

FOR IMMEDIATE RELEASE

International Indigenous Forum on Biodiversity (IIFB) Statement to the Press, Pyeongchang, Republic of Korea, October 13, 2014

We have called you together today over an impasse that we have met within these negotiations at the 12th meeting of the Conference of Parties to the Convention on Biological Diversity concerning the use of the terminology "Indigenous Peoples and local communities" to replace the current phrase "indigenous and local communities."

The United Nations was founded in 1945 to promote peaceful relations and cooperation among the nation states of the world. It is based on the principle of sovereignty of nations, and designed to provide a space where negotiations concerning deep and sensitive issues can take place in an atmosphere that allows for the free exchange of ideas and debate without external pressures. We have significant respect for this process, and have not left the halls of diplomacy lightly. But events over the last week have led us to this regrettable path.

What became the Convention on Biological Diversity began in 1988 with the concept of an international treaty focused on conservation. Negotiations on the treaty began in 1991, where the conservation of the world's biological diversity became linked to the idea of sustainable development. This is to say that nature can be used perpetually in ways that promote human well-being and economies without harming nature itself. This puts people squarely into the center of the implementation of the Convention.

Indigenous Peoples' issues were introduced into the negotiations by Ulf Svensson from the Swedish Ministry of Foreign Affairs who chaired the Drafting Sub-group on Access to Genetic Resources, Equitable Sharing of Benefits and Indigenous Peoples' Issues, and Arthur Campeau, Canada's First Ambassador for the Environment and head of the Canadian delegation.

The proposal to use "Indigenous Peoples" was contentious and subjected to strong debate. In the end, the attempt to develop an entire Article focusing on Indigenous Peoples was not adopted and pieces were scattered among the different Articles of the CBD, a core element being Article 8(j) on traditional knowledge. The phrase "indigenous and local communities" was adopted as a compromise within the Convention:

Article 8(j): (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

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We note that historically, Canada was a strong supporter of Indigenous Peoples' rights. Canada recognizes Indigenous Peoples rights. Article 25 of the Canadian Charter of Rights and Freedoms refers to the rights of the "aboriginal peoples of Canada." "Aboriginal peoples" (equal to Indigenous Peoples) appears in other federal legislation in Canada and judicial decisions of the Canadian Supreme Court that have affirmed these rights. As recently as September 22-23, 2014, in a statement accompanying its adoption of the Outcomes Document of the World Conference on Indigenous Peoples, Canada has said, "Canada is committed to promoting and protecting the rights of Indigenous Peoples at home and abroad. Canada will also continue to contribute to international efforts to improve the lives of Indigenous peoples throughout the world."

This is why today we are puzzled and concerned that Canada is working to tightly control and potentially limit references to Indigenous Peoples within future decisions of the CBD. The Canadian Delegation, along with Indonesia, while accepting some future use of "Indigenous Peoples," seemed to be alone in blocking progress towards the adoption of the new terminology, placing conditions on the use of the phrase that are unacceptable to the International Indigenous forum on Biodiversity (IIFB) and the vast majority of Parties to the CBD.

We cannot comment on the details of the current draft being developed by the Friends of the Chair, as this text is still under negotiation and we will respect the norms of the United Nations and diplomacy. But we can comment on the original text as proposed by the CBD Secretariat, and some general reasons why the IIFB cannot accept the current direction.

The interpretation of United Nations treaties is governed by the Vienna Convention on the Law of Treaties. It is based on the principle that sovereign governments have inherent powers that can only be limited by their explicit consent or by universal human rights or international legal norms, such as those contained in the Universal Declaration on Human Rights. When signing a treaty, governments are bound only by the terminology that is contained in the original treaty. Any changes in terminology and meaning can only occur through their explicit consent. Changes in meaning and use require a new negotiation and the development of a protocol in which parties accept these changes by amendment.

In order to accept this new terminology, the Parties to the CBD have sought to avoid the need to amend the CBD in order to accept "Indigenous Peoples" by using language that explicitly states that the use of "Indigenous Peoples and local communities" exactly equals the legal meaning of "indigenous and local communities." In other words, in accepting "Indigenous Peoples," there are no changes in meaning, no new obligations, and no new rights within the terms of the Convention on Biological Diversity. The meaning stays precisely as it was in 1993 when the CBD came into force.

The IIFB accepted this original formulation, as it is a straight reading international treaty law, and provided a path to using "Indigenous Peoples" in future decisions and related documents of the Convention without needing to formally change the original convention itself. This would be a lengthy, costly and contentious amendment process. Canada and Indonesia have insisted on

including other text from the Vienna Convention to make the same point multiple times that the change in terminology cannot be used in any international law argument to reinterpret the meaning of the original Convention unless there is a formal amendment. We do not believe this extra language is necessary. It is already stipulated in the original text provided by the Secretariat, which clearly states that the new terminology does not change any interpretation of the Convention. It is also contained in the Vienna Convention, which applies whether or not this language appears in the decision text. Other conventions and instruments have not found the need to reference the Vienna Convention, and we do not believe it is necessary here.

Why we bring you here today is the introduction of language that further limits when Parties can adopt the term "Indigenous Peoples and local communities" in their decisions. We note that Canada has consulted with capital and modified their original proposals. It appears to us that Canada and Indonesia are attempting to build a wall against any mention of Indigenous Peoples in a political or human rights context and any subsequent decisions or secondary texts of the CBD. Their approach is unnecessary, as the Secretariat's text already stipulates that the use of the term will not contain any of these implications within this Convention. They are also setting up a legal argument, which will allow a single country to block the use in future consensus decisions of the CBD.

This will not move us forward in the conservation and sustainable use of biological diversity. It will set up the conditions for more costly, wasteful and fruitless debate over when it is appropriate and inappropriate to use the term Indigenous Peoples. We point out that the existing decisions of the Conference of Parties almost universally contain decisions that only apply to the conservation and sustainable use of biodiversity. The very small number of references that we have found that use the terminology "Indigenous Peoples" out of this context are mere references to the existence of the United Nations Declaration on the Rights of Indigenous Peoples or other external treaties, agreements, or documents, or processes that do not change the meaning of the CBD. None of these references change the ability of state sovereigns to use or apply new meanings when applying the CBD in their own countries.

We point out to other parties that the current draft language limits their sovereign ability to make such references. We accept that the use of "Indigenous Peoples" as a term in the Convention on Biological Diversity cannot make sovereign states obligated to principles they did not agree to when ratifying the CBD unless it is formally amended, as provided in the Convention itself. The Vienna Convention contains multiple provisions that protect sovereigns from the interpretations, which Canada and Indonesia seem to fear, whether or not these are mentioned in the draft decision. But we remind them that they are also obligated by other treaties they have ratified and international legal norms, whether or not these are mentioned in the final decision. This is reflected in the consensus decision in the Preamble of the Nagoya Protocol that states "Affirming that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities."

This is not about an attempt to change the meaning of the Convention. The IIFB accepted the original draft text prepared by the Secretariat that made this clear, out of respect of the articles of

this Convention and the rules of international law. That draft provides no legal change in meaning or interpretation, and fully respects and protects state sovereignty in decision-making authority within the CBD. We believe is a minimal statement of recognition and respect of Indigenous Peoples fundamental identity and human dignity.

We want to move on beyond these debates that will continue to waste the precious, limited time that we have in the processes of the CBD to get down to the aims of this Convention. On Saturday, many of us toured the Woljeongsa Temple, and were presented by the monks with the 2014 Pyeongchang Buddhist Declaration of Life-Peace, which affirms the principles that every life is a universe, that all lives are equal, that we should sanctify a culture that sanctifies the preservation of life, and that humans are responsible for the peace of all life, which all have the right to happiness and peace. This is compatible with the cosmovision or worldviews of the approximately 370 million Indigenous Peoples around the world that have sent representatives here to Pyeongchang to work to find ways to maintain their ways of life, but to defend rights of all life, the rights of Mother Earth.

The IIFB cannot accept the qualifications that are being proposed for the decision on terminology. We will not resume further work in the Friends of the Chair group until we receive a diplomatic signal that we can move towards a decision that will affirm and support our fundamental identity and dignity as Indigenous Peoples. We are looking for a decision that will allow the common, unproblematic use of "Indigenous Peoples and local communities" in decisions and secondary documents of the Convention. If necessary, we will take this issue to the High-Level Segment, but we remain hopeful that this can be resolved before then. We thank the parties who have supported us in this position in near unanimity, and call upon Canada and Indonesia to not block consensus.

We continue to be peoples in our territorial lands, regardless of how we are defined in the Convention. We have suffered a long history of injustice, domination, inequality, discrimination, marginalization, invasion, colonization, exploitation and poverty. Despite this we have contributed to biological and cultural diversity with our traditional knowledge, innovation and practices. We believe that the States must demonstrate a minimum of recognition and respect and adopt the use of "indigenous peoples and local communities," and reflect the highest principles adopted by the United Nations system.

We are ready to work with all parties, including Canada and Indonesia, if we can find an acceptable resolution, and move forward in a spirit of cooperation and peace to preserve all life on this planet.

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