February 19, 2016

Safeguards Policy Consultation
The World Bank
1818 H Street NW
Washington, D.C. 20433

The American Cultural Resources Association (“ACRA”) applauds the many improvements made to the first draft of the World Bank Safeguard Policies and is pleased to offer comments on the second draft of the World Bank Safeguard Policies. Our comments are divided into general and specific comments. General comments are included in this cover letter, while specific comments are attached. Our comments are focused on cultural heritage, and therefore are largely directed to Environmental and Social Standard (“ESS”) 8. We also comment on ESSs 1 and 7.

ACRA is the trade association supporting and promoting the interests of cultural resource management (“CRM”) firms in the United States. ACRA’s member firms employ thousands of cultural resources professionals and undertake many of the CRM studies and investigations in the United States. In addition, our member firms are increasingly involved in international projects. ACRA actively promotes best practices within the CRM industry to responsibly balance development and preservation.

ACRA recognizes many improvements in the second draft of the Environmental and Social Framework (“Framework”). Particularly, the improvement to the definition of “cultural heritage” in Paragraph 4 of ESS 8 more properly encapsulates the many facets of cultural heritage. Also, the World Bank broadened the application of ESS 8 by removing the restrictive words “substantial” and “adverse” from Paragraph 5. As written, ESS 8 now applies to all projects that are likely to have “risks or impacts” instead of only projects likely to have adverse impacts. This is significant because the First Draft required that an impact be adverse for ESS 8 to apply; the Second Draft has no such restriction. Also, ESS 8 initially applied to any project which involved significant changes in the physical environment; the Second Draft removes “significant,” thereby applying ESS 8 to any project involving changes of any kind in the physical environment.

Despite these improvements, ACRA still has a number of concerns:

1. The lack of permanent cultural heritage expertise in the World Bank Group.

Though the World Bank employs in-house environmental specialists, the World Bank does not currently employ a full-time, in-house cultural heritage expert. Because cultural heritage management is a very specialized field, we are concerned that the World Bank’s lack of expertise in cultural heritage and archaeological resources will compromise the effectiveness of this Framework. While the World Bank makes extensive use of outside cultural heritage consultants, consultants cannot fully replace qualified in-house heritage professionals in implementing the World Bank’s environmental and social standards.

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1 Please see http://www.acra-crm.org for more information.
2. The need to establish a Cultural Heritage Preservation Fund to provide financial resources to countries that lack strong cultural heritage frameworks.

To overcome the significant obstacle of lack of funding in countries without strong cultural heritage frameworks, the World Bank should establish a fund to strengthen national regulatory controls and train cultural heritage professionals in countries with need.

3. The lack of dissemination of the results of cultural heritage work sponsored by the World Bank to professional archaeologists and other cultural heritage specialists.

The World Bank is a major sponsor of archaeological research in developing countries. Little of this work, however, is readily available to interested professionals. In addition to documenting and physically preserving archaeological materials, the World Bank should require Borrowers to store documentation and archaeological information in an easily accessible digital format.

4. The unclear treatment of intangible cultural heritage.

As defined in Paragraph 4 of ESS 8, international cultural heritage “includes practices, representations, expressions, knowledge, skills events or living traditions, ideas, beliefs, artistic and literary works…” But Paragraph 7 expressly limits the application of ESS 8 to intangible cultural heritage “only in so far as it relates to a physical component of a project.” These Paragraphs, read together, seem to mean that intangible cultural heritage is protected from impacts of physical, but not non-physical, aspects of a project. Does this mean that the Framework applies only when intangible cultural heritage is directly impacted by the physical operations of a project, but not when indirectly impacted?

Clarification on this point would strengthen the commendable inclusion of intangible cultural heritage in the Framework. Particularly, ESS 8 should be revised to clarify: (1) what elements of intangible cultural heritage the Framework applies to; and (2) how borrowers should identify and evaluate intangible cultural heritage.

Implementation of these general comments would substantially improve the effectiveness and credibility of cultural heritage in the Framework. Also, we are particularly concerned by a number of specific paragraphs in ESSs 1, 7, and 8. Those comments follow. We thank you for the opportunity to comment on this second draft of the World Bank Safeguard Policies and look forward to working with the World Bank again in the future.

Sincerely,

Duane E. Peter
President, ACRA
ESS 8: Cultural Heritage (by paragraph number in second draft)

8. The environmental and social assessment...

Revise as follows to recognize that all projects are “likely to affect” cultural heritage:

The environmental and social assessment, as set out in ESS1, will consider direct, indirect, and cumulative project-specific risks and impacts on cultural heritage. Through the environmental and social assessment, the Borrower will determine whether the proposed activities of the project are likely to affect cultural heritage the potential impacts of a proposed activity on cultural heritage.

9. The Borrower will avoid impacts...

Revise as follows to emphasize the role of cultural heritage stakeholders and the World Bank in the decision making process, and to emphasize the appropriate professional qualifications of a “cultural heritage expert.”

The Borrower will avoid impacts on cultural heritage. When the World Bank, cultural heritage stakeholders, and the Borrower agree that avoidance of impacts is not possible, the Borrower will identify and implement measures to address impacts on cultural heritage in accordance with the mitigation hierarchy. Where appropriate, the Borrower will develop a Cultural Heritage Management Plan in consultation with credentialed and accredited independent cultural heritage experts and cultural heritage stakeholders.

10. If the environmental and social assessment determines...

Revise as follows to recognize appropriate professional accreditation and global best-practice standards:

In consultation with credentialed and accredited independent cultural heritage experts, the Borrower will ensure that globally-recognized best practices for field-based study, documentation, and protection of cultural heritage are implemented in connection with the project, including by contractors and other third parties.

11. The Borrower will ensure that a chance find procedure...

Footnote 7 defines chance finds procedure. Revise Footnote 7 as follows to emphasize the role of chance finds procedures:

A chance finds procedure is a project-specific procedure that will be followed if previously unknown cultural heritage is encountered during project activities. Chance finds procedures are in addition to, and not a substitute for, comprehensive cultural heritage protection procedures.

12. The Borrower will ensure that, where necessary,...

Revise as follows to emphasize the likely presence of cultural heritage on any project and the need to involve appropriate, qualified cultural heritage experts, and to align the standard for conducting comprehensive cultural heritage review with the rest of ESS 8.
The Borrower will ensure that, where necessary, the environment and social assessment involves the participation of credentialed and accredited independent cultural heritage experts. If the environmental and social assessment determines that the project may, at any time during the project life-cycle, have significant impacts impact cultural heritage, the Borrower will involve credentialed and accredited independent cultural heritage experts to assist in the identification, valuation assessment, and protection of cultural heritage.

15. The Borrower, in consultation with the Bank...

Revise as follows to emphasize appropriate qualifications of cultural heritage experts:

The Borrower, in consultation with the Bank, project-affected parties (including individuals and communities) and credentialed and accredited independent cultural heritage experts, will determine whether disclosure of information regarding cultural heritage would compromise or jeopardize the safety or integrity of the cultural heritage or would endanger sources of information. If the project-affected parties (including individuals and communities) hold the location, characteristics, or traditional use of natural features with cultural heritage significance in secret, the Borrower will put in place measures to maintain confidentiality.

16. Where the Borrowers’ project site contains…

Revise as follows to emphasize the appropriate level of stakeholder involvement and clarify the Borrowers’ duties regarding site access:

Where the Borrowers’ project site contains cultural heritage or prevents access to previously accessible cultural heritage sites, the Borrower will, based on consultations with the users of the site, allow continued access to the cultural site, or will provide an alternative access route..., if necessary by providing an alternative access route to the site that is acceptable to cultural heritage stakeholders. Access will be designed taking into account health, safety, and security considerations.

18. Archaeological sites comprise…

Revise as follows to emphasize that there is almost never “no archaeology” and to emphasize that most archaeological sites are unseen by and unknown to local people or national and international agencies:

Archaeological sites comprise any combination of structural remains, artifacts, and human or ecological elements and may be located entirely beneath, partially above, or entirely above the land or water surface. Archaeological material may be found anywhere on the earth’s surface, singly or scattered over large areas. Such material also includes burial areas, human remains, and fossils. Most archaeological sites are completely hidden from view. Very rarely, however, is there “no archaeology,” even if such material is not known to or recognized by local people or national or international agencies.
19. Where there is evidence of past human activity…

Revise as follows:

Where there is evidence of past human activity in the area of a project, the Borrower will conduct desk-based research and field surveys to document, map, and investigate archaeological remains. The Borrower will document the location and characteristics of archaeological sites and materials discovered during the project life cycle and provide such documentation to the national or subnational cultural heritage authorities.

We strongly recommend that Paragraph 19 receive significant revision. As written, Paragraph 19 applies in extremely limited scope to only a small portion of what constitutes “cultural heritage.” To broaden the scope of this Paragraph to match the previously revised definition of cultural heritage and to better comply with international standards for archaeological investigation, we suggest the following rewrite of Paragraph 19:

For all projects impacting cultural heritage, the Borrower must conduct an archaeological investigation in accordance with globally recognized best practices and in consultation with credentialed and accredited independent cultural heritage experts. This investigation should include, but is not limited to, (1) document review; (2) interviews with appropriate individuals; (3) aerial and remote-sensing imagery; (4) surface survey; and (5) subsurface sampling (including excavation). This investigation should result in the locating, documenting, and mapping of archaeological materials in the project area.

The Borrower will thoroughly document the location and characteristics of archaeological sites and materials discovered during the life of the project and provide such documentation to the appropriate national or subnational cultural heritage authorities and to international cultural heritage organizations, as well as to the public in a manner that does not endanger the archaeological resources.

20. The Borrower will determine….

Revise as follows to include appropriate professional accreditation for cultural heritage experts and emphasize global best-practices:

The Borrower will determine, in consultation with credentialed and accredited independent cultural heritage experts and according to globally recognized best practices, whether archaeological material discovered during the project life cycle requires: (a) documentation only; (b) excavation and documentation; or (c) conservation in place; and will manage the archaeological material accordingly. The Borrower will determine ownership and custodial responsibility for archaeological material in accordance with national and subnational law, and until such time as custody has been transferred, will arrange for identification, conservation, labeling, secure storage, and accessibility to enable future storage and analysis.
21. Built Heritage refers to…

Revise as follows to emphasize a broader, more accurate definition of “Built Heritage”:

Built Heritage refers to single or groups of architecture works, sites, structures, objects and other features in their urban or rural setting as evidence of a particular civilization, a significant development, or a historical event. Built Heritage can be physical (e.g., a building) or a specific use of existing space (e.g., a trade route). Built Heritage includes, but is not limited to, individual or groups of landmarks, monuments, buildings, structures, open spaces, routes, and corridors buildings, structures, and open spaces constituting past or contemporary human settlements that are recognized as cohesive and valuable from an architectural, aesthetic, spiritual, or socio-cultural perspective.

22. The Borrower will identify…

Revise as follows to include appropriate professional accreditation for cultural heritage experts and emphasize global best-practices:

The Borrower will, in consultation with credentialed and accredited independent cultural heritage experts and in accordance with globally recognized best practices, identify appropriate mitigation measures to address the impacts on Built Heritage, which may include but are not limited to: (a) documentation; (b) conservation or rehabilitation in situ; or (c) relocation and conservation or rehabilitation. During any rehabilitation or restoration of cultural heritage structures, the Borrower will ensure that the authenticity of form, construction materials, and techniques of the structures are maintained.

23. The Borrower will preserve…

Revise as follows to encompass the essential “spiritual” context of a site and to reach all elements of built heritage:

The Borrower will preserve the physical, spiritual, and visual context of individual or groups of historic structures and landscape features by considering the appropriateness and the effect of project infrastructure proposed for location within the range of sight.

25. The Borrower will identify…

Revise as follows to include appropriate professional accreditation for cultural heritage experts and emphasize global best-practices:

Through research and in consultation with credentialed and accredited independent cultural heritage experts and cultural heritage stakeholders, and in accordance with globally recognized best practices, the Borrower will identify natural features with cultural heritage significance affected by the project, the people that value such features, and the individuals or groups with authority to represent and negotiate regarding the location, protection, and use of the heritage place(s). The Borrower will, in consultation with credentialed and accredited independent cultural heritage experts and in accordance with globally recognized best practices, determine whether it is possible to transfer the cultural heritage and/or sacred characteristics of a place to another location. If this
is the case, the agreement that is reached regarding the transfer will respect and enable continuation of the traditional practices associated with such transfer.

26. Movable cultural heritage includes…

Revise as follows to emphasize the necessity of globally recognized best practices:
Movable cultural heritage includes such objects as: historic or rare books and manuscripts; paintings, drawings, sculptures, statuettes, and carvings; modern or historic religious items; historic costumes, jewelry, and textiles; fragments of monuments or historic buildings; archaeological material; and natural history collections such as shells, flora, or minerals. Discoveries and access resulting from a project may increase the vulnerability of cultural objects to theft, trafficking, or abuse. The Borrower will follow globally recognized best practices to take measures to guard against theft and illegal trafficking of movable cultural heritage items affected by the project and will notify relevant authorities of such activity.

29. The Borrower will not proceed…

Revise as follows to emphasize the role of cultural heritage stakeholders:

The Borrower will not proceed with the project unless it: (a) carries out meaningful consultation as described in ESS10; (b) provides for fair and equitable sharing of benefits from commercialization of such cultural heritage, consistent with customs and traditions of the project affected parties; and (c) identifies mitigation measures according to the mitigation hierarchy and in consultation with the stakeholders.
ESS 1. Assessment and Management of Environmental and Social Risks and Impacts

33. For projects that are *High Risk* or contentious…

Revise as follows to emphasize appropriate professional qualifications:

For projects that are High Risk or contentious, or that involve serious multidimensional environmental or social risks or impacts, the Borrower may be required to engage one or more *credentialed and accredited* independent experts. Such experts may, depending on the project, form part of an advisory panel or be otherwise employed by the Borrower, and will provide independent advice and oversight to the project.

45. The Borrower will monitor and measure…

Revise as follows to emphasize appropriate professional qualifications and the need for standard rather than optional expert involvement:

The Borrower will monitor and measure the environmental and social performance of the project in accordance with the legal agreement (including the ESCP). The extent of monitoring will be agreed upon with the Bank, and will be proportionate to the nature of the project, the project’s environmental and social risks and impacts, and compliance requirements. The Borrower will ensure that adequate systems, resources and personnel are in place to carry out monitoring. Where appropriate, the Borrower will engage stakeholders and third parties, such as *credentialed and accredited* independent experts, local communities or NGOs, to complement or verify its own monitoring activities. Where other agencies or third parties are responsible for managing specific risks and impacts and implementing mitigation measures, the Borrower will collaborate with such agencies and third parties to establish and monitor such mitigation measures.

46. Monitoring will normally include…

Revise as follows to remove the subjective word “normally” because of the potentially damaging effects of such discretion.

Monitoring will *normally* include recording information to track performance, and establishing relevant operational controls to verify and compare compliance and progress. Monitoring will be adjusted according to performance experience, as well as actions requested by relevant regulatory authorities and feedback from stakeholders such as community members. The Borrower will document monitoring results.
ESS 7. Indigenous Peoples

18. Indigenous Peoples may be particularly vulnerable...

Reword as follows to remove the subjective word “significant” and to emphasize appropriate professional qualifications:

Indigenous Peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources (including cultural heritage). In recognition of this vulnerability, in addition to the General Requirements of this ESS (Section A) and those set forth in ESSs 1 and 10, the Borrower will obtain the Free, Prior and Informed Consent (FPIC) of the affected Indigenous Peoples when the project will: (a) have impacts on land and natural resources subject to traditional ownership or under customary use or occupation; (b) cause relocation of Indigenous Peoples from land and natural resources subject to traditional ownership or under customary occupation or use; or (c) have significant impacts on Indigenous Peoples’ cultural heritage. In these circumstances, the Borrower will engage credentialed and accredited independent specialists experts to assist in the identification of the project risks and impacts.

24. Where a project may significantly impact cultural heritage...

Revise as follows to remove the subjective word “significant” and to emphasize FPIC provisions:

Where a project may impact cultural heritage that is relevant connected to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples’ lives, priority will be given to the avoidance of such impacts. Where significant project impacts are unavoidable, the Borrower will obtain the FPIC of affected Indigenous Peoples. Where FPIC is not obtained, this aspect of the project will not proceed, as per Paragraph 21 of this ESS.

25. Where a project proposes to use...

Revise as follows to emphasize FPIC provisions:

Where a project proposes to use the cultural heritage including knowledge, innovations, or practices of Indigenous Peoples for commercial purposes, the Borrower will inform the affected Indigenous Peoples of: (a) their rights under national law; (b) the scope and nature of the proposed commercial development; and (c) the potential consequences of such development; and obtain their FPIC. The Borrower will also enable Indigenous Peoples to share equitably in the benefits to be derived from commercial development of such knowledge, innovation, or practice, consistent with the customs and traditions of the Indigenous Peoples. Where FPIC is not obtained, this aspect of the project will not proceed, as per Paragraph 21 of this ESS.