

"I lost my money not once but twice as the prices can change between a morning and an evening several times". His poor knowledge of Chinese worried him, but he found a Hui, Xiao Ma, to do business with and to make sure that the Chinese documents are properly filled in and all tax regulations duly followed.

Kalsang Drolma's family has 70 yaks and around 150 sheep. Some ten years ago they still lived in a sod house in the upper part of the valley. Thanks to savings from trading in *yartsa*, they hired Chinese contractors to build them a three-room house with a portrait of the late Panchen Rinpoche above the kitchen door. This house is a big change in the family's life. Kalsang Drolma has recently enrolled in a middle school that guarantees her later success in entering one of the colleges in the area. Her family knows that the girl's future is founded on a good education. Without savings from trading *yartsa* it would be almost impossible to pay for. The mathematics is simple: for the price of one middle-sized caterpillar fungus you can buy 10 kilos of *tsampa* flour, over 2.5 kilos of mutton or yak meat or 1.5 kilos of butter. Kalsang Drolma's mother remembers a different time. When she was young her family used to bring full bags of *yartsa* down from the mountains, but there was no demand for it in those days. "It started sometime around 2000" – she says. "I don't know what the Chinese use *yartsa* for. I've heard it's good for cancer and when hair goes grey it helps to restore the colour. And when you put it into a *baijiu* (rice liquor) bottle you will get a drink that helps your health – but only in small amounts!"

A day has passed since Tseren was kidnapped. From early morning searches for money and feverish negotiations with the people holding Tseren take place. 6000 yuan is an unthinkable amount of money for somebody that – even with a good job – earns one twelfth of this sum per month. Finally Tseren's relatives manage to collect 2000 yuan and a rescue team heads off to the grasslands with the mission of releasing the hostage. There, under the moonlight they confront four men. The darkness of the night, and the kidnappers' appearance – long hair, shining gold teeth and daggers at the belt of their scruffy woollen robes – intensify the sense of fear. After a long night of tense talks the kidnappers finally agree to console themselves with 2000 yuan and everybody can go home. As *yartsa* trading fever takes over, prices of all the goods in town go up. Suddenly, renting a car to Golog gets more expensive. *Yartsa* is the most common topic of conversation at the table or behind the wheel. Tseren's uncle, who runs a Tibetan carpet factory in India, will visit China soon. Maybe he will be interested in starting a *yartsa* business as well? His nephew sent him an e-mail: "If you're going to buy, buy now as it's fresh and the best quality". Tseten Gyal's brother, also a monk, admits that he dreams of many *yartsa*. Although he gives no importance to dreams at all, he is worried by the ever-growing scale of the trade. It is a bad omen for the grasslands and the *yartsa* itself. Extinction may happen soon he says. Over-exploitation is one of the reasons why the ban on entry to Golog for collectors from other areas was introduced. But those who are lucky enough to have land in Golog or manage to slip through the checkpoints are still collecting *yartsa*.

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The making of a new ethical code of conduct

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Under the banner of the Convention on Biological Diversity (CBD) some hundred nation states and a large number of representatives of indigenous peoples from all over the world gathered in Montreal from 15 through 19 October 2007. The so-called Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions, WG8(j), made a step forward in the development of a new ethical code of conduct during its fifth meeting. This code will apply to those wishing to carry out research involving traditional knowledge with regard to biological and genetic resources within the territories of indigenous and local communities. While indigenous peoples make up less than one percent of today's world population, at present they occupy some 20 percent of the world's land surface, including many of the proclaimed biodiversity hotspots. It is likely that many scientists will be confronted with this code while undertaking field research. The code will be applied to a broad spectrum of scientific disciplines such as anthropology, archaeology, linguistics, biology, (ethno)botany, medicine and pharmacology. Although the code is likely to influence research activities in the near future, its drafting has largely been done without substantial input from the world of science. This alone is sufficient reason to take a closer look.

CBD

The Convention on Biological Diversity (CBD) dates back to 1992 when, during the United Nations (UN) Conference on Environment and Development in Rio de Janeiro, over 150 governments ratified this first global agreement on the conservation and sustainable use of biological diversity. Since then more than 185 countries have signed this legally binding document.

Working group on Article 8(j)

The CBD recognises not only the dependency of indigenous and local communities on biological diversity, but also their role in the conservation of this diversity. It is for this reason that in Article 8(j) of the CBD, governments have committed themselves to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities.

In order to implement the commitments of article 8(j) and to enhance the role and involvement of indigenous and local communities in the achievement of the objectives of the Convention, a Working Group on article 8(j) and related provisions was established during the fourth meeting of the Conference of the Parties (COP4) in 1998. Over the years the WG8(j) has evolved into an interesting meeting to which the Secretariat of the CBD invites not only official Parties but also indigenous and local communities and non-governmental organisations. Within the context of the UN, it is rather exceptional that indig-

enous peoples' representatives are given the opportunity to speak out during such discussions. They have vigorously grasped this opportunity, attending the meetings in large numbers and representing a wide range of indigenous peoples from around the world. In Montreal representatives of various indigenous peoples from North and Latin American countries, as well as from African, European and a variety of Asian countries were present. Many of them wore traditional clothing, adding some colour and variation to the otherwise quite grey scheme of the diplomatic delegates' outfits. Although final decisions can only be made by the parties, indigenous peoples' representatives do fully take part in the discussions. The special character of the WG8(j) meetings is also evident from the opening ceremony. It has become a tradition that WG8(j) meetings are opened with a ritual, performed by one of the indigenous peoples. In Montreal all participants to the meeting, held in traditional Mohawk territory, were welcomed by a delegation of Mohawk Indians.

Discussions in Montreal were more intense than during earlier WG8(j) meetings, not least because just two months prior to the meeting, on 13 September 2007, the General Assembly of the UN approved the Declaration on the Rights of Indigenous Peoples. The UN Declaration was adopted by a majority of 143 states, 4 countries voted against (Australia, Canada, New Zealand and the United States) and 11 abstained (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine). With only three of the states which voted against the Declaration present at the WG8(j) meeting – the United States has not subscribed to the CBD – the indigenous peoples' representatives in Montreal expected to receive

extra support for the protection of their rights during the meeting. This however proved not to be the case.

Protection of traditional knowledge

Discussions about the protection of traditional knowledge can only be understood when the long history of the misappropriation of such knowledge is considered. There are countless cases in which medicines and new varieties of plant species are developed on the basis of knowledge and plant resources available within the territory of indigenous peoples, without indigenous communities enjoying any of the benefits derived from such innovations. Unfortunately the current system offers little to no protection of the traditional knowledge held by indigenous communities. Such knowledge is often in the (local) public domain, transmitted orally and not written down, complicating its protection under the present system of intellectual property rights.

The main objective of the work of WG8(j) is the protection of traditional knowledge with regard to biodiversity and genetic resources. It is, however, not only traditional knowledge as such that should be protected, but also the holders of such knowledge, the indigenous and local communities. Therefore WG8(j) supports the full and effective participation of indigenous and local communities in decision-making processes related to the use of their traditional knowledge. WG8(j) is simultaneously encouraging governments to take measures to enhance and strengthen the capacity of indigenous and local communities and develop appropriate mechanisms, guidelines, legislation or other initiatives to foster and promote their effective participation.

An ethical code of conduct

A major element within the current biennial programme of work (2006-2008) of WG8(j) includes the development of an ethical code of conduct to ensure respect for the cultural and intellectual heritage of indigenous and local communities. In Montreal both official delegates and representatives of indigenous peoples have again been working hard on the drafting of this code, but the development of the code turns out to be much more complicated than expected before hand. The endless diversity in experiences of different countries makes it almost impossible to develop a system that covers this variety while maintaining compatibility with existing national legislation. While the diplomats were interested in the compatibility of proposed texts with national legislation, representatives of indigenous peoples were focused on instances of ruthless bio-piracy and abuse of good faith. These two perspectives proved difficult to reconcile and discussions became defensive and non-constructive. An agreed text could not be produced. It was decided that WG8(j) will propose to COP9, to be held in Bonn, Germany in March 2008, that its mandate be extended to work further on the final drafting of this code.

Impact on research

In our opinion, a cause for concern is the fact that the world of research and higher education has so far largely been absent during the WG8(j) meetings. This absence can be explained by the fact that scientists are not generally attracted to diplomatic meetings, which are seen as lacking scientific relevance. This, however, is a misunderstanding. While discussions such as those at WG8(j) do not follow the logic

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Patents on taro varieties from Hawaii issued and disclaimed

There are hundreds of cases involving the appropriation of traditional knowledge from indigenous peoples by outsiders who then succeed in obtaining a patent, for example, on a new variety of plant based on genetic manipulation of a number of traditional varieties. Indigenous organisations across the world are fighting such patents, but often they are confronted with powerful global corporations and complex legal procedures.

A recent example of a successful protest against an existing patent is found in Hawaii. In 1999 Hawaii University submitted requests for patents to the US Patent Office on three new varieties of taro. In 2002 the office issued these patents with world-wide patent rights.

For the indigenous people of Hawaii, taro is a sacred plant. It is mythically related to their ancestors and over the centuries farmers in Hawaii have developed about 300 different varieties. One of these varieties, *Maui Lehua*, is the female parent of all patented varieties. Hawaiians themselves do not recognise exclusive ownership over any of the traditional varieties. Ownership of this knowledge is collective, recognising the efforts of their ancestors. They certainly did not want a university claiming exclusive rights to what they consider their staple food. Permission was never granted by the farmers to the scientists of the university, and so procedures stipulated in existing ethical codes for ethno-botanists were not followed.

Hawaiian farmers and indigenous organisations protested and demanded that the university withdraw the patent rights. It was argued that the patents were invalidated by considerations of 'prior art' (existing knowledge pre-dating the innovation). Initially the university refused to comply with this request, claiming intellectual property rights over the work of its scientists. However, later it offered to hand over the patent to an indigenous organisation. The protesters refused, stating that they did not want to patent a plant handed down to them from their ancestors. The matter was concluded when the university filed legal documents with the US Patent Office disclaiming proprietary interests in the hybridised taro, and in June 2006 the patents were cancelled.

Source: W. Ritte and L.M. Kanehe (2007) 'Kuleana no halao (responsibility for taro): protecting the sacred ancestor from ownership and genetic modification'.

In: Mead, A.T.P. and S. Ratuvu (eds.) *Pacific genes and life patents*. pp 130-137. Wellington, University of Wellington.

of persuasive reasoning and scientific debates, and are often perceived as having a high degree of political correctness and diplomatic modes of behaviour, these meetings produce instruments and legislation that will impact science and the execution of field research. The CBD is one of those conventions that produces a multitude of measures for the protection of biodiversity worldwide that will sooner or later influence the way science is conducted.

Of particular concern is the drafting of the code and which parties are present and which are absent in this process. As mentioned earlier, the representatives of indigenous and local communities contribute to the drafting of the code from a rather negative perspective on research. Their contributions reflect injustice and anger, dismissing research as the root of all iniquity imposed upon them. Without wanting to downplay the negative impact that research might have had on indigenous peoples' lives, we fear the drafting of this code of conduct is being influenced by such distrust. Instead of creating a guarantee that traditional knowledge is valued, and treated with the same respect afforded to other knowledge domains, the current draft seems to depart from a negative and defensive perspective.

For instance, Principle 15, as it is formulated now, will seriously complicate research within a territory under indigenous legislation. This principle requires researchers to only start research activities after all possible impacts on communities involved have been acknowledged and documented and agreed upon by the communities involved. The fact is that claims and rights to traditional knowledge are often diffuse and subject to internal debate and controversy. Furthermore it is not always known to the community itself which members of the community are the rightful owners and decision makers with regard to such knowledge. Often traditional knowledge is collectively owned or not subject to rules of ownership at all. This, together with the debate on who has (and does not have) the right to claim indigeneity and which boundaries actually constitute an indigenous community, may render future research fairly impossible.

So far the target group of the code is described as anybody involved in intervening with indigenous and local communities. This can refer to research, but also to tourism and the extracting industries. Limiting the discussion for the moment to researchers, it is not yet clear whether the code only targets foreign researchers or also researchers from the country of the indigenous communities. And what about researchers who belong to the indigenous community themselves? Not all indigenous peoples' representatives seem to be willing to discuss the applicability of the code to

their own circles. This question is relevant because there are several instances of indigenous people marketing traditional knowledge at the expense of their fellow community members.

Another area of concern is the relationship between this ethical code of conduct and existing codes as issued by associations of professionals. Numerous professional organisations have discussed ethical issues at length and come up with ethical codes for professionals working in these fields, including ethical codes for anthropologists, archaeologists, ethnobiologists, and museums. These codes generally also include steps to be taken in case of violation of the stipulated principles and norms. Committees within such professional organisations have the authority to look into official complaints and, if necessary, take measures including expelling members and seriously inhibiting the successful careers of such members. So far, there have been no discussions regarding the complementarity of the code with other professional codes, or about the establishment of an authority to mainstream the implementation of the code and monitor violations.

At a higher level there is also another important issue to consider. In addition to this ethical code of conduct only addressing the relationship between researcher and informants there are other normative fields in the scientific process. These fields are related for instance to the fundamentals of scientific inquiry in general but also to the use of scientific knowledge, the position and influence of third parties in case of contract research, and the call for transparency in the scientific process itself. In case of conflicts between these norms and ethical principles, it is unclear which one should be prioritised. We believe it is necessary that the world of science, through its professional organisations, should be involved in the next phase of the drafting of this new code. This could avoid future complications and inconsistencies between codes of conducts and the wider normative context within the world of science. In particular, there is a need for critical reflection on the scope of the new code and the forum that will be made responsible for its implementation, including complaints and appeal procedures. Hopefully this would also create an ethical code that is less based on mistrust and suspicion and that will allow well-intended, carefully designed and implemented research to be continued.

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The draft elements of a code of ethical conduct discussed at the CBD WB8(j) meeting in Montreal can be found at: www.biodiv.org (UNEP/CBD/WG8/J/5/L.10). There are numerous ethical codes for all kinds of professional scientific organisations. Some of the most relevant codes in this context are:

1. American Anthropological Association (AAA) Code of Ethics, as approved in June 1998.
2. Archaeological Institute of America (AIA) Code of Ethics as approved in December 1997 and Nederlandse Vereniging van Archeologen (NVvA) Gedragscode voor beroepsarcheologen, as approved during the General Assembly in Amsterdam (7 December 2001).
3. International Society of Ethnobiology (ISE)
 - a. Declaration of Belem (July 1988)
 - b. ISE Code of Ethics, adopted at the 10th General Assembly, Chiang Rai (8 November 2006)
 - c. Complementary Tool Kit for the 2006 ISE Code of Ethics
4. International Council of Museums (ICOM) Code of Ethics for Museums as revised by the 21st General Assembly in Seoul (8 October 2004).

People, park and partnership

Problems and possible solutions in the Morowali Nature Reserve



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Indonesia's diverse ecosystems contain some 500 species of mammal and 12 percent of the world's bird species. But Indonesia's tropical rainforest, which originally covered more than a million square kilometres, is being lost at a rate of 10,000 square kilometres each year, and many species are on the verge of extinction. Morowali is a nature reserve of 2,250 square kilometres in Central Sulawesi. It is home to a number of rare endemic birds, including the maleo, and mammals, including the anoa and babirusa. The Morowali forest is also the home of the To Wana, one of the several indigenous peoples in Central Sulawesi. Around 3,000 Wana live within the reserve, and approximately another 3,000 in villages just outside its boundary. The To Wana traditional culture and economy depend on swidden agriculture (shifting agriculture, or 'slash and burn'), hunting, and the collection of forest products, particularly *damar* (conifer resin).

After Brazil and the Democratic Republic of Congo, Indonesia has the greatest area of rainforest of the world, and its forests are uniquely biodiverse. But Indonesia's economic development depends partly on the exploitation of natural resources, including timber. This is a major cause of destruction of primary forest and degradation of biodiversity. Aware of the seriousness of the situation, many individuals and groups have come into action to preserve

the country's tropical rainforest. The Indonesian state has long protected particular areas and species. In the 1970s some international organisations, including the World Conservation Union (IUCN) and the World Wildlife Fund (WWF), started to assist the government in proposing further areas to be protected. One such area was the Morowali Reserve. The establishment by law of national parks and reserves, however, has had only a limited effect on the rate of destruction of primary rainforest. Numerous non-governmental organisations in Indonesia are active in local nature conservation projects, and in situations where nature and the environment are threatened by commercial operations, whether legal or illegal.

'No to government, no to religion, no to villages'

Long before the designation of Morowali as a nature reserve in 1980, part of the area concerned was under communal ownership by groups of To Wana. These people have a cultural heritage of adaptation over many generations to life in the mountainous Morowali rainforest. Their lifestyle was disturbed by the establishment of the reserve, which limited the Wana in their movements and prevented them from carrying out the normal activities necessary for their subsistence: swidden agriculture, hunting and collecting. Furthermore, they were blamed for damaging the forest and its wildlife. For this reason, the government attempted to force the To Wana to settle in new villages