

**CONVENTION ON
BIOLOGICAL
DIVERSITY**

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**AD HOC OPEN-ENDED INTER-SESSIONAL
WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE
CONVENTION ON BIOLOGICAL DIVERSITY**

Fifth meeting

Montreal, 15-19 October 2007

Item 9 of the provisional agenda

**COMPILATION OF VIEWS CONCERNING AN ETHICAL CODE OF CONDUCT TO ENSURE
RESPECT FOR THE CULTURAL AND INTELLECTUAL HERITAGE OF INDIGENOUS AND
LOCAL COMMUNITIES**

Note by the Executive Secretary

INTRODUCTION

1. As requested in decision VIII/5 F paragraph 4, the Executive Secretary is circulating herewith, for the consideration of participants in the Fifth meeting of the Ad Hoc Open-ended Inter-Sessional Working Group on Article 8(j) and Related Provisions, a compilation of views and comments received by the Secretariat in response to Notification 2006-074. This information document is provided to assist in the consideration of document UNEP/CBD/WG8J/5/7 concerning a revised draft on elements of an ethical code of conduct.
2. Submissions from Parties, non-Parties and relevant organizations and indigenous and local community members received by the Secretariat have been reproduced in the form and language in which they were provided.

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SUBMISSIONS

Submissions from Parties

1. Argentina

(Original in Spanish)

Habiendo analizado el Proyecto de “Elementos de un Código de Conducta Etica para asegurar el respeto al patrimonio cultural e intelectual de las comunidades indigenas y locales”, no existe ninguna observación a formular tanto en la forma cuanto en el fondo del mismo. Por lo tanto expresamos nuestro acuerdo en la presentación del mismo para ser considerado por la quinta reunión del Grupo de Trabajo especial sobre el Artículo 8 j) y disposiciones conexas.

(Courtesy translation)

Having analyzed the Draft document of “Elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities”, there are no observations to formulate as to its form or content. Therefore we express our agreement on the presentation of this document for its consideration by the fifth meeting of the Working Group on Article 8 j) and related provisions.

2. European Commission

EU submission in reply to Notification 2006-074

General views of the European Community and its Member States on the draft elements of an ethical code of conduct

1. General views

Notification 2006-074 calls for Contracting Parties’ views and comments on the draft on elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant to the conservation and sustainable use of biological diversity.

The EU has already stressed in the past and reaffirms the significance of the fundamental heritage of and the role played by the indigenous and local communities in the conservation and sustainable use of biodiversity, as well as the need for effective protection to related traditional knowledge, innovations and practices, thus for the effective implementation of the objectives of the CBD. The EU therefore welcomes the initiated process for the elaboration of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant to the conservation and sustainable use of biological diversity

The EU believes that the consistency of the proposed draft elements with the mandate of the Convention on Biological Diversity is crucial and should therefore be examined by the Executive Secretary in preparation of the fifth meeting of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions (WG8J-5).

The EU pays due respect to the work and mandates of other international organizations, in particular the United Nations Commission on Human Rights, and therefore believes that coordination is important with

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ongoing activities in other fora, international bodies, instruments, programmes, strategies, standards, reports and processes of relevance.

The EU acknowledges the efforts that have been undertaken by the Secretariat to compile the elements drawing on a large number of sources. With regard to the fact that some elements might have implications on e.g. the negotiation of an international regime for access and benefit-sharing as well as on other issues outside the framework of the CBD these elements require further investigation.

2. Some specific views on the draft elements

Particularly in Section 1 on the Nature and Scope of the elements we'd prefer to clearly identify the conservation and sustainable use of biodiversity as the primary goals and therefore all the elements and sections need to clearly express their relevance for biodiversity conservation and sustainable use.

We believe that a balanced approach with respect to implications of all activities on indigenous and local communities should be taken up, so as to avoid a too strong emphasis on particular areas, such as for instance on research.

3. Canada

PURPOSE

1. In decision VIII/5 F, para. 2, the eighth Conference of the Parties to the Convention on Biodiversity ("Convention") invited Parties, Governments, indigenous and local communities, relevant international organizations and other relevant stakeholders to submit written comments to the Executive Secretary on the draft elements of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities relevant to the conservation and sustainable use of biological diversity which is contained in Annex I of document UNEP/CBD/WG8J/4/8 ("document WG8J/4/8").
2. In response to the above invitation, Canada submits the following comments on document WG8J/4/8, without prejudice to comments that may be made at a later date.

GENERAL COMMENTS

3. Canada acknowledges the efforts of the Working Group on Article 8(j) to develop elements of an ethical code of conduct and welcomes the opportunity to provide comments on document WG8J/4/8. Canada is concerned, however, that the focus of the Working Group on elements of an ethical code of conduct is detracting from its ability to ensure further advancement of the implementation of the priority tasks of the work programme on Article 8(j) and Related Provisions which is contained in Annex I of Decision V/16, para. 2 of the fifth Conference of the Parties.
4. Canada is of the view that any future work of the Working Group with respect to elements of an ethical code of conduct must be consistent with the scope of the Convention. In this regard, Canada observes that the Advisory Group/ Steering Committee on Article 8(j) and related provisions, following a meeting held in Montreal from 11 to 14 July 2005, stated in its report (UNEP/CBD/WG8J/4/INF/13) as follows:

90. It was noted [sic] by the Committee that the recommendation from the UNPFII requesting the CBD to develop elements of an ethical code to ensure respect for the cultural and intellectual heritage of indigenous and local communities (COP7 Dec.16/I) was beyond the mandate of the CBD, however the CBD could partially fulfil this recommendation by referring to the original COP 5 Decision 16, III –

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Element 5, which requests the Secretariat to “identify, compile and analyse ... existing and customary codes of ethical conduct to guide the development of model codes of ethical conduct for research, access to, use, exchange and management of information concerning traditional knowledge, innovations and practices for the conservation and sustainable use of biological diversity”. The Committee recommended that current work focus on the development elements of a draft code, as per COP5 Decision 16, for consideration of the WG8(j) at its fourth session.

5. Canada respects Decision V/16, para. 5 of the fifth Conference of the Parties and reiterates that the Working Group should focus on approaches that are within the scope of Article 8(j) and the scope of the Convention. Not only do the elements of an ethical code of conduct as drafted extend beyond this scope and mandate in many respects, the current text is also unclear, both as to its nature and its own scope. It is therefore difficult to assess the potential impact on the Parties of the implementation of the elements of an ethical code of conduct at the national level in the course of the implementation of the Convention generally and in particular of Article 8(j).
6. Canada also reaffirms the importance of making Article 8(j) and related provisions of the Convention and provisions of other international agreements mutually supportive, being mindful of Article 22 of the Convention. Further noting that there are ongoing discussions of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“IGC”) in the World Intellectual Property Organization (“WIPO”). Canada encourages the Working Group to undertake further examination of the work of the IGC in this area with a view to avoiding duplication and to encouraging synergies. In addition, Canada notes that the 2003 UNESCO Convention on the Safeguarding of the Intangible Cultural Heritage entered into force last year and may have some relevance for several Parties here.
7. Canada believes that elements of an ethical code of conduct should be voluntary. As such, even the use of the word “should” has a more prescriptive tone than we consider appropriate. Canada believes that it is premature to discuss implementation, as there is a danger of confusion, since the Working Group is about the ‘implementation’ of Article 8(j). We should resist any suggestion that these voluntary Guidelines are in furtherance of the ‘implementation’ of Article 8(j). Canada also believes it is premature to discuss the development of compliance mechanisms or dispute resolution mechanisms, as they are inconsistent with the concept of a voluntary code.
8. Given the many and varied domestic contexts within which Article 8j of the Convention will be implemented, elements of an ethical code of conduct cannot foresee every possible situation. As such, they cannot “ensure full respect for the cultural and intellectual heritage of indigenous and local communities relevant for the conservation and sustainable use of biological diversity.” (preambular paragraphs 2 and 4, operative paragraphs 1, 6) At best, elements of an ethical code of conduct may serve as a guide for those interacting with indigenous and local communities as to desirable principles of ethical conduct. Thus, it is more accurate to state that the intent of document WG8J/4/8 is to “promote” rather than to “ensure” full respect.
9. The term “cultural and intellectual heritage” is not defined in document WG8J/4/8 and its nature and scope are not well understood (preambular paragraphs 2 and 4, operative paragraphs 1, 6, 10, 17, 22). It is unclear whether the term “cultural and intellectual heritage” has a similar or different meaning than the terms “cultural heritage” and “intellectual property” as they are used in other international fora. A number of United Nations agencies and instruments are addressing cultural heritage and intellectual property. It is Canada’s view that cultural heritage and intellectual property are beyond the scope of the Convention, acknowledging however that the latter and these instruments can be made mutually supportive. It is also Canada’s view that it is beyond the scope

of the Convention to address the promotion and maintenance of cultural diversity, including linguistic diversity or issues related to alterations of family relationships.

10. In particular, the United Nations Educational, Cultural and Scientific Organization (UNESCO) has dealt with cultural heritage in a number of international instruments to which many States are parties (i.e., Convention concerning the Protection of the World Cultural and Natural Heritage 1972, Convention for the Safeguarding of the Intangible Cultural Heritage 2003, Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005). Additionally, through the IGC, WIPO, which is responsible for administering a number of international treaties in the field of intellectual property, is engaged in an examination of inter-related intellectual property issues regarding genetic resources, traditional knowledge and folklore.
11. Several paragraphs include a formal recognition of rights of indigenous and local communities to sacred sites and lands and waters traditionally occupied or used by them. The references to rights to or on “sacred sites and lands and waters traditionally occupied or used by indigenous and local communities” are ambiguous, and open to a wide variety of interpretations that might not take into account the different types of rights which Aboriginal peoples may enjoy with respect to lands and waters in Canada, as well as the different legislative regimes and protections which apply to these lands and waters. Although Canada is fully committed to the recognition of the rights of indigenous and local communities to sacred sites, lands and waters, document WG8J/4/8 is not the appropriate vehicle for such recognition.
12. Some operative paragraphs (3, 4, 5, 7, 8, 9, 10, 15) refer to interactions; however others (11, 12, 13, 15, 16, 21, 22, 23, 26, 27) refer to “all activities.” Although Canada is of the view that both terms are overly broad, Canada recommends that consistent language be used throughout the document.

SPECIFIC COMMENTS

13. The following comments elaborate on Canada’s intervention on document WG8J/4 at the fourth meeting of the Working Group held in Granada, Spain from 23 – 27 January, 2006. The comments are divided into two parts: Preamble and operative paragraphs.

A. PREAMBLE

14. To make the preambular paragraph 1 consistent with decision VII/16/I, para. 5 of the seventh Conference of the Parties the following text should be added at the end of the paragraph after the word “diversity”: “taking into account task 16 of the programme of work on Article 8(j) and related provisions.”
15. To make preambular paragraph 3 consistent with Article 8(j) of the Convention, the text “subject to their respective national legislation” should be added in the first line after the word “have” to read: “Recalling that Parties to the Convention on Biological Diversity have undertaken,...”
16. Preambular paragraph 4 is confusing and should be redrafted. At present, the paragraph suggests that both “respect and support for cultural diversity” and “the treatment of traditional knowledge” are “coequal and complementary to western scientific knowledge.”
17. Canada understands that some traditional knowledge may have a direct connection to science while other traditional knowledge may not. Furthermore, science includes but is not limited to “western scientific knowledge.”; to keep this phrase would trivialize some scientific bodies of knowledge

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that even predate so-called “western” science. The paragraph could be improved by removing the words “coequal and” and replacing the words “western scientific knowledge” with “science.” To make this paragraph consistent with previous paragraphs and to clarify the nature and scope of the document, the text “relevant for the conservation and sustainable use of biological diversity” should be added in the last line after the word “communities.”

18. Preambular paragraph 5 is extremely broad and should be limited to elements of an ethical code of conduct. The paragraph should not refer to enforceability. While it may be the perspective of indigenous and local communities that elements of an ethical code of conduct will stand a much greater chance of success if they are enforceable, this is not a view that is universally shared by the Parties. Canada is of the opinion that elements of an ethical code of conduct are more appropriately viewed as guiding principles rather than rigid rules.
19. Preambular paragraph 7 does not recognize that a right of access of indigenous and local communities needs to be balanced with the right of access of others.
20. Preambular paragraph 9 could be interpreted as an endorsement by the Parties of a definition traditional knowledge. Canada encourages the Parties to review the potential implications of the paragraph.
21. On preambular paragraph 10, Canada is supportive in principle of the concepts of harmonization, complementarity and effective implementation referred to in the paragraph. However, Canada believes that the words "where applicable" should be added at the end of the first sentence, e.g. "...complementarity and effective implementation, in particular, where applicable:" Canada recommends that the list of international instruments should be reviewed to make sure it is accurate, inclusive and up to date.

B. OPERATIVE PARAGRAPHS

22. To make operative paragraph 1 consistent with the Preamble and to and to clarify the nature and scope of document WG8J/4/8, the words “relevant for the conservation and sustainable use of biological diversity” should be added at the end of the paragraph after the word “communities.”
23. Canada is supportive in principle of operative paragraph 2, but notes that the Guidelines are not about protection, but respect.
24. Operative paragraph 3 is extremely broad and should be redrafted. At present, operative paragraph 3 states that for the purposes of this document, a broad definition of interactions and research will be used. They will apply to all interactions with indigenous and local communities and not merely to “biodiversity-based research and related activities.” The scope of the operative paragraph 3 should, at the very least, be restricted to the purpose of document WG8J/4/8 and be relevant for the conservation and sustainable use of biological diversity in the context of Article 8(j).
25. Operative paragraph 4 is problematic in its overly broad proposal that parties should monitor interactions with indigenous and local communities. Further, it includes a formal recognition of customary laws of indigenous and local communities. This document is not an appropriate vehicle to obtain from Parties the recognition of customary laws by national legal systems.
26. Operative paragraph 7 includes a formal recognition of a right of indigenous and local communities “to protect their traditional knowledge and associated biological and genetic resources.” To date, no such right has been recognized in the Convention. Although Canada is fully committed to the

recognition of the rights of indigenous and local communities, document WG8J/4/8 is not the appropriate vehicle for such recognition.

27. Operative paragraph 8 is drafted in a manner that is confusing as to its purpose and appears to be outside the scope of WG8J/4/8.
28. Operative paragraph 9 is extremely broad and should be redrafted. At present, operative paragraph 9 purports that the ethical principles set out in operative paragraphs 11 to 25 will apply to all interactions with indigenous and local communities irrespective of whether such interactions are relevant for the conservation and sustainable use of biological diversity. The scope of the ethical principles should, at the very least, be restricted to the purpose of document WG8J/4/8.
29. Operative paragraph 10 does not provide any practical guidance with respect to operative paragraphs 11 to 25. Although there are a variety of individual rights regarding culture and intellectual property, there are no such recognized rights in international law for indigenous and local communities.
30. Operative paragraph 11: Canada is supportive in principle of the ethical principle of non-discrimination. However, the reference to “rules” is inconsistent with the concept of a voluntary code.
31. Operative paragraph 12 requires that indigenous and local communities be “fully informed” about activities that are proposed to be carried out or will likely impact on the sacred sites, lands or waters. Operative paragraph 12 is broad, unclear and capable of a wide variety of interpretations. In addition, an obligation to communicate information that may be otherwise protected by intellectual property law may contravene domestic and international law.
32. Operative paragraph 13 is drafted very broadly and purports to apply to “any activities occurring on or likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities.” Operative paragraph 13 does not articulate that indigenous and local communities may have varying interests in lands and waters and, in some cases, may be one of many groups with interests in a particular geographic area.
33. Operative paragraph 13 also contains a formal recognition of the right of “prior informed consent.” It is inappropriate to use the document as a vehicle for the recognition of such a right. Deleting the term “prior informed consent” from operative paragraph 13 and using more flexible wording reflecting 8(j) would result in a more realistic provision without losing its spirit and intent.
34. Operative paragraph 14: Canada is supportive in principle of the ethical principle of respect. However this operative paragraph states that it is necessary for those interacting with indigenous and local communities “to avoid the imposition of external concepts, standards and value judgements.” This language is very expansive and implies that customary laws take precedence over existing national laws. This document is not an appropriate vehicle to obtain from Parties the recognition of customary laws by national legal systems.
35. Operative paragraph 14 directs States to enact legislation to place “restrictions on use of, and access to, sacred sites or otherwise culturally significant sites and species.” Directing States to enact this type of legislation is inconsistent with the concept of a voluntary code.
36. Operative paragraph 15 includes a formal recognition of “collective rights of indigenous and local communities to their cultural and intellectual property, including knowledge, innovations and

practices and associated biological diversity and genetic materials.” This document is not the appropriate vehicle for such recognition.

37. Operative paragraph 15 includes a formal recognition of rights to “equitable and fair sharing of benefits” that derive from “lands and waters traditionally occupied or used by indigenous and local communities.” This document is not the appropriate vehicle for such recognition. Additionally, operative paragraph 15 is broad, unclear and capable of a wide variety of interpretations.
38. Operative paragraph 16 is drafted very broadly. It may be interpreted to mean that indigenous and local communities should receive benefits for their contribution to any activities and outcomes that may take place on or impact on sacred sites and lands and waters traditionally occupied or used by them. It may also be interpreted to mean that indigenous and local communities should receive benefits for their contribution to any activities and outcomes involving their knowledge and culture. In neither instance is there any linkage to conservation and sustainable use of biological diversity.
39. Operative paragraph 16 clearly goes beyond the objective of fair and equitable sharing of the benefits arising out of the utilization of genetic resources that is set out in Article 1 of the Convention and elaborated upon in Articles 15 and 8j of the Convention.
40. The last sentence of operative paragraph 18 is drafted very broadly, it purports to apply to all activities, irrespective of whether such activities are relevant for the conservation and sustainable use of biological diversity. Also, the words “ecological and cultural concerns” are ambiguous and capable of a wide variety of interpretations. It is unclear what is encompassed by “ecological concerns.” Furthermore, it is not obvious whether “cultural concerns” are similar or different than “cultural heritage” and “cultural diversity.”
41. Operative paragraph 19 includes a formal recognition of “the inalienable rights of indigenous and local communities to their sacred sites and lands and waters traditionally occupied or used by them and associated traditional knowledge and that their cultures, lands and waters are inseparable.” Although Canada is fully committed to the recognition of the rights of indigenous and local communities, document WG8J/4/8 is not the appropriate vehicle for such recognition.
42. Operative paragraph 20 includes a formal recognition of “collective” and “individual” rights relating to “natural and/or traditional resources occurring on lands and waters traditionally occupied or used by indigenous and local communities.” Although Canada is fully committed to the recognition of the rights of indigenous and local communities, document WG8J/4/8 is not the appropriate vehicle for such recognition.
43. Operative paragraph 20 also includes a formal recognition of customary laws of indigenous and local communities. This document is not an appropriate vehicle to obtain from Parties the recognition of customary laws by national legal systems. Further, it goes beyond current Canadian law and practice and protections under the Canadian Constitution. In Canada, in large measure Aboriginal communities are free to exercise their customary practices to the extent that they do not contravene domestic laws or Canada's international legal obligations.
44. Operative paragraph 21 includes a formal recognition of a right to compensation or restitution for voluntary removal of indigenous and local communities from lands and waters traditionally occupied or used by them. It also contains a formal recognition of the right of “prior and informed consent.” It is unclear whether this right is similar or different than the right of “prior informed consent” referred to in operative paragraph 13. It is also inappropriate to use the document as a vehicle for the recognition of such rights.

45. Operative paragraph 23 includes a formal recognition of a right to restitution or compensation for adverse consequences of “all activities affecting or impacting” indigenous and local communities. Canada observes that no linkage is made in operative paragraph 23 to conservation and sustainable use of biological diversity. It is also inappropriate to use the document as a vehicle for the recognition of a right to restitution or compensation.
46. Canada is supportive in principle of the concept in operative paragraph 24 that “the exacerbation of any tensions between indigenous and local communities and local or national Governments should be avoided.” Canada observes, however, that no linkage is made to conservation and sustainable use of biological diversity.
47. In operative paragraph 30, Canada does not believe that it is appropriate to acknowledge blanket cultural property rights in “knowledge, ideas, cultural expressions and cultural materials”, as the term is not defined.
48. The first sentence of operative paragraph 31 suggests that the knowledge held by an individual always belongs to the collective. Canada believes that such a relationship seems to run contrary to situations where such knowledge is viewed by some traditional communities as belonging to a particular individual, family, clan or society.

Submissions from relevant organizations

1. Ms. Kelly Bannister, MSc, PhD
Director, POLIS Project on Ecological Governance
University of Victoria
www.polisproject.org

Dr. Ahmed Djoghlaif,
Executive Secretary
Convention on Biological Diversity

April 9, 2007

Dear Dr. Djoghlaif,

I am writing to you in my capacity as **Chair of the Ethics Committee of the International Society of Ethnobiology**, with regard to the 'CBD elements of an ethical code of conduct' document that has been open for comment.

[...]

In terms of substantive comments on the CBD document, I think it covers most of the basic elements in appropriate language and so is a fair starting point to develop an international Code of Conduct. One important aspect that it does not address, however, is the significant issue raised by the accumulated decades or centuries worth of traditional knowledge that has already been made public through academic publications, government reports, online databases, etc. Much of this knowledge has gotten into the so-called "public domain" without the consent or even awareness of the traditional knowledge holders. Unless the CBD document can address this "legacy data" issue, there will always be a problematic "loophole" in accessing traditional knowledge associated with biodiversity and this will undermine the intent of the CBD code of conduct. Our recommendation is that ALL the principles be re-assessed and considered with this legacy data in mind (i.e., traditional knowledge already made public but without any

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evidence of prior informed consent). The International Society of Ethnobiology's new Code of Ethics offers some specific guidance in this regard and I hope there is time for the Working Group to review it.

On behalf of the International Society of Ethnobiology, thank you for considering these points. If you require any clarification or if you have trouble accessing the ISE Code of Ethics, please do not hesitate to contact me for assistance.

[...]

2. Mr. Tom HAMMOND
IUCN – The World Conservation Union
Canada Office

[...] Below is the compilation of points that were raised on the code of ethics discussion during the workshop [Refers to the “Biodiversity data, conservation and traditional knowledge meeting”, organized by IUCN/Environment Canada, held in Gatineau, Quebec, from 13-14 March 2007, in which the Secretariat participated). [...]. Participants generally felt that this document represented an excellent starting point for discussion and eventual adoption. However, while it was appreciated that the non-governmental/scientific community is interested in moving forward with the idea of a joint code of ethics, indigenous participants stressed that it is critical for governments to participate in good faith if the code is going to make an impact.

General Comments

- It was suggested that the current draft would benefit from a process of “bottom up” consultation with indigenous groups and communities;
- It was further noted that there is a need for greater clarity on the meaning of the term “self governing” processes within the draft (note: participants were drawing attention to the Canadian context here regarding land claims settlements and self government models such as Nunavut).
- Further, it was suggested that adherents to an eventual code of ethics/conduct should commit formally to a process of negotiation in good faith.

Substance

- A “non-interference” clause should be incorporated, noting the predominance and importance of mutually agreed settlements or agreements at national level which exist in many countries;
- Concepts of “no harm” and “repatriation” require greater consideration in this code of conduct;
- A review of the “ethno-biology code of ethics” may provide additional substance for consideration in this draft.

Potential way forward

To advance the need for ongoing dialogue, it was noted that between mid 2007 and the end of 2008 a number of important international meetings and events will be taking place that have bearing with regard to carrying the results of this discussion forward. The Conference of the Parties to the Convention on Biological Diversity will be meeting in May of 2008 in Berlin. During the lead up to this conference, two important COP preparatory meetings of the Subsidiary Body on Science, Technology and Technological Assistance (SBSTTA) will also take place. A proposal was put forward to capitalize on these meetings, through workshops and side events, to both highlight and carry forward the discussion on the notion of an ethical code of conduct.

In October of 2008, the World Conservation Congress will take place in Barcelona. This 4-yearly event organized by IUCN will, as with previous Congresses, include a session to consider member-led motions

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for consideration and eventual adoption as resolutions. Provided there is sufficient member support, participants noted that a motion related to the use of traditional knowledge in conservation, based on the outcomes of this dialogue and the proposal for an ethical code of conduct, could be proposed for adoption by the IUCN General Assembly (note – this was suggested and endorsed by numerous participants as a viable course of action).

During this Congress a Member Forum will likely precede the resolutions process, whereby a member workshop could be organized to highlight the issues raised in this dialogue and solutions to address these issues. Finally, a synopsis of workshop results will be presented to the IUCN Council and the Conservation Commons Steering Committee in the coming months.

[...]

3. Mr. Peter Croal

Senior Environment Specialist

Environmental Assessment and Compliance Unit, Environment Division, Policy Branch, Canadian International Development Agency (CIDA)

[...]

For next steps, if possible the Code of Conduct needs to be tested in the field. It would be wonderful if willing groups could use the Code as part of a planned project or program in Canada or elsewhere where TK and Indigenous issues will need to be addressed. I was invited to the meeting but could not go. My name does not appear in the regrets section. Please know that I am most interested in the Code of Conduct evolution and will be pleased to assist in anyway I can. CIDA is nearing the completion of a guide for CIDA officers to assist in addressing TK and Indigenous issues when our programs and initiatives affect Indigenous Peoples. [...]

4. Mr. Stephane Dandeneau

Doctorate fellowship

McGill University

Metis Community, Canada.

I am writing to submit these documents to the Executive Secretary to inform your research and revision of the draft elements of the code of ethics as per notification SCBD/SEL/OJ/SG/56235

The CIHR (Canadian Institute of Health Research, www.cihr-irsc.gc.ca) has come out with guidelines for conducting health-related research with aboriginal peoples.... some of which involves traditional knowledge, sacred sites [...] The main ethics articles seem very appropriate and should be taken into account in revised the draft elements of the code [...]

“These Guidelines have been prepared by the Ethics Office of the Canadian Institutes of Health Research (CIHR), in conjunction with its Institute of Aboriginal Peoples’ Health, to assist researchers and institutions in carrying out ethical and culturally competent research involving Aboriginal people. The intent is to promote health through research that is in keeping with Aboriginal values and traditions. The Guidelines will assist in developing research partnerships that will facilitate and encourage mutually beneficial and culturally competent research. The Guidelines will also promote ethics review that enables and facilitates rather than suppresses or obstructs research”. In terms of the title it should be noted that correct English requires that the conduct be ethical rather than the code and hence the title should be revised.

(Executive Summary, including a summary of the article CIHR guidelines for health research involving Aboriginal people, are attached as annex I)

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5. Professor Mick Dodson

Director

ANU National Centre for Indigenous Studies

ANU College of Law

Independent expert of the United Nations Permanent Forum on Indigenous Issues

Comments on Draft Ethical Code of Conduct

Heading: insert word 'of' between words 'Heritage' and 'Indigenous' in the second line.

Para. 3 I

Don't think it reads very well it's heavy going tries to cover too much I think - might work if it was broken up into a couple of paras.

Para 6. (b)

I think you should delete the words in 1st line '...pay due regard to...' and replace them with the word 'acknowledge'.

Para 6 (f)

In the 4th line I suggest you insert the word 'their' between the words 'build' and 'capacity'. I would also delete the next word in the same line 'regarding' and replace it with the words 'to understand'. I would delete the words 'and for' the 1st words in the next line, 5.

A Preamble

In the 4th Para I would substitute the word 'equal' for 'coequal'.

In the 2nd last Para on that page I suggest a redraft that does away with the need for bracketed words.

In (e) on the following page why not refer to the version of the DRIP's that was adopted by the HRC?

Under Section 1 NATURE AND SCOPE.

Para 3.

4th line delete 'doing' substitute 'engaged in'. 2nd last line same

Para after last word 'researcher' lose the comma and add the words 'whether alone or with others and delete the words 'on his/her own, in the next line.

Section 2 RATIONALE

Para 6.

3rd line 2nd sentence I would start with words 'In this way' rather than 'In doing so...'

Para 7.

1st line delete 1st words 'They attempt to provides....' substitute words 'These elements are intended to provide ...'

Section 3 ETHICAL PRINCIPLES

Para 9.

When talking about sacred sites should we also refer to sites of cultural significance or other culturally significant sites? Sacred sites appear regularly in the document.

Para 10

Suggest a rewrite as follows:

The principles below are intended to acknowledge the overarching principle, that Indigenous and local communities have the right to enjoy, protect and pass on to future generations, their cultural and intellectual heritage and it is according to these are principles that others should engage with indigenous and local communities.

Para. 11

The term 'special measures is used in CERD perhaps to be consistent with Human rights speak this term be used rather than 'positive discriminations measures'.

Para. 12

Last line - should it be 'cultural practices' rather than '...preferences'?

Prior informed consent

Para. 13

The concept used in DRIP's is 'free prior informed consent' is there any reason why it is not used here? I would delete the word 'should' in the 2nd line and insert the word 'shall' or 'must'.

Para. 14

In the 2nd line 2nd sentence I would delete the words 'This principle...' and insert the word 'Respect'.

Para. 18

2nd line 2nd sentence I would start with the words 'Taking into account ...'

Para 18 page 8

2nd line delete word 'to' before last word 'ecological' and insert word 'the'.

Para. 19

Would also include reference to 'other culturally significant sites'.

2nd last line after word empty would add words 'or unoccupied'.

Para. 21

3rd line 2nd sentence delete word 'agree' and substitute word 'consent'.

4th line delete words 'given compensation and the possibility to return' and insert word 'compensated and be given assurance of the possibility of return'.

Note comments above about FPIC.

Section 4

METHODOLOGIES

Active participation

Para. 29

The term used by the HR C'tee and other bodies is 'effective participation'. Suggest that term be used rather than active participation.

Para. 30

5th line insert word and between words places an 2nd line delete words 'would be' and insert word 'is'.

Para. 31

1st line delete last 2 words '...that impacts...' and insert words '...this means...'

Para. 32

1st line delete words 'that impacts' and word 'upon' in next line and insert words 'which affects'.

6. Aqqaluk Lynge

Inuit Circumpolar Council (ICC)

President, ICC-Greenland

Independent expert of the United Nations Permanent Forum on Indigenous Issues

ICC's Chair, Patricia Cochran, who is based in Alaska has [...] read the document carefully [...] thinks they are done very well.

However, here are some comments/notes about where she perceives some additional work may be needed:

1. No clear understanding of how these policies might be implemented or more importantly enforced (which is the real issue – we already have lots of guidelines with no mechanisms for implementation, compliance, enforcement or consequences).
2. Didn't address current unequal standards or application of policies from country to country - those that work and don't.
3. Emphasis needs to be on community based, initiated and driven research - engaging and promoting communities and indigenous researchers.
4. Confidentiality clause seems weak - doesn't really address who "owns" research results, intellectual property, etc.
5. Pleased to see recognition of equal but different knowledge systems.

ICC Council Member, Carl Christian Olsen, noted the following:

1. Inuit Resource Conservation Strategy of Inuit Circumpolar Conference should read: Inuit Regional Conservation Strategy (IRCS).

7. Ms. Violet Ford

Inuit Circumpolar Conference (ICC)

Canada

Disclaimer: These are the views of ICC Canada and not necessarily of the ICC offices in Alaska, Greenland and Russia. Due to lack of financial and human resources within the organization, these comments are based only on an overview of the document and not based on detailed discussions with whom ICC represents. Nonetheless, ICC is of the view that it participates in this process to the extent possible.

Many of the draft elements are prima facie acceptable to ICC Canada. As such, this document will refer only to the areas where ICC has concern.

Please note that ICC Canada extensive written submissions on the issues of Inuit cultural and intellectual heritage in the context of WIPO Intergovernmental Committee discussions are available from ICC Canada on request.

Annex I Elements of an Ethical Code of Conduct

Section 1: Nature And Scope

Para 2.

This para is problematic for ICC in terms of process as it sends message that the outcomes of the access and Benefit sharing discussions will trump the element of an ethical code and that any code of conduct will therefore be of less significance.

Section 3: Ethical Principles

Para 13 Prior Informed Consent

ICC would have preferred the phrase “free, prior and informed consent of the indigenous and local communities concerned” as raised and debated in many CBD forums by indigenous peoples around the world

Para 19 Recognition of Sacred Sites

ICC sees this as a positive consideration especially in light of Inuit land claim agreementst which reflect recognized rights as it relates to the issue of retention of traditional knowledge

Section 4: Methodologies

Para 32-Reciprocity

This is a crucial aspect for Inuit and is a key part of the management and retention of their traditional knowledge.

Annex II Instruments, Guidelines and other instruments used

Instruments that could also be used to develop these elements further which ICC Canada is familiar with are:

The Inuit Land Claim Agreements

The Inuvialuit Land Claim Area-National Parks Service shall consult with the Inuvialuit Regional Council before research occurs

The 2003 Nunavut Wildlife Act Guiding Principles section 8

The Arctic Council-CAFF Working Group

Canada IPY (International Polar Year) Data Policy

Principles and Element for a Comprehensive Arctic Policy: Inuit Circumpolar Conference

8. Mr. Giacomo Rambaldi

Technical Centre for Agricultural and Rural Cooperation (CTA)

The Netherlands

Here is the page where you can find the paper resulting from a long and interactive process by the title “Practical ethics for PGIS practitioners, facilitators, technology intermediaries and researchers” which is soon going to be disseminated in 12 languages, nine of which are already available on this page:

<http://ppgis.iapad.org/code.htm> I thought that this code is directly relevant to the work being carried out by the SCBD regarding the draft code of ethics, as per notification SCBD/SEL/OJ/SG/56235.

9. Dr Nigel Crawhall
Director of Secretariat
Indigenous Peoples of Africa Co-ordinating Committee
Comité de coordination des Peuples Autochtones de l'Afrique

Re: UNESCO
“New Perspectives on Cultural Diversity: The Role of Communities”
Havana, Cuba 7-10 February 2006

Havana Communiqué on Cultural Mapping

Cultural mapping incorporates a wide range of spatial representations of a community or an individual's understanding of his or her social and biophysical environment.

The practice of cultural mapping with indigenous peoples dates back into the 1960s. It has slowly evolved into a powerful tool for making intangible heritage and traditional knowledge visible in a medium that can be understood by both dominant and non-dominant cultures. Both explicit and tacit knowledge emerge if the mapping is done in a way that allows knowledge bearers to express themselves with confidence.

Cultural mapping allows non-dominant or marginalised cultural systems to be represented respectfully, which creates an opportunity for intercultural dialogue with more dominant societies and stakeholders. Cultural mapping is typically used when communities need to negotiate about territories and rights, such as access, control and use of natural resources.

Cultural mapping can be an effective tool to help explore the spatial and territorial aspects of a community's intangible cultural heritage and knowledge system. Indigenous peoples' cultures, in particular, exist in an ecological context. It is easier to represent intangible heritage within the specificity of its spatial and environmental location.

Cultural mapping is a methodology that can help promote intra- and intergenerational knowledge transmission. Indigenous and local youth often respond well to learning about ICTs and at the same time learning traditional knowledge.

Mapping may be just one component of a broader inventory process, which could include other components such as genealogies, oral history, image archiving, research and documentation of specific environmental knowledge and practices. Whether mapping is used a leading aspect of an inventory process, or as one tool amongst others, cultural mapping is always a tool that should be applied within a broader strategy of affirming cultural diversity and creating opportunities for greater intercultural understanding and dialogue.

There are risks associated with mapping. Some components of a community's knowledge or cultural landscape may be sacred or confidential, and should respectfully not be represented on maps for external viewing;

‘Extractive’ mapping, where information is taken away from communities, even if remunerated, can leave people with doubts and anxieties which will have a negative impact on trust relationships and future co-operation. Unethical and badly conceived mapping can expose communities their traditional knowledge, and / or the natural environment to exploitation and abuse.

It is recommended that:

- Cultural mapping should be used as an empowering tool which reinforces a community's dignity and self respect;
- Mapping is part of the process of building mutual consent between marginalised communities and more dominant groups, including the State;
- The process of mapping is as important as the outcomes. Where external agents are assisting communities, it is best that the community's interests and needs be at the centre of the project's operations (i.e. methodologies should be 'participatory');
- An explicit ethical framework should be agreed at the outset of the inventory and mapping process, so that all parties agree on their roles and responsibilities, and ensure participant's / informant's consent is free, prior and informed;
- External agents engaging in cultural mapping should be given appropriate training including modules on attitudes, behaviours and ethics.
- Risks which may arise from mapping should be clearly discussed and considered before embarking on such a project;
- UNESCO should consider promoting training and best practices in the use of cultural mapping, particularly as it relates to cultural inventories and safeguarding intangible cultural heritage;
- UNESCO should help its various Sectors and Divisions understand the benefits and risks of mapping;
- There is an urgent and evident need for UNESCO to co-operate more directly with other agencies on the application of cultural mapping to the protection and promotion of cultural diversity, on the sustainable use of natural resources, and using intangible cultural heritage and traditional knowledge to fight poverty. The assembly recommends that UNESCO share its findings with the UN Permanent Forum on Indigenous Issues, the UN Development Programme, and the UN Environment Programme (including the Convention on Biological Diversity).

10. Kenneth Deer
Publisher/Editor
The Eastern Door
Mohawk Elder

[...] I would like to submit these texts to the Executive Secretary as input into the draft elements of the code of ethics.

INDIGENOUS ICT TASKFORCE

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Indigenous Ethics

Practising Cultural Diversity in the Information Society

What is Ethics?

/...

Sometimes things are not as obvious as they seem to be. One of these surprises may emerge when Indigenous Peoples look at a common concept of “Western” philosophical discourse: the distinction between knowledge and ethics.

In Indigenous philosophies traditional knowledge and ethics are inseparable from each other. Knowledge contains ethical provisions guiding its very use and application. Vice versa, ethics is commonly regarded as an integral part of traditional knowledge.

Indigenous philosophies can offer more of these hidden surprises. In Aboriginal Society, the body of traditional knowledge is often simply called “the law”. Indeed, the view that their customary law directly derives from or is equivalent to their traditional knowledge is common among Indigenous Peoples. Consequently, Indigenous ethics is not only intrinsically interwoven with traditional knowledge, but also with customary law. Customary law provides ethical norms and standards as well as codes of conduct for social life and individual behaviour. These include regulations, protocols and guidelines for holding, sharing, disseminating, communicating, using and applying traditional knowledge in an ethically appropriate way.

To bring the inobvious to its full bloom, one should further mention the direct link between Indigenous concepts of knowledge, ethics and culture. The Mohawk language, for instance, uses the same word for Mohawk traditional knowledge and for Mohawk culture. There is no distinction between the two: culture is knowledge and knowledge is culture. This kind of close relationship between culture and knowledge is generally acknowledged in Indigenous philosophies. Hence, if Indigenous Peoples talk about their cultures, they talk at the same time about their ethics. When they consider if something is culturally appropriate, it usually implies the question for ethical appropriateness as well.

Thus, for Indigenous Peoples, the term ethics simultaneously comprises knowledge, law and culture. Each reflects the holistic approach of their philosophies and teaches the inherent interdependence of the various aspects of life. But ultimately all these terms can be subsumed under the concept of traditional knowledge.

What does this mean?

What does this mean for the participation of Indigenous Peoples in the Information Society? And what does it mean for the quest of non-Indigenous actors of the Information Society for access to and digitalization of Indigenous knowledge?

It means that dealing with traditional knowledge directly touches the essence of Indigenous cultures and identities. It also means to accept that for Indigenous Peoples the “Western” concept of the public domain not only is an issue of deep ethical concern but also a question of cultural survival.

Furthermore, it points to the need to see ICT use and connectivity embedded in an ethical context. This ethical dimension relates to:

- the very fact that many Indigenous Peoples suffer from the digital divide, and
- their ability to bridge the gap on their own terms in a culturally appropriate way.

Accordingly, this also means that “digital development”, and particularly in partnerships with the private sector, would be subject to developing a code of conduct that is sensitive to Indigenous ethics.

Finally it means that promoting cultural diversity in the evolution of an Information Society for All also needs to respect the culturally diverse ethics such as those of Indigenous Peoples. Developing a global ethics that should guide the interaction of the cybercommunity and modes of exchanging, access to and use of knowledge and information must be based on an intercultural dialogue. However, intercultural dialogue involves an openness of mind and a willingness to comprehend culturally diverse ethics that may

fundamentally differ from ethical principles and economic philosophies rooted in European thinking traditions.

The nature of Indigenous knowledge and its ethical implications

The concept of Indigenous knowledge would most probably touch on subjects deeply alien or even suspicious to “modern” Western philosophical minds. One of them might be the spiritual dimension of Indigenous knowledge as, for example, explained in a statement by the Tulalip Tribes from Washington State (USA) to the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore:

In indigenous cosmology, knowledge is a gift from the Creator. [...] Indigenous Peoples have collective systems for using the Creator’s gifts, and these generally have complex systems of regulating the use of knowledge, in which some knowledge may be held by individuals, clans, or other groups. [...] Many songs or stories, for example, are held by individuals or families. These songs and stories are performed in public, and may be known by all members of a community. However, the right to sing these songs or tell these stories falls only to the individuals or families who are caretakers of the Creator’s gifts.¹

The Tulalip statement points at a number of aspects:

Usually, Indigenous Peoples see the spiritual realm as the source of traditional knowledge. Its holders are considered to be custodians, caretakers or guardians of the knowledge that they are entrusted with. Its management follows ethical guidelines and social protocols provided for by customary Indigenous law. Sharing or passing on traditional knowledge also includes an obligation to consider the maturity of the recipient/s regarding its responsible use. These cultural obligations are by no means taken lightly and can involve far reaching consequences, as for instance expressed by a participant in a survey on “Indigenous Peoples and the Information Society” carried out by the Indigenous Media Network:

These principles and teachings are in serious danger of being lost because they are passed on only when the keeper of the teachings finds someone worthy of passing it on to. This comes from the teaching that when Indian [Indigenous] people begin exploiting gifts that the Creator gave them to use, it will be lost because it was not respected and protected. This fear is what brings Elders to protect some of their teachings.²

Misuse of traditional knowledge - either by custodians themselves or by those with whom they share it - is a serious offence, often met with harsh punishments under customary law. Those who guard the knowledge may be held equally responsible for any occurring misuse conducted by third persons. This can even be the case for unauthorized dissemination or reproduction that, for example, can take place through the Internet. In “Western” economic philosophy such knowledge is automatically considered to be part of the public domain and thus is open to general free use. Clearly, the public domain concept can pose tremendous difficulties to Indigenous Peoples in terms of being able to observe ethical provisions in responsibly managing their traditional knowledge.

Furthermore the Indigenous concept of knowledge is not only holistic, but also much broader than its Western counterpart. Names, pictures, designs, paintings, dance, music, certain ceremonial objects that may be regarded as arts, among others, can all contain traditional knowledge. Generally Indigenous cultural expressions are inseparately intertwined with traditional knowledge. Cultural expressions, on their part, are therefore subject to regulations provided by customary law similar to those applying to traditional knowledge.

¹ Statement by the Tulalip Tribes of Washington on Folklore, Indigenous Knowledge, and the Public Domain. July 09, 2003. Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Fifth Session, Geneva, July 6-17, 2003; <http://www.wipo.int/tk/en/igc/ngo/tulaliptribes.pdf>

² Indigenous Media Network/Incomindios 2004: “Give us the stuff and we’ll figure it out”. Indigenous Peoples and the Information Society. Editors: Ann-Kristin Håkansson/Kenneth Deer; p.8; www.incomindios.ch

Due to its holistic nature much of the Indigenous knowledge contains teachings, often with a direct relationship to the respective creation stories. Maori scholars M. Marsden and T.A. Henare comment on the nature of Indigenous knowledge, using the example of a Maori ‘legend’ about how the ‘Baskets of Knowledge’ were obtained from Io, the creator:

On the surface, such a story may be regarded as a fairytale, a fantasy, to tell to children by the fireside in the evenings. Nothing could be further from the truth for this legend is part of the corpus of sacred knowledge and as such was not normally related in public. Its inner meaning could not be understood without the key to unravel it. And unless all the parts were known and understood it was impossible to make sense of it.³

These comments also highlight another aspect of Indigenous ethics: the importance to respect the integrity of traditional knowledge. This can, for instance, become a problem when codifying it for digital storage and the creation of databases. From a “Western” perspective this process often involves a division into ‘useful’ and ‘useless’ knowledge. In fact, stripping it of its holistic contents may deeply violate Indigenous ethical principles.

These are only some of the philosophical surprises that Indigenous Peoples would have to offer to contemporary ethics discourse and its quest for a global ethics project or for developing an ethics of the Information Society for All.

However, to avoid misconceptions, it has to be stressed that Indigenous knowledge is neither static nor rejective to change and innovation. Indeed, there are philosophical debates among the guardians of traditional knowledge on how historical progress and innovation may take place on the basis of its holistic approach and according to its ethical guidelines.

Indigenous innovations are numerous. Traditional knowledge has in many ways already historically contributed to the development of the “Western” world: food such as potatoes, tomatoes, corn or cacao, medicines such as quinine, industrial materials such as rubber or philosophical contributions to democratic thought and the idea of sustainable development are just some examples.

Today it is mainly agro-business and the pharmaceutical industry who benefit most from traditional knowledge. Professional bioprospecting for commercial use has significantly intensified in recent years. With the evolving Information Society the bioprospector will not any longer have to enter into – perhaps rather exhausting - physical encounters with Indigenous worlds. Instead he or she might increasingly be able to comfortably screen some databases from home or office for the traditional knowledge he or she is searching for. But would the bioprospector be aware of the urgent issues immediately raised by his or her surfing in the context of Indigenous ethics?

Intercultural ethics in the Information Society – an Indigenous perspective

Compared to the history of European encounter with the non-European world - such as with Indigenous Peoples of all continents - it is a rather recent development that “Western” philosophy acknowledges that ethics is a cultural concept. Every ethics, including those of the “Western” world, is culture-bound. Such an approach would have to recognize that also Indigenous Peoples have their own ethical systems.

So far, philosophical and political discourse mainly centers around the question if culture-bound ethics could still provide universal norms, or if it solely has to be regarded a case of cultural relativism without

³ M. Marsden and T.A. Henare: Kaitiakitanga: A Definitive Introduction to the Holistic World View of the Maori. Paper prepared for the Ministry for the Environment, 1992, pp 2-4

common ethical ground between cultures. Often the either your ethics or my ethics principle still seems to prevail. But without some common ethical ground between peoples, international policy and politics would not be possible at all.

Some more interculturally oriented approaches propose the development of a transcultural ethic based on intercultural dialogue. A transcultural ethic would go beyond the existing culturally-bound systems towards a global ethics framework for a globalised world. Its very development would be founded on recognition and promotion of cultural diversity and respect for the diversity of ethics. Such a framework would provide good ground for elaborating an Ethics of the Information Society between its stakeholders, including Indigenous Peoples.

The evolving Information Society already brought forward a new branch of “Western” philosophy: The Philosophy of Information (PI). Luciano Floridi from Oxford University proposes that an important task of the new field should be an “explicit, clear, and precise interpretation” of what is the nature of information. He continues:

On the whole, its task is to develop not a unified theory of information but rather an integrated family of theories that analyze, evaluate, and explain the various principles and concepts of information, their dynamics and utilization, with special attention to systemic issues arising from different contexts of application and interconnections with other key concepts in philosophy, such as being, life, truth, knowledge, and meaning.⁴

This definition leaves room for intercultural approaches. The concept of Information is as culture-bound as the concept of Ethics or the concept of Knowledge. Information becomes information by giving it meaning and content as information. Therefore what is viewed as “information” is culturally defined. The same applies to distinguishing knowledge from information and to define the relationship between the two.

A clear-cut definition may even be more complicated when ethics, knowledge and information become so intricately intertwined as in Indigenous philosophies. Then it would perhaps be more adequate to look holistically at the related concepts, but from a varying point of view. Depending on the context, one could depart from ethics, culture, law, knowledge or information or any other relevant concept and consider the whole from this particular perspective.

Intercultural Information Ethics could provide a framework for Indigenous Peoples that leaves room for holistically addressing fundamental issues arising with the evolution of the Information Society from an ethical point of view. Rafael Capurro, Professor at the Stuttgart Media University and founder of the International Center for Information Ethics, for instance urges:

It is indeed necessary to undertake an intercultural dialogue on information technology which means not only to become aware of the conditions under which different life styles and life projects can coexist within the new digital environment but also in order to explore how it affects and is being appropriated by different cultures particularly as they are conditioned by this new environment.⁵

How does Capurro define intercultural dialogue in this context?

⁴ Luciano Floridi 2002: *What is the Philosophy of Information?* In: *Metaphilosophy* (33), 1/2; www.philosophyofinformation.net/; p.137

⁵ Capurro, Rafael 2004: *Intercultural Information Ethics. Paper to the international ICIE Symposium "Localizing the Internet. Ethical Issues in Intercultural Perspective"*, Karlsruhe (Germany), 2004, www.capurro.de/icie.htm; p.10, printed version

A mono-cultural view of ethics conceives itself as the only valid one. In order to avoid this kind of ethical chauvinism and colonialism it is necessary that transcultural ethics arise from an intercultural dialogue instead of thinking of itself as universal without noticing its own cultural bias. [...]

This intercultural appraisal gives rise to a new kind of philosophic thinking, particularly of ethical thinking. [...] When this intercultural philosophical dialogue deals with information technology as the pervasive medium of today's being-in-the world, we speak of intercultural information ethics as well as of intercultural philosophy of information.⁶

Intercultural Information Ethics would not only deal with questions related to the concept of information (and perhaps knowledge in the case of Indigenous Peoples) but also with ethical questions related to the technology itself. As Luciano Floridi points out:

The computer presents itself as a culturally defining technology and has become a symbol of the new millennium, playing a cultural role far more influential than the mills in the Middle Ages, mechanical clocks in the seventeenth century, or the steam engine in the age of the industrial revolution.⁷

The computer and other Information and Communication Technologies (ICTs) are the fundamental instruments for implementing and creating the Information Society. However, ICTs are not only a culturally defining technology, but – as any technology – also a cultural product of their own. They reflect the particular cultural conditions that they were emerging from. As the medium of digital communication, ICTs define, for instance, the way that knowledge and information have to be encoded to fit the technology.

Therefore they will in turn impact the cultural setting of users from a different cultural background, for example Indigenous Peoples. Those impacts can constitute a challenge, a potential or both – depending on the participation of the new users in the introduction of ICTs on their own terms. Participation of Indigenous Peoples in this process is directly linked to their ability to adapt these new technologies in a way to enrich their cultures, strengthen their identities and improve their quality of life. However, successful adaptation of elements from other cultures – as well as their innovative use - highly depends on the degree of how much this process is owned and controlled by the receivers.

Intercultural Information Ethics should also be a framework to address these issues, for example, as part of ethical considerations related to the digital divide. It would be essential to involve other stakeholders such as Governments, international organisations, development agencies, NGOs and – last but not least – the private sector into these discussions. Particularly the private sector might be compelled to develop a business ethics or code of conduct relating to the Information Society and ICT business.

Intercultural Information Ethics, indeed, could be a driving force to form a platform for intercultural dialogue between all stakeholders of the Information Society aiming to develop its ethical foundations.

⁶ *ibid*; p.7 and p.5, printed version

⁷ Luciano Floridi 2002: *What is the Philosophy of Information? In: Metaphilosophy* (33), 1/2, p.127; www.philosophyofinformation.net/; referring to J.D. Bolter 1984: *Turing's Man: Western Culture in the Computer Age*. Chapel Hill: University of North Carolina Press

Annex I

CIHR GUIDELINES FOR HEALTH RESEARCH INVOLVING ABORIGINAL PEOPLE

May 2007

Executive Summary

Purpose and Application

These Guidelines have been prepared by the Ethics Office of the Canadian Institutes of Health Research (CIHR), in conjunction with its Institute of Aboriginal Peoples' Health, to assist researchers and institutions in carrying out ethical and culturally competent research involving Aboriginal people. The intent is to promote health through research that is in keeping with Aboriginal values and traditions. The Guidelines will assist in developing research partnerships that will facilitate and encourage mutually beneficial and culturally competent research. The Guidelines will also promote ethics review that enables and facilitates rather than suppresses or obstructs research. These Guidelines are applicable to researchers carrying out research to which CIHR has made a financial contribution. The reader should note that these Guidelines are not regulations nor are they meant to be of general application. Rather, they are guidelines that should be followed by anyone who carries out research involving Aboriginal people in Canada if the research is funded by CIHR. The obligation on the researcher to abide by the Guidelines is contractual, i.e. it is voluntarily assumed by the researcher in return for the funding provided by CIHR. As these guidelines primarily address the special considerations that arise when carrying out research involving Aboriginal people, researchers must also refer to, and comply with, other Tri-Council and CIHR policies, as well as any applicable legislation and, for those to whom it applies, the Canadian Charter of Rights and Freedoms. Other agencies of government may impose additional regulatory or other requirements.

Background

CIHR established the Aboriginal Ethics Working Group (AEWG) in March 2004 as part of a broader national endeavour to develop research ethics guidelines for Aboriginal people. The AEWG was representative of Aboriginal interests and academic disciplines in providing advice and support for the development of the Guidelines. The AEWG met to deliberate, discuss and draft the Guidelines over the course of two years. A series of commissioned background papers and contributions from the Aboriginal Capacity and Developmental Research Environments (ACADRE) network informed the deliberations of the AEWG. It followed a hands-on, active approach to the development of the Guidelines and adopted ethical principles to guide its work.

A comprehensive, nation-wide strategy for consultation with Aboriginal communities, researchers and institutions was built on the ACADRE network. The ACADRE network is a unique university-based resource with links to academic research communities and partnerships with regional First Nation, Inuit and Métis communities. Proposals for research ethics collaboration were accepted from the ACADRE centres; each proposal was unique to the centre. Early ACADRE activities focused on work with communities to translate traditional values and ethics into guidance for health researchers; this formed the foundation for the Guidelines.

The first draft of the research ethics Guidelines was completed in May 2005. Initial vetting of the Guidelines took place through the ACADRE centres and their community partners to determine cultural appropriateness and acceptability. Then, feedback was sought from the wider academic community. Consultations and vetting throughout Aboriginal and research communities were initiated in the fall of 2005 and continued through March 2006; these sessions were conducted by the ACADRE network.

The Ethics Office along with the National Council on Ethics in Human Research conducted workshops and consultations with Aboriginal communities, researchers and members of research ethics boards to obtain feedback on the draft Guidelines. The document was electronically posted by CIHR and its partners to enable widespread access and awareness, and to solicit comments prior to final revision. Two timeline extensions for feedback were granted to accommodate the high level of interest by the Aboriginal and research communities and requests for additional workshops and consultations. This inclusive and adaptive approach to the development of the Guidelines helped achieve a workable balance on specific issues, given the multiple and diverse perspectives expressed. The Guidelines were then edited by CIHR's Ethics Office, in consultation with Health Canada and Justice Canada, to optimize internal consistency, and to ensure that the Guidelines reflected CIHR's mandate. These Guidelines will contribute to the Tri-Council process established to revise Section 6 of the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans, which addresses research involving Aboriginal people.

Summary of Articles

Article 1

A researcher should understand and respect Aboriginal world views, including responsibilities to the people and culture that flow from being granted access to traditional or sacred knowledge. These should be incorporated into research agreements, to the extent possible. The first principle of these Guidelines is premised on a need for researchers to understand and respect Aboriginal world views, particularly when engaging in the sphere of traditional and sacred knowledge, and the corresponding responsibility that possession of such knowledge entails. Researchers should understand the broader senses of accountability in order to understand the responsibility they have when entering into a research relationship with Aboriginal people.

Article 2

A community's jurisdiction over the conduct of research should be understood and respected. This article should be read in the context of the discussion in Section 1.5, which addresses the application of this document. Some Aboriginal communities manage and control matters dealing with health. Where this is the case, a researcher should comply with any by-laws, policies, rules or procedures adopted by the community. For example, an Aboriginal community may have its own Research Ethics Board and/or community research protocols.

Article 3

Communities should be given the option of a participatory-research approach. Genuine research collaboration is developed between researchers and Aboriginal communities when it promotes partnership within a framework of mutual trust and cooperation. Participatory research enables a range of levels and types of community participation while ensuring shared power and decision-making. Such partnerships will help to ensure that research proceeds in a manner that is culturally sensitive, relevant, respectful, responsive, equitable and reciprocal, with regard to the understandings and benefits shared between the research partner(s) and Aboriginal community(ies).

Article 4

A researcher who proposes to carry out research that touches on traditional or sacred knowledge of an Aboriginal community, or on community members as Aboriginal people, should consult the community leaders to obtain their consent before approaching community members individually. Once community consent has been obtained, the researcher will still need the free, prior and informed consent of the individual participants. A process to obtain the free, prior and informed consents from both the community affected and its individual participants should be undertaken sufficiently in advance of the proposed start of research activities and should take into account the community's own legitimate decision-making processes, regarding all the phases of planning, implementation, monitoring, assessment,

evaluation and wind-up of a research project. The requirement for community consent is distinct from the obligation of researchers to obtain individual consent from research participants.

Article 5

Concerns of individual participants and their community regarding anonymity, privacy and confidentiality should be respected, and should be addressed in a research agreement. The researcher, the individual participants and the community should have a clear prior understanding as to their expectations with regard to the anonymity of the community and of the individuals participating in the research project, and the extent to which research data and results will remain confidential to the researcher. If anonymity is not possible, or if there are necessary limitations to anonymity or confidentiality, these should be clearly communicated.

Article 6

The research agreement should, with the guidance of community knowledge holders, address the use of the community's cultural knowledge and sacred knowledge.

Article 7

Aboriginal people and their communities retain their inherent rights to any cultural knowledge, sacred knowledge, and cultural practices and traditions, which are shared with the researcher. The researcher should also support mechanisms for the protection of such knowledge, practices and traditions. Any research involving Aboriginal people will involve the sharing of some cultural knowledge, practices and/or traditions even when these are not the subjects of the study, as they provide necessary context. The recording of knowledge, practices and traditions in any form (written notes, audio, video, or otherwise) should only be done with explicit permission and under mutually-agreed terms that are set out in advance of the research with the guidance of appropriate Elders and knowledge holders. All uses and wider dissemination of cultural knowledge, practices and traditions should also be by permission.

Article 8

Community and individual concerns over, and claims to, intellectual property should be explicitly acknowledged and addressed in the negotiation with the community prior to starting the research project. Expectations regarding intellectual property rights of all parties involved in the research should be stated in the research agreement. Not all information and knowledge can be protected by existing intellectual property laws, given the strict eligibility criteria defining these legal rights. Understanding and communicating what does and does not qualify as intellectual property under current Canadian and international laws is the joint responsibility of the researcher and communities involved. Research with explicit commercial objectives and/or direct or indirect links to the commercial sector should be clearly communicated to all research partners.

Article 9

Research should be of benefit to the community as well as to the researcher.

A research project should lead to outcomes that are beneficial to the participating Aboriginal community and/or individual community members. Benefit sharing vis-à-vis a community should be interpreted from the community's perspective. This may include tangible and intangible benefits, including those arising from altruism.

Article 10

A researcher should support education and training of Aboriginal people in the community, including training in research methods and ethics. Researchers should work to foster capacity building among Aboriginal people to enhance their participation in research projects and improve the overall interactions between Aboriginal governance mechanisms and public educational institutions.

Article 11.1

A researcher has an obligation to learn about, and apply, Aboriginal cultural protocols relevant to the Aboriginal community involved in the research.

Article 11.2

A researcher should, to the extent reasonably possible, translate all publications, reports and other relevant documents into the language of the community.

Article 11.3

A researcher should ensure that there is ongoing, accessible and understandable communication with the community. Aboriginal communities often have cultural protocols involving interactions within the community. It is important that researchers learn about these and respect them. When providing a research project report to the community, the researcher should, at a minimum, provide an executive summary in the language of the community unless the community has expressly waived this. The reports or other communications of results should use language and terminology that are readily understood by the community.

Article 12.1

A researcher should recognize and respect the rights and proprietary interests of individuals and the community in data and biological samples generated or taken in the course of the research.

Article 12.2

Transfer of data and biological samples from one of the original parties to a research agreement, to a third party, requires consent of the other original party(ies).

Article 12.3

Secondary use of data or biological samples requires specific consent from the individual donor and, where appropriate, the community. However, if the research data or biological samples cannot be traced back to the individual donor, then consent for secondary use need not be obtained from the individual. Similarly, if research data or biological samples cannot be traced back to the community, then its consent for secondary use is not required.

Article 12.4

Where the data or biological samples are known to have originated with Aboriginal people, the researcher should consult with the appropriate Aboriginal organizations before initiating secondary use.

Article 12.5

Secondary use requires REB review.

These guidelines set out basic principles for the collection, disclosure, use and transfer of data and biological samples. The details of safeguards protecting the privacy and confidentiality of data and biological samples should be negotiated as part of the research process and specified in a research agreement. Subject to the community's views on traditional or sacred knowledge, co-ownership of data between researchers and communities is recommended because the Aboriginal community and the researcher are both integral to the production of data. If there is to be transfer of data or biological samples to a third party, this should be done only with the consent of the researcher, the individual participants and the community. If the third party is to engage in secondary use of the transferred data or biological samples, then a further consent to that use must be obtained. The consent should address how confidentiality and privacy will be respected. In any case, secondary use of data or biological samples requires new consent unless such use is specifically agreed to in the research agreement. Notwithstanding the above, individuals retain the right to access data about themselves. In cases where the research is a

governmental activity, other standards for protecting privacy may apply, flowing, for example, from the Canadian Charter of Rights and Freedoms or privacy legislation.

Article 13

Biological samples should be considered “on loan” to the researcher unless otherwise specified in the research agreement. Subject to the terms of the research agreement with their community, biological samples from Aboriginal participants should be considered “on loan” to the researcher, analogous to a licensing arrangement, and this should be detailed in the research agreement.

Article 14

An Aboriginal community should have an opportunity to participate in the interpretation of data and the review of conclusions drawn from the research to ensure accuracy and cultural sensitivity of interpretation. Research involving Aboriginal people is susceptible to misinterpretation or misrepresentation when information about the group is analyzed without sufficient consideration of other cultural characteristics that make the group distinct. The opportunity for review of research results by the Aboriginal community should be provided before the submission of research findings for publication, to ensure that sensitive information is not inappropriately divulged to the public and that errors are corrected prior to wider dissemination. This should not be construed as the right to block the publication of legitimate findings; rather, it refers to the community’s opportunity to contextualize the findings and correct any cultural inaccuracies.

Article 15

An Aboriginal community should, at its discretion, be able to decide how its contributions to the research project should be acknowledged. Community members are entitled to due credit and to participate in the dissemination of results. Publications should recognize the contribution of the community and its members as appropriate, and in conformity with confidentiality agreements.

A sample research agreement and charts describing the step-by-step procedures of the research process are included as preliminary guides in Section III and in the Appendix.
