100 Back Street, Unit 200, Thunder Bay, ON P7J 1L2 Tel: (807) 623-8228 Fax: (807) 623-7730 www.nan.on.ca

## **RESOLUTION: 11/51**

## CALL FOR CANADA TO NOT SIGN THE NAGOYA PROTOCOL BY FEBRUARY 2012 AND TO CONSULT AND OBTAIN THE FREE, PRIOR, AND INFORMED CONSENT OF NISHNAWBE ASKI NATION (NAN) FIRST NATIONS

WHEREAS in 1992, Canada ratified the Convention on Biological Diversity (CBD) which is an international Treaty with three main objectives: (1) conservation of biological diversity, (2) sustainable use of its components, and, (3) fair and equitable sharing of benefits arising from genetic resources, such as the medicinal use of plants;

WHEREAS in July 2010, First Nations across Canada adopted Assembly of First Nations (AFN) Resolution 35/2010 calling for the joint development of a domestic access and benefit sharing policy, but this did not occur;

WHEREAS the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Protocol), a supplementary agreement to the CBD, was adopted on October 29, 2010 and was opened for signature on February 2, 2011 until February 1, 2012;

**WHEREAS** in regard to possible implementation, a draft 2010 Domestic Policy Guidance for Canada document was developed jointly by the Federal – Provincial – Territorial (FPT) Task Force in 2009 and 2010 and approved by the Deputy Ministers FPT Committee on Biodiversity;

WHEREAS on September 22, 2011, the Government of Canada invited First Nations to provide views regarding its potential signature of the Protocol, which signature would be required on or before the February 1, 2012 deadline and would indicate the intent to consider ratification of the Protocol at a later date;

WHEREAS Nishnawbe Aski Nation (NAN) conveyed its preliminary views in a letter, dated October 28, 2011, in order to meet the deadline imposed by the government for comments:

WHEREAS Canada's signature is not urgent, since Parties to the CBD are free to accede to the Protocol at any time after the February 1, 2012 deadline;

WHEREAS NAN has reviewed the actions of the Government of Canada in the development of the Nagoya Protocol and its interpretations of the CBD and Protocol for possible domestic implementation, as well as its failure to consult and accommodate NAN First Nations;

WHEREAS NAN has determined that the government's overall approach to domestic implementation would undermine the rights of First Nations and the related obligations of Canada under international law, including the *United Nations Declaration on the Rights of Indigenous* Peoples (UNDRIP), and would be inconsistent with reconciliation, the duty

to uphold the honour of the Crown and the principles of justice, non-discrimination and respect for human rights;

WHEREAS in particular, the government's intention to solely recognize "established" rights of First Nations to genetic resources could lead to widespread dispossession since there are no "comprehensive claim and self-government agreements" in Ontario, and such kinds of distinctions based on "established" rights have been determined to be discriminatory by the *United Nations Committee on the Elimination of Racial Discrimination* and deemed "not honourable" by the *Supreme Court of Canada*;

THEREFORE BE IT RESOLVED that in keeping with NAN Chiefs-in-Assembly Resolutions 05/21 and 07/91 with respect to the protection, control and ownership of traditional knowledge (including genetic resources) and Article 31 of the UNDRIP, NAN Chiefs-in-Assembly affirm that free, prior and informed consent (FPIC) of NAN First Nations is required in the development of domestic policies and legislation relating to Canada's implementation of the Nagoya Protocol;

**FURTHER BE IT RESOLVED** that in view of the Government of Canada's prejudicial domestic approach and that FPIC has not been obtained from NAN First Nations on the above matters relating to the Protocol to date, NAN Chiefs-in-Assembly do not support the signature of the Nagoya Protocol by Canada by February 1, 2012;

**FURTHER BE IT RESOLVED** that NAN Chiefs-in-Assembly insist that the Government of Canada both conform to the standards set out in UNDRIP and undertake a process of consultation prior to any acceptance of the Protocol, where the consultation must include adequate time and financial resources for the full and effective participation of First Nations and facilitate First Nations FPIC;

**FURTHER BE IT RESOLVED** that NAN Chiefs-in-Assembly support continued collaboration with the Grand Council of the Crees (Eeyou Istchee), which prepared a number of detailed joint submissions regarding the Nagoya Protocol, and that NAN support these joint submissions;

FINALLY BE IT RESOLVED that a report on the progress of this matter shall be provided at subsequent NAN Chiefs Assemblies as new information becomes available.

DATED AT THUNDER BAY, ONTARIO THIS 24th DAY OF NOVEMBER, 2011.

MOVED BY:

Chief Keeter Corston, Chapleau Cree First Nation

SECONDED BY:

Chief Walter Naveau, Mattagami First Nation

**CARRIED** 

Grand Chief Stan Beardy

Deputy Grand Chief