



Chapter 3.7 Cultural Heritage

BACKGROUND

Cultural heritage is the legacy of physical structures, landscapes and artifacts, as well as intangible attributes of a group or society, such as language, activities or knowledge that has cultural, scientific, spiritual or religious value.¹⁸⁶

Over time, mining and other forms of industrial development can both create and also result in profound and irreversible damage to cultural heritage. Most obviously, mining activities can destroy or damage tangible cultural heritage, such as historical buildings or sites of spiritual significance. But damage to intangible cultural heritage may also occur, for example, as a result of inappropriate visitation of sites or the inappropriate use of traditional knowledge.¹⁸⁷

Increasingly, mining companies are recognizing the importance of protecting and where possible promoting cultural heritage to respect the rights of, and strengthen relationships with communities wherever they operate.¹⁸⁸

OBJECTIVES/INTENT OF THIS CHAPTER

To protect and respect the cultural heritage of communities and indigenous peoples.

SCOPE OF APPLICATION

RELEVANCE: This chapter is applicable to all mines applying for IRMA certification that have the potential impact indigenous peoples' cultural heritage and/or the cultural heritage of non-indigenous communities.

NEW VS. EXISTING MINES: New mines and existing mines shall meet the requirements in this chapter. Existing mines that have not carried out a cultural heritage assessment as per 3.7.1 are not expected to carry out an assessment unless there are proposed changes to the company's plans or activities that may potentially affect cultural heritage (or significantly change the nature or degree of an existing impact on cultural heritage); or if previously unknown cultural heritage is encountered by the mining company (also known as chance finds). Existing mines will, however, be expected to meet the requirements in the remainder of the chapter.

TERMS USED IN THIS CHAPTER

Affected Community ■ Biodiversity ■ Biosphere Reserve ■ Chance Find ■ Collaboration ■ Competent Professionals ■ Conservation Values ■ Contractor ■ Critical Cultural Heritage ■ Ecosystem Services ■ Existing Mine ■ Free, Prior and Informed Consent ■ Highly Protected Areas ■ Indigenous Peoples ■ Intangible Cultural Heritage ■ Mining-Related Activities ■ New Mine ■ Nonreplicable Cultural Heritage ■ Operating Company ■ Protected Area ■ Protected Area Management Category ■ Replicable Cultural Heritage ■ Significant Changes to Mining-Related Activities ■ Tangible Cultural Heritage ■ Tentative List for World Heritage Site Inscription ■ World Heritage Site ■

These terms appear in the text with a dashed underline. For definitions see the Glossary of Terms at the end of the document.

¹⁸⁶ Adapted from: Daes, E. 1995. Protection of the heritage of Indigenous People. Final report of the Special Rapporteur, Mrs. Erica-Irene Daes, in conformity with Subcommission resolution 1993/44 and decision 1994/105 of the Commission on Human Rights. E/CN.4/Sub.2/1995/26. June 21, 1995; and IFC. 2012. IFC's Guidance Notes: Performance Standards on Environmental and Social Sustainability. Guidance Note 7, p. 17.

¹⁸⁷ E.g., some indigenous heritage sites may be gendered—safe for one sex but dangerous to the other; indigenous peoples' knowledge regarding the existence, location and significance of sites is often not public; and in some cases, if knowledge of sacred sites is transferred inappropriately it may be dangerous to both the giver and receiver. (O'Faircheallaigh, C. 2008. Negotiating Cultural Heritage? Aboriginal-Mining Company Agreements in Australia. p. 7)

¹⁸⁸ E.g., see Anglo American. 2009. The Anglo Social Way: Management System Standards. p. 12. http://www.angloamerican.com/~media/Files/A/Anglo-American-PLC-V2/documents/supplier/aa_social_way.pdf; and also: Rio Tinto. 2011. Why Cultural Heritage Matters. http://www.riotinto.com/documents/ReportsPublications/Rio_Tinto_Cultural_Heritage_Guide.pdf

Cultural Heritage Requirements

3.7.1. General Stipulations

3.7.1.1. Screening, assessment and the development and implementation of mitigation measures and procedures related to the management of cultural heritage shall be carried out by competent professionals.

3.7.1.2. Screening, assessment and the development of mitigation measures and procedures related to the management of cultural heritage shall include consultations with relevant stakeholders.¹⁸⁹

3.7.1.3. Cultural heritage assessments, management plans and procedures shall be made available upon request to community stakeholders and other stakeholders who have been engaged with the mine site on cultural heritage issues.¹⁹⁰

3.7.2. Cultural Heritage Screening and Assessment

3.7.2.1. Prior to the development of a new mine, or when there are significant changes to mining-related activities, the operating company shall undertake a screening process to identify risks and potential impacts to replicable, non-replicable and critical cultural heritage from the proposed mining-related activities.¹⁹¹

3.7.2.2. If the screening indicates the potential for replicable, non-replicable or critical cultural heritage to be encountered during mining-related activities, the operating company shall assess the nature and scale of the potential impacts and propose mitigation measures to avoid, minimize, restore or compensate for adverse impacts. Mitigation measures shall be consistent with the requirements below (see criteria 3.7.3, 3.7.4, 3.7.5 and 3.7.6), based on the type of cultural heritage likely to be affected.

3.7.3. Replicable Cultural Heritage

3.7.3.1. When tangible replicable cultural heritage that is not critical is encountered during mining-related activities the operating company shall apply mitigation measures that favor avoidance. Where avoidance is not feasible, the following mitigation hierarchy shall apply:

- a. 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 processes needed to support it;
- b. 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;

¹⁸⁹ Relevant stakeholders may include, e.g., communities within the host country who use, or have used within living memory, the cultural heritage; academics or others with expertise on the local cultural heritage; and national or local regulatory agencies that are entrusted with the protection of cultural heritage.

¹⁹⁰ In this case, community stakeholders would include individuals from affected communities (and the host country if there are those who use, or have used within living memory, the cultural heritage that may be affected by the mining activities). If the operating company engaged with other stakeholders (e.g., during the cultural heritage assessment process), such as academics or organizations with expertise on the local cultural heritage, or local or national regulatory agencies entrusted with the protection of cultural heritage that may be affected by the mine site, the company would be expected to share information if requested with those stakeholders, too.

¹⁹¹ If screening has not identified any risks or potential impacts to cultural heritage, then further assessment is not needed.

Note that screening may have taken place as part of the ESIA in IRMA Chapter 1.2, or as part of the biodiversity, ecosystem services and protected areas screening in IRMA Chapter 4.6.

Screening should include a determination of whether or not the mining project is in an area currently or traditionally occupied or used by indigenous peoples, where cultural heritage of other communities may be affected, where there may be indigenous peoples living in voluntary isolation, or where nearby areas have been legally protected to preserve cultural heritage.

- c. Where restoring the functionality of the cultural heritage in a different location is not feasible, permanently remove historical and archeological artifacts and structures; and
- d. Where affected communities are using the tangible cultural heritage for long-standing cultural purposes compensate for loss of that tangible cultural heritage.

3.7.3.2. All mitigation work involving tangible replicable cultural heritage shall be carried out and documented by competent professionals, using internationally recognized practices for the protection of cultural heritage.

3.7.4. Non-Replicable Cultural Heritage

3.7.4.1. The operating company shall not remove any tangible nonreplicable cultural heritage, unless all of the following conditions are met:

- a. There are no technically or financially feasible alternatives to removal;
- b. The overall benefits of the mining project conclusively outweigh the anticipated cultural heritage loss from removal; and
- c. Any removal of cultural heritage is conducted using the best available technique.

3.7.4.2. All mitigation work involving tangible non-replicable cultural heritage shall be carried out and documented by competent professionals, using internationally recognized practices for the protection of cultural heritage.

3.7.5. Critical Cultural Heritage

3.7.5.1. Except under exceptional circumstances, the operating company shall not remove, significantly alter or damage critical cultural heritage. In exceptional circumstances when impacts on critical cultural heritage are unavoidable, the operating company shall:

- a. Retain external experts to assist in the assessment and protection of critical cultural heritage, and use internationally recognized practices for the protection of cultural heritage;¹⁹² and
- b. Collaborate with affected communities to negotiate measures to protect critical cultural heritage and provide equitable outcomes for affected communities, and document the mutually accepted negotiation process and outcomes. Where impacts may occur to the critical cultural heritage of indigenous peoples negotiation shall take place through the free, prior and informed consent process outlined in IRMA Chapter 2.2, unless otherwise specified by the indigenous peoples.

3.7.5.2. When a new mine is proposed within a legally protected cultural heritage area, including areas proposed by host governments for such designation, or a legally defined protected area buffer zone, the operating company shall:

- a. Comply with requirement 3.7.5.1;
- b. Comply with the protected area's management plan;
- c. Consult with agencies or bodies responsible for protected area governance and management, affected communities and other key stakeholders on the proposed mining project; and
- d. Implement additional programs, as appropriate, to promote and enhance the conservation aims of the protected area.

¹⁹² For example, the best available technique proposed by competent professionals hired by the operating company could undergo a peer review by international external experts, or technical experts selected by stakeholders, to ensure that no better, feasible techniques are available.

3.7.5.3. IRMA will not certify new mines that are developed in or that adversely affect the following protected areas if those areas were designated to protect cultural values (see also Chapter 4.6):¹⁹³

- World Heritage Sites, and areas on a State Party's official Tentative List for World Heritage Site Inscription;
- International Union for Conservation of Nature (IUCN) protected area management categories I-III; and
- Core areas of UNESCO biosphere reserves.

3.7.5.4. An existing mine located entirely or partially in a protected area listed in 3.7.5.3 shall demonstrate that:

- a. The mine was developed prior to the area's official designation;
- b. Management plans have been developed and are being implemented to ensure that activities during the remaining mine life cycle will not permanently and materially damage the integrity of the cultural values for which the area was designated or recognized; and
- c. The operating company collaborates with relevant management authorities to integrate the mine's management strategies into the protected area's management plan.

3.7.5.5. To safeguard irreplaceable cultural heritage and respect indigenous peoples' right to self-determination, the operating company shall not carry out new exploration or develop new mines in areas where indigenous peoples are known to live in voluntary isolation.

3.7.6. Commercial Use of Cultural Heritage¹⁹⁴

3.7.6.1. Where the operating company proposes to use the intangible cultural heritage, including knowledge, innovations or practices of local communities for commercial purposes, the company shall inform these communities of their rights under national and international law, of the scope and nature of the proposed commercial development, and of the potential consequences of such development.

3.7.6.2. The operating company shall not proceed with such commercialization unless it:

- a. Collaborates with affected communities using a good faith negotiation process that results in a documented outcome; and
- b. Provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with local customs and traditions.

3.7.6.3. Where the operating company proposes to use indigenous peoples' cultural heritage for commercial uses, negotiation shall take place through the free, prior and informed consent process outlined in IRMA Chapter 2.2, unless otherwise specified by the indigenous peoples.

¹⁹³ Chapter 3.7 is focused on the protection of cultural heritage, and so requirement 3.7.5.3 is specific to cultural values. There is a similar requirement in Chapter 4.6—Biodiversity, Ecosystem Services and Protected Areas (4.6.5.3) that prohibits IRMA certification of mines that are developed in or that affect World Heritage Sites, IUCN protected areas management categories I-III and core areas of UNESCO biosphere reserves if they were designated to protect values other than cultural values (e.g., protect biodiversity, unique geological formations, etc.).

¹⁹⁴ At the present time, there are not clear examples of mining companies proposing to use intangible cultural heritage for commercial purposes. This requirement is from IFC, and the examples provided in IFC guidance include commercialization of traditional medicinal knowledge or other sacred or traditional technique for processing plants, fibers, or metals, or locally-sourced industrial design. (IFC. 2012. Performance Standard 8: Cultural Heritage. Guidance Note, GN29. https://www.ifc.org/wps/wcm/connect/39e39000498007fda1fff3336b93d75f/Updated_GN8-2012.pdf?MOD=AJPERES)

It is expected that community stakeholders will help to identify if there are cases where the mining project or operating company has proposed and/or used a community's intangible cultural heritage for commercial purposes.

3.7.7. Cultural Heritage Management

3.7.7.1. A cultural heritage management plan or its equivalent shall be developed that outlines the actions and mitigation measures to be implemented to protect cultural heritage.

3.7.7.2. If a new or existing mines is in an area where cultural heritage is expected to be found, the operating company shall develop procedures for:

- a. Managing chance finds, including, at minimum, a requirement that employees or contractors shall not further disturb any chance find until an evaluation by competent professionals is made and actions consistent with the requirements of this chapter are developed;
- b. Managing potential impacts to cultural heritage from contractors and visitors;
- c. Allowing continued access to cultural sites, subject to consultations with affected communities and overriding health, safety, and security considerations; and
- d. If the mining project affects indigenous peoples' cultural heritage, the operating company shall collaborate with indigenous peoples to determine procedures related to the sharing of information related to cultural heritage.

3.7.7.3. The operating company shall ensure that relevant employees receive training with respect to cultural awareness, cultural heritage site recognition and care, and company procedures for cultural heritage management.

NOTES

This chapter uses, as its basis, the IFC Performance Standard 8—Cultural Heritage.

While this chapter applies to both indigenous and non-indigenous cultural heritage, it does not specify requirements applicable to Indigenous and Community Conserved Areas (ICCAs) designated as such by indigenous peoples or local communities. These are areas governed and/or managed by the people or community in a manner that conserves nature and/or cultural values.¹⁹⁵ Such areas may be considered by indigenous peoples as a part of their cultural heritage and, as such, could be raised during the cultural heritage screening process and addressed in Chapter 2.8, and/or addressed during the free, prior and informed consent process in Chapter 2.2—Free, Prior and Informed Consent.

CROSS REFERENCES TO OTHER CHAPTERS	
CHAPTER	ISSUES
1.1—Legal Compliance	Some host countries may have laws relating to the assessment and protection of cultural heritage. As per Chapter 1.1, if <u>host country laws</u> related to cultural heritage exist, a company is required to abide by those laws. However, if IRMA requirements are more stringent than <u>host country law</u> , the company is required to also meet the IRMA requirements, as long as complying with them would not require the operating company to violate <u>host country law</u> .
1.2—Community and Stakeholder Engagement	Engagement with <u>stakeholders</u> and <u>indigenous peoples</u> regarding cultural heritage shall conform to the requirements in Chapter 1.2. In particular, criterion 1.2.3 is important to ensure that <u>stakeholders</u> have the capacity to fully understand their rights and collaborate effectively in the development of prevention/ <u>mitigation</u> plans and monitoring processes. Also, 1.2.4 ensures that communications and information are in formats and languages that are accessible and understandable to <u>affected communities</u> and <u>stakeholders</u> , and provided in a timely, culturally appropriate manner.

¹⁹⁵ ICCA Consortium website: “Three defining characteristics for ICCAs.” <https://www.iccaconsortium.org/index.php/discover/>

CROSS REFERENCES TO OTHER CHAPTERS	
1.3—Human Rights Due Diligence	<p>If the infringement of human rights is predicted during cultural heritage assessment, or if human rights related to cultural heritage have been infringed upon at either a <u>new mine</u> or <u>existing mine</u>, a company will be expected to prevent, <u>mitigate</u> and <u>remediate</u> the impacts as per Chapter 1.3. This includes the <u>mitigation</u> or <u>remediation</u> of human-rights-related impacts from past cultural heritage management activities at <u>existing mines</u>.</p> <p>Requirement 3.7.5.5 regarding <u>indigenous peoples</u> in voluntary isolation was written not only to protect the cultural heritage of those <u>indigenous peoples</u>, but also to respect their right to self-determination, which means that their decision to remain isolated must be respected.</p>
2.1—Environmental and Social Impact Assessment and Management	<p>The cultural heritage assessment required in 3.7.1 may be done in coordination with or as part of the Environmental and Social Impact Assessment in Chapter 2.1, rather than as a stand-alone assessment.</p>
2.2—Free, Prior and Informed Consent	<p>The identification and assessment of mining activities that impact cultural heritage of <u>indigenous peoples</u> may be addressed as part of the <u>FPIC</u> process as per Chapter 2.2.</p>
4.6— Biodiversity, Ecosystem Services and Protected Areas	<p>Some legally <u>protected areas</u> are designated as such to preserve <u>critical cultural heritage</u>. The <u>operating company</u> is required in Chapter 4.6 to identify legally <u>protected areas</u> that may be affected by <u>mining-related activities</u>. That information will be applicable for requirements in 3.7.5 pertaining to areas that are designated to protect cultural heritage. Also, the requirements in Chapter 3.7 align with those in Chapter 4.6 regarding actions to be taken by the <u>operating company</u> if mines are to be developed in <u>protected areas</u>.</p> <p>Indigenous and Community Conserved Areas (ICCAs) designated as such by indigenous peoples, may be created to protect cultural heritage and therefore may be addressed in Chapter 3.7. However, consideration of the ecological attributes of protected ICCAs may also be addressed in Chapter 4.6 of the IRMA Standard.</p>