

To the Chairs of the ABSWG:

Please find below a number of proposals from Quebec Native Women for additional and/or amended language for consideration by the Parties at the 9th meeting of the ABSWG. This note also includes recommendations for consistency of terms throughout the text.

Preamble:

The text in **black** indicates existing draft text adopted at ABSWG/8 in November 2009. Text in **red** is proposed new language. The last paragraph dealing with Indigenous rights is intended to consolidate the 8 draft preamble paragraphs in the Montreal Annex addressing Indigenous interests.

Further recalling that in accordance with Article 15(7) of the Convention the fair and equitable sharing of benefits arising from the commercial and other utilization of genetic resources shall be upon mutually agreed terms as decided between the provider and user **and recalling Article 15(4) of the Convention, which stipulates that access to resources also must be on the basis of mutually agreed terms;**

Emphasizing that both providers and users of **genetic resources, their derivatives and products and associated traditional knowledge** benefit from the availability of model clauses for potential inclusion in material transfer agreements and inventories/catalogues of typical utilizations of genetic resources since the use of such clauses and inventories will raise legal certainty, may lower transaction costs and will contribute to creating a level playing field between provider and user when negotiating mutually agreed terms;

Recognizing the importance of providing legal certainty to the **relevant** stakeholders **and Indigenous Peoples and local communities** involved in the conservation, sustainable use and the fair and equitable sharing of benefits derived from the **genetic resources** and associated traditional knowledge;

Recalling that Article 15(1) of the Convention provides that states have sovereign rights over their resources, and that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation, **and recalling international commitments to the free, prior and informed consent of Indigenous Peoples and local communities;**

Recognizing that patents and other intellectual property rights may have an influence on the implementation of the Convention, and the importance of international cooperation to ensure that such rights are supportive of and do not run counter to the objectives of the Convention;

Affirming respect for the holistic and positive interconnection between biological diversity and traditional knowledge, innovations and practices of Indigenous peoples and local communities particularly *sui generis* customary law and community protocols relevant for the conservation and sustainable use of biological diversity, and the right of Indigenous peoples and local communities to share equitably in the benefits arising from the use of their resources, knowledge, innovations and practices and noting international commitments recognizing the rights of Indigenous Peoples and local communities, including:

United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295 UN GAOR, 61st Sess., Agenda Item 68, UN Doc. A/RES/61/295, (2007);

Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, 1650 U.N.T.S. (entry into force 5 September 1991);

International Convention on the Elimination of All Forms of Racial Discrimination, U.N.G.A. resolution 2106 (XX) 21 Dec 1965 (entry into force 4 January 1969);

International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47 (entry into force 23 March 1976);

Convention On The Protection And Promotion Of The Diversity Of Cultural Expressions 2005, 20 October 2005, U.N. Doc. 2005-138, (entry into force, 18 March 2007);

Vienna Declaration And Programme Of Action, UNGA, World Conference on Human Rights, 1993, UN Doc. A/CONF.157/23 (1993); and

Agenda 21, United Nations Conference on Environment and Development, Annex, Resolution 1, UN Doc. A/conf.151/26/Rev.1 (vol. 1) (1993).

Consistency of Language

The current draft text as adopted at ABSWG/8 is inconsistent in its use of terms leading to confusion and therefore an inability to achieve consensus between Parties. This inconsistency is found in sections dealing with Benefit Sharing, Access, Compliance and Capacity. For the purpose of enhancing clarity and promoting consensus building, it is recommended that the following terms and constructions be used, as appropriate, consistently throughout the text:

- Indigenous peoples and local communities;
- Free, prior and informed consent of Indigenous Peoples and local communities; and
- Genetic resources and associated traditional knowledge.