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The Permanent Mission of Canada
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at Geneva

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à Genève

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Priorité au discours

**Expert Mechanism
on the Rights of Indigenous Peoples**

Third session - July 12-16, 2010

**Item 3: Study on indigenous peoples and the right to
participate in decision-making**

**Statement delivered by: Line Paré
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**Mécanisme d'Experts
sur les droits des peuples autochtones**

Troisième session - 12-16 juillet, 2010

**Item 3 : Étude sur les peuples autochtones et le droit
de participer à la prise de décisions**

**Prononcé par: Line Paré
Affaires indiennes et du Nord Canada**

Mr. / Madame Chairperson,

The Government of Canada is pleased to continue to support the work of the Expert Mechanism by participating in its third annual session and by offering observations on the current study on indigenous peoples and the right to participate in decision-making. Canada takes note of and thanks the Expert Mechanism for the draft progress report of this study presented for consideration at this session.

Canada would like to take this opportunity to inform the Expert Mechanism that, on March 3, 2010, the Government of Canada announced that it would take steps to endorse the United Nations Declaration on the Rights of Indigenous Peoples. Canada is currently looking at how best to formalize this endorsement.

Mr. / Madame Chairperson, Canada welcomed the invitation by the Expert Mechanism to submit information to assist in the study on indigenous peoples' participation in decision-making. A compilation of pertinent issues, comments and examples, from the perspective of the Government of Canada, has been submitted to the Expert Mechanism for its consideration.

Nous tenons à souligner brièvement certains points contenus dans ce document.

La quantité d'information digne d'intérêt est importante. Le Canada a cherché à fournir un portrait exhaustif de l'étendue et de la profondeur de l'expérience canadienne dans ce domaine, qu'on pourrait, d'une certaine façon, décrire comme « une participation des peuples autochtones à la prise de décisions », qu'elle soit fondée sur un droit ou un autre impératif. Les renseignements fournis ne représentent qu'une partie des exemples de participation autochtone à un processus décisionnel en contexte canadien; il en existe de nombreux autres.

Bien que le Canada mette tout en œuvre pour respecter le cadre élaboré par le Mécanisme d'Experts, il traite de la « participation » dans son ensemble plutôt que d'essayer de séparer les lois et les politiques des processus et des défis qui s'y rattachent.

En gardant cela à l'esprit, le gouvernement du Canada a établi qu'il pourrait aussi s'avérer efficace de traiter la question de la participation aux processus décisionnels sous un angle propre à chaque domaine, comme l'administration de la justice, l'éducation, le développement économique, les relations internationales, le développement de la capacité (incluant la création d'institutions) et le soutien financier. Le Canada présente également quelques nouvelles avancées intéressantes en matière de gouvernance et d'administration.

Le Canada est conscient que les représentants des peuples autochtones et d'autres parties feront part de leurs points de vue et de leurs réponses, qui sont inestimables et uniques.

The following conclusions and recommendations are offered for consideration by the Expert Mechanism, based on Canada's experience and the information submitted by Canada to the study:

1. In Canada, indigenous peoples' participation in decision-making occurs across a vast array of legal obligations, policies and processes. It is recognized, however, that models and mechanisms for consultation and other forms of participation in decision-making continue to evolve.
2. While it is useful and informative to explore the nature of the right of indigenous peoples' participation in decision-making as expressed in international instruments and other sources, such a rights-based approach by itself is limiting and may not capture the myriad other bases and forms of participation available to and used by indigenous people in different circumstances in Canada and around the world.
3. The right to participate in decision-making does not constitute a stand-alone right under Canadian law. Rather, it finds expression as a corollary to the federal, provincial and territorial governments' duties to consult Aboriginal peoples. Depending on the circumstances, governments may have statutory, contractual or common law obligations to consult with Aboriginal peoples. Consultation and participation in decision-making may also occur for reasons of good governance in the development and implementation of policy and programs.
4. Two significant influences that have propelled the advancement of indigenous participation in decision-making in Canada have been rulings by the courts on the common law duty of the government to consult and, if indicated, accommodate, and Canada's unique framework for the resolution of land claims and recognition of indigenous self-government through negotiated agreements.
5. As demonstrated by Canada's experience in developing the *First Nations Fiscal and Statistical Management Act* with First Nations participation, efforts to address and resolve apparently simple and discrete issues of control and decision-making can, if approached responsibly and thoughtfully by all parties, lead to the creation of significant new institutions and mechanisms for participation not originally envisioned.
6. The attention of the Expert Mechanism is drawn to the observation that participation in decision-making and concomitant accountability are also issues of pertinence within indigenous communities, and between community members and their own governing authorities.

7. The participation of indigenous people in the design, implementation, delivery and assessment of government policies and programs is integral to successfully ensuring the participation of indigenous peoples in decision-making.
8. Indigenous communities must have the means to build their institutional capacity to effectively participate in decision-making. Governments at all levels and other stakeholders (e.g. the private sector, academia, NGOs) all have a primary role to play in assisting capacity-building by indigenous groups.
9. Decision-making in government is complex and meeting indigenous peoples' expectations of participation and outcomes presents on-going challenges. Issues of indigenous representation and who to consult and involve also pose challenges in certain instances. Resolution of these challenges requires patience, understanding and goodwill from all parties. The creation of national institutions designed and controlled by indigenous people has proven effective in certain cases.
10. Effective approaches to indigenous participation in decision-making require attention to the incorporation of indigenous cultural and community values and traditions, as well as to gender equity and the participation of Elders, youth, women and persons with disabilities.
11. At the international level, Canada recommends that the Expert Mechanism give due note to the Arctic Council as a body which has a special relationship with indigenous peoples that incorporates their participation in decision-making.

In conclusion Mr. / Madame Chairperson, Canada looks forward to the completion of the Expert Mechanism's current study and would be pleased to consider providing any additional information or assistance, as required.

Thank you.