IIFB Core Principles for Inclusion in the Draft Guidelines for the Development of Mechanisms, Legislation or Other Appropriate Initiatives to Ensure the Prior Informed Consent or Approval and Involvement of Indigenous Peoples and Local Communities for Accessing their Knowledge, Innovations and Practices, for Fair and Equitable Sharing of Benefits Arising From the Use of their Knowledge, Innovations and Practices, and for Reporting and Preventing Unauthorized Access of Such Knowledge

1. There are many other agencies and bodies that have developed norms and standards and mechanisms on free, prior and informed consent (FPIC) or PIC of indigenous peoples. Such norms and standards should not be diminished by the Draft Guidelines being developed by WG8J under Task 12. (Non-diminution of human rights standards on FPIC, premised on the duty to consult, as well as indigenous peoples’ rights to lands, territories and resources and right to self-determination)

2. We look forward to strong guidelines containing core principles that build on and do not diminish the human rights norms and standards developed by relevant bodies, including human rights treaty bodies and special procedures, on FPIC/PIC.

3. The guidelines must fully respect the rights of indigenous peoples and local communities as owners and holders of traditional knowledge.

4. Although the guidelines are voluntary, FPIC/PIC is obligatory and binding under international human rights law and many national laws.

5. FPIC/PIC includes the right to say no.

6. The use of “approval and involvement” raises the possibility of two separate standards being applied in relation to the consultation and consent process, and can be confusing. We propose the deletion of “approval and involvement,” “prior informed approval” and similar words/phrases from the document in order to avoid such confusion and potential uneven application of the voluntary guidelines and maintain the use of the term free, prior and informed consent (FPIC) or PIC.
7. The procedural and substantive aspects of the consent process must recognize the primacy of customary laws and/or community protocols of indigenous peoples and local communities and be governed by customary decision-making mechanisms.

8. The information provided must be balanced and come from a variety of sources and must be available in indigenous languages using terms understood by them, and include safeguards to ensure that all parties to an agreement have the same understanding of the information and terms provided.

9. Granting FPIC/PIC to users of traditional knowledge does not transfer ownership, but merely allows temporary use. Ownership is retained by the IPLCs at all times, and especially upon expiration of the term of temporary use.

10. Legitimately constituted traditional authorities of indigenous peoples and local communities have the exclusive power to grant or withhold consent.

11. Whether or not benefit-sharing is “fair” and “equitable” is determined by IPLCs under their customary laws and/or community protocols.

12. There is a need to build capacities of IPLCs to effectively negotiate with users of TK, including in negotiating their fair and equitable share of benefits.

13. FPIC Terms of agreement shall constitute a legal contract between the concerned Indigenous People(s) or Local Communities and the corresponding contracting Parties.

14. The FPIC contract shall contain agreed grievance and redress mechanisms to address non-compliance with its provisions.