

UN Declaration Act: Annual Progress Report 2023-24 FNLC Input

1. What does the Action Plan mean to you and/or your community, government, and/or organization?

The FNLC continues to believe that the fulsome, comprehensive, and accountable implementation of the principles and standards of the UN Declaration by the federal government of Canada presents real and important opportunities for the recognition of First Nations rights, the reconciliation of historical and ongoing wrongs and the fostering of a sustainable and accountable relationship with the government of Canada moving forward. Yet, to achieve this potential, Canada needs to come to the table and demonstrate its commitment to upholding these standards through a whole-of-government, comprehensive and coordinated framework which recognizes First Nations' rights to self-determination and self-government.

2. Please tell us about your views on the Action Plan.

While the UNDA NAP has been acknowledged as a positive step forward in the realization of the rights of Indigenous peoples as articulated by the UN Declaration, many have noted significant concerns regarding particular flaws that require improvement if the NAP is to be successful.

Some of these concerns include (1) an expedited development timeline, which didn't permit fulsome participation from First Nations; (2) a lack of capacity funding for First Nations to adequately participate; (3) a lack of transparency in how First Nations priorities were incorporated into the NAP; (4) the content of many of the APMs were derived from existing commitments and pre-existing initiatives.

Following the development of the APM, as Canada begins implementation of the 180+ measures, the FNLC remains concerned that many of these issues have not been addressed and continue to impact federal implementation efforts.

Despite the importance of co-development, the federal government has not developed a clear, consistent, or coherent whole-of-government framework defining co-development, nor a clear indication on how the government will collaborate with First Nations across the 180+ APM measures.

As identified previously, APMs are currently being actioned across federal departments, the lack of process, transparency, central coordinating body and consistent engagement processes, combined with a lack of capacity by First Nations to engage on UNDA implementation, raises a number of ongoing concerns:

1. *It is unclear as to how APMs are being prioritized for implementation and if federal priorities align with First Nations priorities;*
2. *Engagement with First Nations appears to be ad-hoc in nature, potentially contributing to poor participation and a lack of accountability to First Nations;*

3. *Oversight, accountability and transparency mechanisms have yet to be identified or developed; and*
4. *It is unclear how Canada is seeking First Nations' free, prior, and informed consent in the development and implementation of APMs and the alignment of law initiatives.*

Finally, we remain concerned that First Nations will not be provided the funding or appropriate timelines to participate in a full and comprehensive manner.

3. In your view, does the Action Plan meaningfully address intersection and gender-specific priorities, and how should the Government of Canada ensure that these groups' participation and perspectives are reflected in implementation, monitoring, and evaluation?

Addressing systemic gender discrimination, gender-based violence, and including a gender-based analysis+rights-based and culturally relevant lens in the implementation of the UNDA NAP as a whole will be critical to its success. The UNDA NAP contains a number of commitments in this regard, and the success of these commitments, like all the APMs, will depend upon how Canada engages First Nations peoples in the co-development and co-implementation of these measures. It is imperative that the federal government works across ministries and with all levels of government on a coordinated approach to the implementation of policy and legislative initiatives including the UNDA NAP and the National Action Plan to End Gender-Based Violence to implement the National Inquiry's Calls for Justice as legal imperatives. Along with First Nations, families and survivors of gender-based violence and the MMIWG2S+ crisis and 2SLGBTQIA+ people should be engaged on gender-specific priorities, as well as people with disabilities, sex workers and those living in rural and remote communities.

Along with the cited priority (13) to protect Indigenous women, girls and 2SLGBTQI+ individuals from coerced sterilizations, Canada must enact policy and legislative mechanisms to protect against gender-based violence and end systemic gendered discrimination. This must also include accountability and reporting mechanisms that are timely, accessible and transparent such as accountability forums to track implementation progress.

4. If applicable, please tell us about your experiences working with federal departments or agencies to develop the Action Plan, between April 1, 2023, and June 21, 2023. Or if your community, government or organization was unable to participate, what were some of the reasons that prevented your participation?

To ensure that the perspectives, priorities and interests of First Nations in BC were reflected in the NAP, the FNLC compiled guiding principles and priority actions to be included in the national action plan. These principles and priorities were developed based on direction and input from First Nations in BC, including through resolutions of the BCAFN, FNS, and UBCIC, circulation and review of the principles and priorities by First Nations and sectoral First Nations organizations,

and through dialogue at an All-Chiefs' Assembly hosted by the FNLC in 2023. The FNLC priorities paper called on Canada to ensure its efforts were: (1) Comprehensive and Coherent; (2) Progressive; (3) Had a Clarity of Scope; (4) Distinctions-Based; (5) Inclusive; (6) Integrative; (7) Measurable; (8) Expedient.

To complement the FNLC Priorities Paper, the BCAFN drafted the Options Paper, which compiled a list of action items and guiding principles to be included in the NAP. These principles and priorities were developed based on existing mandates passed through resolution at the regular meetings of the BCAFN. The BCAFN submitted this paper on May 11, 2023.

The BCAFN Options Paper identifies 15 principles that should guide the interpretation of the actions and priorities put forth by the FNLC and the actions of the government of Canada in the implementation of the UNDA.

In addition to the 15 principles, the paper identifies 204 actions NAP.

5. Please tell us about your experience working with federal departments or agencies on the implementation of Action Plan Measures since June 21, 2023.

On Feb 16th, 2023, Minister Lametti issued a Letter of Understanding (LOU) to the FNLC, which outlines Canada's commitment to a BC-specific bilateral process with the FNLC to identify priorities and actions for UNDA implementation consistent with the direction of First Nations in BC.

On May 4th, 2023, the FNLC submitted the FNLC Priorities Paper to Minister Lametti, articulating the priorities of First Nations in BC for inclusion into the NAP. This Priorities Paper was developed by the FNLC with feedback from BC First Nations.

In late 2023, in partial fulfilment of the guiding principles of the UNDA NAP, the FNLC and the Department of Justice entered a funding agreement to formalize and implement the FNLC-DoJ LOU over the next two calendar years.

To assist in formalizing the terms of the LOU, in January of 2024 the FNLC met with Minister Virani, the new Attorney General and Minister of Justice, to prepare draft Terms of Reference to guide the political and technical tables under the LOU. The intention of these tables is to facilitate the inclusion of the priorities and interests of First Nations in BC in the implementation of the UNDA Section 5, 6 and 7 provisions. The draft TORs have not yet been finalized, but once an agreement between the Department of Justice and the FNLC is reached, the table will begin working on developing a workplan to co-development and implement APMs which fall under the purview of the Department of Justice.

As per our previous comments, we are disappointed by the disjuncture between federal ministries, having been advised that your BC-Specific Table will be limited to addressing only those APMs which fall under the DOJ, while the many APMs which fall under the purview of other federal departments, will not be required to follow a similar process. Our concerns with this ad-hoc and piecemeal approach have been articulated previously. A coordinated, whole-of-government approach to ensuring First Nations are driving the implementation of the NAP APMs is essential.

6. If applicable, please tell us about your experience working with federal departments or agencies on developing any legislation or regulations.

The FNLC has not been engaged in the co-development of legislation amendments under the UNDA NAP. The FNLC has had preliminary engagements with the CBSA and IRCC on border mobility issues and their impacts on Indigenous peoples, but it is our understanding that these engagements are unlikely to result in legislative amendments. The BCAFN has recently passed Resolution 05/2024, Indigenous Rights and Border Mobility, which is calling on CBSA and IRCC to broaden the scope and timelines of their engagements with First Nations to engage with First Nations' interests and priorities more fulsomely, including potential legislative amendments.

While the FNLC was not involved in the co-development process of Bill C-61 "An Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands", the BC Assembly of First Nations engaged in tertiary dialogue with Indigenous Services Canada through the Assembly of First Nations during the drafting process. As the first distinctions-based bill introduced since the passing of UNDA, the co-drafting process served as a litmus test for UNDA alignment of laws through co-development mechanisms. Overall, the process did not meet the definition of co-development and lacked meaningful regional participation resulting in a failure of Canada's Duty to Consult. Further refinement of regionally appropriate co-development processes must be undertaken in full partnership with rights and title holders. While the development of the bill was an improvement towards approaching legislative reform through participation and input from the Assembly of First Nations, Bill C-61 does not meet the minimum standards as set out in the United Nations Declaration on the Rights of Indigenous Peoples.

7. How can the Government of Canada better support the implementation of the UNDA Action Plan through consultation and cooperation (including co-development) with Indigenous Peoples?

Canada needs to develop a comprehensive whole-of-government framework for engaging First Nations on implementing the UNDA NAP APMs, including reviewing and revising the NAP itself. This whole-of-government approach could be mirrored after the coordination body of BC's UN Declaration Secretariat, which supports and coordinates the Government of BC's efforts to legislate and implement the standards and principles of the UN Declaration within a provincial context.

Furthermore, it is critical that First Nations be provided with the opportunity to lead the implementation of the APM and not be engaged in an ad-hoc, insufficient process based on status quo consultation policies. The standards and principles of the UN Declaration require a much more robust engagement process than we have observed to date, which includes expanded/appropriate timelines, the implementation of the standards of free, prior and informed consent, capacity funding, accountability and transparency mechanisms and for APM implementation priorities to be driven by First Nations.

8. Do you have any other comments that you would like to share with us?
9. Would you like to share a quote on behalf of the Indigenous community, government, or organization that you represent that could be used in the Annual Report or in related communications materials?

yes

10. Quote:

The NAP is a promising first step, but without a defined, coordinated, distinctions-based, whole-of-government approach to implementation, founded on the recognition of First Nations' right to self-determination, self-government and the requirement to receive First Nation's free, prior and informed consent, and supported by accountability and transparency mechanisms, which respect the capacity and priorities of First Nations, there is no feasible way to co-develop or action any of the priorities and principles contained within the NAP, or for the Government of Canada to claim that its processes pertaining to the development of its national action plan are aligned with the UN Declaration", said Regional Chief Terry Teegee of the BC Assembly of First Nations.

11. Regional Chief Terry Teegee
12. First Nations Leadership Council
13. Email: Matthew.Norris@bcfn.ca
14. Date: March 25, 2024
15. Permission to use quotes: yes