



Recognition and Implementation of Indigenous Nations' Inherent Rights through the UNDA Action Plan

Our Gathering, Vancouver, BC
May 16, 2023





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 self-government
- 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...

- | | |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 1. Rights must be claimed and proven by Indigenous groups | 1. Rights recognized as pre-existing and implemented through negotiated agreements |
| 2. Certainty with the practical effect of extinguishment of rights | 2. 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 | 4. Negotiation mandate proposals are co-developed by parties |
| 5. Fiscal relationship does not account for broader socio-economic considerations | 5. Fiscal relationship prioritizes self-determination and addressing socio-economic gaps |





PROGRESS MADE USING A NEW RIGHTS-BASED APPROACH

2014

- Interim Comprehensive Land Claims Policy (incremental agreements)

2016

- Approaches with the practical effect of extinguishment are abandoned in favour of interest-based negotiations and agreements that can evolve over time
- Permanent Bilateral Mechanisms with First Nations, Inuit, and Métis Nation

2017

- Principles respecting the Government of Canada's relationship with Indigenous peoples
- New approach to rights-based negotiations (i.e. co-development, flexible processes)

2018

- Announcement of forgiveness and reimbursement of comprehensive claim negotiation loans
- Nation Re-Building Program

2019

- 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*
- 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*

2023

- 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 its approaches with respect to the recognition and implementation of Indigenous rights?

