourage use of these profiles by client countries. In addition, through its professed role in technical assistance and knowledge sharing, the Bank should consider cost-effective measures to provide guidance to its client countries for the identification, protection and management of cultural heritage as required for compliance with the provisions of Standard 8. Again, there could be a role for ICOMOS in facilitating this.

7. Implementation and Monitoring of Standard 8.

How will the World Bank implement, monitor and assess compliance with Standard 8 by its client countries? Where is the administrative locus for cultural heritage and oversight of Standard 8 in the World Bank administrative structure? We strongly advise the creation of at least two new staff positions in the World Bank headquarters to act as a focal point for attention to cultural heritage as set forth in Standard 8.

8. Tourism.

ESS8 is deficient in its failure to expressly deal with tourism projects. ESS8 should express the concept that conservation and preservation of heritage must be integrated into the core of the development of cultural tourism and that authenticity should be at the heart of the development of cultural tourism and the growth of interpretation and communication strategies. ESS8 should provide that local participation, drawing on local perspectives, priorities and knowledge, is a pre-condition for tourism projects, particularly those that implicate intangible heritage or cultural landscapes. The precise manner in which these points are made depends somewhat on the approach taken to issues of intangible heritage and commercialization of heritage. ICOMOS requests the opportunity to be involved in the further development of these concepts.

9. Archeology.

Attached hereto please find a document entitled "COMPLYING WITH AND FURTHERING THE OBJECTIVES OF THE WORLD HERITAGE CONVENTION IN REGARD TO WORLD BANK DOCUMENT ESS8." The specialized comments on archaeological resources contained therein were prepared by the ICOMOS International Committee on Archaeological Heritage Management (ICAHM) and are hereby incorporated in these comments by reference.

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ICOMOS again wishes to thank the World Bank for affording this opportunity for consultation. In addition, ICOMOS wishes to acknowledge the work of several of its committees in the preparation of these comments including the International Committee on Law, Administration and Finance (ICLAFI) and the International Committee on Archaeological Heritage Management (ICAHM). ICOMOS looks forward to continuing to work with the Committee and World Bank staff on the completion and ultimate implementation of this new Environmental and Social Framework.

Respectfully yours,

*/s/ Gustavo F. Araoz*

Gustavo F. Araoz  
President, ICOMOS

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<sup>i</sup> The European Bank for Reconstruction and Development standard reads as follows:

The EBRD recognises the importance of cultural heritage for present and future generations. Consistent with the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of Intangible Heritage, this Performance Requirement aims to protect irreplaceable cultural heritage and to guide clients to avoid or mitigate adverse impacts on cultural heritage in the course of their business operations. In addition, the requirements of this Performance Requirement related to a project's use of cultural heritage are based in part on standards set by the Convention on Biological Diversity. The Bank supports a precautionary approach to the management and sustainable use of cultural heritage in line with the Rio Declaration.

Cultural heritage is important as a source of valuable historical and scientific information, as an asset for economic and social development, and as an integral part of a people's cultural identity, practices, and continuity.

In pursuing these aims of protection and conservation, the Bank is guided by and supports the implementation of applicable international conventions and other instruments.<sup>1</sup> The EBRD also recognises the need for all parties to respect the laws and regulations that pertain to cultural heritage in a project's area of influence and the country of operation's obligations under relevant international treaties and agreements. These laws may be cultural heritage or antiquities laws, planning or building consent laws, conservation area or protected area regulations, other laws and regulations governing the built historic environment, or laws relating to the protection of Indigenous Peoples.

[http://www.ebrd.com/downloads/about/sustainability/ESP\\_PR08\\_Eng.pdf](http://www.ebrd.com/downloads/about/sustainability/ESP_PR08_Eng.pdf)

<sup>ii</sup> It is unclear whether the definition of "mitigation hierarchy" set forth in ESS1 is meant to apply to the term as used in ESS8. It is not clear that the former is readily suited to the latter.