

**FINAL VERSION**  
**WIPO IGC 38 – INDIGENOUS CAUCUS OPENING STATEMENT**  
December 10, 2018/ Delivered by Frank Ettawageshik

Mr. Chair, thank you for giving me the floor to speak on behalf of the Indigenous Caucus to address some of the issues that are key for us in this process.

First, Member States must recognize the rights in the UN Declaration on the Rights of Indigenous Peoples, International Labour Organisation Convention No. 169, and other instruments of international, domestic, and Indigenous law, as well as Indigenous customary law. Under these, Indigenous Peoples enjoy legal peoplehood, self-determination, and the right to maintain Indigenous cosmologies, spirituality, and lifeways. We call upon Member States to honor their obligations to recognize and respect Indigenous Peoples' rights. The respect of the UN Declaration on the Rights of Indigenous Peoples and the Charter of the United Nations in upcoming negotiations is fundamental for the process to continue.

Second, concerning the traditional knowledge and traditional cultural expression draft texts, we welcome the discussion on the relationship between the substantive articles and the work being done on definitions. Definitions of some terms may not be necessary or appropriate. We question whether eligibility criteria need to be set out in definitions or in separate eligibility criteria, as they may be defined by the scope of protection. Let us be clear, establishing a particular number of years since origin as an eligibility criteria is a negotiating dead end. Requiring 50 years before traditional knowledge and traditional cultural expressions can be protected would result in the lack of protection of traditional knowledge and traditional cultural expressions during that period. Anyone who wants to exploit or use traditional knowledge or traditional cultural expressions should be required to use due diligence to discover potential owners and engage in free, prior, and informed consent to determine whether they can legally access and use the traditional knowledge and traditional cultural expressions.

While possibly there may be forms of traditional knowledge and traditional cultural expressions that might be amenable to treatment through a tiered approach, for Indigenous Peoples the current criteria as set out do not adequately address our rights. Much traditional knowledge and traditional cultural expressions have been taken from us historically and economically without our free, prior, and informed consent. What matters to us is not how widely available traditional knowledge and traditional cultural expressions are, but their sacred nature, violations of our spiritual and cultural beliefs, and the harms that we suffer from, as we define and experience them. In order to work for us, any tiered approach must respect our laws, traditions, and customs, as set out in Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples. We have the right to petition for the return of our secret, sacred, spiritual and other culturally sensitive traditional knowledge and traditional cultural expressions. Traditional knowledge and traditional cultural expressions do not exist primarily as a means to serve the intellectual property system – their purpose is to holistically serve political, economic, cultural, ritual, ceremonial, spiritual, sacred and other purposes of Indigenous Peoples.

Third, we remind member states that the legitimacy and lawfulness of this process depends on the free, prior, and informed consent of Indigenous Peoples. We continue to call upon Member States and WIPO to support the Voluntary Fund, which is now depleted, in order to ensure continued participation of Indigenous Peoples. And we thank those states that have contributed in the past.

Mr. Chair, the days in which our fundamental rights are negotiated without our full consent must be a thing of the past. We look forward to a productive set of negotiations.