

**Statement by the Observer Delegation of Canada delivered by Jean-François Tremblay, Senior Assistant Deputy Minister, Indian and Northern Affairs Canada, at the tenth session of the United Nations Permanent Forum on Indigenous Issues: Follow-Up to the Recommendations of the Permanent Forum on Free, Prior and Informed Consent**

**NEW YORK, May 17, 2011**

Madame Chairperson and members of the Permanent Forum,

Canada welcomes the opportunity to comment on the question of the interpretation of free, prior and informed consent (FPIC) at the national and international levels.

Madame Chairperson, the concept of FPIC, at its core, is about meaningful consultation, and meaningful consultation is central to reconciliation. Reconciliation, as articulated by Canadian courts, is about reconciling the pre-existence of indigenous societies with the assertion of Crown sovereignty. It is about building and strengthening relationships. It is a process through which a society moves from a divided past to a shared future. In the Canadian context, it is also a process through which the rights and interests of indigenous peoples are taken into account.

In 2009, the Special Rapporteur on the Rights of Indigenous Peoples elaborated on his understanding of FPIC as set out in the provisions of the UN Declaration on the Rights of Indigenous Peoples. He noted that FPIC “does not provide indigenous peoples with a "veto power", but rather establishes the need to frame consultation procedures in order to make every effort to build consensus on the part of all concerned”.

Canada shares this perspective. As Canada has made clear on several occasions, Canada does not interpret FPIC as providing indigenous peoples with a veto. Canadian courts have also made it clear that indigenous peoples do not have the right to veto legitimate government decisions made in the public interest.

Instead, Canada believes that the concept of FPIC should, in practice, focus on fostering partnerships to ensure that indigenous peoples are more fully involved, consulted and, where appropriate, accommodated on development and other decisions that directly affect their rights and interests. It should focus on processes that will encourage and support the fair and equitable balancing of rights and interests between States, Indigenous peoples and, where relevant, development proponents. Canada interprets FPIC as calling for a process of meaningful consultation with indigenous peoples on issues of concern to them.

Domestically, Canada consults with Aboriginal communities and organizations on matters that may impact their interests or rights. This is important for good governance, sound policy development and decision-making. Canada has strong consultation processes in place, and our courts have reinforced the need for such processes as a matter of law.

Canada is making progress along a wide front on consultation with Aboriginal communities and organizations. Federal departments and provincial and territorial ministries are ensuring that they undertake the appropriate consultation with Aboriginal groups. On average, the legal duty to consult is triggered for some provinces over 100,000 times per year, and for the federal government over 5,000 times per year.

To ensure a consistent and comprehensive approach to consultation at the federal level, prior to the release of the *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* in March 2011, Canada undertook an engagement process in which sixty-eight First Nations, Inuit and Métis communities and organizations participated, to seek their views on a federal policy approach on consultation and accommodation. The *Updated Guidelines* reflect lessons learned and best practices. Key elements of these guidelines are the guiding principles and consultation directives

which provide clearer direction to federal officials. Similarly, several provinces and territories have developed their own consultation policies.

Canada is also strengthening partnerships with provinces, territories and Aboriginal groups by entering into arrangements on consultation that clarify the consultation process for all parties and achieve a more coordinated and efficient process. Examples of these partnerships can be found in the Consultation Process Interim Measures Agreement with Canada, the Province of Ontario and the Algonquins of Ontario in 2009, and the Canada, Nova Scotia and Mi'kmaq Terms of Reference for consultation from 2010. These partnerships better meet the needs of Aboriginal groups and the Crown.

While there is still work to be done, Canadian practices could be a helpful example to other States and indigenous peoples with respect to mechanisms of consultation. Canada will continue to make progress on our domestic approach to meaningful consultation and remains committed to carrying out a fair and reasonable process for consultation that seeks positive outcomes for all partners.

Thank you.