Canada's Statement on the World Conference on Indigenous Peoples Outcome Document

New York, 22 September 2014

Canada is committed to promoting and protecting the rights of Indigenous Peoples at home and abroad.

In 2010, our statement of support for the UN Declaration on the Rights of Indigenous Peoples clearly recorded that the Declaration is an "aspirational document which speaks to the individual and collective rights of indigenous peoples, taking into account their specific cultural, social and economic circumstances". Also in this statement, Canada placed on the record its concerns with various provisions of the declaration, including free, prior and informed consent when used as a veto.

Canada's unique constitutional framework recognizes and affirms Aboriginal and Treaty rights. Thus, in Canada, governments have a legal duty to consult Aboriginal Peoples and, where appropriate, accommodate Aboriginal peoples, when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights. Canada interprets the principles expressed in the Declaration in a manner that is consistent with our constitution.

Free, prior and informed consent, as it is considered in paragraphs 3 and 20 of the WCIP Outcome Document, could be interpreted as providing a veto to Aboriginal groups and in that regard, cannot be reconciled with Canadian law, as it exists.

Agreeing to paragraph 3 of the Outcome Document would commit Canada to work to integrate FPIC in its processes with respect to implementing legislative or administrative measures affecting Aboriginal peoples. This would run counter to Canada's constitution, and if implemented, would risk fettering Parliamentary supremacy.

Canada does not interpret FPIC as providing indigenous peoples with a veto. 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. Agreeing to paragraph 20 would negate this important aspect of Canadian law and policy.

Canada's position on this issue is well known and has not changed. While the UN Declaration on the Rights of Indigenous Peoples and the Outcome Document for this World Conference are not legally binding and do not reflect customary international law, or change Canadian laws, we regret that our concerns were not taken into account.

As a result, Canada cannot associate itself with the elements contained in this outcome document related to free, prior and informed consent.

Further, Canada cannot support paragraph 4 in particular, given that Canadian law, recently reaffirmed in a Supreme Court of Canada decision, states the Crown may justify the infringement of an Aboriginal or Treaty right if it meets a stringent test to reconcile Aboriginal rights with a broader public interest.

We remain strongly committed to building a positive and productive relationship with First Nations, Inuit and Métis peoples to improve the well-being of Aboriginal Canadians, based on our shared history, respect, and a desire to move forward together.

As stated when we endorsed the UNDRIP in November 2010; "The government`s vision is a future in which Aboriginal families and communities are healthy, safe, self-sufficient and prosperous within a Canada where people make their own decisions, manage their own affairs, and make strong

contributions to the country as a whole."

The government has also taken concrete and viable actions including legislation in important areas such as access to safe drinking water, transparency, protecting matrimonial rights on reserve, elections, devolution and associated regulatory regimes, as part of a continuing agenda focussed on real results with willing and able partners.

Canada will also continue to contribute to international efforts to improve the lives of Indigenous peoples throughout the world.