

## **BRIEFING NOTE**

**TO: BCAFN SPECIAL CHIEFS ASSEMBLY**  
**FROM: FNLC POLICY TEAM**  
**DATE: MAR 05, 2024**  
**RE: UNITED NATIONS DECLARATION ACT – BILATERAL IMPLEMENTATION TABLES**

### **PURPOSE**

Provide an update to the BCAFN Special Chiefs Assembly on the progress and obstacles on the UNDA file for their upcoming 2024 Chiefs Council.

### **RECOMMENDATIONS**

1. Raise concerns about the lack of a whole-of-government approach to the implementation of the UNDA National Action Plan.
2. Call on Canada to create a coordination body to ensure cross-department coordination and accountability.
3. Reiterate support for the BC-Specific Bilateral Process for UNDA Implementation being led by the FNLC and the department of Justice.

### **DISCUSSION/BACKGROUND**

On June 21, 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA) came into force. This Act requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to:

- Take all measures necessary to ensure that federal laws are consistent with the Declaration (Section 5);
- Prepare and implement an action plan to achieve the objectives of the Declaration (Section 6); and
- Develop annual reports on progress and submit them to Parliament (Section 7).

On December 10, 2021, Canada launched its consultation, cooperation and engagement process. The Minister of Justice has been identified as the designated minister for purposes of the Act, with the obligation to take measures to ensure consistency of federal laws and to develop an action plan for the implementation of the Act. Other federal Ministers are implicated as needed.

On June 20<sup>th</sup>, 2023, the Department of Justice tabled in Parliament the UNDA National Action Plan (NAP), as mandated by Section 6 of the UNDA.

The NAP is organized into five chapters, of particular interest to First Nations are Chapters: 1) Shared priorities, which sets out commitments to implement measures required by the UN Declaration Act as well as measures that address cross-cutting Indigenous priorities, and respond to priorities put forward by Indigenous Peoples; 2) First Nations Priorities, which sets out commitments to implement measures that respond to submissions put forward by First Nations representative organizations, historic and number Treaty partners, and First Nations governments; and 5) Indigenous Modern Treaty Partner Priorities, which sets out commitments to implement measures that respond to submissions put forward by Modern Treaty Partners across Canada.

Work is already underway by Federal Departments on implementing many of the NAP Action Plan measures (APMs). The FNLC technical team is aware of the following initiatives:

- A. SP-APM #2: Minister Virani, in his Oct 25 submission to the Senate's Study on Bill S-13, *An Act to amend the Interpretation Act*, noted that the passage of the bill would be a successful completion of one of the UNDA APMs.
- B. Multiple APMs: The Department of Justice has launched its consultations, consistent with the *United Nations Declaration on the Rights of Indigenous Peoples Act*, on possible reforms to the *Security of Information Act*, *Criminal Code* and *Canada Evidence Act*.
- C. SP-APM #52: Immigration, Refugees, and Citizenship Canada (IRCC) and the Canada Border Services Agency have begun engaging with Indigenous peoples on UNDA NAP APM SP52 regarding federal legislative changes to the right to enter and remain in Canada.
- D. SP-APM #9: Federal Pathway to address the root causes of violence against Indigenous women, girls, and 2SLGBTQI+ people underway.
- E. SP-APM #10: Development of a National Gender-Based Violence Action Plan.
- F. SP-APM #13: Bill S-250 at consideration in committee of the Senate
- G. SP-APM #28 Canada and Indigenous-led engagements re. Finalizing the Indigenous Justice Strategy is underway.
- H. SP-APM #46. Canada is coordinating the development of the Indigenous Climate Leadership Agenda.
- I. FN-APM #7: Bill C-38, which seeks to address discrimination in the registration and membership provisions of the *Indian Act* is currently in Second Reading.
- J. FN-APM #8: ISC is establishing an Indigenous Advisory Process to guide First Nations engagement on reforms relating to registration and band membership issues.
- K. FN-APM #11: ISC has begun engaging with rights holders in the scope of the FNHC authority.
- L. FN-APM #17: *An Act Respecting First Nations Water and Wastewater Act*, is being proposed.

#### **FNLC INVOLVEMENT:**

On Feb 16<sup>th</sup>, 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 4<sup>th</sup>, 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 partial fulfilment of the guiding principles of the UNDA NAP, the FNLC and the Department of Justice have 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, 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 TORs will be shared with members.

## **ANALYSIS**

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 the BC region across the 180+ APM measures.

As identified previously, APMs are currently being actioned across Departments at the federal level, 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 in BC 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 as to how Canada is seeking First Nations free, prior and informed consent in the development and implementation of APMs and alignment of laws initiatives.

The BC region has its own interests and experience co-developing UNDRIP legislation at the provincial level, which is distinctive from other regions and necessitates a BC-specific approach to UNDA implementation. Within this context, it is critical to develop defined processes to support the participation of First Nations in BC in implementing the UNDA NAP.

FNLC policy and legal staff have developed draft Terms of Reference for both the political and technical bilateral tables, under the LOU, which would permit the FNLC to actively participate in the implementation of the UNDA NAP, including:

- A. Identifying priorities and collaboratively developing legislation to achieve the consistency of the laws of Canada with the UN Declaration.
- B. Identifying priorities and collaboratively implementing NAP measures.
- C. Consulting and cooperating in the development of annual reports on progress.
- D. Reviewing and amending the NAP on a regular basis.
- E. Directing technical work for specific UNDA NAP measures or implementation matters as required; and
- F. Facilitate dialogue with First Nations in BC on the implementation of the UNDA.

These proposed measures are currently under review with the Department of Justice.

### **AFN CHIEFS COMMITTEE ON THE UN DECLARATION ACT**

Through executive motion at the AFN Executive Committee, the AFN established an Ad-Hoc Chiefs' Committee on the UN Declaration to ensure that First Nation priorities were being advocated for during the development of the UNDA Action Plan. The Ad-Hoc Committee's mandate expired after the July 2023 AFN Annual General Assembly.

On December 5<sup>th</sup>, 2023, the First Nations-in-Assembly passed resolution no. 78/2023 to 1) transition the Ad-Hoc Chiefs' Committee to become a standing Chiefs' Committee on the *United Nations Declaration on the Rights of Indigenous Peoples Act*, and 2) direct the AFN Executive Committee to appoint, and in some cases reappoint, existing members as needed, to the Chiefs' Committee on the UNDA, in accordance with Article 7 (3) of the AFN Charter, to provide advice and direction on matters relating to the implementation of the UN Declaration.

BCAFN Regional Chief Terry Teegee holds the portfolio lead for the UNDA file. Letters from Regional Chief Teegee to fellow Regional Chiefs have gone out seeking regional appointments to the committee.

### **FUNDING FOR FIRST NATIONS**

Justice Canada launched their *Indigenous Partnership Fund Call for Proposals* to support consultation and cooperation between the Government of Canada and Indigenous partners on:

- Measures to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples;
- Implementation of the UN Declaration Act Action Plan to achieve the objectives of the UN Declaration;
- The development of annual reports on progress.

The deadline to submit applications passed on January 30, 2024, but the FNLC is continuing to advocate for additional funds to support First Nation's capacity to participate in the implementation of the UNDA.

**NEXT STEPS**

1. Finalize TORs for the BC-Specific Bilateral Tables on UNDA
2. Develop Workplan/Timeline/Engagement Plan for BC-Specific UNDA Implementation Plan Priorities