



**Convention on
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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

Sixth meeting
Montreal, 2-6 November 2009

**COMPILATION OF VIEWS CONCERNING THE DRAFT CODE OF ETHICAL 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 paragraph 2 of decision IX/13 G, the Executive Secretary is circulating herewith a compilation of views and comments received by the Secretariat of the Convention on Biological Diversity, concerning the draft code of ethical conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities. This information document is provided to assist in the consideration of the draft elements of a code of ethical conduct (UNEP/CBD/WG8J/6/4).
2. Submissions, including other exemplary codes 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.

SUBMISSIONS

A. *Submissions from Parties*

1. *Australia*

Australia supports the finalization of the draft code of ethical conduct in accordance with Task 16 of the second phase of the Article 8(j) work programme.

2. *European Community*

EU submission in response to CBD notification no. 2009-003

III. ELEMENTS OF A CODE OF ETHICAL CONDUCT:

The EU reaffirms the significance of the role played by indigenous and local communities in the conservation and sustainable use of biodiversity, as well as the need for effective protection of related traditional knowledge, innovations and practices. The EU concludes that traditional knowledge related to biodiversity has a strategic importance for the effective implementation of the objectives of the CBD.

The EU therefore welcomes the initiated process for the elaboration of a code of ethical 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. A code of ethical conduct, once finished, can provide useful guidance on how to relate to and strengthen traditional knowledge.

In many parts of the world traditional knowledge vanishes in a worrying pace due to various reasons. Regardless the underlying causes for this loss, useful tools aiming at strengthening traditional knowledge could counter such trends and turn the development in to a positive direction. Hence, the EU considers it to be of utmost importance to finalize the development of a code of ethical conduct for adoption at COP 10 in order to allow its full and effective implementation.

The EU furthermore believes that such a code of conduct should constitute a practical and meaningful instrument to guide activities/interactions with indigenous and local communities. Welcoming the recent relevant developments at the international level, the code of conduct should be additional and complementary to existing instruments and should be focused on the requirements for the purposes of the Convention.

B. *Submissions from relevant international organizations*

In decision IX/13 G, paragraph 5, the COP at its ninth meeting has requested that the Ad Hoc Working Group on Article 8(j) and Related Provisions further develop the draft elements of a code of ethical conduct and submit them to the Conference of the Parties at its tenth meeting for its consideration and possible adoption. Further to this, in paragraph 3 of the same decision, the Executive Secretary has been requested to transmit the present decision to the United Nations Permanent Forum on Indigenous Issues and to seek collaboration in the development of the elements of a code of ethical conduct. The following recommendation by the UNPFII represents the consensus of advice of the sixteen independent experts of the UNPFII to the Convention at its seventh session.¹

Recommendations from the UNPFII to the Convention on Biological Diversity regarding the draft code of ethical conduct:

¹ Refer report of the seventh session of the UNPFII document no. E/2008/43 and E/C.19/2008/13

81. The Permanent Forum requests the Secretariat of the Convention on Biological Diversity to complete its work on the draft code of ethical conduct for the recognition and protection of indigenous intellectual property and cultural heritage, taking into account the Declaration on the Rights of Indigenous Peoples, as a minimum standard, with a view to adopting the code at the tenth meeting of the Conference of the Parties in 2010, the International Year of Biodiversity.

C. Submissions from relevant organizations

1. Mr. David Hircock

AVEDA

The following code is a code of conduct accepted by the Aromatic and Cosmetics Industrial Sector, in particular, concerning natural extracts sources from indigenous and local communities and as such provides guidance of existing and accepted standards.

SONGMAN PROTOCOL

THE SONGMAN CIRCLE OF WISDOM NOVEMBER 2004

The Circle

The Songman Circle of Wisdom is a Western Australian based National Aboriginal Corporation which is owned, operated, managed and controlled by Aboriginal people. It is a not for profit organisation that is committed to developing a new paradigm in commercial relationships that Aboriginal people wish to undertake.

The members of the Circle have extensive experience within the commercial, business, arts and academic sectors and combined with their respect, knowledge and understanding of their culture, will facilitate practical outcomes and real world solutions. Members are committed to developing new approaches to the challenges and constraints that exist today for Aboriginal people.

The Belief

We believe that by active participation in supporting and facilitating equitable commercial partnerships between the Indigenous and business communities, based on the sustainable use of natural resources and Indigenous cultural knowledge, positive change will occur.

The Songman Protocol

The Songman Protocol is a guiding document that provides a framework that will:

- Respect and acknowledge Indigenous culture and spirituality
- Advocate practical models that deliver positive outcomes for Indigenous communities
- Allow certification of compliance and provide recognition to activities and projects
- Increase real financial returns and commercial opportunities to the mutual benefit of project partners
- Provide a sound commercial basis for Aboriginal business development.

CERTIFICATION

The Songman Circle of Wisdom will establish a web-based register that is accessible to the public that lists companies and their associated products and services that have been produced in compliance with the Songman Protocol.

Companies wishing to be entered onto the register will be required to undergo an audit conducted by the Songman Circle of Wisdom.

Once a company has been assessed as complying with the protocol it will be entered onto the register and permitted to use the Songman Circle of Wisdom registration mark.

Contact

If you would like to find out more about the Circle or the Songman Protocol please contact us by email: songmancircle@westnet.com.au / PO Box 1166 Albany WA 6330

Songman Protocol

1. Scope

This protocol will apply to all activities that utilise natural resources for commercial gain by communities and organisations that are signatories to this protocol.

The Songman Circle of Wisdom (SCW) will maintain a register of all signatories and their associated activities. This register will be publicly available.

2. Legal systems

This protocol recognises the existence and legitimacy of two parallel systems of law.

Customary rights and traditional law will have precedence for the purpose of this protocol.

The customary rights and traditional laws applying to any activity will be identified in consultation with indigenous people associated with the area of the activity and complied with.

Any activities shall be conducted in accordance with all applicable legislation within the country that the activity takes place, at a local, state and national level and comply with all international treaties and agreements to which the country is a signatory.

3. Consent

The proponent will obtain prior consent before commencing the consultation and planning stages of an activity. Following consultation, planning and approval by all relevant parties, consent for the activity to commence must be obtained. Consent in all cases must be obtained with the active participation of the community or individuals who have the authority to speak on cultural matters. The form of consent will be in writing.

4. Confidentiality

All signatories to this protocol will respect the confidentiality of all information, in all forms, provided in relation to any activity.

5. Planning

5.1 Tenure

The proponent must ascertain both the legal and cultural tenure of the area affected by the activity.

5.2 Environmental Impact

All activities will be assessed for their impact, both negative and positive upon the environment.

5.3 Environmental Management Plan

Any activities considered to have a significant negative environmental impact will require a plan to be developed and implemented that addresses the negative environmental impact and reduces its impact to acceptable levels. Environmental Management Plans will be publicly available.

5.4 Cultural impact

All activities will be assessed for their impact, both negative and positive upon the cultural traditions and practices of the Indigenous people associated with the area of the activity. This must be done with the active participation of the community or individuals who have the authority to speak on cultural matters.

Where there is disagreement between the proponent and the Indigenous people affected by the activity on ways to eliminate or reduce negative effects upon cultural traditions and practices, the final decision on an appropriate course of action will remain with the community or individuals who have the authority to speak on cultural matters.

6. Operational Implementation

6.1 Responsibility

The proponent will clearly identify themselves and identify actual persons who will be responsible for compliance with this protocol.

6.2 Supervision

The proponent will nominate a supervisor for each activity who will ensure day to day operations are conducted in accordance with this protocol and report any non-conformance.

6.3 Employment

All activities will require the involvement of Indigenous people who will maintain direct control over the activity.

6.4 Financial Returns

Proponents must clearly commit to and demonstrate an equitable financial return to the traditional owners of the resources or tenure on which the activity will take place.

6.5 Emergency preparedness and response

The proponent will plan and document response plans for any emergency likely to occur during an activity.

7. Monitoring

The proponent will establish a system for monitoring the Key Outputs of the activity.

7.1 Corrective Action

Where monitoring detects variations outside predetermined limits for any Key Output, corrective action will be undertaken. Where corrective action requires major change to operating procedures or cannot be implemented within two weeks, an Environmental Management Plan will be developed.

In all cases the Indigenous people associated with the area of the activity will be notified of any variations outside predetermined limits for any Key Output, verbally within 48 hours and in writing within one week.

7.2 Records

Records will be kept by the proponent of all Key Outputs and corrective actions.

7.3 Chain of Custody

Documentation and procedures that allow transparency in the chain of custody must be established by the proponent and will be subject to approval by the SCW.

7.4 Audit

All activities will be subject to third party audit against this protocol on a regular basis appropriate to the scale of the activity. In all cases an annual audit must be undertaken.

Certification audits will be conducted by SCW or its appointed agent.

8. Certification

All activities will maintain certification against this protocol. Any activity that fails to maintain certification will be given an adequate period of time to regain certification. Were certification has not been achieved or maintained, the SCW will amend its register of certified activities.

Certification against this protocol will be given by SCW or its appointed agent, subject to the findings of any audits in relation to the activity.

Glossary

Activities

Any interaction with the environment, either directly by or under the control of humans.

Significant Negative Environmental Impact

Any resultant outcome of an activity which is not in accordance with acceptable limits.

Acceptable limits

Acceptable limits will be determined by reference to traditional knowledge, legislation and applicable international treaties.

Proponent

The community or organisation proposing to carry out an activity under the scope of the SCW protocol.

Key Output

A measurable result of an activity that allows the monitoring of a significant negative environmental or cultural impact.

Environmental Management Program

A document outlining the steps to be taken ensure key outputs remain within acceptable limits for all activities that have an actual or potential significant negative environmental impact.

Songman Circle of Wisdom

The Songman Circle of Wisdom Aboriginal Corporation incorporated under the Aboriginal Councils and Associations Act 1976 by the Registrar of Aboriginal Corporations.

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

and

[ISE Ethics Committee Chair:](#)

International Society of Ethnobiology (2006). ISE Code of Ethics
(with 2008 additions). Online: http://ise.arts.ubc.ca/global_coalition/ethics.php

The following code is a code of conduct accepted and adopted by the International Society of Ethnobiology and as such provides guidance of existing and accepted standards agreed to by professionals working in the area of ethno-biology.

EXECUTIVE SUMMARY

The Code of Ethics of the International Society of Ethnobiology (ISE) reflects the vision of the Society and provides a framework for decision making and conduct for ethnobiological research and related activities. The goals are to facilitate ethical conduct and equitable relationships, and foster a commitment to meaningful collaboration and reciprocal responsibility by all parties. The Code of Ethics is a living document that will adapt over time to meet changing understandings and circumstances. All Members of the ISE are bound in good faith to abide by the Code of Ethics as a condition of membership.

The Code of Ethics is comprised a Preamble, Purpose, 17 Principles, 12 Practical Guidelines and a Glossary of Terms. The Principles include:

- Prior Rights and Responsibilities
- Self Determination
- Inalienability

- Traditional Guardianship
- Active Participation
- Full Disclosure
- Educated Prior Informed Consent
- Confidentiality
- Respect
- Active Protection
- Precaution
- Reciprocity, Mutual Benefit and Equitable Sharing
- Supporting Indigenous Research
- The Dynamic Interactive Cycle
- Remedial Action
- Acknowledgement and Due Credit
- Diligence

The fundamental value underlying the Code of Ethics is the concept of *mindfulness* – a continual willingness to evaluate one's own understandings, actions, and responsibilities to others. The Code of Ethics acknowledges that biological and cultural harms have resulted from research undertaken without the consent of Indigenous peoples. It affirms the commitment of the ISE to work collaboratively, in ways that: support community driven development of Indigenous peoples' cultures and languages; acknowledge Indigenous cultural and intellectual property rights; protect the inextricable linkages between cultural, linguistic and biological diversity; and contribute to positive, beneficial and harmonious relationships in the field of ethnobiology.

The Code of Ethics applies to all research, collections, databases, publications, images, audio or video recordings, or other products of research and related activities undertaken, especially that which concerns collation and use of traditional knowledge or collections of flora, fauna, or other elements of biocultural heritage found on community lands or territories.

The Principles and Practical Guidelines are based on the concept of traditional resource rights. They facilitate compliance with the standards set by national and international law and policy and customary practice. They recognize traditional and customary laws, protocols, and methodologies extant within the communities where collaborative research is proposed. They are intended to support and enable but not override community level processes and decision making structures, recognizing that Indigenous, traditional or local peoples conducting research within their own communities, for their own uses, may need to comply with their own cultural protocols and practices. In the event of inconsistency between such local requirements and the ISE Code of Ethics, all parties involved are encouraged to work collaboratively to develop appropriate practices.

ISE CODE OF ETHICS

This Code of Ethics was adopted by the ISE membership at the 10 th International Congress of Ethnobiology, Chiang Rai, Thailand, 8 November 2006, subject to the addition of an Executive Summary and Glossary of Terms. The two additions were adopted at the 11 th International Congress of Ethnobiology, Cusco, Peru, 26 June 2008. This constitutes the complete and most current version of the ISE Code of Ethics.

The Code of Ethics of the International Society of Ethnobiology (ISE) provides a framework for decisionmaking and conduct for ethnobiological research and related activities. This Code of Ethics has its origins in the Declaration of Belém agreed upon in 1988 at the Founding of the International Society of Ethnobiology (in Belém, Brazil). It has been developed over the course of more than a decade and is the culmination of a series of consensus based fora and discussion processes involving the ISE Membership.

The Code of Ethics is comprised of five parts: (i) Preamble, (ii) Purpose, (ii) Principles, iv) Practical Guidelines, and (iv) Glossary of Terms. The Code of Ethics reflects the vision of the ISE as stated in Article 2.0 of the ISE Constitution:

The ISE is committed to achieving a greater understanding of the complex relationships, both past and present that exist within and between human societies and their environments. The Society endeavors to promote a harmonious existence between humankind and the Bios for the benefit of future generations.

Ethnobiologists recognize that Indigenous peoples, traditional societies, and local communities are critical to the conservation of biological, cultural and linguistic diversity.

All Members of the ISE are bound in good faith to abide by the Code of Ethics as a condition of membership.

PREAMBLE

The concept of ‘mindfulness’ is an important value embedded in this Code, which invokes an obligation to be fully aware of one’s knowing and unknowing, doing and undoing, action and inaction.

It is acknowledged that much research has been undertaken in the past without the sanction or prior informed consent of Indigenous peoples, traditional societies and local communities and that such research has caused harm and adversely impacted their rights and responsibilities related to biocultural heritage.²

The ISE is committed to working in genuine partnership and collaboration with Indigenous peoples, traditional societies and local communities to avoid perpetuating these past injustices and build towards developing positive, beneficial and harmonious relationships in the field of ethnobiology.

The ISE recognises that culture and language are intrinsically connected to land and territory, and cultural and linguistic diversity are inextricably linked to biological diversity. Therefore, the ISE recognizes the responsibilities and rights of Indigenous, traditional and local peoples to the preservation and continued development of their cultures and languages and to the control of their lands, territories and traditional resources as key to the perpetuation of all forms of diversity on Earth.

PURPOSE

The Purpose of this Code of Ethics is to facilitate establishing ethical and equitable relationships:

- i. to optimize the positive outcomes and reduce as much as possible the adverse effects of research (in all its forms, including applied research and development work) and related activities of ethnobiologists that can disrupt or disenfranchise Indigenous peoples, traditional societies and local communities from their customary and chosen lifestyles; and

² See Glossary of Terms for a definition of biocultural heritage.

- ii. to provide a set of principles and practices to govern the conduct of all Members of the ISE who are involved in or proposing to be involved in research in all its forms, especially that concerning collation and use of traditional knowledge or collections of flora, fauna, or any other element of biocultural heritage found on community lands or territories.

The ISE recognises, supports and prioritises the efforts of Indigenous peoples, traditional societies and local communities to undertake and own their research, collections, images, recordings, databases and publications. This Code of Ethics is intended to enfranchise Indigenous peoples, traditional societies and local communities conducting research within their own society, for their own use.

This Code of Ethics also serves to guide ethnobiologists and other researchers, business leaders, policy makers, governments, nongovernment organisations, academic institutions, funding agencies and others seeking meaningful partnerships with Indigenous peoples, traditional societies and local communities and thus to avoid the perpetuation of past injustices to these peoples. The ISE recognises that, for such partnerships to succeed, all relevant research activities (i.e., planning, implementation, analysis, reporting, and application of results) must be collaborative. Consideration must be given to the needs of all humanity, and to the maintenance of robust scientific standards, whilst recognizing and respecting the cultural integrity of Indigenous peoples, traditional societies and local communities.

A commitment to meaningful collaboration and reciprocal responsibility by all parties is needed to achieve the purpose of this Code of Ethics and the objectives of the ISE.

This Code of Ethics recognizes and honors traditional and customary laws, protocols, and methodologies extant within the communities where collaborative research is proposed. It should support and enable but not override such community level processes and Decision making structures. It should facilitate the development of community centered, mutually negotiated research agreements that serve to strengthen community goals.

PRINCIPLES

The Principles of this Code embrace, support, and embody the concept and implementation of traditional resource rights³ as articulated in established principles and practices of international instruments and declarations including, but not limited to, those documents referred to in Annex 2 of the ISE Constitution. The Principles also facilitate compliance with the standards set by national and international law and policy and customary practice. The following Principles are the fundamental assumptions that form this Code of Ethics.

1. Principle of Prior Rights and Responsibilities

This principle recognises that Indigenous peoples, traditional societies, and local communities have prior, proprietary rights over, interests in and cultural responsibilities for all air, land, and waterways, and the natural resources within them that these peoples have traditionally inhabited or used, together with all knowledge, intellectual property and traditional resource rights associated with such resources and their use.

2. Principle of SelfDetermination

This principle recognises that Indigenous peoples, traditional societies and local communities have a right to self determination (or local determination for traditional and local communities) and that researchers and associated organisations will acknowledge and respect such rights in their dealings with these peoples and their communities.

³ See Glossary of Terms for a definition of traditional resources rights.

3. Principle of Inalienability

This principle recognises the inalienable rights of Indigenous peoples, traditional societies and local communities in relation to their traditional territories and the natural resources (including biological and genetic resources) within them and associated traditional knowledge. These rights are collective by nature but can include individual rights. It shall be for Indigenous peoples, traditional societies and local communities to determine for themselves the nature, scope and alienability of their respective resource rights regimes.

4. Principle of Traditional Guardianship

This principle recognises the holistic interconnectedness of humanity with the ecosystems of our Sacred Earth and the obligation and responsibility of Indigenous peoples, traditional societies and local communities to preserve and maintain their role as traditional guardians of these ecosystems through the maintenance of their cultures, identities, languages, mythologies, spiritual beliefs and customary laws and practices, according to the right of self determination.

5. Principle of Active Participation

This principle recognises the crucial importance of Indigenous peoples, traditional societies and local communities to actively participate in all phases of research and related activities from inception to completion, as well as in application of research results. Active participation includes collaboration on research design to address local needs and priorities, and prior review of results before publication or dissemination to ensure accuracy of information and adherence to the standards represented by this Code of Ethics.

6. Principle of Full Disclosure

This principle recognises that Indigenous peoples, traditional societies and local communities are entitled to be fully informed about the nature, scope and ultimate purpose of the proposed research (including objective, methodology, data collection, and the dissemination and application of results). This information is to be given in forms that are understood and useful at a local level and in a manner that takes into consideration the body of knowledge, cultural preferences and modes of transmission of these peoples and communities.

7. Principle of Educated Prior Informed Consent

Educated prior informed consent must be established before any research is undertaken, at individual and collective levels, as determined by community governance structures.

Prior informed consent is recognised as an ongoing process that is based on relationship and maintained throughout all phases of research. This principle recognises that prior informed consent requires an educative process that employs bilingual and intercultural education methods and tools, as appropriate, to ensure understanding by all parties involved. Establishing prior informed consent also presumes that all directly affected communities will be provided complete information in an understandable form regarding the purpose and nature of the proposed programme, project, study or activities, the probable results and implications, including all reasonably foreseeable benefits and risks of harm (be they tangible or intangible) to the affected communities. Indigenous peoples, traditional societies and local communities have the right to make decisions on any programme, project, study or activities that directly affect them. In cases where the intentions of proposed research or related activities are not consistent with the interests of these peoples, societies or communities, they have a right to say no.

8. Principle of Confidentiality

This principle recognises that Indigenous peoples, traditional societies and local communities, at their sole discretion, have the right to exclude from publication and/or to have kept confidential any information concerning their culture, identity, language, traditions, mythologies, spiritual beliefs or genomics. Parties to the research have a responsibility to be aware of and comply with local systems for management of knowledge and local innovation, especially as related to sacred and secret knowledge.

Furthermore, such confidentiality shall be guaranteed by researchers and other potential users. Indigenous peoples, traditional societies and local communities also have the rights to privacy and anonymity, at their discretion.

9. Principle of Respect

This principle recognises the necessity for researchers to respect the integrity, morality and spirituality of the culture, traditions and relationships of Indigenous peoples, traditional societies, and local communities with their worlds.

10. Principle of Active Protection

This principle recognises the importance of researchers taking active measures to protect and to enhance the relationships of Indigenous peoples, traditional societies and local communities with their environment and thereby promote the maintenance of cultural and biological diversity.

11. Principle of Precaution

This principle acknowledges the complexity of interactions between cultural and biological communities, and thus the inherent uncertainty of effects due to ethnobiological and other research. The precautionary principle advocates taking proactive, anticipatory action to identify and to prevent biological or cultural harms resulting from research activities or outcomes, even if cause and effect relationships have not yet been scientifically proven. The prediction and assessment of such biological and cultural harms must include local criteria and indicators, thus must fully involve indigenous peoples, traditional societies, and local communities. This also includes a responsibility to avoid the imposition of external or foreign conceptions and standards.

12. Principle of Reciprocity, Mutual Benefit and Equitable Sharing

This principle recognises that Indigenous peoples, traditional societies, and local communities are entitled to share in and benefit from tangible and intangible processes, results and outcomes that accrue directly or indirectly and over the shorter and longer term for ethnobiological research and related activities that involve their knowledge and resources. Mutual benefit and equitable sharing will occur in ways that are culturally appropriate and consistent with the wishes of the community involved.

13. Principle of Supporting Indigenous Research

This principle recognizes and supports the efforts of Indigenous peoples, traditional societies, and local communities in undertaking their own research based on their own epistemologies and methodologies, in creating their own knowledge sharing mechanisms, and in utilising their own collections and databases in accordance with their selfdefined needs. Capacity building, training exchanges and technology transfer for communities and local institutions to enable these activities should be included in research, development and comanagement activities to the greatest extent possible.

14. Principle of The Dynamic Interactive Cycle

This principle recognises that research and related activities should not be initiated unless there is reasonable assurance that all stages can be completed from (a) preparation and evaluation, to (b) full implementation, to (c) evaluation, dissemination and return of results to the communities in comprehensible and locally appropriate forms, to (d) training and education as an integral part of the project, including practical application of results. Thus, all projects must be seen as cycles of continuous and ongoing communication and interaction.

15. Principle of Remedial Action

This principle recognises that every effort will be made to avoid any adverse consequences to Indigenous peoples, traditional societies, and local communities from research and related activities and outcomes. Notwithstanding the application of standards set out by this Code of Ethics, should any such adverse consequence occur, discussion will be had with the local peoples or community concerned to decide on what remedial action may be necessary to redress or mitigate adverse consequences. Any such remedial action may include restitution, where appropriate and agreed.

16. Principle of Acknowledgement and Due Credit

This principle recognises that Indigenous peoples, traditional societies and local communities must be acknowledged in accordance with their preference and given due credit in all agreed publications and other forms of dissemination for their tangible and intangible contributions to research activities. Coauthorship should be considered when appropriate. Acknowledgement and due credit to Indigenous peoples, traditional societies and local communities extend equally to secondary or downstream uses and applications and researchers will act in good faith to ensure the connections to original sources of knowledge and resources are maintained in the public record.

17. Principle of Diligence

This principle recognises that researchers are expected to have a working understanding of the local context prior to entering into research relationships with a community. This understanding includes knowledge of and willingness to comply with local governance systems, cultural laws and protocols, social customs and etiquette. Researchers are expected to conduct research in the local language to the degree possible, which may involve language fluency or employment of interpreters.

PRACTICAL GUIDELINES

The following guidelines are intended as a practical application of the preceding Principles. Recognising that this Code of Ethics is a living document that needs to adapt over time to meet changing understandings and circumstances, if guidelines have not yet been articulated for a given situation, the Principles should be used as the reference point for developing appropriate practices.

Similarly, it is recognized that Indigenous, traditional or local peoples conducting research within their own communities, for their own uses, may need to comply with their own cultural protocols and practices. In the event of inconsistency between such local requirements and these guidelines, all parties involved will commit to work collaboratively to develop appropriate practices.

The Practical Guidelines apply to any and all research, collections, databases, publications, images, audio or video recordings, or other products of research and related activities undertaken.

1. Prior to undertaking any research activities, a good understanding of the local community institution(s) with relevant authority and their interest in the research to be undertaken, as well as

knowledge of cultural protocols of the community shall be developed. A thorough effort shall be made in good faith to enhance such understandings through ongoing communication and active participation throughout the duration of the research process.

2. Educated prior informed consent must be established prior to undertaking any research activities. Such consent is ideally represented in writing and/or tape recording, uses language and format that are clearly understood by all parties to the research, and is developed with the persons or deliberating bodies identified as the most representative authorities from each potentially affected community.

3. As a component of educated prior informed consent, there will be full disclosure to potentially affected communities and mechanisms to ensure mutual understanding of the following, based on the reasonably foreseeable effects:

a. The full range of potential benefits (tangible and intangible) to the communities, researchers and any other parties involved;

b. The extent of reasonably foreseeable harms (tangible and intangible) to such communities;

c. All relevant affiliations of the individual(s) or organization(s) seeking to undertake the activities, including where appropriate the contact information of institutional research ethics boards and copies of ethics board approvals for research;

d. All sponsors of the individual(s) or organization(s) involved in the undertaking of the activities.

e. Any intent to commercialise outcomes of the activities, or foreseeable commercial potential that may be of interest to the parties involved in the project, and/or to third parties who may access project outcomes directly (e.g., by contacting researchers or communities) or indirectly (e.g., through the published literature).

4. Prior to undertaking research activities, the following must be ensured by research proponents:

a. Full communication and consultation has been undertaken with potentially affected communities to develop the terms of the research in a way that complies with the Principles.

b. Approval is granted in the manner defined by the local governance system of each affected community.

c. Permissions and approvals have been granted from government as well as other local and national authorities, as required by local, national or international law and policy.

5. All persons and organizations undertaking research activities shall do so throughout in good faith, acting in accordance with, and with due respect for, the cultural norms and dignity of all potentially affected communities, and with a commitment that collecting specimens and information, whether of a zoological, botanical, mineral or cultural nature, and compiling data or publishing information thereon, means doing so only in the holistic context, respectful of norms and belief systems of the relevant communities. This includes supporting or creating provenance mechanisms to ensure collections are clearly traceable to their origins for purposes of due credit and acknowledgement, establishing “prior art” in the event of future ownership claims, and facilitating a reconsent process to develop new mutually agreed terms for further use or applications of collections or derivatives of collections.

Researchers are encouraged to register collected information in local databases and registries where they exist, and explore mechanisms such as community certificates of origin linked to databases. Researchers

are encouraged to support and build capacity for community based data management systems to the extent possible.

Any intellectual property ownership claim or application related to the knowledge or associated resources from the collaboration research should not work against the cultural integrity or livelihood of communities involved.

6. Mutually agreed terms and conditions of the research shall be set out in an agreement that uses language and format clearly understandable to all parties. The agreement will address and adhere to the following standards:

a. Will be represented in writing and/or tape recording if permitted by the community, using local language whenever possible. If writing or taperecording are culturally prohibited, the parties shall work in collaboration to find an acceptable alternative form of documenting the terms of the agreement.

b. Will be made with each potentially affected community after full disclosure, consultation, and establishment of educated prior informed consent regarding mutual benefit and equitable sharing, compensation, remedial action and any other issues arising between parties to the research.

c. Will address the elements outlined in (6b) above as related to all foreseeable uses and property ownership issues of the research outcomes, including derivative forms they may take such as biological and other samples, photos, films, videotapes, audiotapes, public broadcasts, translations, communications through the electronic media, including the internet. This includes clear agreement on rights and conditions related to who holds, maintains, uses, controls, owns, and has rights to the research processes, data, and outcomes (direct and indirect).

d. Will specify attribution, credit, authorship, coauthorship, and due acknowledgement for all contributors to the research processes and outcomes, recognizing and valuing academic as well as cultural and local expertises;

e. Will specify how and in what forms the resulting information and outcomes shall be shared with each affected community, and ensure that access and forms are appropriate and acceptable to that community. Community data and information management systems, such as local registries and databases, shall be supported to the greatest extent possible.

f. Will represent what understandings have been reached regarding what is potentially sacred, secret or confidential and how such will be treated and communicated, if at all, within and beyond the direct parties to the research.

7. Objectives, conditions and mutually agreed terms should be totally revealed and agreed to by all parties prior to the initiation of research activities. It is recognised that collaborative research, by design, may be iterative, emergent and require modifications or adaptations. When such is the case, these changes shall be brought to the attention of and agreed to by all parties to the research.

8. All members of the ISE or affiliated organizations of ISE shall respect and comply with moratoriums by communities and countries on collection of information or materials that they would otherwise intend to include in their research, unless such moratorium is lifted to allow the research.

9. All educational uses of research materials shall be consistent with a good faith respect for the cultural integrity of all affected communities, and, as much as practical, developed in collaboration with such communities for mutual use.

10. All existing project materials in the possession, custody or control of an ISE member or affiliated organization shall be treated in a manner consistent with this Code of Ethics. All affected communities shall be notified, to the extent possible, of the existence of such materials, and their right to equitable sharing, compensation, remedial action, ownership, repatriation or other entitlements, as appropriate. Prior informed consent shall not be presumed for uses of biocultural information in the “public domain” and diligence shall be used to ensure that provenance or original source(s) of the knowledge and associated resources are included and traceable, to the degree possible, in further publications, uses and other means of dissemination.

11. If during the cycle of a project it is determined that the practices of any parties to the research are harmful to components of an ecosystem, it shall be incumbent upon the parties to first bring such practices and the impacts thereof to the notice of the offenders and attempt to establish a mutually agreed conflict resolution process, prior to informing the local community and/or government authorities of such practices and impacts.

12. ISE members shall in good faith endeavour to consider and ensure that project proposals, planning, and budgets are appropriate to collaborative interdisciplinary and crosscultural research that complies with the ISE Code of Ethics. This may require prior consideration of elements such as: extended timeframes to enable permissions, development of mutually agreed terms and ongoing communication; additional budget categories; research ethics and intellectual property ownership considerations that are in addition to or even inconsistent with policies of sponsoring institutions; additional reporting requirements and sharing of outcomes; and mechanisms and forms of communication with parties to the research activities, including the potential need for language fluency and translation. ISE members shall also endeavour to raise awareness among funding bodies, academic institutions and others about the increased time and costs that may be involved in adhering to this Code of Ethics.

GLOSSARY OF TERMS

“**Biocultural heritage**” is the cultural heritage (both the tangible and intangible including customary law, folklore, spiritual values, knowledge, innovations and practices) and biological heritage (diversity of genes, varieties, species and ecosystem provisioning, regulating, and cultural services) of Indigenous peoples, traditional societies and local communities, which often are inextricably linked through the interaction between peoples and nature over time and shaped by their socioecological and economic context. This heritage includes the landscape as the spatial dimension in which the evolution of Indigenous biocultural heritage takes place. This heritage is passed on from generation to generation, developed, owned and administered collectively by stakeholder communities according to customary law.

“**Community certificate of origin**” is a community generated attestation to the origin of information or material.

“**Intellectual property**” is a legal term for a creation of the intellect that has potential commercial value, and may have a right to protection under law relating to copyright, patent, trademark or trade secret (e.g., inventions, technological knowhow, literary and artistic works, symbols, names, images, and designs)

“**Prior art**” is a term used in patent law that refers to preexisting knowledge. Establishing prior art can impact the validity of a patent claim by negating novelty and obviousness requirements.

“**Provenance**” is the place of origin, including history of ownership.

“**Public domain**” is intellectual property that is not protected by copyright, patent or other restrictions on use and is subject to appropriation by anyone.

“**Traditional resources rights**” is defined in “Beyond Intellectual Property Rights:

Toward Traditional Resource Rights For Indigenous Peoples and Local Communities” by Posey and Dutfield (1996:3) as follows:

the term ‘traditional’ refers to the cherished practices, beliefs, customs, knowledge and cultural heritage of indigenous and local communities who live in close association with the Earth; ‘resource’ is used in its broadest sense to mean all knowledge and technology, esthetic and spiritual qualities, tangible and intangible sources that together, are deemed by local communities to be necessary to ensure healthy and fulfilling lifestyles for present and future generations; and ‘rights’ refers to the basic inalienable guarantee to all human beings and the collective entities in which they choose to participate of the necessities to achieve and maintain the dignity and wellbeing of themselves, their predecessors, and their descendants.
