Cultural rights, museums and ICH

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Outline

- Human Rights; The Universal Declaration of Human Rights (1948)
- Universal Human Rights and Cultural Diversity
- Defining Cultural Rights; The International Covenant on Economic, Social and Cultural Rights (1976)
- The Fribourg Declaration on Cultural Rights (2007)
- UN Declaration on Indigenous Cultural Rights
- Indigenous Cultural and Intellectual Property Rights
- Codes of ethics for museums – cultural rights and ICH
- World Intellectual Property Organisation and museums’ roles in conserving ICH
- ICH and ethnic minority communities – the Luizhi Principles
- Conclusion
Human Rights

- Dignity, equality, freedom, respect, liberty, security, privacy, tolerance, friendship, understanding.

- These values are central to the Universal Declaration on Human Rights adopted by the United Nations on 10 December 1948.
Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. *(This is my culture,)*

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which (s)he is the author. *(and I own it)*

What do is meant by ‘scientific, literary or artistic production’?
Human Rights and Cultural Diversity

- Human values, far from being universal, vary a great deal according to cultural perspectives – the phenomenon known as cultural relativism.
- So human rights are not always respected, indeed, where cultural tradition alone governs a State’s compliance with international standards then widespread abuse, disregard and violation of human rights can be given legitimacy. But attempts to justify such violations on the basis of culture have no validity under international law.
- Traditional culture is not a substitute for human rights; it is a cultural context within which human rights must be established.
- Universal human rights do not impose one cultural standard, rather one legal standard of minimum protection necessary for human dignity.
• Cultural rights are different from human rights because they are vested in groups of people, whereas human rights deal with individuals.
• Cultural rights tend to focus on groups such as religious and ethnic minorities and indigenous societies that are threatened.
Cultural Rights (2)

- This was because of the significance of traditional cultural knowledge – ethnomedicine, plant identification and cultivation, craft techniques – to environmental protection and biodiversity.
International Covenant on Economic, Social and Cultural Rights (1976)

- Article 15 recognises the right of everyone to participate in cultural life.
- The Covenant is really targeted at individuals rather than groups of people. It does not deal with questions of intellectual property rights.
- Although Thailand has signed the Covenant it interprets the right to self determination within the framework of other international laws.
The Fribourg Declaration on Cultural Rights 2007 (1)

- Article 2 provides some useful definitions:
  - ‘Culture’ – those values, beliefs, convictions, languages, knowledge and the arts, traditions, institutions and ways of life through which a person or group expresses their humanity.
  - ‘Cultural identity’ – the sum of all cultural references through which a person, alone or in a community with others, defines or constitutes oneself, communicates and wishes to be recognized.
  - ‘Cultural community’ – denotes a group of persons who share references that constitute a common cultural identity that they intend to preserve and develop.
  - All museums work with a variety of ‘cultural communities’.
The Fribourg Declaration on Cultural Rights 2007 (2)

- Article 3 stresses that everyone – alone or in a community, has the right to have one’s cultural identity respected.
- Article 4 notes that everyone is free to identify with (or not) one (or several) communities.
- Article 5 indicates everyone has the right to participate in cultural life, to be free to exercise their cultural practices, to share knowledge and cultural expressions and to protect the material and moral interests linked to the works that result from one’s cultural activity.
The Fribourg Declaration on Cultural Rights 2007 (3)

- Article 8 states that everyone – alone or in a community – has the right to participate in the cultural development of the community and to be involved in making decisions that concern oneself and the community.
- Article 9 demands democratic governance.
- The Declaration gives useful guidance as to how museums might operate when dealing with ethnic minority groups – or indeed any specific community having a shared culture.
UN Declaration on the Rights of Indigenous Peoples

- Emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations.
UN Declaration (2) - critiques

- rejection by Australia, Canada, New Zealand and the United States
- "There should only be one law for all Australians and we should not enshrine in law practices that are not acceptable in the modern world." (Australia’s Minister for Indigenous Affairs). (But agreed 2009)
- "unworkable in a Western democracy under a constitutional government." (Canada’s Minister for Indian Affairs and Northern Government)
- "appears to require recognition of rights to lands now lawfully owned by other citizens, both indigenous and non-indigenous. This ignores contemporary reality and would be impossible to implement" (New Zealand Minister of Maori Affairs) (But agreed 2009)
Mr. PUNKRASIN (Thailand) said that his delegation had voted in favour of the text and was in agreement with its intent, despite the fact that a number of paragraphs raised some concerns. The draft just adopted was an improvement over the text that had been put before the Third Committee last year. Thailand understood that the articles on self-determination would be interpreted within the framework of the principle set out in the Vienna Declaration. Thailand also understood that the Declaration did not create any new rights and that any benefits that flowed from the Declaration would be based on the laws and Constitution of Thailand.
Intellectual Property Rights

- Exclusive rights over creations of the mind.
- Artistic works (books, paintings, photos) are subject to copyright that controls their use for a period of time.
- Industrial properties are governed by patents and trademarks.
- IIPR have no such legal protection, with some exceptions such as the ‘Toi Iho’ trademark developed by Maori artists in New Zealand.
- Indigenous communities must themselves seek to control the rights management of their cultural intellectual property; this is especially necessary where that property becomes digital content already gathered by institutions of social memory (=museums).
6.5 Contemporary Communities
Where museum activities involve a contemporary community or its heritage, acquisitions should only be made based on informed and mutual consent without exploitation of the owner or informants. Respect for the wishes of the community involved should be paramount.

6.6 Funding of Community Facilities
When seeking funds for activities involving contemporary communities, their interests should not be compromised.
ICOM Code of Ethics (2)

- **6.7 Use of Collections from Contemporary Communities**
  
  Museum usage of collections from contemporary communities requires respect for human dignity and the traditions and cultures that use such material. Such collections should be used to promote human well-being, social development, tolerance, and respect by advocating multisocial, multicultural and multilingual expression.

- **6.8 Supporting Organisations in the Community**
  
  Museums should create a favourable environment for community support (e.g., Friends of Museums and other supporting organisations), recognise their contribution and promote a harmonious relationship between the community and museum personnel.
Museums Association (UK)
Code of Ethics: key principles

Consult and involve communities, users and supporters
Acquire items honestly and responsibly
Safeguard the long term public interest in the collections
Recognise the interests of people who made, used, owned, collected or gave items in the collections
Support the protection of natural and human environments
Research, share and interpret information related to collections, reflecting diverse views
American Association of Museums: Code of Ethics

- Taken as a whole, museum collections and exhibition materials represent the world's natural and cultural common wealth. As stewards of that wealth, museums are compelled to advance an understanding of all natural forms and of the human experience. It is incumbent on museums to be resources for humankind and in all their activities to foster an informed appreciation of the rich and diverse world we have inherited. It is also incumbent upon them to preserve that inheritance for posterity.
The major Codes of Museum Ethics have not yet included major references to Intangible Cultural Heritage.

ICH and IIPR are implicit, but not explicit.

IIPR have been a major focus for WIPO
World Intellectual Property Organisation

- Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections
- Te Papa Resource Guides: A Guide to Guardians of Iwi Treasures He Tohu ki nga Kaitiaki o nga Taonga-a-Iwi, June 2001
Museums, the rights of indigenous communities and ICH

- Museums have an important role to play in by recording and making available ICH of indigenous communities.
- Traditional Cultural Expression or Indigenous Intellectual Property?
- Appropriate processes or protocols are needed – for collecting and maintaining IIP.
- Above all museums need to demonstrate respect, acknowledge the need for security and privacy, and to show understanding.
- A thoughtful approach to working with Indigenous groups was developed in China when planning ecomuseum development: all work was carried out only after careful development of a set of principles.
Establishing ecomuseums in ethnic minority communities: The Liuzhi Principles

- The people of the villages are the true owners of their culture. They have the right to interpret and validate it themselves.

- The meaning of culture and its values can be defined only by human perception and interpretation based on knowledge. Cultural competence must be enhanced.

- Public participation is essential to the ecomuseum. Culture is a common and democratic asset and must be democratically managed.

- Where there is conflict between tourism and preservation of culture the latter must be given priority. The genuine heritage should not be sold out, but production of quality souvenirs based on traditional crafts should be encouraged.
The Liuzhi Principles (2)

- Long term and holistic planning is of utmost importance. Short term economic profits that destroy culture in the long term must be avoided.

- Cultural heritage protection must be integrated in the total environmental approach. Traditional techniques and materials are essential in this respect.

- Visitors have a moral obligation to behave respectfully. They must be given a code of conduct.
The Liuzhi Principles (3)

- There is no bible for ecomuseums. They will all be different according to specific culture and situation of the society they present.

- Social development is a prerequisite for establishing ecomuseums in living societies. The well-being of the inhabitants must be enhanced in ways that do not compromise traditional values.

- These principles were not designed with ICH specifically in mind, but to establish ecomuseums; however they do provide some indications of the protocols that are needed when dealing with communities and their ICH.
Conclusions

- Respect
- Respect
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Some questions for you to consider at your field sites

- Are human rights taken into consideration? (participation, ownership by individuals)
- Are cultural rights taken into consideration? (Participation, consultation, democracy, sharing of knowledge, protection)
- Do your communities see their ICH as ‘cultural expressions’ or ‘indigenous cultural property’?
Some questions for you to consider at your field sites (2)

- Have your museums or their communities taken any steps to secure indigenous intellectual property rights? If not, should they, & how might you suggest they do?
- Are your curators aware of conventions, declarations and codes that deal with aspects of working with communities & ICH?
- Do you think your own actions as researchers has paid due attention to rights issues? Reflect on, and describe, how you think your work has respected the cultural rights of the individuals and communities you have worked with.
Some questions for you to consider at your field sites (3)

- At your field site, are you aware of any aspects of ICH that are sensitive and should not be revealed in your final plan?
- Do you think that at your site it would be useful for the curators to develop a protocol, code of practice or set of principles to guide their work with local communities and ICH?