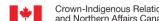


PURPOSE

- To provide background on Canada's rights-based approach
- To discuss the proposed United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan Measures 23 and 24
- To discuss linkages between Action Plan Measures 23 and 24 with the priorities of the First Nations Leadership Council and participating Indigenous nations





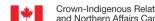
POLICY CONTEXT

- Indigenous groups involved in negotiations with Canada have criticized:
 - Slow and cumbersome mandating and approval processes with high costs:
 - Static frameworks that do not allow agreements to evolve;
 - Inflexibility and lack of collaborative approaches to negotiations; and,
 - Insufficient funding and capacity support for implementing selfgovernment
- In response to sustained Indigenous efforts and leadership, the courts have increasingly encouraged Canada to take greater action on Indigenous rights issues (e.g., title rights, reconciliation as the fundamental purpose of section 35, meaningful consultation and accommodation)
- The findings from multiple expert reports also reiterate the calls from Indigenous groups that Canada shift to more flexible and responsive policies

RECOGNITION OF INDIGENOUS RIGHTS AND SELF-DETERMINATION DISCUSSION TABLES

- In recent years, Canada has been engaging in rights-based discussions focused on the co-development of proposals and innovative policy approaches that are more responsive to the needs and interests of Indigenous groups
- These tables are:
 - Without prejudice
 - Premised on the recognition of section 35 rights
 - Open to a broad range of subject areas for discussion
 - Supportive of flexible approaches for reaching agreements
 - Alternatives to litigation
 - An opportunity to support greater self-determination





RECOGNITION AND RECONCILIATION OF RIGHTS POLICY FOR TREATY NEGOTIATIONS IN BRITISH COLUMBIA

Overview:

- Co-developed in 2019 by the First Nations Summit, representatives of participating Indigenous Nations, the Government of British Columbia, and the Government of Canada
- Replaces the Comprehensive Land Claims Policy and Inherent Right Policy for First Nations participating in the BC treaty negotiations framework

Key Features:

- Bases negotiations on the recognition and continuation of rights without modification, surrender or extinguishment
- Includes measures to implement self-determination and jurisdiction, and the recognition and implementation of title using section 35 of the Constitution Act, 1982 and the UN Declaration as foundations
- Provides greater flexibility to implement recognition of rights-based agreements incrementally and to accommodate Nation building
- Treaties, agreements and other constructive arrangements set out frameworks for reconciling Crown and Indigenous sovereignty, and can evolve over time



CANADA'S POLICY DIRECTION ON RIGHTS-BASED APPROACHES TO NEGOTIATIONS

Moving From	To
 Rights must be claimed and proven by Indigenous groups 	Rights recognized as pre-existing and implemented through negotiated agreements
Certainty with the practical effect of extinguishment of rights	Flexible agreements with mechanisms for predictable exercise of rights and evolution of agreements
3. Full and final settlements	3. Living agreements
4. Federal negotiation mandates developed unilaterally	 Negotiation mandate proposals are co- developed by parties
Fiscal relationship does not account for broader socio-economic considerations	Fiscal relationship prioritizes self- determination and addressing socio- economic gaps



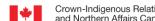
Crown-Indigenous Relation and Northern Affairs Canad

PROGRESS MADE USING A NEW RIGHTS-BASED APPROACH

Interim Comprehensive Land Claims Policy (incremental agreements) 2014 Approaches with the practical effect of extinguishment are abandoned in favour of interestbased negotiations and agreements that can evolve over time 2016 Permanent Bilateral Mechanisms with First Nations, Inuit, and Métis Nation Principles respecting the Government of Canada's relationship with Indigenous peoples 2017 New approach to rights-based negotiations (i.e. co-development, flexible processes) Announcement of forgiveness and reimbursement of comprehensive claim negotiation loans 2018 Nation Re-Building Program Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples An Act respecting First Nations, Inuit and Métis children, youth and families Indigenous Languages Act Impact Assessment Act 2019 Specific amendments to the Fisheries Act related to Indigenous governments Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia Canada's Collaborative Self-Government Fiscal Policy A more collaborative approach to the resolution of specific claims 2021 United Nations Declaration on the Rights of Indigenous Peoples Act 2022 Self-governing First Nations able to retain tax exemption under section 87 of Indian Act



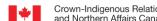
 Upcoming release of the United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan (June)



LOOKING AHEAD – ADDRESSING GAPS THROUGH THE UNDA **ACTION PLAN**

- Despite this progress, greater flexibility and tools are needed to address remaining impediments to reaching agreements in a timely manner that meet partners' expectations – the *United Nations Declaration on the Rights* of Indigenous Peoples Act Action Plan presents an opportunity for accelerated change
- The United Nations Declaration on the Rights of Indigenous Peoples Act came into force on June 21, 2021, and commits the Minister of Justice and Attorney General of Canada to, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the Declaration
- The draft action plan was made public on March 20, 2023. The action plan is required to be released in June 2023

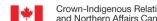




UNDA ACTION PLAN

- CIRNAC is leading on several action plan measures, including Action Plan Measures 23 and 24, which commit the Government of Canada to the following actions in consultation and cooperation with Indigenous peoples:
 - APM 23: Issue a public statement of Canada's rights-based approach for the negotiation of treaties, agreements and other constructive arrangements to replace the Comprehensive Land Claims and Inherent Right Policies
 - APM 24: Co-develop approaches for the implementation of the right to self-determination through negotiated agreements, new policies and legislative mechanisms

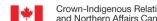




WHAT WE'VE HEARD

- The First Nations Leadership Council shared several priorities for the Action Plan in March which establish a set of priorities
 - Formal revocation of the Inherent Right and Comprehensive Land Claims policies
 - New pathways to remove the imposition of the *Indian Act* that are principled, non-prescriptive, First Nations driven as well as determined, flexible, multiple and based on the full legal recognition of First Nations' governments, laws and jurisdictions
 - Eliminate all barriers that currently delay the return of lands to Indigenous peoples, and establishment of a single approach to timely and effective land return on a fixed timeline inclusive of the polluter pays principle





DISCUSSION QUESTIONS

- What are your views on Action Plan Measures 23 and 24 in terms of key priorities that will need to be addressed?
- What types of mechanisms are missing that would accelerate the implementation of the rights upheld and affirmed in the Declaration for your Nations?
- What would an accelerated negotiations process look like to you? What are the barriers?
- How could Canada improve it's approaches with respect to the recognition and implementation of Indigenous rights?

