

**TENTH SESSION OF THE  
UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES  
May 16 to 27, 2011  
New York City**

**STATEMENT OF THE  
NORTH AMERICAN INDIGENOUS PEOPLES' CAUCUS**

**Agenda Item 3(c): Indigenous Peoples' Right to Free, Prior and Informed Consent**

Thank you Madame Chair. I am pleased to give this statement on behalf of the North American Indigenous Peoples' Caucus.

We recall the UNPFII Workshop On Free, Prior And Informed Consent held in January 2005 (New York, 17-19 January 2005) Report, and concur with the conclusion that FPIC "...is central to Indigenous Peoples' exercise of their right to self-determination with respect to developments affecting them." The implementation of FPIC as a collective right and emerging legal standard is a matter of justice and legal obligation. We note with great interest, the recent ruling by Colombia's Constitutional Court (T-129 ruling of March 3, 2011) that halted three industrial projects for failing gain the FPIC by the affected Indigenous Peoples. The Constitutional Court ruling stated in part that, "The .... majority vision of development .....cannot be imposed when such projects are developed in Indigenous Peoples' territories"<sup>1</sup> further noting the need "...to understand and recognize that what is at stake is the present and future of a people, a human group that has the right to self-determination and to defend its physical and cultural existence."

We are very concerned that current UN processes addressing the environment and impacts of unsustainable development are failing to protect the Indigenous Peoples right of FPIC, or implement Articles 18 and 42 of the UNDRIP including recognizing the right to participate in decision-making in processes that affect us.

We are also concerned by the recent adoption of language in the Convention on Biological Diversity's proposed Nagoya Protocol and the UNFCCC's "Cancun Agreements" which diminish our right of free, prior, and informed consent. Any attempt to diminish Indigenous Peoples' right to an uncompromised standard of FPIC is unacceptable.

**Recommendations:**

1. We call upon the UNPFII to renew recommendations made in past sessions that UN processes provide mechanisms and procedures for Indigenous Peoples' full and effective participation, and a meaningful role in decision-making and policy development. These processes include, inter alia, the UN Framework Convention on Climate Change (UNFCCC), the Stockholm Convention

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<sup>1</sup> Cultural Survival Quarterly, Colombian Court Confirms Indigenous Peoples' Right to Free, Prior, and Informed Consent, May 10, 2011 (see at: <http://www.culturalsurvival.org/news/colombia/colombian-court-confirms-indigenous-peoples-right-free-prior-and-informed-consent>)

on Persistent Organic Pollutants, the Convention on Biological Diversity (CBD), the World Intellectual Property Organization (WIPO), the International Maritime Organization (IMO) and negotiations for a new Global Treaty to eliminate mercury contamination.

2. Recalling UNPFII-9 recommendation: “The Permanent Forum called upon those States which have granted leases, concessions and licenses on Indigenous Peoples’ territories for projects related to logging, minerals, oil, gas and water without proper consultation and without respecting the free, prior and informed consent of the Indigenous Peoples concerned to review those arrangements and to address the complaints raised by Indigenous Peoples in those territories.” The NAIPC requests the UNPFII provide a report to Indigenous peoples on the implementation of this recommendation and any proposed further action.

3. FPIC is not being fully implemented in carbon trading and offset projects. Therefore, we recommend the UNPFII appoint a member of the Permanent Forum as Special Rapporteur to conduct a study on existing and potential violations of the human rights of Indigenous Peoples affected by carbon markets, the Clean Development Mechanism and REDD-type projects (Reducing Emissions from Deforestation and Degradation), and to report thereon to the Forum at its eleventh session, in 2012.

4. We specifically request that the UNPFII address a formal, urgent communication to these UN agencies and processes, calling upon them to implement Article 42 of the UN Declaration, and asking for clarification regarding the steps they are taking to include the formal participation of Indigenous Peoples in their decision-making processes.

5. The NAIPC calls for standardization in the implementation of Article 32 regarding FPIC by all parties concerned.

6. In the implementation of FPIC, the NAIPC calls upon the PF to embolden advocacy and education focusing on the necessary component of FPIC which ensures that consent must be acquired within the leadership structures and with Indigenous grassroots communities that would be affected by the decision.

7. In conclusion, the NAIPC calls on the UNPFII to ensure UN agencies protect and implement the full right of FPIC of Indigenous Peoples in all issues that impact them.