

Protocol for Managing the Discovery of Human Remains

Construction projects on occasion encounter an unanticipated chance find of human remains. This protocol provides guidance to project proponents, managers and staff as well as ADB project staff for managing the discovery of human remains in a precautionary, legally compliant and culturally sensitive manner.

What types of sites of human remains may be encountered?

During construction human remains may be found in unmarked sites below ground during excavation works in the right of way of a project. These may be historical or more recent graves of archeological significance, or they may result from a crime, including the killing of individuals or of larger groups of a population, as in violent ethnic confrontations and war crimes.

The project may also encounter unanticipated smaller marked grave sites in both, private properties near or within human settlements or in the open landscape within the designed project right of way. While larger formal cemeteries are usually clearly marked and visible and are noted in cadastral and other pertinent maps, smaller grave sites may be not be as readily noted during project feasibility and design studies.¹

What can project designers do to be prepared for the discovery of human remains?

First, the need for thorough feasibility assessment and adequate due diligence to identify potential unmarked and marked sites of human remains during project design and before the commencement of construction works should be kept in mind from the outset. This requires the study of relevant maps and aerial photographs of the project's right of way in combination with detailed on-the-ground field observations of the landscape, settlements and communities. At the same time, the project designers require a good understanding of the project's specific socio-cultural and historical as well as legal and policy context. By consulting local community representatives and residents as well as relevant government representatives, by noting the record of historical and recent events involving violent confrontations or known crimes, and by keenly observing the features of the settlements and landscapes affected by the project facilities, the project designers can develop an awareness of known sites of human remains and of the potential for encountering unmarked sites. Moreover, adequate familiarity with the legal requirements for the treatment of chance finds of archeological significance or of crime scenes², as well as with local cultural beliefs and practices in the treatment of the remains of deceased ancestors are essential to properly manage potential finds. Thereby conflict with the law and/or local stakeholders and lengthy delays of project works as well as reputational risks can be avoided.

The project proponents and managers furthermore need to ensure that the project contractors understand how to manage the discovery of human remains during project works and are contractually obligated to follow legal requirements and the applicable provisions of this protocol.

Compliance with legal requirements and this protocol for managing the discovery of human remains needs to be included in the covenants of the loan agreement between the project proponent and the ADB.

What steps need to be taken first if a project discovers human remains?

If the project becomes aware of a site of human remains during design activities it can manage the site in accordance with this protocol before the commencement of civil works alongside other environmental and social safeguards requirements and include the respective assessment and

¹ While this protocol primarily addresses unmarked and smaller marked sites, the guidance for the management of the discovery of human remains addressed here should also be considered in the treatment of larger formal cemeteries affected by project construction works.

² Respective information can be found on the websites of government agencies or national associations of architects and engineers, as well as engineering companies engaged in construction works.

mitigation measures in the applicable safeguards management plans. The sites will be included in the environmental and social assessment and baseline data, including a site survey, a mortuary inventory and a census and socio-economic assessment of the known and other possible descendants of the buried persons, will be prepared together with appropriate mitigation measures based on systematic stakeholder engagement.

If the project encounters unanticipated unmarked or marked sites of human remains during civil works, the first step is for the contractor to stop all construction activities at and around the site immediately and to secure the site. This involves the clear marking of the site with barriers and the removal of all construction equipment, taking care that any further damage of the remains and the site is avoided. All further entry to the marked site or handling of the remains need to thereafter be prohibited. The site needs to be treated as a potential archeological and/or cultural heritage site or as a crime scene. Photographs and videography of the status of the site at this time should be taken to provide documentary evidence and ensure that relevant stakeholders can recognize the project's compliance with applicable legal and policy requirements and this protocol.

It is critically important that the project complies with all applicable legal and policy requirements and respects all local customs regarding grave sites to avoid any unnecessary additional delays by either committing a criminal violation or by offending affected communities and other stakeholders.

The removal of human remains and/or artifacts found in a grave site and attempts to hide and cover up the chance find to either avoid project delays or to achieve financial gains through the sale of artifacts are likely to constitute criminal acts. Project proponents, consultants and/or contractors may be subject to potential imprisonment and large fines, as most countries have clear legal provisions for dealing with the discovery of human remains and archeological sites or crime scenes. The delays and offences caused would likely be more costly than the limited delay due to the proper management of the discovery. Civil works in unencumbered sections of the project **trace** can most likely be continued soon after the notification and assessment of the chance find site and the project may return to the same at a later point in time. The discovery of human remains would be a valid justification for granting a reasonable extension of time to the affected contractor.

Who needs to be notified?

There are various stakeholders who need to be notified, depending on the type of site of human remains discovered.

In any case, the project contractor needs to immediately notify the on-site project officers of the implementing agency, who will alert the management and relevant staff of the project implementing and executing agencies. The borrower/client in turn needs to notify the ADB project team through the ADB resident mission without delay. The ADB project team may choose to directly support the project in the management of the discovery of human remains if deemed necessary. In addition, the project officers of the implementing agency need to notify the owner of the land on which the site is located, i.e., the private landowner, community or government authority concerned.

Marked grave sites are likely to be non-criminal and mainly of significance to the descendants of the buried persons and their community. Known descendants of the buried persons therefore need to be notified by the project immediately. If the descendants are unknown to local communities, local authorities in charge of grave sites and/or of archeological finds need to be notified to identify possible descendants. The marked grave sites may be of archeological significance and the authorities concerned with archeological finds need to be notified in any case to investigate the site.

If the concerned site is unmarked and discovered during excavation works, the contractor needs to immediately notify the on-site project officers and project management and the local police and the

government medical examiner and/or coroner to investigate and determine the type of site of human remains.³ The IA is responsible for adhering to local mandatory reporting requirements.

In case of a crime scene, a police investigation and related legal processes would be triggered. If the site is linked to a war crime or ethnic conflict, governmental and non-governmental organizations dealing with war crimes and missing persons would need to be notified by the local authorities and examine the site. Possible descendants would be notified by the respective agencies.

If the site is determined to be of potential archeological significance, the government archeological department as well as other relevant agencies, including possibly agencies dealing with Indigenous Peoples and cultural heritage, would need to be contacted and become involved, as prescribed by law, who would then notify and involve possible immediate affected descendants and/or groups and communities related to the buried persons, if any. All relevant stakeholders need to be considered and appropriately notified including expatriate governments if associated with war graves.

How will the project be involved in the management of the discovery of human remains?

In order for the project to appropriately manage the discovery of human remains, the project staff designated to manage social and environmental impacts will engage, consult and cooperate with the relevant stakeholders, including the authorities and agencies indicated above as well as the known and other possible descendants of the buried persons.

Depending on the examination and assessment by the police, coroner, archeology department and other concerned agencies and their determination of the type of site and related events and on the findings of meaningful consultations with the affected descendants and other related stakeholders, if any, feasible options for the treatment of the site and continuation of project construction works need to be negotiated and determined.

If the site is a crime scene or if an archeological site is not connected with possible immediate affected descendants and/or groups and communities related to the buried persons, the site will likely become available to the project once the relevant investigations have been carried out and the human remains removed by the authorities. However, the project proponent and contractors need to be prepared for more discoveries at other sites along the project right of way and ensure that all project workers are informed to proceed with caution. The continuation of construction works must in any case await the approval of the relevant authorities, the project proponent and the ADB. ADB may request a revised work method statement to consider updated chance find procedures and precautionary approaches.

It is of great importance to closely consult with and clearly consider the local beliefs and practices of the immediate affected descendants and/or groups and communities related to the buried persons, in addition to considering the legal requirements and judgement of the relevant local and national authorities, to ascertain whether a burial site needs to remain in place and thus needs to be avoided or the human remains can be relocated to another appropriate burial ground. The age of the grave, or person buried may affect when it can be moved, so thorough consultation and community/family involvement in outcomes will be required.

The management of the discovery of human remains will always follow the mitigation hierarchy requiring to avoid, minimize and mitigate adverse impacts, as well as the replacement principle of the Safeguard Policy Statement of the ADB.⁴

Accordingly, a site of discovery of human remains should preferably stay in place if technically feasible alternatives for the project design can be found. This depends critically on the availability of alternative land which can be made available to the project and its technical suitability. If avoiding the affected site is not possible - and considering that minimizing impact on an existing burial site is likely

³ The medical examiner and/or coroner will also ascertain whether the remain found are of human or non-human origin.

⁴ The relevant provisions and requirements of the ADB Safeguard Policy Statement for Indigenous Peoples, Cultural Heritage and land acquisition, land use restriction and resettlement are applicable.

to be difficult - mitigation by means of relocation to a suitable alternative burial site, i.e., replacement of the burial site, needs to be negotiated with the relevant stakeholders. This would involve finding a new site which is acceptable to all stakeholders, including the descendants and the adjacent communities, as well as appropriate ritual procedures to undertake the culturally sensitive transfer and reinterment of the human remains.

However, if applicable legal provisions prevent the relocation of a burial site or strong cultural objections to relocation exist among the descendants, relocation may not be feasible and the use of an alternative project design and land would be unavoidable if the project is to proceed.

Much will depend on the ability of the project to negotiate a suitable resolution with the relevant stakeholders under consideration of the project benefits for the various stakeholder groups. If the project provides sufficiently important benefits to the immediate affected descendants and/or groups and communities related to the buried persons, a culturally appropriate approach to relocation may be found. If the project benefits are critical to the project proponents and intended local beneficiaries, these may be motivated to develop a feasible design alternative and provide alternative land to site the project section concerned.

In the event that disagreements between the project and the immediate affected descendants and/or groups and communities related to the buried persons cannot be resolved through meaningful consultation, they may contact the project's grievance redress mechanism or the ADB's accountability mechanism to facilitate the resolution of the disagreements.

How will the management of the discovery of human remains be monitored and reported?

The project through the borrower/client will initially provide the ADB with an incident report of the discovery of human remains based on the appended checklist for the management of the discovery of human remains. The incident report will contain all available information and documentary evidence for the discovery and its implications for the project, as well as an initial plan of action to manage it.

Through the project's internal and external safeguards monitoring arrangements, as the case may be, the management of the discovery of human remains will be monitored regularly and progress will be reported in the periodic monitoring reports prescribed under the project. Regular overall project progress monitoring will also provide reporting of the discovery of human remains and regular updates on the management and resolution of the incident. Corrective action plans will be prepared if monitoring indicates inadequate management of the discovery of human remains, based on the detailed analysis of the reasons.

Upon final resolution of the incident through an alternative project design or the relocation of the site, the borrower/client will provide ADB with a final incident report covering the entire process and outcomes of the management of the discovery of human remains.

Appendix

Checklist for the Management of the Discovery of Human Remains (DHR)

This form will be filled and updated at the various stages of managing the DHR as new information becomes available and required actions are carried out. The form will be updated at least every 3 months and the respective status of the management of DHR will inform the periodic monitoring reports prescribed under the project. ~~{Delete all instructions in red font and brackets and indicate the requested information.}~~

Project name	
Reporting date	{state initial reporting date or date of periodic updating}
Project description	
Impact	
Outcomes	
Outputs	
Date of DHR	
Time of discovery in project cycle	Feasibility study Detailed design Construction works
Location of DHR	
Place name	
Administrative units	
Geo-coordinates	
Chainage of project trace	

<p>Type of site of human remains</p>	<p>Marked site</p> <p>Private burial site</p> <p>Open landscape</p> <p>Unmarked site</p> <p>Potential crime scene</p> <p>Individual burial site</p> <p>Mass grave</p> <p>Potential archeological site</p> <p>Other:</p>
<p>Landowner</p>	<p>Private</p> <p>Community</p> <p>Government agency</p> <p>Other:</p>

Immediate actions taken	<p>Construction stopped at DHR site</p> <p>Site secured, marked and closed off</p> <p>Construction equipment removed</p> <p>Site photographed and videoed</p> <p>Project workers and staff informed about requirements</p> <p>Prevention of removal of human remains and artifacts</p> <p>Other:</p>
Applicable key legal framework	<p>{list relevant laws and policies}</p>
Persons or agencies notified by contractor	<p>On-site project officers and management</p> <p>Implementing agency</p> <p>Landowner</p> <p>Police</p> <p>Medical Examiner / Coroner</p> <p>Local community</p> <p>Other:</p>
Persons or agencies notified by project management and staff	<p>ADB resident mission / ADB project team</p> <p>Police</p> <p>Medical Examiner / Coroner</p> <p>Local community</p>

	<p>Landowner</p> <p>Known immediate descendants</p> <p>Other groups and communities related to the buried persons</p> <p>Archeological authorities</p> <p>Governmental and non-governmental organizations dealing with war crimes and/or missing persons</p> <p>Other:</p>
<p>Persons or agencies notified by the police and/or medical examiner</p>	<p>Local community</p> <p>Landowner</p> <p>Known immediate descendants</p> <p>Other groups and communities related to the buried persons</p> <p>Archeological authorities</p> <p>Other law enforcement agencies</p> <p>Governmental and non-governmental organizations dealing with war crimes and/or missing persons</p> <p>Other:</p>
<p>Stakeholder engagement</p>	

<p>Consultation</p>	<p>Local community</p> <p>Landowner</p> <p>Known immediate descendants</p> <p>Other groups and communities related to the buried persons</p> <p>Police</p> <p>Medical Examiner / Coroner</p> <p>Archeological authorities and specialists</p> <p>Other agencies and stakeholders: {list relevant agencies and persons}</p>
<p>Information disclosed</p>	<p>{list information disclosed and stakeholders provided with respective documents}</p>
<p>Key findings and agreements of stakeholder engagement</p>	<p>{list the key findings and agreements}</p>
<p>Mitigation options considered</p>	
<p>Alternative project design and location</p>	<p>{list probable reasons supporting or preventing this option}</p>
<p>Relocation of human remains / burial site</p>	<p>{list probable reasons supporting or preventing this option}</p>

Negotiation of options and mitigation measures adopted	{list participants, characterize negotiation process and indicate the options adopted}
Resolution of disagreements	
Mechanisms utilized	<p>GRM</p> <p>ADB Accountability Mechanism</p> <p>OSPF</p> <p>CRP</p> <p>Courts</p> <p>Other:</p>
Resolution outcomes	{list the provisions and measures accepted and adopted or the reasons for their failure}
Monitoring	
Monitoring mechanism	<p>Internal monitoring</p> <p>External monitoring</p> <p>Project progress reporting</p>
Corrective actions	{list causes for inadequate management of DHR and the proposed / adopted corrective actions}