



A RESOURCE REPORT

TO ASSIST WITH THE DEVELOPMENT OF

A DRAFT STATEMENT OF DECLARATIONS & RECOMMENDATIONS

ON RESEARCH & SUSTAINABLE INDIGENOUS TOURISM DEVELOPMENT

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October 2019

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Data Sovereignty Summit 20th June 2018, Canberra, ACT

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- **Canada** **Page 38**
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 - Extracts from: Āhukatanga ū ki te tika me te pono mō te Rangahau Māori: Māori Research Ethics, An overview.
 - Extracts from: Guidelines for Researchers on Health Research involving Maori (2010) Health Research Council of New Zealand, pp 9-12.
 - Extracts from: Te Mana Raraunga: Māori Data Sovereignty Network. Principles of Māori Data Sovereignty
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PREFACE

This Resource Report is primarily a collection of extracts from research reports and news articles produced by a variety of authors and organisations which we have identified as having relevance to the development of a *Draft Statement of Declarations & Recommendations on Research & Sustainable Indigenous Tourism Development*.

We acknowledge both, the authors of those extracts listed as well as the many other authors who have produced relevant papers and articles that we have not specifically referred to in the Resource Report.

We commend readers who have a specific interest in any of the extracts listed, to utilise the weblinks provided in this Resource Report, to view the original reports and articles to understand the original purpose and intent of those reports and articles.

1. INTRODUCTION

During its meeting on 9 – 13 September 2019, the 23rd General Assembly UNWTO, *Fully endorsed the Recommendations on Sustainable Development of Indigenous Tourism as proposed by the World Committee on Tourism Ethics and encouraged the Committee to stimulate their dissemination among all relevant tourism stakeholders.*

These recommendations included the observation that:

....it has become evident that the development of Indigenous tourism cannot be undertaken without sound partnerships among Indigenous communities, governments, tourism destinations, the private sector and the civil society. Moreover, academic institutions need to partner with these stakeholders in order to be able to produce solid research and data to be used in the course of the tourism development. Only multi-stakeholder partnerships can really assure that Indigenous people can reap direct benefits from tourism and keep their core values intact....

In order to provide a practical pathway forward for implementing the requirement for solid research & data for sustainable Indigenous tourism development, WINTA has sought the advice of a Steering Group comprised of Indigenous and non-Indigenous researchers in tourism.

This Resource document has been produced to assist the Steering Group in its deliberations on a suitable Draft Statement of Declarations & Recommendations for research and sustainable Indigenous tourism development for review by:

- A selection of key Indigenous tourism industry stakeholders;
- The WITS 2020 Symposium: Wangkiny Coolamon being held on 6 April 2020 in Perth WA; and
- The WITS 2020 Plenary Conference being held on 7-9 April 2020 in Perth

2. DRAFT STATEMENT OF DECLARATIONS

Draft Declaration 1:

Indigenous peoples with spiritual links to traditional lands and ocean spaces represent the most unique & diverse cultural expressions of humankind. These spiritual links represent a clear pull factor for potential visitors to geographic locations to experience tangible and intangible Indigenous natural & cultural heritage in physical, intellectual and emotional terms.

Commentary

The nexus of tourism and the rights of Indigenous peoples has demonstrated the potential to result in both positive and negative impacts for Indigenous peoples.

The recommendations to the UNWTO by the [World Committee on Tourism Ethics on Sustainable Development of Indigenous Tourism](#) include the observations that Indigenous peoples are characterized by some of the richest, most unique and diverse cultural expressions of humankind which have developed over thousands of years across our planet and are spiritually linked to Indigenous traditional lands. These expressions represent a clear pull factor for potential tourists who wish to experience Indigenous natural and cultural heritage in physical, intellectual and emotional terms.¹

In some countries, traditional and sacred sites are exploited or destroyed by the tourist industry. Many of these sites of spiritual and cultural significance are also ecological reserves that have been developed, conserved and managed by Indigenous peoples through their traditional knowledge and practices. In other cases, Indigenous art and sacred materials are used without the knowledge or permission of the Indigenous artist or community. Many cultural artefacts and ancestral human remains that were taken from sites without the permission of Indigenous peoples, are held in museums and collecting institutions around the world. Increasingly, Indigenous peoples are seeking to have these items returned to them as a sign of respect for their cultural traditions and practices. Indigenous intellectual property includes the information, practices, beliefs and philosophy that are unique to each Indigenous culture. Once traditional knowledge is removed from an Indigenous community, the community loses control over the way in which that knowledge is used. In most cases, this system of knowledge evolved over many centuries and is unique to the Indigenous peoples' customs, traditions, land and resources. Indigenous peoples have the right to protect their intellectual property, including the right to protect that property against its inappropriate use or exploitation.²

At its seventh session in Paris, 29 April–4 May 2019, [the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services \(IPBES\)](#) concluded that nature managed by Indigenous peoples and local communities is under increasing pressure. Nature is generally declining less rapidly in Indigenous peoples' land than in other lands, but is nevertheless declining, as is the knowledge of how to manage it. At least a quarter of the global land area is traditionally owned, managed, used or occupied by Indigenous peoples. These areas include approximately 35 per cent of the area that is formally protected and approximately 35 per cent of all remaining terrestrial areas with very low human intervention. In addition, a diverse array of local communities, including farmers, fishers, herders, hunters, ranchers and forest users, manage significant areas under various property and access regimes. Among the local indicators developed and used by Indigenous peoples and local communities, 72 per cent show negative trends in nature that underpin local livelihoods and well-being. The areas managed (under various types of tenure and access regimes) by Indigenous peoples and local communities are facing growing resource extraction, commodity production, mining and transport and energy infrastructure, with various consequences for local livelihoods and health. Some climate change mitigation programmes have had negative impacts on Indigenous peoples and

local communities. The negative impacts of all these pressures include continued loss of subsistence and traditional livelihoods resulting from ongoing deforestation, loss of wetlands, mining, the spread of unsustainable agriculture, forestry and fishing practices and impacts on health and well-being from pollution and water insecurity. These impacts also challenge traditional management, the transmission of Indigenous and local knowledge, the potential for sharing of benefits arising from the use of, and the ability of Indigenous peoples and local communities to conserve and sustainably manage, wild and domesticated biodiversity that are also relevant to broader society.³

Supporting References

- 1. Extract from: Recommendations of the World Committee on Tourism Ethics on Sustainable Development of Indigenous Tourism
- 2 Extract from: [Leaflet No. 12: WIPO and Indigenous Peoples.](#)
- 3. Extract from: [The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services \(IPBES\)](#) Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services Seventh session Paris, 29 April–4 May 2019.

Draft Declaration 2:

Indigenous natural & cultural heritage including Indigenous knowledge systems have been impacted for centuries by colonisation and further threatened by forces of globalisation which have facilitated the development of tourism. Indigenous peoples have demonstrated that given the opportunity to fully participate in development processes they can initiate adaptive responses to cope with external influences and produce tourism opportunities which benefit both visitors and their own communities.

Commentary

Prior to contact with Europeans, Indigenous knowledge systems had developed and flourished over thousands of years in various parts of the world. These knowledges are rich and varied, ranging from soil and plant taxonomy, cultural and genetic information, animal husbandry, medicine and pharmacology, ecology, zoology, music, arts, architecture, social welfare, governance, conflict management, and many others.

Indigenous knowledge systems have also made many significant contributions to the arts and humanities of the world. Stories of ancient times before human beings, stories of the Creation of Indigenous peoples and other stories of spiritual, mythological and legendary figures are rooted in the Oral Tradition of Indigenous nations and have been passed down through generations and continue to fascinate many of the peoples of the world. Elaborate Indigenous artistic techniques and designs in sculpture, painting, music, drama, dance, continue to thrive in traditional and evolved forms, and have intrigued art historians and the art world for centuries.

Indigenous knowledge systems represent the accumulated experience, wisdom and know-how unique to nations, societies, and or communities of people, living in specific environments of America, Africa, Asia and Oceania. It represents the accumulated knowledge of seventy per cent of the earth's people—some ten thousand distinct peoples and cultures.

In the past, Eurocentric knowledge has condescendingly associated Indigenous knowledge with the primitive, the wild, and the natural. This is the prevailing negative Eurocentric perception of Traditional Knowledge that forms the basis for the status quo. Despite the advances made by knowledge systems throughout the Indigenous world, the Western world's general response throughout the colonial and most of the post-colonial periods was to dismiss the value of Traditional Knowledge. Since only European people could progress, all Indigenous knowledge was viewed as static and historical.

Time-tested Indigenous systems' have been devalued and diminished by having Eurocentric perceptions and institutions imposed upon them. In the process, many of the systems have been de-based through misrepresentation, misappropriation, unauthorized use and the separating of the content from its accompanying regulatory regime.

Indigenous Peoples have numerous internal Customary Laws associated with the use of Traditional Knowledge. These Customary Laws have also been called "cultural protocols" and are part of the laws that Indigenous Nations have been governed by for millennia and are primarily contained in the Oral Tradition. Neither the common law nor international treaties place Indigenous customary law on equal footing with other sources of law. The status quo is that Indigenous knowledge has become subjugated under European legal regimes.^{3a}

In some continents the Residential School System was the ultimate institution of colonization. Colonization can be characterized as a deliberate organized program on the part of an invading foreign regime to culturally or physically eliminate the Indigenous peoples of the territory to make way for complete foreign domination and control. In the process of colonization, Indigenous peoples are divested of the control of Traditional Knowledge through their Customary Laws, and Traditional Knowledge that is of value to Western knowledge and societies is colonized by the Intellectual Property Rights Laws.^{3a}

In more recent times.

Globalization as a process had brought about significant changes in all spheres of social, political and economic life. Global economy, as a result of the globalization impact, has also led to certain changes that can be seen primarily in the liberalization of international trade, free movement of capital, workforce and goods, as well as the provision of services breaking down the barriers.

Tourism is an industry that can be considered an increasingly important industry within the global economy, especially mass tourism. We can also conclude that the globalization processes, which have initiated changes in the field of transport, communications, new technologies and the Internet, exert a strong impact on tourism development.

This influence can be observed in a constant rise in the number of tourists and travels, as well as in constantly rising revenues in the tourism industry with continuous reduction of costs, through industries following tourism. It can be concluded that globalization processes which have been causing changes in the global economy, especially in tourism-related industries, have severely affected tourism development, principally mass tourism. The development and progress of tourism also produce certain changes that exert a strong impact on related industries. In that sense, the view of tourism as a consequence of economic development has evolved into a new view of tourism as a factor of economic development.⁴

Indigenous peoples today stand at the crossroads of globalization. In many ways, Indigenous peoples challenge the fundamental assumptions of globalization.

Indigenous peoples are acutely aware, from their own tragic experience over the past 500 years, that consumer societies grow and prosper at the expense of other peoples and the environment.

The globalization of trade and communications presents opportunities as well as challenges for Indigenous peoples. Thus, globalization is creating two potentially opposing forces: the global marketing of goods and the global marketing of ideas. Indigenous peoples are rich in ideas and stories; it has always been their principal form of capital.

Globalisation is providing finger-tip access to the whole range of human cultural diversity while, at the same time, it is dissolving all cultures into a single supermarket with standard brands making it possible for even the smallest society to earn a livelihood by selling its ideas, rather than selling its lands or forests. But it is also threatening the confidentiality of Indigenous peoples' most private and sacred knowledge.

The real issue is not the problem of defining Indigenous cultural and intellectual property, nor of agreeing that the heritage of Indigenous peoples, should in principle, be protected by law, like other property. The real issue is enforcement, where disputes routinely cross international frontiers, and generally involve parties with vastly different levels of power, information and financial resources. ⁵

Globalisation has meantthe commercialization of Aboriginal culture in the new global world.

Turned into commodities, Aboriginal cultural identities are progressively merging within the global culture. This is not to say that Aboriginal values and practices have been accommodated in the global world; global culture has remained quite impervious to the non-Western elements it has progressively assimilated. Rather, as Western cultural principles have swept the world, Aboriginal cultures and ways of life have become simple products for global consumerism. Sometimes, cultural products are sold in the marketplace by their traditional Aboriginal owners, who may see the propagation of their traditional culture as a way to economic and cultural empowerment. Often, however, Aboriginal people's traditional knowledge and skills are used for commercial ends without their consent. Misappropriation, illicit reproduction and unauthorized adaptation of Aboriginal culture are nowadays common practices, and the consensus is that they constitute a terrible, permanent threat. For, indeed, the substitution of non-Indigenous people compromises cultural 'authenticity' and continuity, while competition undermines the possibility of Aboriginal empowerment in both national and global society.⁶

Supporting References

- 3a. Extract from [*WIPO Indigenous Panel on the Role of the Public Domain Concept: Experiences In The Fields Of Genetic Resources, Traditional Knowledge And Traditional Cultural Expressions: Experiences From Canada*](#). Intergovernmental Committee on Intellectual Property and Genetic Resources Traditional Knowledge and Folklore. Seventeenth Session Geneva, December 6-10, 2010
- 4. Extract from: [*The Influence of Globalization on Tourism and Impact of Tourism on Other Activities with an Emphasis on Greenfield Investments in Tourism*](#). Slobodan Čerović, Predrag Vukadinović, Miroslav Knežević* Singidunum University, Belgrade, Serbia. SITCON 2015 - Key Issues on Tourism Destination Competitiveness.
- 5. Extract from: [*The impact of globalization on Indigenous Intellectual Property and Cultures*](#). Lecture by Professor Dr. Erica-Irene A. Daes, 25 May 2004, Museum of Sydney, Sydney Australia.
- 6. Extract from: <https://journals.openedition.org/lisa/1991> *Globalisation and the Australian Aborigines: gain or strain?*

Draft Declaration 3:

The evolution of advocacy for the need to protect the rights of Indigenous peoples including their knowledge systems, has been accelerated by States and the corporate sector including the tourism industry

Commentary

The evolution of advocacy for the need to protect the rights of Indigenous peoples including their knowledge systems is evidenced in a range of conventions and declarations including:

- The ILO Convention on Indigenous and Tribal Peoples (No. 169) 1989
- The Convention on Biological Diversity 1992
- The United Nations Declaration on the Rights of Indigenous Peoples 2007
- The Larrakia Declaration 2012
- The 2030 SDGs 2015
- The American Declaration on the Rights of Indigenous Peoples 2016
- The UNWTO Framework Convention on Tourism Ethics 2017
- The Chengdu Declaration on Tourism and the Sustainable Development Goals 2017
- The European Parliament resolution of 3 July 2018 on violation of the rights of Indigenous peoples in the world, including land grabbing (2017/2206(INI))
- The WCTE recommendations 2017/19

These conventions and declarations have been supplemented by a range of UN and Industry International Guidelines including:

- UN Global Compact Principles for Responsible Management Education 2007;
- The UN Guiding Principles on Business and Human Rights 2011;
- The UN Global Compact Business Reference Guide, UN Declaration on the Rights of Indigenous Peoples 2013
- PRME Open Letter to Academic Institutions on Business & Human Rights 2014
- Indigenous Tourism and Human Rights in Asia and the Pacific Region: Review, Analysis, and Checklists. PATA & WINTA. 2015
- PRME Open Letter to Academic Institutions on Business & Human Rights 2017
- Indigenous People & The Travel Industry: Global Good Practice Guidelines 2017
- WINTA Indigenous Tourism Engagement Framework 2019

Supporting References

Conventions and Declarations

[Extracts from: The ILO Convention on Indigenous and Tribal Peoples \(No. C169\) 1989.](#)

Article 2:

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

Article 4:

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

Article 5:

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

Article 7

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

Extracts from: Convention on Biological Diversity 1992

Article 8

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Article 10c

Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

Extracts from: United Nations Declaration of the Rights of Indigenous Peoples 2007

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Extracts from: The Principles of the Larrakia Declaration 2012

The tourism industry will respect Indigenous intellectual property rights, cultures and traditional practices, the need for sustainable and equitable business partnerships and the proper care of the environment and communities that support them.

Extracts from: The UN 2030 Agenda for Sustainable Development 2015

Cooperation among all major stakeholders—governments at the national, sub-national and local level, international organizations, the private sector, and communities—is vital for achieving the SDGs through tourism. Therefore, a coordinated effort of all stakeholders is needed in order to promote a greater understanding of the value of partnerships as an implementation tool towards fostering sustainable development and in support of the SDGs

The New Agenda

23. People who are vulnerable must be empowered. Those whose needs are reflected in the Agenda include all children, youth, persons with disabilities (of whom more than 80 per cent live in

poverty), people living with HIV/AIDS, older persons, Indigenous peoples, refugees and internally displaced persons and migrants. We resolve to take further effective measures and actions, in conformity with international law, to remove obstacles and constraints, strengthen support and meet the special needs of people living in areas affected by complex humanitarian emergencies and in areas affected by terrorism.

25. We commit to providing inclusive and equitable quality education at all levels – early childhood, primary, secondary, tertiary, technical and vocational training. All people, irrespective of sex, age, race or ethnicity, and persons with disabilities, migrants, Indigenous peoples, children and youth, especially those in vulnerable situations, should have access to life-long learning opportunities that help them to acquire the knowledge and skills needed to exploit opportunities and to participate fully in society. We will strive to provide children and youth with a nurturing environment for the full realization of their rights and capabilities, helping our countries to reap the demographic dividend, including through safe schools and cohesive communities and families.

Goal 2. End Hunger, Achieve Food Security and Improved Nutrition and Promote Sustainable Agriculture

2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, Indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.

2.5 By 2020, maintain the genetic diversity of seeds, cultivated plants and farmed and domesticated animals and their related wild species, including through soundly managed and diversified seed and plant banks at the national, regional and international levels, and promote access to and fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge, as internationally agreed

Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

4.5 By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, Indigenous peoples and children in vulnerable situations

Follow-up and review

79. We also encourage Member States to conduct regular and inclusive reviews of progress at the national and subnational levels which are country-led and country-driven. Such reviews should draw on contributions from Indigenous peoples, civil society, the private sector and other stakeholders, in line with national circumstances, policies and priorities. National parliaments as well as other institutions can also support these processes.

[Extracts from: The American Declaration on the Rights of Indigenous Peoples 2016](#)

Article 13

Right to cultural identity and integrity.

1. Indigenous peoples have the right to their own cultural identity and integrity and to their cultural heritage, whether tangible or intangible, including historic and ancestral heritage; and to the protection, preservation, maintenance, and development of that cultural heritage for their collective continuity and that of their members and so as to transmit that heritage to future generations.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs.

3. Indigenous people have the right to recognition and respect for all their ways of life, cosmologies, spirituality, uses, customs, norms, traditions, forms of social, economic, and political organization; forms of transmission of knowledge, institutions, practices, beliefs, values, dress, and languages, recognizing their inter-relationship as established in this Declaration.

Article 28

Protection of cultural heritage and intellectual property.

1. Indigenous peoples have the right to full recognition and respect for the ownership, dominion, possession, control, development, and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted over millennia from generation to generation.

2. The collective intellectual property of Indigenous peoples includes, inter alia, traditional knowledge and traditional cultural expressions, including traditional knowledge associated with genetic resources, ancestral designs and procedures, cultural, artistic, spiritual, technological, and scientific expressions, tangible and intangible cultural heritage, as well as knowledge and developments of their own related to biodiversity and the utility and qualities of seeds, medicinal plants, flora, and fauna.

3. States, with the full and effective participation of Indigenous peoples, shall adopt measures necessary to ensure that national and international agreements and regimes provide recognition and adequate protection for the cultural heritage of Indigenous peoples and intellectual property associated with that heritage. In adopting such measures, consultations shall be held to obtain the free, prior and informed consent of Indigenous peoples.

Extracts from: UNWTO Framework Convention 2017

Article 4

Ethical Principles in Tourism

Tourism's contribution to mutual understanding and respect between peoples and societies

The understanding and promotion of the ethical values common to humanity, with an attitude of tolerance and respect for the diversity of religious, philosophical and moral beliefs, are both the foundation and the consequence of responsible tourism; stakeholders in tourism development and tourists themselves should observe the social and cultural traditions and practices of all peoples, including those of minorities and Indigenous peoples and recognize their worth.

Extracts from: The Chengdu Declaration on Tourism and the Sustainable Development Goals 2017

5. Cooperation among all major stakeholders—governments at the national, sub-national and local level, international organizations, the private sector, and communities—is vital for achieving the SDGs through tourism. Therefore, a coordinated effort of all stakeholders is needed in order to 3 promote a greater understanding of the value of partnerships as an implementation tool towards fostering sustainable development and in support of the SDGs

Extracts from: European Parliament Resolution on Violation of the Rights of Indigenous Peoples in the World. 3 July 2018.

9. Calls on all states, including the EU and its Member States, to legally recognise and accept the territorial autonomy and self-determination of Indigenous people, which implies their right to own, use, develop and control their lands, territories, waters and coastal seas, and other resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired;

47. Recalls the responsibility of companies to guarantee the right of Indigenous peoples to free, prior and informed consultation when projects, works or activities are to be carried out within their territories, and to incorporate and subsequently apply corporate social responsibility in their policies

61. Calls on all states to ensure that Indigenous communities benefit from sustainable tourism revenues and are protected from the adverse impact that mass tourism might bring, and

welcomes examples of shared management of reserves and protected areas that allow better protection of ecosystems and control of tourism flows; recalls, in this connection, the importance of the concept of sustainable development;

[Extract from: Recommendations of the World Committee on Tourism Ethics on Sustainable Development of Indigenous Tourism](#)

The WCTE recommendations to the UNWTO recognise:

5. The Larrakia Declaration follows the principles of UNWTO's core policy document, the Global Code of Ethics for Tourism, adopted by the General Assembly of UNWTO in 1999 and acknowledged by that of the United Nations in 2001. While serving as a guide for sustainable and responsible development of tourism, the Code makes a reference to the role of tourism stakeholders in protecting and respecting the cultures of Indigenous people, their rights and their ancestral traditions.

6. It has become evident that the development of Indigenous tourism cannot be undertaken without sound partnerships among Indigenous communities, governments, tourism destinations, the private sector and the civil society. Moreover, academic institutions need to partner with these stakeholders in order to be able to produce solid research and data to be used in the course of the tourism development. Only multi-stakeholder partnerships can really assure that Indigenous people can reap direct benefits from tourism and keep their core values intact.

[Extract from: The UN Global Compact Business Reference Guide, UN Declaration on the Rights of Indigenous Peoples 2013](#)

All businesses should take the following fundamental actions, some of which may be required in conjunction with local and State governments to meet their responsibility to respect Indigenous peoples' rights:

1. Adopt and implement a formal policy (whether on a stand-alone basis or within a broader human rights policy) addressing Indigenous peoples' rights and committing the business to respect Indigenous peoples' rights.
2. Conduct human rights due diligence to assess actual or potential adverse impacts on Indigenous peoples' rights, integrate findings and take action, track and communicate externally on performance.
3. Consult in good faith with Indigenous peoples in relation to all matters that may affect them or their rights.
4. Commit to obtain (and maintain) the free, prior and informed consent of Indigenous peoples for projects that affect their rights, in line with the spirit of the UN Declaration.
5. Establish or cooperate through legitimate processes to remediate any adverse impacts on Indigenous peoples' rights.
6. Establish or cooperate with an effective and culturally appropriate grievance mechanism.

These fundamental actions are important to ensure respect for the individual and collective rights of Indigenous peoples.

[Extract from: PRME Open Letter to Academic Institutions on Business & Human Rights 2014](#)

Students preparing today for careers in business, law and government expect universities to equip them with the knowledge and skills to manage the human rights impacts of business.

[Extract from: Indigenous Tourism and Human Rights in Asia and the Pacific Region: Review, Analysis, and Checklists. PATA & WINTA 2015.](#)

This report has provided the context for upholding human rights—as growing numbers of communities explore, develop or expand Indigenous cultural tourism offerings.

It has presented an historical overview of progress made in this area, introduced readers to instruments that have evolved over the last decade, and through a case study approach, prepared

the set of goals and practical guidelines in this section. These are intended to provide equal value for Indigenous community leaders, business owners and governments with responsibilities in this area.

Indigenous Tourism Goals

There is an increasing awareness in the industry that to create culturally authentic experiences for travellers, the issue of human rights is a basic one. Those involved in Indigenous tourism should consider these human-rights related goals:

- Recognition, respect, and appreciation for Indigenous cultures
- Differentiation, authenticity and enrichment of visitor experiences
- Appreciation and revitalization of traditional knowledge, cultures and practices
- Catalyst for building Indigenous knowledge, and intergenerational stewardship of cultural & natural resources
- Revitalization and/or strengthening of language, pride, identity, self determination
- Contribution to community health, development and governance
- Economic foundation for negotiations, partnership building, co-management, conventions & agreements
- Economic context for human resource capacity, entrepreneurship and investment
- Sharing, mutual learning, identity strengthening, societal gain, and economic tool for poverty alleviation

[Extract from: PRME Open Letter to Academic Institutions on Business & Human Rights 2017](#)

Business school graduates should know how to focus on human rights and other societal issues in order to shape a viable and sustainable business environment in which firms can prosper long-term.

[Extract from: Indigenous People & The Travel Industry: Global Good Practice Guidelines 2017](#)

Guiding Principle: Understand, respect and accept traditional norms, land ownership rights and management systems.

Guiding Principle: Make every effort to ensure that traditional knowledge and its representations—including artwork, crafts, ceremonies, rituals, performing arts and all intangible assets—are protected from commercial exploitation. Tour operators should only use Indigenous communities' traditional knowledge with full community consent.

Guiding Principle: Ensure that traditional lands, territories, sacred sites and resources are used with communities' full knowledge and consent and protected against exploitation.

Guiding Principle: Ensure that all storytelling and narratives told about Indigenous communities are accurate and defined and approved by the Indigenous community itself, with respect and appreciation for traditional languages.

Guiding Principle: Work toward conserving natural and cultural resources, and assist Indigenous communities to steward and protect these assets, which form the basis of their tourism businesses.

Guideline 7: Obtain explicit approval from Indigenous community or supplier, for use of natural and cultural assets, such as traditional customs, music, art forms, dress, food, storytelling, etc. Where an Indigenous community or supplier does not have ownership rights, it is imperative that access rights are clearly understood, and that all relevant external authorities are consulted.

Guideline 9: Develop tourism experiences, including interpretive elements, in a manner that presents the living (current) culture, customs, language, connection to natural resources, history and local sites consistent with the Indigenous narrative (in their own voice), protocols and cultural codes (customs) as is agreed to as relevant to the tourism experience design.

Guideline 13: Travel companies should provide Indigenous enterprise managers, tour guides, hosts and suppliers with regularly updated information about the anticipated type of visitors and their expectations. For example, are they budget-style backpackers who are flexible and whose demands

are modest, or will they likely demand a higher level of comfort and service? What language do they speak? How much do they know about the Indigenous culture?

Guideline 15: Acknowledge the Indigenous community's traditional knowledge and customs, especially as pertaining to religious, medicinal, plant and animal knowledge and actively work with the community to prevent misuse, cultural appropriation, and exploitation.

Guideline 16: Provide Indigenous community stakeholders with the opportunity to approve the use of images and text related to their cultural assets for marketing purposes.

Guideline 18: All promotional materials made available by tour operators should accurately and respectfully represent the community's living culture, customs, language, connection to natural resources, and history in a manner consistent with the Indigenous narrative.

Extract from: WINTA Indigenous Tourism Engagement Framework 2019

WINTA's Indigenous Tourism Engagement Framework provides a methodology for reviewing Tourism Industry Stakeholders' engagement with Indigenous communities and the sustainable development of community participation and benefit from tourism.

This Indigenous Tourism Engagement Framework deploys the following 6 principles of the Larrakia Declaration which **collectively & consecutively provide the pathway/process** for fostering sustainable community tourism relationships consistent with the rights of Indigenous peoples:

- Tourism Industry Stakeholders' policies & practices demonstrate **RESPECT** for Indigenous lore and law;



- Tourism Industry Stakeholders **CONSULT** affected Indigenous communities, based on free, prior & informed consent, before taking decisions that affect them;



- Tourism Industry Stakeholders **EMPOWER** affected Indigenous communities by fostering use of community organisational structures & processes;



Tourism Industry Stakeholders foster equitable business **PARTNERSHIPS** between Indigenous communities and industry;



- Tourism Industry Stakeholders foster the delivery of defined **COMMUNITY BENEFITS** from tourism developments;



- Tourism Industry Stakeholders measure the resulting **PROTECTION** afforded by tourism developments to affected Indigenous communities, their culture and their associated land & waters.

This WINTA Indigenous Tourism Engagement Framework is relevant for use by:

- Government agencies responsible for the development of tourism public policy and programmes which impact on the rights of Indigenous peoples;
- Tour & Travel Operators intending to:
 - Develop tourism experiences which incorporate Indigenous community experiences;
 - Operate tourism experiences which incorporate Indigenous community experiences;
 - Market tourism experiences which incorporate Indigenous community experiences.
- Research Institutions seeking to undertake research programmes & projects into the nexus of tourism and Indigenous peoples
- NGOs seeking to build the capacity of Indigenous communities to empower their engagement with the tourism sector.

Draft Declaration 4:

There is increasing recognition of Indigenous peoples' knowledge and the requirements for Indigenous Data Sovereignty and Governance

Commentary

Indigenous peoples have always been data collectors and protectors. Data gathering and preservation existed in most, if not all, Indigenous cultures in the form of art and pictorial calendars, chants, songs, the recitation of genealogies and other cultural practices that have been passed on across generations. With colonisation these practices were disrupted (and often heavily censored), but not extinguished.

Early expressions of Indigenous data sovereignty can be seen in Indigenous oral traditions, which included a complex set of rights and responsibilities concerning the use of community-held information. 8

Victoria Tauli-Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples observes that the twin problems of lack of reliable data and information on Indigenous peoples and the biopiracy and misuse of their traditional knowledge and cultural heritage are issues that have been grappled within the process of drafting and negotiating the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Victoria Tauli-Corpuz, also observes that the concept of data sovereignty is linked with Indigenous peoples' right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as their right to maintain, control, protect and develop their intellectual property over these.⁹

For Indigenous peoples, historical encounters with statistics have been fraught, and none more so than when involving official data produced as part of colonial attempts at statecraft. Governments in the settler states of Australasia and North America have amassed large amounts of data on their Indigenous populations to generate statistics as 'evidence' for population monitoring and policy interventions. Set against this, Indigenous nations, communities and data activists have responded with their own agendas for 'good data'; Indigenous Data Sovereignty (IDS) and Indigenous Data Governance (IDG) movements are contemporary articulations of 'good data'.

At the heart of IDS and IDG is the right of Indigenous peoples and nations to decide what data development occurs and the controls over the collection, governance, ownership, and application of data about their people, territories, lifeways and natural resources. IDS is grounded in Indigenous understandings of sovereignty that challenge dominant 'data sovereignty' discourse and current practice, and is supported by global human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁹

The Indigenous data ecosystem is extensive and includes data generated or held by Indigenous communities and organisations, governments, the public sector, international governmental organisations (IGOs), NGOs, research institutions and commercial entities. Therefore, the application of IDS and IDG crosses many boundaries.⁹

'Data sovereignty' is the management of information in a way that aligns with the laws, practices and customs of a nation-state in which it is located.⁴ In the Indigenous context this may manifest at the group (iwi(tribe)/mob/Māori) levels.⁹

Data governance is the power and authority over the design, ownership, access to and use of data. The governance of data has emerged as a highly contested area of debate between Indigenous peoples and the states within which they reside. For Indigenous peoples, whose traditional modes of governance were disrupted by western modes of democratic governance, re-asserting themselves

through self-determined governance structures is critical. Ownership of governance structures commences at the development stage and continues through the ethics application stage and through the collection, analysis and reporting of data, and through policy translation. Indigenous peoples' ownership is integral to autonomy.⁹

The proposition that UNDRIP has implications for Indigenous data sovereignty is overwhelmingly affirmed by the chapters in this book. Given the lack of strategic academic attention previously afforded this issue, discussions are necessarily preliminary and exploratory. It is clear that further work is needed to refine definitions, concepts, theory and applications. There is further scope to articulate the distinction between sovereignty as it relates to digital spaces and the forms of data stored in those spaces. Nonetheless, it is clear that Indigenous peoples are positioning themselves and organising to give practical expression to various forms of Indigenous data sovereignty at all scales at which Indigenous polities are formed: international, national, regional and local/tribal. ⁹

Supporting References

- 8. Extract from: [Good data practices for Indigenous Data Sovereignty and Governance.](#)
- 9. Extract from: [Indigenous Data Sovereignty. Toward An Agenda.](#)
Edited by Tahu Kukutai & John Taylor. November 2016. Published by ANU Press The Australian National University Acton ACT 2601, Australia.

Draft Declaration 5:

Institutions with research capability in tourism have an important role to play in advancing tourism research consistent with the requirements of Indigenous Data Sovereignty and Governance, while delivering to the needs of visitors

Commentary

It has become evident that the development of Indigenous tourism cannot be undertaken without sound partnerships among Indigenous communities, governments, tourism destinations, the private sector and the civil society. Moreover, academic institutions need to partner with these stakeholders in order to be able to produce solid research and data to be used in the course of the tourism development. Only multi-stakeholder partnerships can really assure that Indigenous people can reap direct benefits from tourism and keep their core values intact.¹

Whilst the tourism industry has not yet focused on the notions of Indigenous data sovereignty and Indigenous data governance in its desire for research and data for the sustainable Indigenous tourism development, it is clear that research institutions must necessarily give consideration to the implications arising from the UNDRIP and the emergence of Indigenous data sovereignty and governance requirements.

A significant start has been made by other sectors especially in developed countries such as Australia, Canada, New Zealand and United States in addressing Indigenous data sovereignty and governance.

In July 2015, an international group of scholars, representatives of Indigenous organisations and government personnel from the CANZUS group of Anglo-settler democracies—Canada, Australia, Aotearoa/New Zealand and the United States—gathered in Canberra to participate in a workshop, ‘Data sovereignty for Indigenous peoples: current practice and future needs’. The purpose of the workshop, sponsored by the Academy of the Social Sciences in Australia (ASSA) and the Centre for Aboriginal Economic Policy Research (CAEPR) at The Australian National University, was to identify and develop an Indigenous data sovereignty agenda, leveraging international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁹

In June 2018, the Maiam nayri Wingara Indigenous Data Sovereignty Collective and the Australian Indigenous Governance Institute convened the National Indigenous Data Sovereignty Summit in Canberra, ACT. Over 40 Indigenous delegates attended the Summit, including representatives from peak bodies, the public service and academia as well as community leaders. Delegates came from every State and Territory in Australia and were joined by four representatives of Te Mana Raraunga Māori Data Sovereignty Network and the Data Iwi (Tribal) Leaders Group. The aim of the Summit was to progress Indigenous Data Sovereignty and Indigenous Data Governance through developing shared understandings and initiating an Australian set of Indigenous Data Governance protocols. Delegates attending the summit endorsed foundational statements. In Australia Indigenous Data Sovereignty is derived from Aboriginal and Torres Strait Islander peoples inherent right to govern their peoples, country (including lands, waters and sky) and resources as outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), for which Australia has declared its support. ¹⁰

In Canada, The First Nations Information Governance Centre (FNIGC) operates with a special mandate from the Assembly of First Nations’ Chiefs in Assembly (*Resolution #48*, December 2009). FNIGC is home to the [First Nations principles of OCAP®](#), a set of principles that guide how research with First Nations people should be conducted and how that information should be stored. OCAP® stands for ownership, control, access, and possession. It means that First Nations control data collection processes in their communities and that First Nations own, protect and control how

their information is used. Access to First Nations data is important, and under OCAP® First Nations determine how and when external researchers are allowed to access and use their information. OCAP® is an important expression of First Nations jurisdiction over its information.¹¹

In New Zealand, Te Mana Raraunga was established in 2015 as the Maori Data Sovereignty Network to advocate for Maori rights and interests in data at a national level consistent with the Treaty of Waitangi and UNDRIP.

Te Mana Raraunga enables any organisation to subscribe to its charter and to operate in terms of its guiding principles based on kaupapa Maori values of rangatiratanga, kotahitanga, manaakitanga and kaitiakitanga and enables access to a Maori Data Audit Tool.¹²

In the United States, the United States Indigenous Data Sovereignty Network (USIDSN) helps ensure that data for and about Indigenous nations and peoples in the US (American Indians, Alaska Natives, and Native Hawaiians) are utilized to advance Indigenous aspirations for collective and individual wellbeing.

USIDSN's primary function is to provide research information and policy advocacy to safeguard the rights and promote the interests of Indigenous nations and peoples in relation to data.

USIDSN seeks to link American Indian, Alaska Native, and Native Hawaiian data users, tribal leaders, information and communication technology providers, researchers, policymakers and planners, businesses, service providers, and community advocates together to share stories about data initiatives, successes, and challenges, and resources. Network members need not be American Indian, Alaska Native, or Native Hawaiian, so long as they are interested in furthering the aims of Indigenous data sovereignty in the US.¹³

Various authors have deliberated on best practice for community consent & benefit sharing, in the publication [Indigenous Peoples, Consent and Benefit Sharing: Lessons from the San-Hoodia Case 2009](#), edited by Rachel Wynberg, Doris Schroeder & Roger Chennells and published by Springer in 2009. ¹⁴

While much of the focus in the book is on bioprospecting and natural product development, the book also yields significant lessons about informed consent and benefit sharing from the health sciences and sectors such as mining. Among other things these lessons include:

- *Land the Foundation of Indigenous Peoples' Rights*. Land is the foundation on which indigenous peoples preserve and protect their traditional knowledge. Equitable benefit sharing for indigenous peoples should therefore be linked to broader initiatives to secure their rights to the resources, knowledge and land that have been alienated over centuries.....
- *Justice*. Benefit sharing is no quick fix for deep-seated international injustice and never can be....
- *Commodification*. Knowledge has been traded for millennia without being considered non-commodifiable. It is not for policymakers, academics, activists, lawyers or other outsiders to decide whether traditional knowledge should be commodified in particular circumstances or not. This decision has to rest with those directly concerned, but they must be assured of sufficient time to gather information, and build capacity and knowledge, in order to be able to act appropriately and independently. The pros and cons of commodification are local choices that cannot be made universally, and communities that categorically reject the possibility of sharing their knowledge need to be sure that they will be heard and respected. Hence it is paramount to take seriously and strengthen the CBD's provision for prior informed consent.
- *Prior Informed Consent*. The principle of prior informed consent is not negotiable, but significant flexibility is required in its attainment, recognizing that circumstances vary from case to case and community to community. All parties need to approach the complex and challenging consent

process with a willingness to adapt to circumstances and focus on building relationships over time. Obtaining consent is not a quick, one-off process as in the medical context, but rather an iterative, progressive process, which benefits significantly from collaboration with local intermediaries and support organizations. In the words of Mason Durie (2008), deputy vice-chancellor at Massey University, New Zealand, and a Māori, ‘an encounter [with indigenous peoples] is more likely to have a good outcome if mutual benefits are on the agenda, agreement is reached about the terms, and ... a commitment to a long term relationship is made’

- *Identification of Traditional Knowledge Holders and Relevant Authorities.* Traditional knowledge holders in particular, should be identified through processes that are incremental, iterative and socially astute. Principles should be developed in collaboration with the wider community to guide the process of identifying the correct beneficiaries. Clear roles and responsibilities should be developed for different categories of beneficiaries. Governments should act to establish simple and clear information channels to inform bioprospectors and researchers about the authorities that need to be consulted to obtain permits, and the procedures to be followed.
- *Capacity Development.* Strong efforts are required to build the capacity of indigenous institutions to engage in the consent process, to negotiate with potential partners, and to receive and distribute funds from benefit sharing. Stable, robust and representative institutions are needed to ensure equitable benefit sharing. Sufficient time, financial support and advice are essential elements of building this capacity. Efforts should also be made to develop the capacity of NGOs to support indigenous communities, of researchers to facilitate communication, and of governments to drive the implementation of laws. The earlier capacity-building investment is undertaken, the better.
- *Managing Expectations.* Communities involved in initiatives need to be fully and honestly informed about the benefits they are expected to derive from their engagement in the development of any benefit-sharing agreements. Information sharing from researchers and industry should include ongoing feedback about progress with research, development and commercialization. Communities should be active partners from the beginning. To minimize the riskcommunities should proactively use the institutions they set up and the knowledge gained to pursue new venture
- *Intercultural Encounters & Governance.* It is important to strike a balance between fulfilling the expectations of Western governance and respecting the norms and practices of indigenous communities. In helping maintain that balance, NGOs and local support organizations can play an important bridging role. However, flexibility on procedures and governance expectations must not be used to justify corruption, nepotism or theft.
- *Policies & Laws.* When indigenous traditional knowledge holders reside in several countries and biological resources are shared across national borders, it is important that governments cooperate successfully and communicate effectively with each other. Cooperation should be especially encouraged in the development of common policy approaches towards trade and benefit-sharing, and in pursuing joint strategies to promote and protect indigenous knowledge and local industries (for example, the development of geographic indications). Access and benefit-sharing laws and policies will only be effective if they have social legitimacy and through consultation reflect the viewpoints of indigenous peoples, local communities and society at large. Laws and policies should be as specific as possible with regard to the procedures to obtain free and prior informed consent, and the nature of benefits expected. State laws and policies must recognize and work in meaningful ways with indigenous and customary approaches.
- *The Law is not Enough.* Progressive laws to enforce benefit sharing and recognize the rights of indigenous peoples are necessary but, on their own, insufficient to ensure equity and secure

human rights. Experience has shown that states often collude with industrial and corporate interests to the detriment of their own indigenous citizens. Indigenous peoples must therefore become organized and empowered, if necessary in alliance with NGOs, in order to counter the asymmetry of power and ensure that their own rights are asserted and secured.

Supporting References

- 1. Extract from: Recommendations of the World Committee on Tourism Ethics on Sustainable Development of Indigenous Tourism
- 10. Extracts from: [Indigenous Data Sovereignty Communique Indigenous Data Sovereignty Summit 20th June 2018, Canberra, ACT.](#) The Maianayri Wingara Indigenous Data Sovereignty Collective and the Australian Indigenous Governance Institute.
- 11. Extracts from: [The First Nations Information Governance Centre \(FNIGC\) and the First Nations Principles of OCAP®.](#)
- 12 Extracts from: [Te Mana Raraunga: Māori Data Sovereignty Network](#)
- 13 Extracts from: [US Indigenous Data Sovereignty Network \(USIDSN\)](#)
- 14 Extracts from: [Indigenous Peoples, Consent and Benefit Sharing: Lessons from the San-Hoodia Case 2009](#)

3. DRAFT STATEMENT OF RECOMMENDATIONS

Researchers and research institutions seeking to produce solid research and data to be used in the course of sustainable Indigenous tourism development should:

Draft Recommendation 1:

Ensure that each tourism research project, from start to finish, be carried out in the spirit of equitable partnerships that uphold the tourism rights of Indigenous Peoples as expressed by the Larrakia Declaration and human rights resolutions set out by the United Nations Declaration on the Rights of Indigenous Peoples.

- a) Commit to partnerships where each project, from start to finish, is built on dialogue, informed consent and respect for Indigenous Peoples as project stakeholders whose knowledge systems strengthen the authenticity and value of scientific inquiry.
- b) Ensure that tourism research enables Indigenous empowerment and rights in sustainable tourism development as expressed by the Larrakia Declaration.
- c) Ensure that tourism research fulfils a duty to protect, serve and contribute to Indigenous human rights and sovereignty as set out by the United Nations Declaration on the Rights of Indigenous Peoples.

Draft Recommendation 2:

Strengthen conventional ethical research standards, research methodologies and practices with engagement principles that enable culturally respectful, diverse and meaningful Indigenous participation throughout the entire tourism research process.

- a) Implement research methodologies and engagement principles grounded by respect, reciprocity and appropriate Indigenous involvement throughout the entire tourism research process.
- b) Recognise and facilitate Indigenous stakeholder needs for cultural rights and practices to be incorporated into the processes involved in tourism research.
- c) Create opportunities for Indigenous capacity building throughout the entire tourism research process to further the development and implementation of Indigenous-driven research now and in the future.

Draft Recommendation 3:

Strive to generate research impact and provide results that contribute genuine change towards tourism sustainability needs identified by Indigenous Peoples and their Territories, such as ecological, cultural, social, economic, political and spiritual wellbeing outcomes.

- a) Design research targets and present Indigenous People with deliverables that produce lasting impacts for their empowerment in tourism and their human rights as outlined by the United Nations Declaration on the Rights of Indigenous Peoples.
- b) Incorporate Indigenous wisdom and insight to define research data needs and project objectives that address the complex tourism sustainability challenges faced by Indigenous People now and in the future.
- c) Action the roles tourism research can play to implement objectives that support the custodianship duties of Indigenous Peoples over the lands and waters of Mother Earth.

4. SUPPORTING REFERENCES FOR STATEMENT OF RECOMMENDATIONS

- **INTERNATIONAL**

[Extracts from: The Principles of the Larrakia Declaration](#)

The 6 principles of the Larrakia Declaration 2012 recognised and supported by the UNWTO Executive Council at its Ninety-fourth session Campeche, Mexico, 23-25 October 2012 are:

1. Respect for customary law and lore, land and water, traditional knowledge, traditional cultural expressions, cultural heritage that will underpin all tourism decisions.
2. That governments have a duty to consult and accommodate Indigenous peoples before undertaking decisions on public policy and programs designed to foster the development of Indigenous tourism.
3. Indigenous peoples will determine the extent and nature and organizational arrangements for their participation in tourism and that governments and multilateral agencies will support the empowerment of Indigenous people.
4. The tourism industry will respect Indigenous intellectual property rights, cultures and traditional practices, the need for sustainable and equitable business partnerships and the proper care of the environment and communities that support them.
5. That equitable partnerships between the tourism industry and Indigenous people will include the sharing of cultural awareness and skills development which support the well-being of communities and enable enhancement of individual livelihoods.
6. Indigenous culture and the land and waters on which it is based, will be protected and promoted through well managed tourism practices and appropriate interpretation.

[Extracts from: United Nations Declaration on the Rights of Indigenous Peoples \(2007\)](#)

Article 1 Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2 Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3 Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4 Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5 Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6 Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9 Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10 Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18 Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed

consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23 Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25 Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27 States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34 Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35 Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38 States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39 Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40 Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41 The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42 The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43 The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44 All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45 Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

[Extracts from Indigenous Peoples, Consent and Benefit Sharing: Lessons from the San-Hoodia Case 2009](#)

Rachel Wynberg • Doris Schroeder Roger Chennells. Editors. Publisher Springer

Chapter 18 Conclusions and Recommendations: Towards Best Practice for Community Consent and Benefit Sharing

18.1 Introduction

The adoption of the Convention on Biological Diversity (CBD) is one of the great policy success stories of the twentieth century. One hundred and ninety- one parties have signed this broad and forward-thinking convention after exceptionally wide processes of consultation.

18.2 Land: The Foundation of Indigenous Peoples' Rights

Land is the foundation on which indigenous peoples preserve and protect their traditional knowledge. *Equitable benefit sharing for indigenous peoples should therefore be linked to broader initiatives to secure their rights to the resources, knowledge and land that have been alienated over centuries*

18.3 Justice and the Convention on Biological Diversity

While benefit sharing rightly aims for justice in exchange (e.g. traditional knowledge holders must be consulted with and compensated for the use of their resources), it cannot take over the role of governments. Governments have a legal duty to ensure that their citizens can live in dignity and, importantly, have their basic needs met. Basic human rights must continue to be secured for all citizens by their nation states. *Benefit sharing is no quick fix for deep-seated international injustice and never can be.*

18.4 Commodification

Knowledge has been traded for millennia without being considered non-commodifiable. It is not for policymakers, academics, activists, lawyers or other outsiders to decide whether traditional knowledge should be commodified in particular circumstances or not. This decision has to rest with those directly concerned, but they must be assured of sufficient time to gather information, and build capacity and knowledge, in order to be able to act appropriately and independently. The pros and cons of commodification are local choices that cannot be made universally, and communities that categorically reject the possibility of sharing their knowledge need to be sure that they will be heard and respected. *Hence it is paramount to take seriously and strengthen the CBD's provision for prior informed consent.*

18.5 Prior Informed Consent

The principle of prior informed consent is not negotiable, but significant flexibility is required in its attainment, recognizing that circumstances vary from case to case and community to community. All parties need to approach the complex and challenging consent process with a willingness to adapt to circumstances and focus on building relationships over time. Obtaining consent is not a quick, one-off process as in the medical context, but rather an iterative, progressive process, which benefits significantly from collaboration with local intermediaries and support organizations. In the words of Mason Durie (2008), deputy vice-chancellor at Massey University, New Zealand, and a Māori, *'an encounter [with indigenous peoples] is more likely to have a good outcome if mutual benefits are on the agenda, agreement is reached about the terms, and ... a commitment to a long term relationship is made'*

18.6 Identification of Traditional Knowledge Holders and Relevant Authorities

Beneficiaries of bioprospecting initiatives, and traditional knowledge holders in particular, should be identified through processes that are incremental, iterative and socially astute. *Principles should be developed in collaboration with the wider community to guide the process of identifying the correct beneficiaries.* Clear roles and responsibilities should be developed for different categories of beneficiaries. Governments should act to establish simple and clear information channels to inform bioprospectors and researchers about the authorities that need to be consulted to obtain permits, and the procedures to be followed.

18.7 Capacity Development

Strong efforts are required to build the capacity of indigenous institutions to engage in the consent process, to negotiate with potential partners, and to receive and distribute funds from benefit sharing. Stable, robust and representative institutions are needed to ensure equitable benefit sharing. Sufficient time, financial support and advice are essential elements of building this capacity. Efforts should also be made to develop the capacity of NGOs to support indigenous communities, of researchers to facilitate communication, and of governments to drive the implementation of laws. The earlier capacity-building investment is undertaken, the better.

18.8 Managing the Expectations of Bioprospecting

Communities involved in bioprospecting initiatives need to be fully and honestly informed about the benefits they are expected to derive from their engagement in the development of any benefit-sharing agreements. Information sharing from researchers and industry should include ongoing feedback about progress with research, development and commercialization. *Communities should be active partners from the beginning.* To minimize the risk associated with bioprospecting, communities should proactively use the institutions they set up and the knowledge gained to pursue new ventures.

18.9 Intercultural Encounters and Governance

Efforts by national governments to ensure that their citizens are not disadvantaged in benefit-sharing negotiations are both commendable and necessary to overcome inbuilt power imbalances based on Western governance expectations. However, alternative approaches may be necessary where governments are not legitimate or are not believed to be capable of representing the interests of their citizens. *It is important to strike a balance between fulfilling the expectations of Western governance and respecting the norms and practices of indigenous communities.* In helping maintain that balance, NGOs and local support organizations can play an important bridging role. However, flexibility on procedures and governance expectations must not be used to justify corruption, nepotism or theft.

18.10 Policies and Laws for Indigenous Peoples, Access and Benefit sharing

When indigenous traditional knowledge holders reside in several countries and biological resources are shared across national borders, it is important that governments cooperate successfully and communicate effectively with each other. Cooperation should be especially encouraged in the development of common policy approaches towards trade and benefit-sharing, and in pursuing joint strategies to promote and protect indigenous knowledge and local industries (for example, the development of geographic indications). Access and benefit-sharing laws and policies will only be effective if they have social legitimacy and through consultation reflect the viewpoints of indigenous peoples, local communities and society at large. *Laws and policies should be as specific as possible with regard to the procedures to obtain free and prior informed consent, and the nature of benefits expected.* State laws and policies must recognize and work in meaningful ways with indigenous and customary approaches.

18.11 The Law is Not Enough

Progressive laws to enforce benefit sharing and recognize the rights of indigenous peoples are necessary but, on their own, insufficient to ensure equity and secure human rights. Experience has shown that states often collude with industrial and corporate interests to the detriment of their own indigenous citizens. *Indigenous peoples must therefore become organized and empowered, if necessary, in alliance with NGOs, in order to counter the asymmetry of power and ensure that their own rights are asserted and secured.*

18.12 Conclusion

This book has told the story of one of the most remarkable bioprospecting initiatives to emerge

from post-CBD deliberations. It has done so not only with an in-depth account of the San-*Hoodia* case, but also by introducing important new concepts about benefit sharing and bringing in comparative material from other countries to illuminate broader trends about indigenous peoples, consent and benefit sharing. *While much of the focus has been on bioprospecting and natural product development, the book also yields significant lessons about informed consent and benefit sharing from the health sciences and sectors such as mining.*

As has been shown, a remarkably consistent suite of issues emerges from these diverse experiences. First, it is clear that too much has been made of the potential of bioprospecting, access and benefit sharing to resolve poverty, address global injustices and deal with the complex set of issues associated with the commodification of traditional knowledge, the patenting of life and the rapacious nature of many companies. *While these are critical issues to debate and resolve, this will not happen through benefit sharing agreements or successful bioprospecting initiatives.*

Second, it is vital to recognize the interface between indigenous approaches and processes and those adopted by governments, researchers and companies, and, where appropriate, integrate them as comprehensively as possible. They may be in the form of laws and policies, consultative processes, institutional arrangements, research protocols, or company practices. *It is especially vital to make linkages to the rights of indigenous peoples to land, knowledge and natural resources if benefit sharing is to emerge and succeed as a strategy to empower indigenous peoples.*

A third common theme to emerge is *the importance of legal clarity and specificity in informed consent and benefit sharing procedures.* Here there is something of a conundrum. On the one hand, there is a *need for flexibility and adaptability in such procedures*, given the range of circumstances that have been described. On the other hand, *specificity is important to ensure the provision of adequate information, and to enable compliance and accountability.* A delicate balance between these needs should be struck by legislators setting up access and benefit sharing systems.

Finally, *the importance of communication, cooperation and consultation* has been stressed throughout the book. *This is crucial not only for indigenous peoples who need to be active partners from the beginning of access and benefit sharing initiatives, and to receive clear and honest information about projected benefits and risks – but also for governments, which have a responsibility to establish simple and clear information channels, to cooperate among themselves where resources or knowledge crosses national borders, and to establish transparent and fair consultation processes for the development of access and benefit sharing policies.*

The question remains: will the enormous efforts and funds that have been expended over decades to achieve the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits be rewarded? Although the jury is still out, there is significant evidence that collective efforts can influence the verdict positively.

- [Extracts from: Good Data Practices for Indigenous Data Sovereignty and Governance.](#)

Defining Indigenous Data Sovereignty

'Data sovereignty' is the management of information in a way that aligns with the laws, practices and customs of a nation-state in which it is located. In the Indigenous context this may manifest at the group (iwi(tribe)/mob/Māori) levels.

Defining Indigenous Data Governance

Data governance is the power and authority over the design, ownership, access to and use of data. The governance of data has emerged as a highly contested area of debate between Indigenous peoples and the states within which they reside. For Indigenous peoples, whose traditional modes of governance were disrupted by western modes of democratic governance, re-asserting themselves through self-determined governance structures is critical. Ownership of governance structures commences at the development stage and continues through the ethics application stage and through the collection, analysis and reporting of data, and through policy translation. Indigenous peoples' ownership is integral to autonomy.

- [Extracts from: Under the Same Sun Parallel Issues](#)

Indigenous research is the specific issue in Chapters 14–16.

This section will be of particular interest to researchers. Non-Indigenous researchers are challenged to find ethical ways of conducting Indigenous research, specifically research that is relevant for Indigenous peoples. Indigenous research issues should move from research on to research with and ultimately become research by Indigenous people.

Foreign researchers and institutions have an academic social responsibility to ensure that their work contributes to the capacity building of local Indigenous people and institutions.

- [Extracts from: Traditional Knowledge and Intellectual Property \(background paper\)](#), World Intellectual Property Organization

The current international system for protecting intellectual property was fashioned during the age of enlightenment and industrialization and developed subsequently in line with the perceived needs of technologically advanced societies. However, in recent years, indigenous peoples, local communities, and governments, mainly in developing countries, have demanded equivalent protection for traditional knowledge. WIPO member states take part in negotiations within the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), in order to develop an international legal instrument (or instruments) that would give traditional knowledge, genetic resources and traditional cultural expressions (folklore) effective protection. Such an instrument could range from a recommendation to WIPO members to a formal treaty that would bind countries choosing to ratify it. Representatives of indigenous and local communities are assisted by the WIPO Voluntary Fund to attend the WIPO talks, and their active participation is crucial for a successful outcome.

Traditional knowledge is not so-called because of its antiquity. It is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity. As such, it is not easily protected by the current intellectual property system, which typically grants protection for a limited period to new inventions and original works by individuals or companies. Its living nature also means that “traditional” knowledge is not easy to define.

Recognizing traditional forms of creativity and innovation as protectable intellectual property may enable indigenous and local communities as well as governments to have a say over their use by others. This may make it possible, for example, to protect traditional remedies, artworks or music against misappropriation, and enable communities to control and benefit collectively from their commercial exploitation.

Although the negotiations underway in WIPO are propelled mainly by developing countries, they are not neatly divided along “North-South” lines. Communities and governments do not necessarily share the same views, and some developed country governments, especially those with indigenous populations, are active.

- **AUSTRALIA**

[Extracts from: Indigenous Data Sovereignty Communique Indigenous Data Sovereignty Summit 20th June 2018, Canberra, ACT](#)

The delegates of the Indigenous Data Sovereignty Summit 20th June 2018, Canberra, ACT asserted that in Australia, Indigenous peoples have the right to:

- Exercise control of the data ecosystem including creation, development, stewardship, analysis, dissemination and infrastructure.
- Data that is contextual and disaggregated (available and accessible at individual, community and First Nations levels).
- Data that is relevant and empowers sustainable self-determination and effective self-governance.
- Data structures that are accountable to Indigenous peoples and First Nations.
- Data that is protective and respects our individual and collective interests.

Enacting Indigenous Data Governance requires Indigenous leaders, practitioners and community members with the skills and infrastructure to advocate and participate across all sectors and jurisdictions. Indigenous communities retain the right to decide which sets of data require active governance and maintain the right to not participate in data processes inconsistent with the principles asserted in this Communique.

- [Extracts from:](#) Guidelines for Ethical Research in Australian Indigenous Studies 2012, Australian Institute for Aboriginal and Torres Strait Islander Studies

Principle 1 Recognition of the diversity and uniqueness of peoples, as well as of individuals, is essential.

Principle 2 The rights of Indigenous peoples to self-determination must be recognised.

Principle 3 The rights of Indigenous peoples to their intangible heritage must be recognised.

Principle 4 Rights in the traditional knowledge and traditional cultural expressions of Indigenous peoples must be respected, protected and maintained.

Principle 5 Indigenous knowledge, practices and innovations must be respected, protected and maintained.

Principle 6 Consultation, negotiation and free, prior and informed consent are the foundations for research with or about Indigenous peoples.

Principle 7 Responsibility for consultation and negotiation is ongoing.

Principle 8 Consultation and negotiation should achieve mutual understanding about the proposed research.

Principle 9 Negotiation should result in a formal agreement for the conduct of a research project.

Principle 10 Indigenous people have the right to full participation appropriate to their skills and experiences in research projects and processes.

Principle 11 Indigenous people involved in research, or who may be affected by research, should benefit from, and not be disadvantaged by, the research project.

Principle 12 Research outcomes should include specific results that respond to the needs and interests of Indigenous people.

Principle 13 Plans should be agreed for managing use of, and access to, research results.

Principle 14 Research projects should include appropriate mechanisms and procedures for reporting on ethical aspects of the research and complying with these guidelines.

- **CANADA**

[Extracts from: The First Nations Principles of OCAP®](#)

What is OCAP®?

The First Nations principles of OCAP® are a set of standards that establish how First Nations data should be collected, protected, used, or shared. They are the de facto standard for how to conduct research with First Nations.

Standing for ownership, control, access and possession, OCAP® asserts that First Nations have control over data collection processes in their communities, and that they own and control how this information can be used.

What do the four “OCAP®” principles mean?

There are four components of OCAP®: Ownership, Control, Access and Possession.

- **Ownership** refers to the relationship of First Nations to their cultural knowledge, data, and information. This principle states that a community or group owns information collectively in the same way that an individual owns his or her personal information.
- **Control** affirms that First Nations, their communities, and representative bodies are within their rights in seeking to control over all aspects of research and information management processes that impact them. First Nations control of research can include all stages of a particular research project-from start to finish. The principle extends to the control of resources and review processes, the planning process, management of the information and so on.
- **Access** refers to the fact that First Nations must have access to information and data about themselves and their communities regardless of where it is held. The principle of access also refers to the right of First Nations communities and organizations to manage and make decisions regarding access to their collective information. This may be achieved, in practice, through standardized, formal protocols.
- **Possession** While ownership identifies the relationship between a people and their information in principle, possession or stewardship is more concrete: it refers to the physical control of data. Possession is the mechanism by which ownership can be asserted and protected.

Why was OCAP® created?

There is no law or concept in Western society that recognizes community rights and interests in their information, which is in large part why OCAP® was created. OCAP® ensures that First Nations own their information and respects the fact that they are stewards of their information, much in the same way that they are stewards over their own lands. It also reflects First Nation commitments to use and share information in a way that maximizes the benefit to a community, while minimizing harm.

As the *Report of the Royal Commission on Aboriginal Peoples* (1999) pointed out, First Nations people have historically had a problematic relationship with researchers, academics, and other data collectors:

“In the past, Aboriginal people have not been consulted about what information should be collected, who should gather that information, who should maintain it, and who should have access to it. The information gathered may or may not have been relevant to the questions, priorities and concerns of Aboriginal peoples. Because data gathering has frequently been imposed by outside authorities, it has met with resistance in many quarters.”

First Nations have often complained that they have been the focus of too much research (i.e. “Researched to Death”), that research projects are too often conducted by non-First Nations

people, that research results are not returned to communities, and that the research does not benefit First Nations people or communities.

Prominent examples of this can be found in the Barrow Alcohol Study of alcoholism in Alaska in the 1970s, the Nuu-chah-nulth First Nation “Bad Blood” research of the 1980s, and the diabetes study of the Havasupai Tribe in Arizona during the 1990s. This is another motivation for the creation of the First Nations principles of OCAP®.

How does OCAP® apply to First Nations?

The ideas inherent in OCAP® are not new, in fact they represent themes and concepts that have been advocated for and promoted by First Nations people for years.

That’s why over the past two decades the principles of OCAP® have been successfully applied in dozens of First Nations communities across Canada, as communities and individuals have increasingly asserted jurisdiction over their own data. First Nations communities have passed their own privacy laws, established Research Review Committees, entered data-sharing agreements, and setting standards to ensure OCAP® compliance.

It’s important to note that although there is a good degree of consensus surrounding OCAP®, each First Nations community or region may have a unique interpretation of the OCAP® principles. This is because OCAP® is not a doctrine or a prescription: it respects the right of First Nations communities in making its decisions regarding why, how, and by whom information is collected, used, or shared.

Can OCAP® be applied to other Aboriginal communities?

OCAP® is an expression of First Nations jurisdiction over information about their communities and its community members. As such OCAP® operates as a set of specifically First Nations—not Aboriginal—principles.

How does OCAP® apply to researchers?

OCAP® respects that rights of First Nations communities to own, control, access, and possess information about their peoples is fundamentally tied to self-determination and to the preservation and development of their culture.

This is why anyone interested in conducting research with a First Nation should acquaint themselves with OCAP® before they begin. A good place to start would be [The Fundamentals of OCAP® course](#), an online course developed by FNIGC in conjunction with Algonquin College that provides a comprehensive overview of the history of OCAP® and its applications in research and information governance today

How do I cite OCAP®?

If you wish to use the OCAP®/PCAP® name or logo in your publication you must include a citation that states “OCAP® is a registered trademark of the First Nations Information Governance Centre (FNIGC)” and include a reference to our website (www.FNIGC.ca/OCAP) so that the definition of OCAP® can be fully understood by the reader.

Extracts from: [Anisnabe Kekendazone \(original knowledge\) Network Environment for Aboriginal Health Research, Colloquium on ethics in Aboriginal health research, Ottawa 2003 \(downloaded from: <http://akneahr.ciet.org/ciet-aboriginal-health-research/canada/colloquium-ethics>\)](http://akneahr.ciet.org/ciet-aboriginal-health-research/canada/colloquium-ethics)

AK-NEAHR and the Alberta ACADRE Network convened a colloquium on ethics in First Nations, Métis and Inuit health research in Ottawa, Ontario on 5 and 6 November 2003. The event began with a round table discussion among experts in First Nations, Métis and Inuit research and health research ethics; community chiefs and Elders; board members of the Ottawa ACADRE Centre, who represent the five national Aboriginal organisations; and the Alberta ACADRE Network.

The colloquium drafted a set of draft principles that should guide First Nations, Métis and Inuit health research:

1. Research should be based on informed partnerships with communities.
2. These partnerships should respect and protect indigenous knowledge, methods and protocols.
3. Ethics in research involves a process from design to dissemination of results and beyond, not just a review moment, and has cost and time implications for all partners.
4. Ethical reviews should enable rather than suppress research and evaluation.
5. Ownership, control, access and possession (OCAP) of research and its products rest with the community.
6. Collective issues should be considered in addition to individual ones (benefits, risks, consent, ownership, etc).
7. Ethical research seeks a balance between individual and collective consent, benefits and risks, confidentiality and transparency.
8. Ethical research seeks free and informed community consent in a language that is accessible and culturally relevant, and acknowledges the individual and community preferred modes of consent (for example, oral/written or individual/collective).
9. Research processes should acknowledge the dynamics and impact of power differentials within communities on the research process.
10. Research processes should acknowledge diversity within and between communities.
11. Informed community participation requires increasing ethical knowledge through capacity development at several levels.
12. Research processes should acknowledge, value and provide for community-led research and its own ethical review processes

- **AOTEAROA NEW ZEALAND**

Extracts from: [Te Ara Tika Guidelines for Māori research ethics: A framework for researchers and ethics committee members. Published by the Health Research Council of New Zealand on behalf of the Pūtaiora Writing Group. 2010.](#)

Research contributes to the broader development objectives of society. Ethics has a specific role in guiding key behaviours, processes and methodologies used in research. International codes of ethics such as the Nuremburg Code (1947)², the Helsinki Declaration (1964)³, the Belmont Report (1979)⁴ and, more recently, the UNESCO Universal Declaration on Bioethics and Human Rights (2005)⁵ shape the changing ethical standards and professional expectations for researchers.

The Treaty of Waitangi principles of partnership, participation and protection provide a framework for identifying Māori ethical issues in terms of; rights, roles and responsibilities of researchers and Māori communities; the contribution that research makes towards providing useful and relevant outcomes; and addressing inequalities. All research in New Zealand is of interest to Māori, and research which includes Māori is of paramount importance to Māori.

The Māori ethics framework references four tikanga based principles:

- whakapapa (relationships),
- tika (research design),
- manaakitanga (cultural and social responsibility), and
- mana (justice and equity) as the primary ethical principles in relation to research ethics

WHAKAPAPA is used to explain both the genesis and purpose of any particular kaupapa (topic/purpose).

Minimum standard: Consultation

An element of aroha (care) or aro ki te ha (awareness) involves acknowledging the essence of the environment within which a person operates. In a traditional context, a person going fishing or diving might be cautioned with the phrase 'Kia aroha ki a Tangaroa' (to be careful and aware of the potential dangers in the sea). Within this guideline we use the notion of aroha as the protective element, a basic caution relating to the risks of engaging in research and to consider ways in which they might be mitigated

Consultation^{12 13} ensures that there has been a constructive critique of the proposed project and its potential impact on Māori. It also provides an opportunity for the community to consider the track record of the researcher. Consultation assists with the development of clearly written information sheets which specify that samples will only be used for the purpose for which they are taken¹⁴, provide a mechanism for reporting back results to appropriate parties¹⁵ and allow issues regarding the research scope and agenda^{16 17} to be discussed. These are considered minimum requirements and should be reflected in the locality assessment and section F of the ethics application.¹⁸

Good Practice: Engagement

We encourage researchers to move beyond consultation and look to substantial and positive engagement with Māori communities. This will ensure that Māori participation in the research project aligns with their tūmanako (aspirations) and tangible benefits are derived. Where research is clearly Māori centred and displays a focus on generating answers to questions that are of particular relevance and importance to Māori then additional features in the research protocol will be expected in terms of cultural safety and research design.

Questions of relevance include:

- what is the evidence for engagement with Māori and what was the shape, time scale and extent of this?
- how has the consent issue been dealt with and is the mode of informed consent suggested appropriate?

Questions asked should include:

- is the information sheet written with clarity and with no exaggerated claims or understatement of risks?
- is there clarity around potential future use of the samples or data?
- does the reporting back of results reach its intended audience?
- is there evidence of local consultation?
- does the researcher have a good track record?

Best Practice: Kaitiaki

A best practice level of 'relationship' empowers Māori to take a kaitiaki role within the research project with a view to ensuring that tangible outcomes are realised within Māori communities. A relationship displaying transparency, good faith, fairness and truthfulness is captured in the concept of whakapono (hope) and the whakatauki (proverb) "kia u ki te whakapono, kia aroha tetahi ki

tetahi” (Hold strong to your beliefs and care for one another). Where research is framed by tenets of kaupapa Māori the above sets of requirements will be augmented by clear evidence that implications of using this methodology is transparently manifested right across the application and in all additional and supporting documents.

Of particular relevance here will be the development of mechanisms for Māori to have a governance role in the planning, development and execution of research as well as monitoring¹⁹ the project through its life cycle. The dissemination of results from the project will be focused on matters of relevance to Māori with information directed to an end use that shows clear benefits for Māori.

Questions of relevance include:

- is the use of kaupapa Māori research approach evidenced right through the application document?
- what degree of meaningful input have Māori had in influencing the shape of the research?
- are Māori participants and their iwi, hapū and whānau the prime recipients or contributors of results?
- what mechanisms are in place to optimise benefits to participants?
- is there an adequate monitoring mechanism?

TIKA – Me pehea e tika ai tēnei kaupapa?²⁰

Tika provides a general foundation for tikanga and in the Māori context refers to what is right and what is good for any particular situation. In the context of this framework we relate it to the validity of the research²¹ proposal. The design of a research project is a critical determinant in whether the research is successful in achieving proposed outcomes, benefiting participants and communities, and bringing about positive transformative change.

Respectful relations with Māori and mana whenua (regional authority) are vital in all research projects, whatever approach the research team decides to use. There are a continuum of approaches to research, each with varying degrees of responsiveness to Māori which reflect the responsibilities, roles, rights of researchers and Māori communities. In this framework approaches to research design, Kaupapa Māori, Māoricentred, and Mainstream, (see Appendix C) are considered in relation to the Treaty of Waitangi principles of partnership, participation and protection.

Minimum standard: Mainstream

A mainstream approach refers to research that may or may not have direct relevance to Māori and where Māori engage as research participants. In these situations researchers are expected to protect the rights and interests of Māori although there is little real involvement in the research process or outcomes. Using this research approach, a number of factors need to be considered when designing the research project including defining the purpose of the project^{22 23} and its relevance to Māori goals^{24 25}. If Māori are involved as participants²⁶ then it is important to consider the recruitment methods, for example kanohi-ki-te-kanohi (face to face) and the sampling frameworks, and whether it is relevant and appropriate to collect ethnicity data²⁷. In this regard the collection of ethnicity data may not be of primary use to the research proposal itself but can provide valuable baseline data for other researchers or Māori communities.

Questions asked should include:

- In what way does this research project impact on Māori?
- How will Māori be included in this project? Is this appropriate and respectful?
- Do I need to consult with Māori for this project? If so, how do I do that?

Good Practice: Māori-centred

Research designs that give Māori a greater level of participation within the research process are encouraged. Māori-centred research involves Māori as significant participants in various roles, including research team and participants, and possibly analysis and outcomes. Issues to be considered when using this research approach include Māori involvement in research design^{28 29}, the role of mentors and Māori researcher development³⁰, use of sampling frameworks that allow equal explanatory power³¹ and Māori involvement in analysis^{32 33}.

Questions of relevance include:

- how will Māori be involved in this project? As researchers, participants, advisors?
- how will this research project benefit Māori in all of the above?
- is there adequate participation of Māori in different stages of the research project, including research design, analysis and dissemination of the results?

Best Practice: Kaupapa Māori framework

This approach to the research design acknowledges the importance of partnerships and the responsibilities of Māori to ensuring the project delivers its intended outcomes to Māori communities. Use of a kaupapa Māori framework to develop research that is designed by, conducted by, made up of, and benefits, Māori is promoted. We encourage research that frames Māori kaupapa as the primary interest of the project, involves Māori as co-constructors of the project³⁴, supports kaupapa Māori theory³⁵ and uses Māori research methodologies as appropriate^{36 37}.

Questions of relevance include:

- who defined the research problem?
- for whom is the study worthy and relevant?
- who says so?
- what knowledge will the community gain from this study?
- what are some likely positive outcomes from this study? • what are some possible negative outcomes?
- how can the negative outcomes be eliminated?
- to whom is the researcher accountable?
- what processes are in place to support the research, the researched and the researcher?³⁸

Note: The TIKA segment is what contextualises the Māori ethics framework to research. The framework may have utility in other areas (e.g. environmental, assisted reproductive technology) by adapting this section.

MANAAKITANGA – Mā wai e manaaki tēnei kaupapa?³⁹

The concept of manaakitanga encompasses a range of meanings in a traditional sense with a central focus on ensuring the mana of both parties is upheld. In this context it is associated with notions of cultural and social responsibility⁴⁰ and respect for persons⁴¹.

Minimum Standard: Cultural Sensitivity

The minimum standard for manaakitanga acknowledges a persons inherent dignity⁴² and the responsibility that people have to act in a caring manner towards others. The responsibility to protect and care for people with aroha and be aware of issues of cultural sensitivity comes to the fore. In this context it includes access to appropriate advice (e.g. kaumātua (elder), advocate)^{43 44} and respect for concepts of privacy and confidentiality⁴⁵.

Concepts of privacy and confidentiality are altered when the individualised notion of autonomy is removed. Information is shared to provide support and increase the transparency and accountability between members of the community.

While recognising the appropriateness of privacy and confidentiality to safeguard any harmful effects from disclosure of information, in many situations, the level of confidentiality can be negotiated with communities and participants. This may simply involve participants consenting to be named as part of the study and giving them the opportunity to remove or de-identify particular comments from the final report.

Questions asked should include:

- are the participants being treated with dignity and respect?
- will the participants have access to appropriate advice?
- is privacy and confidentiality being applied appropriately?

Good Practice: Cultural safety

A better standard of manaakitanga or cultural and social responsibility can be achieved by recognizing, in addition to the issues above, the importance of collective participation in establishing the goals and benefits (tūmanako)^{46 47 48} of a research project and its culturally safe implementation⁴⁹. This is enhanced by considering the inclusion of Māori values and concepts^{50 51 52 53 54} Indigenous values and concepts, and allowing for the use of whānau support^{55 56} and appropriate Māori protocols⁵⁷.

Questions of relevance include:

- are Māori values or concepts used within this research project?
- how will Māori protocols be observed as part of the research project?
- are whānau able to support participants within this project?

Best Practice: Māhaki

Manaakitanga is fully realized in the context of relationships. Here mana akiaki (empowerment) empowers partnerships whose quality is enhanced by the level of the parties' faith and trust in each other (whakapono). Extending beyond cultural safety, māhaki (respectful conduct) acknowledges the importance of recognizing spiritual integrity⁵⁸, Māori philosophy⁵⁹, and may include processes like whakawātea (realignment) within the research project.

Questions of relevance include:

- are kaumātua required to guide the research team?
- how will researchers ensure the safe application of protocols?

MANA – Kei a wai te mana mō tēnei kaupapa?⁶⁰

Minimum standard: Mana tangata

Mana in a Māori context refers to power and authority bestowed, gained or inherited individually and collectively. In the context of this framework mana relates to equity⁶¹ and distributive justice⁶². Mana acts as a barometer of the quality of relationships by acknowledging issues of power and authority in relation to who has rights, roles and responsibilities when considering the risks, benefits and outcomes of the project.

Mana Tangata (autonomous individual), in the context of this framework, refers to individuals that choose to participate in research and their right to be appropriately informed of risks to their individual or collective mana. As such consideration should be given to the identification of risks (individual/collective)^{63 64}, fairness in terms of their distribution⁶⁵ and the place of koha^{66 67}. Providing clear understanding of the requirements for informed consent⁶⁸, and recognising the

place of oral consent in some Māori settings⁶⁹ is integral to demonstrating respect for the mana of Māori participants.

Questions asked should include:

- how open/transparent has the process of consultation been?
- how honestly and fully have the potential or real risks involved in this research been explained?
- how equitable will the results be for Māori?
- are the ideas behind koha understood?
- is there evidence of: o equitable outcomes for Māori? o minimisation of harm? o fairness by appropriate inclusion of Māori? o engagement with the most appropriate groups to deliver favourable research outcomes?

Good Practice: Mana whenua

Mana whenua are iwi and hapū who are recognized as having regional authority and a primary role discerning benefits and making decisions around resource management and research being done in their rohe pōtae (tribal area)^{70 71 72}. Researchers should be establishing meaningful relationships with mana whenua at the research design/conceptual stage to ensure the research provides outcomes for Māori^{73 74 75} and provides opportunities to explore benefit sharing arrangements⁷⁶.

Recognizing the mandated authority of hapū and iwi^{77 78 79} acknowledges the role they have in dealing with issues around consent. It may be appropriate to recognise ethical requirements for ‘collective consent’^{80 81 82 83} in circumstances where risks to the collective are at least as serious as those to the individual participant.

Questions of relevance include:

- who will benefit from the research and how will this be evidenced?
- have the contributions of mana whenua been acknowledged?
- is there evidence of mana whenua goals, aspirations, development, or expectations?
- how will these be measured and by whom?
- where will the research be developed, undertaken, and with whom?
- has there been engagement with mana whenua and in what capacity?
- to whom must the researchers report back to besides funders/institutions?
- what and where is the relevance to/for Māori in their ongoing development in this research?
- does the research include the achievement of Māori goals as an outcome

Best practice: Mana whakahaere

In regard to research mana whakahaere refers to the sharing of power and control in the research relationship with hapū, iwi or relevant Māori communities who assume the responsibility for the outcomes of the project. This presupposes engagement with Māori as mana whenua. Mana whakahaere represents Māori control within the research project and includes acknowledgement of iwi intellectual property⁸⁴, their knowledge systems (Mātauranga Māori)⁸⁵, ownership of research data^{86 87 88} and guardianship responsibilities in relation to the protection and dissemination of information from the research project.

Questions of relevance include:

- is there evidence of engagement in a meaningful relationship with mana whenua, Mataawaka (Māori living within the area not related to local iwi), or iwi researchers?
- how does this application protect Māori intellectual property?
- has consent been gained to access/use of mātauranga Māori?
- how is data ownership guaranteed under mana whakahaere?
- whose intellectual property will/does this research become?
- has mātauranga Māori contributed to the research and how is this evidenced?

- who will own the data produced/collected/generated during the research?

Special Ethical Considerations

Intellectual property Māori continue to assert their cultural and intellectual property (IP) rights through a range of mechanisms; the Treaty of Waitangi (article two: protection of taonga (resources), the United Nations Declaration on the Rights of Indigenous Peoples⁹¹, the Waitangi Tribunal (Wai 262)⁹² and the Mataatua Declaration⁹³ (an affirmation of kaitiakitanga in relation to the intellectual property rights of Māori).

[Extracts from: *Āhuatanga ū ki te tika me te pono mō te Rangahau Māori: Māori Research Ethics, An overview. Dr Polly Atatoa-Carr, Mr Māui Hudson, Dr Te Kani Kingi and Associate Professor Andrew Moore. Published in November 2012 by the Ministry of Health.*](#)

SUMMARY

Gains in Māori research ethics are likely to be achieved through the developing Māori research workforce, the growing body (and improved availability) of literature describing the key components of ethical research practice for Māori, Treaty of Waitangi training courses for researchers, engagement of Māori advisors, advisory panels and communities, ongoing attention to the evaluation of the ethical review system, and a stronger focus in academic work and government policy on achieving equity. Expectations of what constitutes ethical behaviour in Māori research have evolved over time and can be expected to continue to develop in the future, reflecting changing dynamics in our society.

This document offers a summary of published information on Māori research ethics, with a focus on health and disability research. It is designed as a resource for those interested in Māori research ethics, to identify the important issues for Māori research ethics, and to assist researchers, ethics committees, and communities to improve relationships and research experiences for Māori.

This resource is not intended to prevent or to constrain research endeavours.

Rather, its fundamental purpose is to enhance research quality, to improve research outcomes and to maintain robust ethical standards for all New Zealanders.

Central to the discussion of Māori research ethics in this document is the need to:

- incorporate key principles and values, such as tikanga Māori and mātauranga Māori, that are appropriate for Māori and stem from a Māori world view
- understand and address the implications of the Treaty of Waitangi
- consider issues of power and equity, including in research development, methodology, implementation and analysis
- ensure cultural safety, protect knowledge and engage meaningfully with Māori
- align with Māori priorities
- improve outcomes for Māori.

This document has described a number of frameworks and models that those in health and disability and other sectors can use to consider Māori research ethics. These frameworks often present questions for the researcher to consider during the research development phase, to ensure the research is ethical for Māori. The frameworks and models described in this resource all discuss the importance of meaningful engagement with Māori communities. A focus on caution, trust, relationships, respect, consequences and outcomes is commonly described as central to the Māori ethic, and improving Māori ethical understanding will make a valuable contribution to ethical practice in research and society.

Why Consult?

Consultation is a vital step in the development of a research project that involves Māori - either as participants or when the topic is of particular relevance to Māori health. The consultation process can lead to the development of research partnerships, the identification of the most useful research design methods, the resolution of contentious issues, and the maximisation of the potential health outcomes.

Research partnerships and co-operation

Consultation is also an excellent way of arriving at and sustaining a research partnership with Māori researchers and/or communities. To avoid suspicion and build trust meaningful consultation will need to take place.

Despite the urgent need for high quality Māori health research, it is common to encounter a perception among Māori that they are over-researched, and that much previous research has been, at best, of no benefit to Māori and at worst, actively disempowering. The researchers involved may not have intended their activities to be viewed with such misgivings. It is nevertheless important that these issues are considered and that efforts are made to address any potential conflicts or misunderstandings. Consultation assists in erasing this mistrust and building a more cooperative environment for current and future research activities.

Research topics and design

Defining a research topic

The research topic may be defined and enhanced as a result of consultation with Māori. A Māori community may convey a health issue to a researcher who could assist in the formulation of research questions which, if investigated, could result in useful information.

Alternatively a researcher may have their research topic reshaped to meet the health needs of a particular community. Such consultation at the outset helps ensure that both the researchers and the Māori community will benefit from the research project by matching research interest with local health needs. It is important that the researcher and the community have a clear understanding of the other party's' expectation of the likely and possible outcomes of the research. The researcher must ensure that the benefits of participation in a particular research project are not oversold and that any risks or negative consequences are fully explained. It is important to note that a researcher's perceptions of priorities for Māori health may differ substantially from those of particular Māori communities or groups, who may consider other issues more pressing than the researcher's chosen topic. Therefore a researcher planning a piece of research may encounter a less than enthusiastic response from the intended participants.

Such a response will require sincere consultation and negotiation to work through. With researcher-initiated research, it is strongly recommended that researchers consult with Māori as early as possible to ensure the acceptability of the intended research topic prior to the time consuming process of developing the proposal. Again, these processes and activities are designed to enhance the research process and to ensure that potential benefits of the study are realised.

Research design

Consultation can also help identify the most suitable research methods and recruitment strategies. There may be significant differences of approach required within a Māori research sample due to iwi affiliation, ability with Te Reo Māori, age, geographic location and education. Some geographic areas with large Māori populations such as South Auckland may have been over-exposed to research or certain research tools by market researchers, making new research difficult.

The initial advice a researcher receives from within their host organisation may point to general methodological issues for the intended research topic. Subsequent local consultation and collaboration may provide valuable insights into what recruitment strategies and research methods will be best suited to the intended participants. It may also help to avoid problems arising from cultural and socio-economic differences, as well as previous overexposure to some research techniques.

Resolving potentially difficult or contentious issues

A major benefit of consultation is to help resolve possible contentious or difficult issues in the research process before the research project starts. Initial and ongoing consultation can prevent problems from arising in the research process which may be unforeseen by researchers working alone. It can also provide mechanisms for overcoming any problems that may develop. Issues such as intellectual property rights, access to data, publication processes, accountability, authorship, storage of information and allocation of research funding can all be resolved in this manner.

Many researchers find it extremely difficult recruiting Māori as participants in research projects. Consultation provides an ideal mechanism for a study to be publicised through local networks. A study that has the overt endorsement of the local Māori community is less likely to have problems in recruiting participants.

Researchers should be aware that consultation may reveal that resolution of some research issues may not be possible. In such instances those involved could contact the HRC for further advice in resolving outstanding issues. However, the group's right to decline to proceed with research within their whānau, hāpū or iwi if the project is unacceptable to them, is paramount.

Maximising the benefits of research

Researcher development

The MHC regards development of research skills as one of the key benefits of effective research partnerships. Research projects on issues relevant to Māori health or that involve Māori participants provide excellent opportunities for researchers, students and communities to acquire new skills that are able to be applied in later research.

A mechanism of mutual mentoring can be established where the researchers provide research advice and other support to the community or group, which in turn assists with the development of the research project.

The process of consultation could lead to the development and implementation of novel

research strategies that would be a learning experience for even the most senior researcher. Researchers not only acquire cross-cultural skills and experiences, but they can be exposed to new research skills including recruitment methods, dissemination strategies and research tools.

In turn, experienced researchers are able to provide training and supervision to emerging Māori researchers seeking a practical component to their academic training. There is a shortage of Māori researchers, especially in the biomedical and clinical research fields, so opportunities to develop expertise here should be explored where possible.

The MHC is keen for researchers to use research projects as training opportunities to speed development of the Māori health workforce in all research fields. Such training opportunities could be supported by one of a range of career development awards for emerging Māori researchers.

In this way the MHC is able to support an emerging researcher to get hands-on research training with an established researcher, while the research team benefits by having additional staff that are supported by the HRC. Alternatively, emerging researchers could be resourced as research staff on the primary grant.

As well as intending career researchers, local Māori can be provided with research skills which could have broader application than the current research project. Upskilling key members of the local community in research processes and accessing funding is an excellent way of assisting local Māori health development while providing a research workforce for the researcher's current project.

Dissemination of results

It is important that research results contribute to Māori development. This pragmatic approach requires that researchers consider how the results of the intended research will be disseminated and utilised, and outline their dissemination plan in the application. Consultation and ongoing dialogue should determine the appropriate dissemination strategies for the results of a particular project, making research-based information available in a suitable format and timely manner. Potential audiences for such information include Māori health organisations, health providers, Māori representative organisations, policy makers, other researchers and the community from which the information was sourced. By making research information accessible in this way, researchers maximise the project's potential benefits, and therefore its suitability for funding. They also minimise the risk of damage caused by the inappropriate circulation of confidential information.

Dissemination can be supported by either the primary research grant or an HRC Grant-in-Aid. Dissemination is particularly important when Māori have been participants in the research project. Māori have often found it difficult to gain access to, and therefore benefit from, health research findings. Dissemination of research information should be organised to include presentation of results, in an appropriate form, back to the community or group which supplied the information, before publication of the study. Some instances where Māori have been powerless to stop the inappropriate dissemination of information have generated unease within Māori communities. Researchers must take care to ensure that Māori participants understand and agree on which information is to be published in what formats and forums.

Permission to collect and analyse potentially sensitive information does not serve as a proxy to publish such information. Publication may be possible but the format needs to be negotiated with the Māori community involved. If the research topic is relevant to Māori health, it is strongly recommended that the results are provided in a format which is suited to the particular needs of the relevant organisation.

Other opportunities

In situations where the likely utility of the results for Māori is less certain, it may be possible for the research process to contribute in other ways. Examples include providing some employment for local people on the research project or by providing health checks as separately funded additions to the project. Again, these issues should be worked through in conjunction with participant representatives and in recognition of the strong sense of ownership Māori feel towards information originating from their community.

[Extracts from: Te Mana Raraunga: Māori Data Sovereignty Network](#)

[Principles of Māori Data Sovereignty](#)

Definition of terms

- Māori data refers to digital or digitisable information or knowledge that is about or from Māori people, our language, culture, resources or environments.
- Māori Data Sovereignty refers to the inherent rights and interests that Māori have in relation to the collection, ownership, and application of Māori data.
- Māori Data Governance refers to the principles, structures, accountability mechanisms, legal instruments and policies through which Māori exercise control over Māori data.

01 Rangatiratanga | Authority

1.1 Control. Māori have an inherent right to exercise control over Māori data and Māori data ecosystems. This right includes, but is not limited to, the creation, collection, access, analysis, interpretation, management, security, dissemination, use and reuse of Māori data.

1.2 Jurisdiction. Decisions about the physical and virtual storage of Māori data shall enhance control for current and future generations. Whenever possible, Māori data shall be stored in Aotearoa New Zealand.

1.3 Self-determination. Māori have the right to data that is relevant and empowers sustainable self-determination and effective self-governance.

02 Whakapapa | Relationships

2.1 Context. All data has a whakapapa (genealogy). Accurate metadata should, at minimum, provide information about the provenance of the data, the purpose(s) for its collection, the context of its collection, and the parties involved.

2.2 Data disaggregation. The ability to disaggregate Māori data increases its relevance for Māori communities and iwi. Māori data shall be collected and coded using categories that prioritise Māori needs and aspirations.

2.3 Future use. Current decision-making over data can have long-term consequences, good and bad, for future generations of Māori. A key goal of Māori data governance should be to protect against future harm.

03 Whanaungatanga | Obligations

3.1 Balancing rights. Individuals' rights (including privacy rights), risks and benefits in relation to data need to be balanced with those of the groups of which they are a part. In some contexts, collective Māori rights will prevail over those of individuals.

3.2 Accountabilities. Individuals and organisations responsible for the creation, collection, analysis, management, access, security or dissemination of Māori data are accountable to the communities, groups and individuals from whom the data derive

04 Kotahitanga | Collective benefit

4.1 Benefit. Data ecosystems shall be designed and function in ways that enable Māori to derive individual and collective benefit.

4.2 Build capacity. Māori Data Sovereignty requires the development of a Māori workforce to enable the creation, collection, management, security, governance and application of data.

4.3 Connect. Connections between Māori and other Indigenous peoples shall be supported to enable the sharing of strategies, resources and ideas in relation to data, and the attainment of common goals.

05 Manaakitanga | Reciprocity

5.1 Respect. The collection, use and interpretation of data shall uphold the dignity of Māori communities, groups and individuals. Data analysis that stigmatises or blames Māori can result in collective and individual harm and should be actively avoided.

5.2 Consent. Free, prior and informed consent (FPIC)² shall underpin the collection and use of all data from or about Māori. Less defined types of consent shall be balanced by stronger governance arrangements.

06 Kaitiakitanga | Guardianship

6.1 Guardianship. Māori data shall be stored and transferred in such a way that it enables and reinforces the capacity of Māori to exercise kaitiakitanga over Māori data.

6.2 Ethics. Tikanga, kawa (protocols) and mātauranga (knowledge) shall underpin the protection, access and use of Māori data.

6.3 Restrictions. Māori shall decide which Māori data shall be controlled (tapu) or open (noa) access.

- **THE UNITED STATES**

Extracts from: [United States - US Indigenous Data Sovereignty Network \(USIDSN\)](#)

The United States Indigenous Data Sovereignty Network (USIDSN) helps ensure that data for and about Indigenous nations and peoples in the US (American Indians, Alaska Natives, and Native Hawaiians) are utilized to advance Indigenous aspirations for collective and individual wellbeing. USIDSN's primary function is to provide research information and policy advocacy to safeguard the rights and promote the interests of Indigenous nations and peoples in relation to data.

Indigenous data sovereignty is the right of a nation to govern the collection, ownership, and application of its own data. It derives from tribes' inherent right to govern their peoples, lands, and resources. This conception of data sovereignty positions Indigenous nations' activities to govern data within an Indigenous rights framework. In other words, Indigenous data sovereignty accords with international declarations and covenants to which the US has become a signatory, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Notably, this conception of data sovereignty contrasts with the mainstream understanding of data sovereignty, which is that data are subject to the laws of the nation in which it is stored. USIDSN posits that when data are collected from the people and communities of an Indigenous nation, the data come under the control of that Indigenous nation.

The US Indigenous Data Sovereignty Network unites advocates for Indigenous Data Sovereignty at the tribal, state, national, and international levels. The Native Nations Institute (NNI), a unit of the University of Arizona Udall Center for Studies in Public Policy, hosts the Network. NNI provides administrative and research support, coordination of advisory board activities, web hosting, and listserv maintenance. Network membership is open to all American Indian, Alaska Native, and Native Hawaiian data users, tribal leaders, information and communication technology providers, researchers, policymakers and planners, businesses, service providers, and community advocates.

Policy Brief on Data Governance For Native Nation Rebuilding

A Call to Action for Native Nations, Tribal Citizens, Governments, Organizations, Scholars, and Funders

Native nations in the United States increasingly are exercising Indigenous data sovereignty¹ —the right of each tribe to control the collection, ownership, and application of its own data.² Data governance provides the mechanisms for enacting that right.

Purpose

This brief is a primer on Indigenous data governance. It describes the relationship between reclaiming Indigenous data and Native nation rebuilding. It extends the Indigenous data sovereignty conversation to tribal data governance and discusses the implications of Indigenous data sovereignty for non-tribal entities that govern tribal data.

Data and Data Governance

A Native nation's data are any facts, knowledge, or information about the nation and about its citizens, lands, resources, programs, and communities. Information ranging from demographic profiles, to educational attainment rates, maps of sacred lands, songs, and social media activities are all data. Data governance is the exercise of a nation's broad right to control all of this information.

Native Nation Rebuilding

Native nation rebuilding acknowledges the destructive impact of colonization on tribal governance infrastructure and leadership mechanisms. It refers to the reclamation of Native self-rule and increased self-determination. It occurs as a Native nation harnesses its capacity to make and

implement strategic decisions about its own affairs. It is a comprehensive effort to rebuild tribal societies that work on tribal terms.³

Data Governance and Nation Rebuilding

Data sovereignty, data governance, and nation rebuilding go hand in hand. Tribes need accurate, relevant, and timely data for policy and decision-making. Tribes also need mechanisms to protect and control their information. As tribes rebuild their governance institutions, they increase their capability to govern their data, which in turn, facilitates stronger evidence-based decision-making. Indigenous data sovereignty is a right; it is also a state to be achieved through data governance (see Figure 1). Every tribal nation is positioned along a spectrum from data dependency—the state of depending on other entities to provide data about the tribe and about its people, communities, and resources—to data sovereignty. By implementing mechanisms of data governance, tribes are working toward data sovereignty. In this process, they will develop and use mechanisms such as research review boards, data sharing agreements, and data repositories. They also will revisit, reuse, and revise these mechanisms continuously to better achieve their goal. As technological advances or changes in tribal government activities create new data, the process will continue to evolve.

Figure 1. Toward Indigenous Data Sovereignty: The Process of Decolonizing Data

It is important to note that exercising the right to Indigenous data sovereignty occurs within a larger data system in which other governments, corporations, and entities also control tribes' data. Thus Indigenous data sovereignty also requires these external entities to incorporate tribal principles into their own data governance practices. Tribes in the United States are incredibly diverse. Indigenous data governance strategies are similarly varied. We posit, however, that there are common principles of data governance that support tribes as they work toward Indigenous data sovereignty. These may include trust, recognition of inherent tribal sovereignty by external entities, and tribal ownership of a Native nations data, among others.

What might be some of the other Indigenous data governance principles shared among tribes in the United States?

Recommendations

- Identify common principles of Indigenous data governance for use by tribes, governments, organizations, corporations, and researchers within the United States.
- Explore the development of tribe-specific data governance principles.
- Identify and develop mechanisms to facilitate effective tribal data governance.
- Develop data governance mechanisms that non-tribal governments, organizations, corporations, and researchers can use to support tribal data sovereignty.

This brief was produced by the Native Nations Institute and has been made available to the US Indigenous Data Sovereignty Network.

For more information, contact the Native Nations Institute at nni@email.arizona.edu.

[Extracts from: Model Tribal Ordinance for the Protection of Indigenous Knowledge 2000: Indigenous Peoples Council on Biocolonialism](#)

The model [Indigenous Research Protection Act](#) is offered to assist tribal leaders and attorneys when a Tribe desires to protect itself and its people by taking control of research conducted on its Reservation. It may be copied, adapted, and adopted freely. The appendices can also serve as stand-alone documents in the case of tribes that have not adopted legislation like this Act. Following are some points that we think are important to discuss about the Act as written.

1. While a Tribe concerned about research on its members could decide to ban research altogether, the Act as written assumes that a Tribe might want to allow some research on its Reservation, and it allows for this possibility to occur under the Tribe's own terms. The Act is intended to foster cooperation and set the stage for research that the Tribe sees as beneficial. See Sections 1 & 2 for more explanation of the purpose of the Act as it is written.
2. The Act as written should be seen more as a cookbook than as a model to be adopted outright. Each Tribe will know best which individual provisions it wants to include, and which to cut out, when drafting its own legislation.
3. The Act includes provisions setting out two fees: an administrative fee, to cover costs of administration of an application, and a refundable security bond, to ensure that the researcher(s) comply with the terms under which they are allowed to do their research. Each Tribe will want to set its own fee rates, and may even choose not to charge fees.
4. Permits are a part of the Act as written. The provisions for permits may be easily removed, but a permitting procedure will usually make enforcement easier, because a researcher being required to carry a permit provides immediate verification whether their research has been approved by the Tribe, and should the researcher violate any Act provisions the Tribe may revoke the permit.
5. A penalties section is included, but appropriate penalty provisions may vary depending on each Tribe's situation. Factors that may come into play include ownership of land on the Reservation and make-up (members, non-member Indians, and non-Indians) of the Reservation community.
6. Appendix. In addition to the regulatory requirements, the Act provides for the entering into of research agreements. The Tribe may choose not to require such agreements, but such agreements may serve as protection should certain data or samples be removed from the Reservation and the Tribe seeks recognition of its terms and conditions in another jurisdiction. A model [Academic Research Agreement](#) is included as Appendix 1 below.

Dated: September 30, 2000

[Extracts from: Model Indigenous Research Protection Act](#)

WHEREAS, pursuant to the _____ Treaty, [or Executive Order or Agreement] the _____ Tribe reserved the _____ Reservation (hereinafter "Reservation") for present and future generations of the _____ people, and the _____ Tribal Council (or Executive Committee) has a duty and responsibility to protect the Reservation and traditional aboriginal homelands of the _____ people; and

WHEREAS the Reservation forms a sizeable geographic area for the exercise of Tribal jurisdiction, supports a residing population, is the basis for the Tribal economy, and provides an irreplaceable forum for cultural vitality based on religious and cultural traditions premised on the sacredness of land; and

WHEREAS the original territory of the Tribe, including land off-Reservation, contain significant cultural and religious sites which continue to be utilized by Tribal members; and

WHEREAS the _____ Tribe, by and through the _____ Council, has the inherent sovereign authority to regulate the conduct and activities on all lands within the jurisdiction of the Tribe, and as expressly established in the Constitution of the _____ Tribe, to promulgate, adopt, and enact laws for the control and regulation on all lands within the jurisdiction of the Tribe, and to protect the health, economic security, and general welfare of the Tribe and its members

NOW THEREFORE BE IT ENACTED BY THE COUNCIL OF THE _____ TRIBE an Ordinance to

be known as the "Indigenous Research Protection Act."

SECTION 1. FINDINGS AND POLICY.

1.1 The natural and cultural landscapes, including wildlife, flora, fauna, waters, and biogenetics, among others, located on aboriginal and present day Tribal lands are owned by the Tribe and the disposition, development, and utilization thereof are under the Tribe's full control and supervision.

1.2 The integrity and orientation of past, present, and future generations of the _____ people is founded upon a unique and invaluable cultural, historical and environmental ethic. This Tribal ethic defines and perpetuates a communal identity, language, history, and value system which involves an irrevocable cultural attachment to the native landscape ecology, and the human inseparability and interdependence with species and biological diversity.

1.3 The Tribe has the right of self-determination and in exercising that right must be recognized as the exclusive owner of indigenous traditional knowledge.

1.4 Indigenous knowledge, cultural and biogenetic resources, and intellectual property rights have been, and continue to be, damaged, destroyed, stolen, misappropriated, both on and off the Reservation and Tribal members have been the subjects of research for decades, with virtually no benefits returning back to the community from the research.

1.5 The Tribe finds that it is in the best interest of the Tribal community to establish a research review mechanism to prevent the continued abuses, to protect the people's traditional knowledge and properties, and thereby to ensure our rights to continue to practice traditional lifeways and long term survival thereof.

1.6 The established research review process is developed as a mechanism to improve relations between the Tribe and scientists/researchers, and to promote collaboration within the framework of mutual respect, equity, and empowerment, and to identify benefits and risks to the Tribal community.

SECTION 2. PURPOSE.

2.1 The purposes of this Ordinance are to:

a. protect the people, culture and natural resources of the Tribe and the Tribe's future generations from unauthorized scientific research; and

b. to reduce the adverse effects of research and related activities on the Tribal community; and

c. to ensure that researchers recognize Tribal control of research activities and that the Tribe owns all data and information generated or produced by such research; and

d. to establish and provide a statutory basis for a process to review and govern any research, collection, database, or publication undertaken on the Reservation.

2.2 All research activities conducted on the Reservation must comply with this ordinance.

2.3 The Tribe reserves its right, through its inherent sovereign authority and its police power, to exclude individuals from the Reservation and to deny permission and access for any research

activities whatsoever.

SECTION 3. DEFINITIONS.

For purposes of this Act:

3.1 "_____ Tribal Community" includes Tribal members, their descendants and ancestors, and other individuals, families, clans, governments and people residing within the exterior boundaries of the Reservation.

3.2 "Academic Research" means research carried out to obtain educational qualifications or as part of their academic career at a university or affiliated institutions.

3.3 "Biodiversity" means the total variety of life in all its forms. It includes many levels that range from the level of alleles to the biosphere. The major elements of biodiversity include alleles, genes, populations, species, ecosystems, landscapes, and the ecological processes of which they are a part.

3.4 "Biogenetic Resources" means biological and genetic resources, including plant material, animals, microorganisms, cells, and genes.

3.5 "Biological Samples" means, but is not limited to: bacteria and other microorganisms, bacteria, plant, animal, or any human biological materials, genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

3.6 "Commercial Purposes" means to sell, purchase, barter, trade, delayed compensation for profit, exchange, transport, or offer to sell, purchase, barter, trade, delay compensation for profit, exchange, or transport.

3.7 "Cultural Research" means any endeavor, by means of critical investigation and study of a subject, to discover new or collate old facts or hypotheses on a cultural subject, the latter being defined as any ethnographic or anthropological study, including basic data collection, studies of or incorporating traditional knowledge or classifications systems (e.g. studies of medicinal properties of plants), documentary films, archaeology, linguistics and ethno-historical accounts.

3.8 "Indigenous" means native, originating or growing naturally in a specific landscape. Also refers to people descending from the original inhabitants of the Western Hemisphere who have maintained distinct languages, culture, or religion from time immemorial.

3.9 "Products of Research" means publications (including but not limited to reports, studies, articles, theses, books, manuscripts, sound recordings, film and video, media interviews, computer databases), field notes, illustrations, photographs, sound recordings, collected material artifacts, replicas, and specimens, including any derivative forms they may take such as translations, and communications through the electronic media, including the internet and world wide web.

3.10 "Research" includes identification, description, classification, collection, database, recordation, analysis, and publication in fields including, but not limited to: agronomy, archaeology, astronomy, biology, ethnobotany, ecology, ethnography, history, linguistics, paleontology, medicine, photography, psychology, remote sensing, sociology, theology, videography, and other investigative disciplines or approaches as identified by the Tribe.

3.11 "Reservation" means all lands outside or inside the exterior boundaries of the _____ Reservation which are under the jurisdiction of the Tribe, and such lands as may hereafter be obtained or added to the jurisdiction of the Tribe.

3.12 "RESEARCH REVIEW COMMITTEE" means the five member Research Review Committee established under this Act.

3.13 "Taboo/Sacred" means subject to which access is restricted to any degree. Such subjects can include places, names, knowledge, oral traditions, objects, and practices.

3.14 "Traditional Indigenous Intellectual Property" means the indigenous cultural information, knowledge, uses, and practices unique to the Tribe's ways of life maintained and established over tribal homelands and aboriginal areas since time immemorial. This knowledge is based upon millennia of observation, habitation, and experience, and is a communal right held by the Tribe, and in some instances by individuals. This property includes, but is not limited to, the following:

- a. knowledge of remembered histories and traditions;
- b. details of cultural landscapes and particularly sites of cultural significance;
- c. records of contemporary events of historical and cultural significance;
- d. sacred property (images, sounds, knowledge, material, culture or anything that is deemed sacred by the community);
- e. knowledge of current use, previous use, and/or potential use of plant and animal species, soils, minerals, objects;
- f. knowledge of preparation, processing, or storage of useful species;
- g. knowledge of formulations involving more than one ingredient;
- h. knowledge of individual species (planting methods, care for, selection criteria, etc.);
- i. knowledge of ecosystem conservation (methods of protecting or preserving a resource);
- j. biogenetic resources that originate (or originated) on indigenous lands and territories;
- k. tissues, cells, biogenetic molecules including DNA, RNA, and proteins, and all other substances originating in the bodies of Tribal members, in addition to genetic and other information derived therefrom;
- l. cultural property (images, sounds, crafts, art, symbols, motifs, names, performances); and
- m. knowledge of systems of taxonomy of plants, animals, and insects.

3.12 "Traditional Knowledge Right" means the traditional right of individuals to control the ways the information they provide is used and accessed. The issue of traditional knowledge rights arises when individuals either own or are the custodians of specialized (or usually taboo/sacred) knowledge and its communication. This knowledge can include names, ceremonies, designs or forms, oral traditions, practices and skills.

3.13 "Tribal Member" means an individual Indian who is enrolled in the _____ Tribe.

3.14 "Tribe" means the _____ Tribe.

SECTION 4. RESEARCH REVIEW COMMITTEE ESTABLISHED.

4.1 There is hereby established a Research Review Committee, which shall be comprised of five (5) Tribal members who shall be appointed to serve on this committee by the Tribal governing body.

4.2 The Research Review Committee shall have the following duties and responsibilities:

- a. to examine and comment on all proposals for research to be conducted within the Reservation.
- b. to develop and propose to the Tribal governing body rules under which the RESEARCH REVIEW COMMITTEE shall operate.
- c. to coordinate and insure that affected Tribal programs', departments', and members' interests are protected and represented.
- d. submit recommendations regarding proposals to the Tribal governing body for final approval.
- e. coordinate and interact with the researcher(s) in order to ensure Tribal control of the research process and Tribal ownership of data and information generated by such research.
- f. negotiate the terms and conditions of a research agreement, and submit such agreement for execution by the Tribal Council.

SECTION 5. GUIDING PRINCIPLES FOR RESEARCH REVIEW COMMITTEE.

5.1 The Research Review Committee, in examining proposals, shall be guided by the following principles:

a. Principle of Fully Informed Consent After Full Disclosure and Consultation

Research should not be conducted until there has been full consultation with all potentially affected Tribal communities and individuals, and each such community and individual has approved the research after full disclosure. Full disclosure is of: the full range of potential benefits and harms of the research, all relevant affiliations of the person(s) or organization(s) seeking to undertake the research, and all sponsors of the researcher(s).

b. Principle of Immediate Risks and Benefits to the Tribal Community

The research should be of immediate benefit to the Tribal community, and the risks associated with the research should be less significant than the benefits to be gained.

c. Principle of Confidentiality

This principle recognizes that the Tribe 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, traditions, mythologies, or spiritual beliefs. Furthermore, researchers and other potential users shall guarantee such confidentiality.

d. Principle of Respect

This principle recognizes the necessity for researchers to respect the integrity, morality, and spirituality of the culture, traditions, and relationships of Tribal members with the world, and to avoid the imposition of external conceptions and standards.

e. Principle of Communication

This principle recognizes that communications should be carried out in the local language, using translators as necessary.

f. Principle of Empowerment

This principle recognizes that empowerment is the sharing of power and is premised on mutual respect. Empowerment means that each affected party feels that their needs are being met through a fair and equitable manner. Empowerment also means that research authorship must be shared between the Tribal community and the researcher.

g. Principle of Equity

This principle recognizes that equity is a sharing of resources. Both the researchers and the Tribe must bring equity to any research contract, agreement or understanding. Each of the participants in

a good research agreement must evaluate such equity in relation to the research. Finance or money is only one form of equity. Community knowledge, networks, personnel and political or social power are other forms of equity useful to the project. Each of these commodities has value and must be shared between the researchers and the Tribe if a good agreement is to be formulated. The parties must continuously review equity over the duration of a research agreement.

h. Principle of Mutual Respect

This principle recognizes that in order to develop a good research agreement, the researchers and the Tribe must generate respect for each other. Respect is generated by understanding the social, political and cultural structures of the other party. The researchers and the Tribes can not assume that they believe in the same things or share the same goals and expectations. Good communication is required if a proper research agreement is to be generated. Cultural sensitivity training for the researchers and Tribal awareness presentations will help develop a mutual understanding in conducting the research project. Definitions and assumptions must be clarified and questioned by each side and set forth in an agreement. The Tribes and the researchers must listen to each other with open minds.

i. Principle of Prior Rights

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

j. Principle of Self-Determination

This principle recognizes that indigenous peoples, traditional societies and local communities have a right to self determination and that researchers and associated organizations will acknowledge and respect such rights in their dealings with these peoples and their communities.

k. Principle of Inalienability

This principle recognizes the inalienable rights of indigenous peoples in relation to their traditional territories and the natural resources within them and associated traditional knowledge. These rights are collective by nature but can include individual rights. It shall be for indigenous peoples to determine for themselves the nature and scope of their resource rights regimes.

l. Principle of Traditional Guardianship

This principle recognizes the holistic interconnectedness of humanity with the ecosystems of our Sacred Earth and the obligation and responsibility of indigenous peoples to preserve and maintain their role as traditional guardians of these ecosystems through the maintenance of their cultures, mythologies, spiritual beliefs and customary practices.

SECTION 6. RESEARCH PROPOSAL REQUIREMENTS.

6.1 Time Frame:

As a cooperative venture, research requires an appropriate time frame for Tribal review and approval. Researchers must begin working with the RESEARCH REVIEW COMMITTEE in the earliest stages of planning their proposals. Depending on the nature of the proposed project, researchers are advised to allow sufficient time for the RESEARCH REVIEW COMMITTEE to thoroughly review and understand all aspects of the study, ask questions and resolve differences. Even the simplest of

proposals must be submitted at least three months prior to the anticipated project start date. The RESEARCH REVIEW COMMITTEE reserves the right to reject last minute proposals.

6.2 Format:

A short (a maximum five (5) pages, single sided) synopsis of the project shall be submitted to the RESEARCH REVIEW COMMITTEE. A full length proposal should be submitted as a supplement, but the requested summary must contain sufficient information to allow the RESEARCH REVIEW COMMITTEE to make an informed decision. The following information must be included in any request for approval of a research project:

a) Statement of the Issue/Problem/Research Question:

The research applicant shall briefly describe the issue/problem the applicant is addressing by the proposed research. Specific questions related to this issue/problem and the theoretical rationale behind the questions shall be set forth. If the applicant has a specific hypothesis, the applicant shall briefly set forth such hypotheses.

b) Intent/Benefit to the Tribe:

The research applicant must clearly outline and discuss the intent of the research project and the benefit(s) that the project, research or activity will have to the Tribal community. Some questions to be answered are: 1) what are the anticipated consequences or results/outcomes of the project; 2) what groups will be affected and what groups will benefit; and 3) in what ways will these groups and the Tribe's benefit?

c) Method:

As a part of the application process, the applicant shall briefly describe the procedure for the collection of all data to be used in your study. Included shall be a description of subjects, settings, proposed procedure and the nature of the data to be collected.

d) Confidentiality:

A very important part of the application process is a description on how confidentiality will be protected. The applicant shall identify the circumstances under which the obligations of the researcher may constitute a breach of confidentiality. A description shall be given on how individual participants will be informed of the degree of confidentiality that will be maintained throughout the study. The Tribe maintains that unless otherwise specified, only aggregate data, not individual data, shall be published or released to the general public. All individual identifiers such as names, addresses and phone numbers must be kept confidential and no sale or transfer of databases outside the specific research project shall be allowed. The applicant must state in their application summary whether the Tribal community will be identified in any data released to the general public.

e) Disposition of Data and Samples

A portion of the application process shall describe how individual participants will be informed of how data and samples will be used. Both the Tribal community and the participants must clearly understand what the researcher plans to do with the information and samples that are collected. A description of the plans to provide individual participants with their own personal results must be provided. In addition, the research applicant shall describe how the community at large will be educated or empowered by this study. A description of the frequency and manner by which the

aggregate data and progress reports will be shared with the RESEARCH REVIEW COMMITTEE must be set forth. Furthermore, communication strategies to present aggregate data to the community at large shall be described.

f) Risks:

The applicant must describe any potential legal, financial, social, physical or psychological risks that are anticipated in the research. Any risks of deleterious impact on the cultural, social, economic or political well-being of the Tribe or Tribal members shall be assessed. The assessment of risk will also address the steps that will be taken to minimize, ameliorate or repair any actual harm caused to the Tribal community by the research. Explanation shall also be given on how potential risks will be explained to participants and how the risks are justified by the potential benefits of the research.

g) Funding/Budget:

If the study is funded by any public or private sources, the applicant shall provide a full reference of this funding source and explanation of any limits on the confidentiality of research results. If the researcher is currently seeking funding, the researcher shall list all funding agencies for which proposals are being sought. Researchers shall budget funding to cover cultural sensitivity training, to provide adequate resources to cover community education and outreach efforts as a part of the research, and finally, to rectify any harm to, or exploitation of, Tribal property resulting from the research.

h) Cultural Sensitivity Training:

All principal investigators, researchers, graduate students and any other people involved in the research will be required to undergo cultural sensitivity training to be provided at the researcher's expense. Costs will be determined based on the scope of the project. The training shall be provided by _____.

i) Equity:

The proposal must demonstrate how the participants and the Tribe will be given a fair and appropriate return for cooperation in the research. Just compensation or fair return includes but is not limited to: obtaining copies of the research findings, authorship, co-authorship or acknowledgment, royalties, fair monetary compensation, copyright, patent, trademark, compensation for expenses incurred in reviewing/advising researchers, coverage of training/education or outreach expenses or other forms of compensation.

j) Consent:

The proposal must address mechanisms for informed consent, which may be required from individual participants, families, clans or the Tribal Government. The applicant shall list all the agencies, professionals, government representatives or individuals within the Tribal community with which the applicant has previously discussed the proposed research and whether or not these people have given their informed consent, or other support, to the research.

k) Empowerment:

The applicant shall describe how individuals and Tribal members will be empowered by the research

process through employment, training or outreach efforts. Native American preference must be given in employment and training in all phases of the project or activity, especially where the research is occurring on the Reservation. The Tribal preference laws shall govern the order of priorities in hiring.

l) Intellectual Property Rights:

The application shall address the plans (pre, during and post-project) for publication or commercialization of the research findings. If such publication or commercialization is contemplated, the applicant shall address how the Tribal community shall share in the authorship of publications or commercialization of the research findings. The Tribe also needs to know how the Tribal community will have access to the project, research data or findings for the Tribe's own use. Researchers must inform the RESEARCH REVIEW COMMITTEE of journals, publishing houses or conferences that they plan to print or present the results of their studies before papers are submitted or presented. The proposal must demonstrate a process whereby the RESEARCH REVIEW COMMITTEE and the Tribe will have an opportunity to review, critique and approve the results of all studies before any publication, presentation, news conferences or release of data to the general public occurs. Researchers shall be responsible for addressing, correcting and satisfying the concerns of the Tribe in both drafts and final reports, papers or data summaries before they are released to the general public.

m) Data Ownership/Archive:

The Tribe reserves the right to require the deposit of raw materials or data, working papers or product in a tribally designated repository, with specific safeguards to preserve confidentiality. Duplicates of data or split samples may be required to be stored in such a local archive.

6.3 Administrative Fee:

The researcher shall remit with the research proposal an administrative fee in the amount of \$ _____ to cover administrative costs associated with review of the proposal and permitting.

SECTION 7. REVIEW OF RESEARCH PROPOSALS AND REVIEW PROCESS.

7.1 All research proposals must be complete before the RESEARCH REVIEW COMMITTEE is required to consider the proposal. A proposal is complete when it contains the fee and all of the information required in Section 6 that is necessary for the RESEARCH REVIEW COMMITTEE to decide whether or not the proposal should be considered.

7.2 Any research summaries and support documents requested by the RESEARCH REVIEW COMMITTEE pursuant to the proposal process should be sent to:

[Insert Address]

7.3 The RESEARCH REVIEW COMMITTEE shall review the application materials that are submitted and either:

a) Return the proposal to the researcher with requests for additional information or with suggestions for clarification or change; or

b) Forward the proposal and request to the Tribal governing body with a recommendation for approval or disapproval; or

c) Consult with other Tribal members, Tribal elders, professionals, technical experts or specialists for a second evaluation before sending recommendations to the Tribal governing body.

7.4 The review process and approval of the research is complete when the researcher receives a letter of notification from the RESEARCH REVIEW COMMITTEE and enters into a binding Research Agreement (see Appendix) that contains the obligations and responsibilities of the parties. Upon approval, principal investigators, researchers, graduate students and any others involved in the research shall undergo cultural sensitivity training at the researcher's expense before any project begins within the Reservation. The RESEARCH REVIEW COMMITTEE expects periodic progress reports and will use these reports to update the Tribal governing body on the status of the project.

7.5 The RESEARCH REVIEW COMMITTEE may specify a Compliance Fee in an amount appropriate to ensure the researcher's compliance with the conditions of the research. Upon completion of the research, the compliance deposit may be refundable.

7.6 Following approval of the research, the researcher shall secure all permits and licenses that may be required by Tribal law, including but not limited to a permit as provided under Section 9.

SECTION 8. RESEARCH AGREEMENTS.

8.1 An agreement specific to the research shall be developed so that studies proceed in a manner that is both culturally sensitive and relevant to the participants and the Tribal community.

8.2 Where any of the products of the research are to be used for commercial purposes, a separate agreement will be made specifying the bases on which sales are to be made and the proceeds of sales are to be distributed. Where research is engaged in for commercial purposes, it is the responsibility of the researcher to make all informants and suppliers of information aware of this fact, and to come to an agreement with them on the amount of compensation to be paid. There must be a limit on samples that the researcher may obtain and take off the Reservation, and the approved list and amount of samples to be taken must be followed strictly.

8.3 A sworn notarized declaration of noncommercial use of research products and/or traditional and indigenous knowledge is required in conjunction with an Academic Research Agreement. This declaration may be included in the body of the Research Agreement.

8.4 If a research project receives approval by the Tribe, the approval remains in effect for the period of time specified in the research agreement unless substantial changes are made in the research protocol. At the end of the period approved for the research project, the researcher must submit a letter in writing which summarizes the status of the project (complete, incomplete, discontinued), any unanticipated problems that occurred during the data collection phase of the project, and a time schedule for completion of all work, including community education/outreach, related to the project. If the project is incomplete, the researcher must also request in writing an additional period for the data collection phase of the project.

SECTION 9. PERMITS.

9.1 The RESEARCH REVIEW COMMITTEE shall develop standard application forms for Research

Permit applicants and set forth the type of information that must be submitted.

9.2 The RESEARCH REVIEW COMMITTEE shall develop a standard permit form, which at a minimum shall include the name(s) of the researcher(s) covered, name and/or brief description of the study approved, location(s) of research to be conducted, and effective start and ending dates of the permit.

9.3 Upon execution of a Research Agreement, all persons conducting research on the Reservation shall obtain from the Office of the Tribal Secretary a Research Permit in accordance with the terms of this Section.

9.4 An application form for a Research Permit may be obtained from the RESEARCH REVIEW COMMITTEE or from the Office of the Tribal Secretary.

9.5 All persons covered by a Research Permit shall have such Permit in their possession at all times while conducting research. The Research Permit must be produced for inspection or surrendered upon demand by authorized Tribal authorities.

9.6 A Research Permit issued under this Section may be suspended or revoked at any time by the Tribal Chairperson, Tribal Council, or the RESEARCH REVIEW COMMITTEE, if a permit holder is engaged in activities not allowed by the permit, fails to abide by a permit term or condition, has committed fraud or misrepresentation or provided incorrect statements in the application or permitting process, or is engaged in or has engaged in activities prohibited by this Act or any other Tribal law or resolution.

9.7 A revocation or suspension of a permit issued pursuant to this Section is final and not subject to appeal.

SECTION 10. MODIFICATIONS OF AN APPROVED PROJECT.

10.1 If the researcher wishes to make substantial changes in his or her research project after receiving approval from the Tribe, he or she must submit a summary of the proposed modifications to the RESEARCH REVIEW COMMITTEE.

10.2 Modifications in the data collection procedures must be reviewed by the RESEARCH REVIEW COMMITTEE and approved by the Tribal governing body. Modifications to the research project shall not be implemented until the researcher and the RESEARCH REVIEW COMMITTEE have amended the research agreement and permits, and the researcher receives written approval from the RESEARCH REVIEW COMMITTEE.

SECTION 11. REGULATION OF BIOLOGICAL SAMPLES

11.1 Any researcher who seeks to collect, acquire, or analyze any biological samples must agree and abide by the following conditions with regard to research with biological materials.

11.2 The Tribe may, at any time, decide to withdraw from the research project or any portion thereof, and request the return of all biological samples. The researcher, and any other parties, must comply.

11.3 Upon completion of the research project, or termination or cancellation of the project at any time prior to completion, the biological samples must be completely and fully returned to the

possession of the Tribe.

11.4 No biological samples from this study may be released to, or used by, any other researcher(s), research institution, or any other entity, whether public or private, without the prior and fully-informed written approval of the Tribe.

11.5 If the Tribe permits any biological samples to be stored in any other locations, the researcher shall maintain at all times a complete list thereof. The list shall include a description of the sample or data, source, specific use or purpose of each item, responsible person(s) at the location, and where the item is housed (e.g., in a "gene bank" or on a specific computer), and any relevant time lines with regard to use of, disposition, return, or destruction of the samples or data. The researcher shall provide an updated copy of the list to the Tribe whenever changes are made. The updated list shall include identification of changes made since the last copy of the list was provided to the Tribe.

11.6 Any situation where biological samples will leave the possession or control of the researcher will require a separate agreement between the Tribe and the external party in accordance with this Act.

11.7 No entity may seek to patent or commercialize any biological materials obtained from the Tribe, from the Tribe's jurisdiction, or under the authority of the Tribe. This includes genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

SECTION 12. RESERVATIONS AND TERMINATION.

12.1 The Tribe reserves the right to:

a) Withdraw consent to use or release information and/or prevent the publication of data which is unauthorized, insensitive, misrepresents or stereotypes Tribal people or will harm the health, safety or welfare of the Tribe or the Tribal environment.

b) Deny researchers the opportunity to conduct research in any Tribal community within Tribal jurisdiction. In addition, other researchers or scientists from the same research institution may be denied any future access to the Reservation.

c) Withdraw approval for projects. Should this occur, the Tribe will explain the rationale for withdrawing approval and explain why this project or the release of data is deemed to be harmful to individuals or the Tribal community at large. In the case of withdrawal of approval by the Tribe, all information and copies of data must be returned to the Tribe.

d) Exclude individuals from the Reservation

e) Seek injunctive relief, including an order restraining a person from continuing to enter onto the Reservation.

12.2 If a project is terminated, the research entity or individual must provide just compensation to any field staff or member of the Tribe for their time and efforts spent related to the research project.

12.3 This ordinance does not apply to Tribal members or communities conducting research within their own community for their own use, provided, however, that this ordinance shall apply if a Tribal member is conducting research for, or is affiliated with, an outside institution.

SECTION 13. PROHIBITED CONDUCT.

13.1 No person shall conduct any academic research or cultural research without first obtaining approval by the RESEARCH REVIEW COMMITTEE pursuant to Section 7 of this ordinance;

13.2 No person shall conduct any academic research or cultural research without obtaining a fully executed research agreement pursuant to Section 8 of this ordinance;

13.3 No person shall conduct any academic research or cultural research without maintaining in their possession a permit issued pursuant to Section 9 of this ordinance;

13.4 No person shall collect, acquire, or analyze any biological samples without abiding by the provisions of Section 11 of this Ordinance;

13.5 No person shall alter, damage, disturb, excavate, removed, or desecrate and biodiversity related resources, biogenetic resources, or traditional indigenous intellectual property on or of the Reservation or Tribe;

13.6 No person shall, while on the Reservation, conduct any visitation, inventory, collection, research, or filming related to any biodiversity related resources, biogenetic resources, or traditional indigenous intellectual property, or disturb any animals, vegetation, or landscapes of the Reservation or Tribe;

13.7 No person shall sell, purchase, exchange, transport, receive, or offer to sell, purchase, exchange, transport, or possess any biodiversity related resources, biogenetic resources, biological samples, or traditional indigenous intellectual property if such resource or property was obtained in violation of this Ordinance or any permits.

SECTION 14. PENALTIES.

14.1 CRIMINAL PENALTIES

Any person over whom the Tribe may assert criminal jurisdiction, who knowingly violates or counsels, solicits, or employs any other person to violate any section of this ordinance, or any condition of limitation of a permit issued under this ordinance, shall be guilty of a criminal offense. Each criminal offense shall be punishable by restitution, community service, a fine not to exceed \$10,000, imprisonment in the tribal jail for not more than one year, or any combination of these penalties. Criminal offenders may also be subject to civil penalties and damages set forth in this ordinance.

14.2 CIVIL PENALTIES

a) Any person who violates any section of this ordinance, or any permit issued under this ordinance, shall be assessed a civil penalty not to exceed \$10,000 per violation, or if applicable, any civil penalty provided for under Federal laws.

b) No civil penalty shall be assessed unless such person is given notice and an opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. The trial of any such violation shall be by the Tribal Court and the prosecution shall have the burden of proving the

alleged violation by a preponderance of the evidence.

c) Any person who violates this ordinance, or any permit issued under this ordinance, may lose the privilege of doing business or conducting research on the _____ Reservation.

d) Any nonmember of the Tribe who violates this ordinance or any permit issued under this ordinance may be excluded from the Reservation.

14.3 CIVIL DAMAGES

a) Assessment of Actual Damages: Any person who violates any section of this Ordinance or any permit issue under this Ordinance shall be liable to the Tribe for civil damages to be assessed by the _____ Tribal Court after a hearing. "Civil Damages" shall be interpreted liberally by the _____ Tribal Court to include, but not be limited to, the following:

1. Cost of restoration and repair; and
2. Enforcement costs associated with the enforcement of this Ordinance; and
3. Costs associated with the culturally appropriate disposition of resources, including conservation, curation, and/or reburial.

b) Assessment of Treble Damages: In addition to actual damages, the _____ Tribal Court, in its discretion, may assess damages of up to three times the amount of actual damages.

14.4 FORFEITURE

a) All objects or property in the possession of any person, and obtained in violation of this Ordinance or in violation of a term or condition of a permit obtained thereunder, shall be seized by law enforcement agents and forfeited to the Tribe for disposition.

b) A person may recover all such property incapacitated by paying to the Tribe the costs incurred by the Tribe in carrying out legal proceedings, and by paying all fines due for violations of Tribal law.

14.5 SEIZURE OF SECURITY

The citing law enforcement agent shall:

a) Seize such property in the possession of the alleged perpetrator, including vehicles, or equipment involved in the violation, as the enforcement program or agent deems reasonably necessary to secure payment of any fine or civil damages which may be levied upon the defendant upon conviction of the infraction or crime.

b) The property seized shall be released to the owner upon timely payment of any related civil assessments.

c) Any seized property shall be forfeited to the _____ Tribe if the assessment has not been paid within 15 days of the hearing at which the civil assessment was levied or 15 days from the final determination of any appeal taken pursuant to this Ordinance, whichever is later.

SECTION 15. PERSONAL JURISDICTION.

15.1 As to a cause of action arising under this ordinance, a court may exercise jurisdiction over a non-domiciliary on any basis consistent with and on the broadest basis permissible under the Constitutions of the United States and the _____ Tribe.

SECTION 16. SEVERABILITY.

16.1 If any provision of this ordinance or the application thereof to any person, court, or circumstance is held invalid by a Tribal Court or another court having competent jurisdiction, the invalidity shall not affect other provisions of this ordinance which can be given effect without the invalid provision or application and to this end, the provisions of this ordinance are severable.

SECTION 17. REPEAL OF CONFLICTING LAWS OR REGULATIONS

17.1 Any ordinance, resolution, act, or rules and regulations in conflict with the provisions of this Ordinance shall be superceded and repealed to the extent of such conflict.

SECTION 18. WAIVER

18.1 No individual person, Tribal official, or Tribal employee is authorized to waive any part of this Ordinance.

SECTION 19. SOVEREIGN IMMUNITY

19.1 The Tribe and all its constituent parts, subordinate organizations, boards, committees, including the RESEARCH REVIEW COMMITTEE, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribe.

SECTION 20. AMENDMENTS

20.1 This Ordinance may be amended following public hearings by Resolution by the _____ Tribal Council in accordance with the _____ Constitution.

SECTION 21. EFFECTIVE DATE.

21.1 This Act is effective upon the date of passage by the _____ Tribal Council.

[Extracts from: Appendix 1: A Model Academic Research Agreement](#) Research Agreement

THIS AGREEMENT is entered into by and between the _____ Tribe, located at _____ (hereinafter referred to as "Tribe"), and _____, located at _____ (hereinafter referred to as "the Researcher").

WHEREAS, the Researcher has applied to the Tribe to do research, and agrees to the conditions placed upon the Researcher in this agreement and to comply with the intent of the Indigenous Research Protection Act and the principles set forth therein; and

WHEREAS, the Tribe agrees to permit the Researcher to do such research;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto understand and agree as follows:

Section 1. Parties Bound.

The provisions of this Agreement shall apply to and be binding upon the Tribe and the Researcher

and the Researcher's officers, agents, successors, assigns and all persons acting on the Researcher's behalf. Each party certifies that its undersigned representative is fully authorized by the party he or she represents to enter into the terms and conditions of this Agreement, to execute it on behalf of that party, and to legally bind the party on whose behalf he or she executes this Agreement.

Section 2. Tribe's Authorization

The Tribe hereby authorizes the Researcher to undertake research work in ___(location)_____ on the subject of:

with the communities of:

in the capacity of (if more than one researcher is involved):

x

x

for the period up until (specify if research will involve more than one visit):

Section 3. Responsibilities of the Researcher.

3.1 The Researcher shall pay an administrative fee of \$_____ to cover all administrative fees and costs incurred in the setting up and implementation of the research venture, unless, in the discretion of the RESEARCH REVIEW COMMITTEE, the fee has been waived.

3.2 The Researcher shall provide copies of non-artifact products or research to the RESEARCH REVIEW COMMITTEE and, where feasible, to the local community. Two copies of films, videos, or other audio or visual media are to be provided, one for public screening and the other for deposit in the Tribal archives, library, or repository. Any artifacts collected become the property of the Tribe unless traditional ownership has been established in a Traditional Copyright Agreement. The removal of any artifacts or specimens outside of the Reservation is prohibited, unless agreed upon by the parties to this Agreement. The conditions for return of the materials shall include:

(a) a letter from the institution with which they are affiliated guaranteeing the researcher's compliance with the conditions below; and/or

(b) a deposit in the amount of \$_____ to ensure compliance with the conditions.

(c) Identify specimens, materials, artifacts, and conditions for return in addition to (a) and/or (b) above:

3.3 The Researcher agrees to involve Tribal scholars, students, and members of the community in research, to provide full recognition of their collaboration, and to provide training to enable future contribution to the community.

3.4 The Researcher guarantees a product of immediate benefit and use to the Tribal community and the Researcher shall provide such product no later than six months after termination of the research period. This product is:

3.5 The Researcher, in addition to the research work and as a service to the Tribal community, shall undertake to:

3.6 The Researcher, in undertaking research, shall:

(a) recognize the rights of people being studied, including the rights not to be studied, to privacy, to anonymity, to confidentiality, and to fully informed consent;

(b) recognize the primary right of informants and suppliers of data and materials to the knowledge and use of that information and material;

(c) respect traditional copyrights;

(d) respect local customs and values, and carry out research in a manner consistent with this Agreement and the Indigenous Research Protection Act;

(e) assume a responsibility to make the subjects in the research fully aware of their rights and the nature of the research and their involvement in it;

(f) contribute to the interests of the community in whatever ways possible so as to maximize the return to the community for their cooperation in the research work; and

(g) recognize their continuing obligations to the local community after the completion of the fieldwork, including returning materials and providing support and continuing concern for the well-being of the local community;

3.7 The Researcher shall enter into a Traditional Copyright Agreement where the Researcher obtains information or material data. The Traditional Copyright Agreement shall be completed by the Researcher, the supplier of data or information, and the RESEARCH REVIEW COMMITTEE. The Researcher has the responsibility to make such consultants fully aware of their rights and obligations, and those of the Researcher, in the signing of the Traditional Copyright Agreement

3.8 The Researcher shall maintain all information and data gathered in his/her research and shall make such information and data available to the RESEARCH REVIEW COMMITTEE upon request for inspection and review.

3.9 The Researcher shall provide the RESEARCH REVIEW COMMITTEE with monthly status reports of the research conducted on the Reservation.

3.10 The Researcher, and the Researcher's employees, students, and agents, shall maintain confidentiality of any and all records, data, and information gathered relating to the Tribe which is in the Researcher's possession and control. Such information shall only be released or disseminated pursuant to the strictest policies of confidentiality and privacy with the consent of the Tribe.

3.11 The Researcher is an independent contractor and nothing contained in this Agreement shall be deemed, construed, or interpreted to constitute the Researcher as a partner, agent, or employee of the Tribe, nor shall the Researcher have any authority to bind the Tribe.

3.12 A breach of any part of this Agreement by the Researcher or a decision by the affected community that it no longer desires to be involved in the research will result in the termination of

the research project.

Section 4. Responsibilities of the Tribe.

4.1 The Tribe is the owner of the communal cultural, natural, and biogenetic resources, and retains ultimate discretionary authority and final authority and responsibility for the approved research.

Section 5. Noncommercial Purpose

5.1 The Researcher hereby warrants that no research performed under this Agreement, no research products, and no traditional or indigenous knowledge will be used for commercial purposes, unless otherwise provided for in this Agreement.

Section 6. Termination of Agreement.

6.1 This Agreement may be terminated by:

- (a) the mutual agreement of both parties in writing; or
- (b) either party giving the other party not less than sixty (60) days advance notice of termination; or
- (c) the non-breaching party in the event the breaching party fails to correct a material breach within fifteen (15) days of receiving written notification from the non-breaching party;

Section 7. Miscellaneous Provisions.

7.1 The Tribe does not assume any liability by entering into this Agreement.

7.2 The failure of the Tribe to require the strict performance of any provisions of this Agreement in any one or more instances, or to exercise rights hereunder or seek enforcement of such provisions or rights at law or equity, shall not be construed as and shall not constitute a waiver or relinquishment of such provision or rights, and such provisions and rights shall continue in full force and effect.

7.3 This Agreement, including all matters relating to the validity, construction, performance, and enforcement thereof, shall be governed by the applicable laws of the _____ Tribe and federal law. The _____ Tribal Court shall have jurisdiction to hear disputes under this Agreement, and the Researcher and the Tribe shall be subject to the personal jurisdiction of the _____ Tribal Court and all court rules thereof, and shall accept venue in the _____ Tribal Court. The Researcher agrees that any process served for any action or proceeding shall be valid if mailed by Certified Mail, return receipt requested, with delivery restricted to addressee, its registered agent, or any agent appointed in writing to accept service.

7.4 All notice required to be given under this Agreement shall be in writing and shall be either (1) personally delivered to the party to whom addressed, or (2) sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the party at the address which follows or to such other address as the parties may hereafter designate in writing. Any such notice shall be deemed to have been given, if mailed as provided herein, as of the date mail stamped.

Tribe's Address:

Researcher's Address:

7.5 If any provision of this Agreement is found unlawful, void, or unenforceable by a court of competent jurisdiction, that provision shall be deemed severed from this Agreement, and in no way shall affect the validity or enforceability of the remaining provisions of this Agreement.

7.6 Neither party shall assign, pledge, or transfer, in whole or in part, their rights, duties, responsibilities, or interests under this Agreement without the prior written consent of the other party. No assignment of this Agreement shall be made to an individual, organization, firm, or business entity that has been convicted of a criminal offense related to or involved in any research concerning research of an Indian tribe or indigenous community. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and permitted assigns.

7.7 This Agreement constitutes the entire agreement between the parties and no agreements or representations have been made or shall be binding upon either party unless set forth herein. This Agreement supersedes any prior oral or written statements made by either party, its employees, representatives or agents.

IN WITNESS WHEREOF, the Tribe and the Researcher have executed this Agreement, in triplicate, individually or by signature of this duly authorized representative as of the date and year written below.

Tribe

The Researcher

Date: _____

Date: _____

[Extracts from: Principles and Models for Data Sharing Agreements with American Indian/Alaska Native Communities](#)

By Victoria Warren-Mears, PhD, RD, LD

This paper aims to provide guidance for researchers and their tribal partners on how to develop data sharing agreements.

Background of Research Injustices

Topic of Concern

- Tribal nations have been subject to too much research.
- Researchers have selected subjects of personal or academic interest without consideration of tribal interests and priorities.
- Researchers have often pre-empted meaningful community involvement by presenting fully designed and funded projects to the community rather than using participatory methodology early on in the research design process.
- Researchers have treated AI/AN tribes and peoples as merely a source of data.
- Researchers have failed to explain their studies in a language or manner that adequately insures fully informed participation and consent.

- Research has disrespected human dignity of participants, including, but not limited to their religious, spiritual or cultural beliefs. (Warne, 2010)
- Researchers have collected genetic materials for purposes not originally identified to the community and/or individuals (e.g., the lawsuit filed by the Havasupai Tribe against the Arizona Board of Regents).
- Human remains and cultural property have been taken for storage, display in museums, or for sale to individuals.
- Researchers have used leftover portions of blood samples for secondary research without consent of the donor.
- Researchers have described problems with a disregard to their impact on communities.
- Researchers have often focused on problems without examination of positive, resiliency factors.
- Research has not been returned to the community in ways which benefit the community.

Principles for Ethical Research

Research should be based on three core ethical principles (The Belmont Code 1978) :

- Respect for Persons and Communities
- Concern for Welfare (Beneficence)
- Justice Respect for Persons and Communities Respect for persons and communities acknowledges the inherent value of not only the individual, but the community to which they belong.

Emerging Ethics

Emerging ethical practices that are recommended are summarized in the table below:

Ethical Practice

- Strict adherence to the usual and customary ethical requirements for research – informed consent and confidentiality, including consideration of whether anonymity is needed both for individuals and the tribe as a group.
- Community involvement, participation and consultation, including appropriate approvals by tribal councils.
- Negotiated research relationships in writing, which are agreed upon by all parties.
- Meaningful tribal capacity building; the ability of the Tribe to either conduct independent research or implement the findings of research to enhance tribal capacity.
- Meaningful protection of the individual and the tribal community including the respect of tribal protocols and customs.
- The return of data and reports to the community

Principles for Data Sharing

There are several important principles that relate to data sharing agreements in AI/AN communities:

- 1. Participatory Research, also known as community-based participatory research (CBPR) is research that is conducted as an equal partnership between traditionally trained experts and members of a tribal community. The community participates at varying degrees in all aspects of the research process, from development and implementation to analysis and publication. In participatory research models the community is respectfully afforded equal power to that of the traditionally trained experts. Tribes are sovereign governments, and therefore also have oversight and decision making power over research studies conducted with their citizens.
- 2. Ownership of Data The rights and responsibilities surrounding ownership, access and retention of data as well as the definition of research data may vary based upon sponsorship of the project, nature of the award, and general context of each situation. For the purposes of a specific research agreement, the investigator and tribe may review the funders' expectations. The use, ownership, and stewardship of data is a point of negotiation for both tribes and researchers when conducting research in the community.

- 3. Obligation to Follow-Up An obligation is a requirement to take some course of action, whether legal or moral. In the contexts of research in tribal communities, an obligation could exist to follow up with the community on the results and needed actions suggested by experts or community analysis. The obligation to follow up with communities suggests considering policy and practice implications of data rather than just collecting data and leaving the community. Follow up with communities provides an additional level of equity of power between experts and the community.
- 4. Future Participation Sustaining the benefits of a research project may require researchers to be involved with the community after the immediate research project is completed. Such future involvement may include potential uses of data derived from a particular project. It is useful to define and clarify issues around long-term relationships between researchers and communities during initial negotiations between the research team and the community. Research agreements may need to be revisited at the end of the project to ensure emergent community needs are addressed.

A data sharing agreement offers a helpful mechanism for negotiating terms of data ownership and access between tribes and researchers. Such an agreement could be drafted between the two partners at the post-award phase of funding. Ideally tribal entities could be involved in the development of any proposed research prior to the development of the grant proposal. The Appendix at the end of this paper includes a model data sharing agreement from the Northwest Portland Area Indian Health Board.

Key components of research agreements regarding data sharing include:

- The purpose of the data collection and why it is important to the tribe.
- The expected outcome of the project.
- The variables will be collected and why.
- Who will have access to the data and for what purposes.
- How the data will be managed – storage, security, exchange, length of data storage and method of destruction or return to the tribe.
- How data will be stored or handled according to US governmental regulations which apply (e.g., the Freedom of Information Act and amendments relating to federally funded research; HIPAA regulations)
- How the results will be shared and who will approve the documents to be shared.

Below is a suggested outline for a research agreement:

- Introduction including the relevance of the project; why tribal involvement is important; potential risks, burdens, and benefits of research; the impact of research and data collection on the tribe; and any compensation for participants involved in the study or project.
- Clear description of study design including timing, materials to be used, where the study will occur and study procedures that are mutually understood.
- Potential risks and benefits of the study including anticipated benefit to tribal community; steps taken to minimize risks and maximize benefits; and assessment of balance of risks and benefits which will be continual and on-going.
- Adverse events handling.
- Confidentiality of research data.
- Plans for data analysis.
- Anticipated reporting of data and publications.
- Process for resolving conflicts between research partners (e.g., arbitration)

Conclusion

Tribes should have the authority to decide how research data will be used in the future. Without the tribe and its collective consent to participate, there would be no data. Research agreements can be developed in a way that satisfies the requirements of the tribe, university, and funder regarding ownership and control over the data. In addition to data ownership and control, tribes and researchers should be aware of key issues of concern, such as anonymity and confidentiality for both individual research participants and the tribe as a whole.

In sum, key recommendations for conducting research with tribes include:

1. A meaningful ethical framework needs to be maintained by all parties seeking to work with tribes and tribal organizations. This includes a mindfulness toward traditional harms of research, cultural knowledge that is both historic and current, and acknowledgement of the worldview of each participating partner in the research proposal.
2. The community needs to be a part of the research study from study conception to publication. The community may choose to participate to varying degrees in all aspects of study design, data analysis, and interpretation.
3. Research agreements are a useful tool for lending clarity to the research process. Potential risks and benefits to the tribe or tribal organization can be delineated in these agreements. The roles and responsibilities of all research partners can also be included. Finally, provisions related to data ownership, control, access, and possession can be specified, along with procedures for publication review.

5. FURTHER SUGGESTED READINGS

Chilisa, B., 2011. Indigenous research methodologies. Sage Publications.

Hart, M.A., 2010. Indigenous worldviews, knowledge, and research: The development of an indigenous research paradigm.

Kovach, M., 2015. Emerging from the margins: Indigenous methodologies. Research as resistance: Revisiting critical, Indigenous, and anti-oppressive approaches, pp.43-64.

Martin, K., 2008. Please knock before you enter: Aboriginal regulation of outsiders and the implications for researchers.

McGregor, D., Restoule, J.P. and Johnston, R. eds., 2018. Indigenous research: Theories, practices, and relationships. Canadian Scholars' Press.

Mertens, D.M., Cram, F. and Chilisa, B. eds., 2013. Indigenous pathways into social research: Voices of a new generation. Left Coast Press.

Parks Canada. 2015. The Land is our Teacher: Reflections and Stories on Working with Aboriginal Knowledge Holders to Manager Parks Canada's Heritage Places, Parks Canada.

Popova-Gosart, U. ed., 2009. Traditional Knowledge and Indigenous Peoples. L'auravet!an Information & Education Network of Indigenous Peoples, and World Intellectual Property Organization.

Smith, L.T., 2013. Decolonizing methodologies: Research and indigenous peoples. Zed Books Ltd..

Strega, S., 2015. Research as Resistance, 2e: Revisiting Critical, Indigenous, and Anti-Oppressive Approaches. Canadian Scholars' Press.