

DCMS Consultation Document.

Care of Historic Human Remains. A consultation on the Report of the Working Group on Human Remains.

Submission from the World Archaeological Congress

1. BACKGROUND

1.1. The World Archaeological Congress (WAC) is a non-governmental, not-for-profit organisation and is the only representative world-wide body of practising archaeologists. WAC seeks to promote interest in the past in all countries, to encourage the development of regionally-based histories and to foster international academic interaction. Its members include physical anthropologists, social anthropologists, historians, geographers, museum professionals as well as archaeologists and indigenous peoples. Its aims are based on the need to recognise the historical and social roles, as well as the political context, of archaeology, and the need to make archaeological studies relevant to the wider community.

1.2. WAC makes special provision for indigenous issues relating to archaeology to be represented within its official committee structure by reserving eight (out of 40) places on its elected Council for indigenous members. One of these members is elected by the Indigenous members of Council to sit on WAC's eight strong Executive.

1.3. WAC has a long history of debate, research and publication about the 'reburial issue'. It was at WAC's first Congress in 1986, that archaeologists and indigenous people first came together to talk about the issue at an international level. Papers from relevant symposia were then published in a volume of the One World Archaeology series.¹ In response to the debate at WAC-1, an Inter-Congress was organized in 1989 specifically to discuss 'Archaeological Ethics and the Treatment of the Dead'. Indigenous and non-indigenous participants attended from many countries.

1.4. Debate at the Inter-Congress resulted in the Vermillion Accord (see Attachment A). Forged through discussion between archaeologists and indigenous peoples, the Accord is a series of statements upholding respect for both cultural beliefs and the interests of science as the main principles underlying resolution.

1.5. In 1991, WAC adopted a Code of Ethics on Members Obligations to Indigenous Peoples (see Attachment B). In this, WAC recognises that the indigenous cultural heritage, including human remains, rightfully belongs to the indigenous descendants of that heritage.

Both the Vermillion Accord and the WAC Code of Ethics have been adopted by other archaeological organizations, sometimes amended to suit local conditions.

¹ Layton, R. (ed) 1989: *Conflict in the Archaeology of Living Traditions*. London: Routledge.

1.6. In response to a request by indigenous participants at WAC-1, in 1990 WAC undertook a research programme to document the holdings of various indigenous groups in UK institutions. The results of this research were published in the 6th World Archaeological Bulletin (1991).

1.7. WAC continues to provide a forum to discuss the developments and debates surrounding the reburial issue. For example, papers from WAC-4 symposia dedicated to this topic were published as part of the One World Archaeology series in 2002.²

1.8. WAC's response to the DCMS consultation document is guided by the Vermillion Accord and the Code of Ethics – both of which resulted from debate between archaeologists and indigenous peoples. These documents, and WAC's continuing commitment to provide a forum for discussion between archaeologists and indigenous groups, places this organization in a unique position to respond to many of the questions for consultation posed by the DCMS document.

2. GENERAL COMMENTS

2.1. WAC welcomes the recommendations of the Working Group on Human Remains. Its draft Code of Practice and its Statement of Principles are in broad conformity with WAC's Code of Ethics and the Vermillion Accord.

2.2. The requirement for consent and the weight placed on consultation, mutual trust and negotiation that is inherent in the Working Group's recommendations is similar to WAC's recognition that the indigenous heritage belongs to the descendants of that heritage and that 'agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education' (the Vermillion Accord, point 6). In this regard, WAC agrees with the Working Group that consent should be sought from appropriate authorities within indigenous communities, and not solely from those identified within western socio-cultural conventions as close kin.

2.3. WAC has consistently supported the provision of information to indigenous groups about museum holdings of human remains, and access by such groups to relevant archives. Such provision and access has, in many cases, been lacking in the past. Indigenous groups have the right to information about their heritage. Provision of such is central to creating relationships of mutual trust between institutions and indigenous communities. WAC particularly supports all Working Group recommendations that ensure indigenous groups have access to information about human remains in museum collections.

2.4. On the matter of consent we draw your attention to the Working Group's expectation that claimant persons or groups should "forward serious evidence... of the lack of consent of the deceased person or close family of the deceased person to

² Fforde, C., Hubert, J. and Turnbull, P. (eds) 2002: *The Dead and Their Possessions: repatriation in principle, policy and practice*. London: Routledge.

the original removal of the remains". The onus on communities to provide details of lack of consent, and the term 'serious evidence' requires further thought and clarification. For example, while many originating communities can provide evidence of cultural belief systems in relation to the disturbance of human remains, due to historical circumstances it is unreasonable to expect provision of documentary evidence of lack of consent for each collecting episode. Additionally, there must have been many circumstances when indigenous individuals or groups, however much they may have been opposed to interference with the dead, would not, in the political and social context of the time, have felt it possible to make their views known. Consequently, as museums were responsible for collecting, the onus should surely be on such institutions to prove to the satisfaction of communities that items were obtained *with* consent.

3. QUESTIONS FOR CONSULTATION

Legislation (Q1 – Q2)

Q1. Museums, whether national or otherwise, should face no legal impediment to repatriate human remains. Therefore, if required, Clause 48 should be widened to include any museum that is currently restricted by legislation or statute from de-accessioning its holdings of human remains.

Q2. The DCMS should keep under review whether or not any further changes in legislation are required to strengthen the Working Group's recommendations and the commitment outlined in the Prime Ministerial Joint Declaration (2000)

Codes of Practice and Licensing Regime (Q3,Q4)

Q3. The Working Group has recommended a licensing system with associated Code of Practice to implement its findings regarding the care, treatment and management of human remains collections.

The general findings of the Working Group in relation to consent, treatment, care and negotiation agree closely with WAC's own Code of Ethics and the Vermillion Accord.

There is currently no uniformity in UK museums and institutions regarding policies about human remains collections and, in particular, about claims for return by originating communities. Some museums have no written policies. It would be desirable to bring all museums under one Code of Practice in conjunction with one Statement of Principles. The draft Code of Practice and the draft Statement of Principles suggested by the Working Group provide a sound basis for discussion.

Q4. The pertinent point is whether or not UK museums require a licensing system to enforce such a Code of Practice, or whether the museum community should be self-regulating in this respect.

Because of the history of the 'repatriation issue' in the UK and the current disparities in museums' positions, it is difficult to conceive that all holding institutions would voluntarily adopt a national Code of Practice and Statement of Principles. A licensing

system under the auspices of the Human Tissue Authority (as outlined by the Working Group) is the only method of enforcing the recommendations of the Working Group.

Q5. Indigenous groups have campaigned for the return of their ancestral remains for over 30 years and there is historical evidence of the objection by communities to the removal of remains. The reburial issue has been debated by archaeologists, anthropologists and museum professionals since at least the 1980s. Therefore, it is important that UK institutions resolve this matter in a timely fashion and are brought under the necessary authority and licensing regime as soon as possible.

Consent (Q6 – Q9)

Q6. The WAC Code of Ethics states that “members will adhere to the following rules, prior to, during, and after their investigations:

1. Prior to conducting any investigation and/or examination, Members shall with rigorous endeavour seek to define the indigenous peoples whose cultural heritage is the subject of investigation.
2. Members shall negotiate with and obtain the informed consent of representatives authorized by the indigenous peoples whose cultural heritage is the subject of investigation.”

WAC thus agrees that the retention of human remains, and any research on them, should be subject to the consent of close family or direct genealogical descendants where these can be identified. Moreover, as outlined in General Comment 2.4. above, the onus of proof of consent must be upon the holding museum to establish; if museums cannot provide such evidence (either from the present or the past) there should be no presumption of retention. See also Q7 below.

Q7. WAC agrees with the majority view. Museums can identify appropriate authorities to consult by seeking advice from a range of experts, such as local and national indigenous organizations, and overseas museums, academics, and relevant government bodies. There is already a decade of success regarding such procedures in countries such as the USA. It is reasonable to expect museums to consult with such authorities and follow their advice to their best endeavours. Section 3B of the Working Group’s Draft Code of Practice provides useful guidelines in this regard. Consultation methodologies followed by museums in countries such as the USA and Australia can also provide useful guidelines.

Research to identify, as far as possible, the provenance of human remains in UK institutions is required to facilitate consultation with communities.

Q8. According to the Working Group’s majority conclusion, consent is the basic requirement for negotiation, regardless of the age of remains (although fossils and sub-fossils were excluded from the Working Group’s considerations). WAC’s

Vermillion Accord states that agreement on disposition of human remains should apply whatever the age of the human remains.

Q9. WAC disagrees with the view expressed by the Director of the Natural History Museum. Wide consultation with all stakeholders is required for any decision making, and this is in line with the principles of the Vermillion Accord. However, unless such consultation is underpinned by recognition that human remains 'belong' to originating communities, it is likely that those museums fundamentally opposed to repatriation will continue to place more weight on the value of collections to science than they will on the rights of other claimants.

Procedures, Panels and Statement of Principles (Q10-15)

Q10. All museums holding human remains should have published procedures for dealing with claims relating to human remains. It would follow from the response to Q3 (above), that any procedures should be based on central guidelines that would be agreed with the museum community.

Q.11. There must be some higher authority such as a national Human Remains Advisory Panel to which disputes that cannot be resolved by local means (see Q12 below) are referred. See Q6 above for WAC's view on consent.

Q12. Museums may find it helpful to create local panels to regulate any decision making process in relation to repatriation claims although in practice this role has often been taken by existing committees within institutions. The local panels recommended by the Working Group benefit from having both expert representation from outside the institution, and appointments that follow published procedures and criteria – thus assisting transparency.

Q13. Not applicable.

Q14. It would be useful to publish the Statement of Principles as a guide to museums and to the National Advisory Panel. The Statement is in general conformity with WAC's Code of Ethics and the Vermillion Accord.

Q15. As the proposed Human Remains Advisory Panel's role is advisory, in cases where resolution is not forthcoming the issue may need to be referred onwards.

Q16. The Working Group has not recommended the introduction of legislation to force museums to accede to community wishes. However, it would be prudent to keep this matter under review if the licensing system does not effect change in the museum sector.

Survey of Sacred Objects, Education, Implementation Options (Q17-19)

Q17. WAC would support a survey of sacred objects in UK institutions. Sacred objects encompass those that have particular social and cultural significance as defined by the belief system of the group in question. The cost implications of such

a survey should be relatively low as responses would be based on existing inventories and curatorial expertise.

Q18. An information and education programme should be instigated as a follow up to the Working Group's report. Any programme should be aimed not only at museums and holding institutions but also at indigenous authorities. Seminar series or equivalent may assist in such a programme. These could be incorporated into relevant meetings held by, for example, the Museums Association, WAC, or other relevant bodies.

Q.19. Option 10.

ATTACHMENT A

The Vermillion Accord on Human Remains

The Vermillion Accord was adopted in 1989 at the South Dakota **WAC Inter-Congress**.

1. Respect for the mortal remains of the dead shall be accorded to all, irrespective of origin, race, religion, nationality, custom and tradition.
2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonably inferred.
3. Respect for the wishes of the local community and of relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.
4. Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.
5. Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.
6. The express recognition that the concerns of various ethnic groups, as well as those of science are legitimate and to be respected, will permit acceptable agreements to be reached and honoured.

ATTACHMENT B

WAC Code of Ethics

Principles to Abide By:

Members agree that they have obligations to indigenous peoples and that they shall abide by the following principles:

- 1.To acknowledge the importance of indigenous cultural heritage, including sites, places, objects, artefacts, human remains, to the survival of indigenous cultures.
- 2.To acknowledge the importance of protecting indigenous cultural heritage to the well-being of indigenous peoples.
- 3.To acknowledge the special importance of indigenous ancestral human remains, and sites containing and/or associated with such remains, to indigenous peoples.
- 4.To acknowledge that the important relationship between indigenous peoples and their cultural heritage exists irrespective of legal ownership.
- 5.To acknowledge that the indigenous cultural heritage rightfully belongs to the indigenous descendants of that heritage.
- 6.To acknowledge and recognise indigenous methodologies for interpreting, curating, managing and protecting indigenous cultural heritage.
- 7.To establish equitable partnerships and relationships between Members and indigenous peoples whose cultural heritage is being investigated.
- 8.To seek, whenever possible, representation of indigenous peoples in agencies funding or authorising research to be certain their view is considered as critically important in setting research standards, questions, priorities and goals.

Rules to Adhere to:

Members agree that they will adhere to the following rules prior to, during and after their investigations:

- 1.Prior to conducting any investigation and/or examination, Members shall with rigorous endeavour seek to define the indigenous peoples whose cultural heritage is the subject of investigation.
- 2.Members shall negotiate with and obtain the informed consent of representatives authorised by the indigenous peoples whose cultural heritage is the subject of investigation.
- 3.Members shall ensure that the authorised representatives of the indigenous peoples whose culture is being investigated are kept informed during all stages of the investigation.

4. Members shall ensure that the results of their work are presented with deference and respect to the identified indigenous peoples.

5. Members shall not interfere with and/or remove human remains of indigenous peoples without the express consent of those concerned.

6. Members shall not interfere with and/or remove artefacts or objects of special cultural significance, as defined by associated indigenous peoples, without their express consent.

7. Members shall recognise their obligation to employ and/or train indigenous peoples in proper techniques as part of their projects, and utilise indigenous peoples to monitor the projects.

The new Code should not be taken in isolation; it was seen by Council as following on from WAC's adoption of the Vermillion Accord passed in 1989 at the South Dakota Inter-Congress.