



ASSEMBLY OF FIRST NATIONS

IMPLEMENTING THE UN DECLARATION

First Nations Essential Elements

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IMPLEMENTING THE UN DECLARATION

First Nations Essential Elements

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INTRODUCTION

This document outlines the minimum essential elements that the Assembly of First Nations (AFN) expects Canada to include in the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) Action Plan. These elements are measures that Canada should take to implement the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and are grounded in the mandates set by First Nations-in-Assembly, which the AFN works to fulfil.

The requirements set out in this report are focused on a principled, rights-based approach to implement the UN Declaration that supports the self-determination of every First Nation and the exercise of First Nations' inherent jurisdictions, rights, and title. Nothing in this document should be read to imply any limitation or barrier to the right of each and every First Nation to determine implementation measures of their own and/or to advance such measures in direct negotiation with the Crown. Rights-holders are those who lead.

AFN Mandates

- Resolution 97/2017, *Support for Bill C-262, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*
- Resolution 86//2019, *Federal Legislation to Create a Framework for Implementation of the United Nations Declaration on the rights of Indigenous Peoples*
- Resolution 17/2021, *National Action Plan to Implement the United Nations Declaration on the Rights of Indigenous Peoples*
- Resolution 12/2022, *Call for Full First Nations Participation in the Implementation of the UN Declaration*
- Resolution 13/2022, *First Nations Priorities to Guide the Crown's Implementation of the UN Declaration on the Rights of Indigenous Peoples*
- Resolution 20/2023, *United Nations Declaration on the Rights of Indigenous Peoples Act Draft National Action Plan*



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BACKGROUND

Canada's action plan to implement the UN Declaration must be rights-based and committed to respecting the Inherent nature of First Nations rights and title. Resolutions adopted by First Nations-in-Assembly are absolutely clear that any measures to implement the UN Declaration in Canada must build on, and in no way limit, the minimum standards set out in the UN Declaration itself or the rights of First Nations affirmed in our own laws and in Treaties and other agreements entered into with the Crown. Anything else is inconsistent with the requirements of the UN Declaration, the legal commitments set out in the UNDA, the Nation-to-Nation relationship between First Nations and the Crown, and the Honour of the Crown.

The AFN expects the Department of Justice (DOJ) to advance longstanding priorities of First Nations through the action plan, including by:

- Framing federal obligations through the lens of international law;
- Establishing concrete federal commitments that will be subject to First Nations-led collaborative review and reporting;
- Moving away from short-term planning based on federal political imperatives and annual budget cycles;
- Promoting better coordination and cohesion across government departments and programs; and
- Providing clear direction to all government departments and agencies that they are expected to work in *consultation and cooperation* with First Nations.

THE UN DECLARATION ACT

The UNDA requires the federal government to work “in consultation and cooperation” with Indigenous Peoples to “prepare and implement an action plan to achieve the objectives of the *Declaration*.”



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The text of the Act sets out several other important requirements that Canada must consider in the context of the Action Plan:

Consultation and Cooperation: The Expert Mechanism on the Rights of Indigenous Peoples, the independent body established by the UN to help interpret the *Declaration* and other human rights standards, has said that the “combined term” of consultation and cooperation reflects the right of Indigenous Peoples “to influence the outcome of decision-making processes affecting them, not a mere right to be involved in such processes or merely to have their views heard.”

In the AFN’s view, “consultation and cooperation” must be interpreted in the context provided by the UN Declaration itself, which affirms Indigenous Peoples’ Inherent right to self-determination and the corresponding obligation of states to enact laws, policies, and other administrative measures only with First Nations free, prior, and informed consent (for example, Article 18).

Consistency: The Act states that the Government of Canada “must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the *Declaration*.”

In the AFN’s view, the term “laws of Canada” includes not only the legislation passed by Parliament, but also all regulations and policies through which Acts are applied.

This provision does not include a specific mechanism or timeline for achieving consistency. It is understood, therefore, that consistency is an immediate obligation applicable to the operations of all government departments. This requirement of consistency necessarily applies to the creation and implementation of the Action Plan.

Accountability: The Act requires annual reporting to Parliament—in consultation and cooperation with Indigenous Peoples—on measures taken to implement the *Declaration*. In addition, the Act specifically requires the federal government to create “other accountability measures” including “measures related to monitoring, oversight, recourse or remedy.” These other accountability measures are not detailed in the Act itself. The Action Plan is an opportunity for the federal government to commit to additional measures and/or a process for developing such measures in consultation and cooperation with First Nations.



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Timespan: The Act does not specify the duration or timespan of the Action Plan that must be tabled this year. The Act does specify that the plan must include measures for monitoring its implementation and for reviewing and amending the plan.

This implies that the government cannot simply adopt a one-time, fixed-term action plan. If the action plan has a time duration—for example, if it's a three- or five-year plan—Canada must commit to creating a subsequent plan. Furthermore, during the life of the plan, collaborative processes must exist for the action plan to be reviewed and updated as required.

THE PROCESS TO DATE

The AFN has raised several significant issues with Canada's process to develop the Action Plan.

Canada's action plan process has consisted primarily of making a small amount of funding available to Indigenous Peoples' organizations wanting to undertake research, policy development, or engagement processes of their own. The AFN has consistently called for more funding to be made available on an expedited basis, as the current approach to participation is inadequate and the program has been over-subscribed by First Nations since its inception.

The DOJ unilaterally imposed a funding methodology for the participation of First Nations and unilaterally decided which organizations received funding. The AFN was not included in decisions related to funding methodology and allocation and the DOJ has not been forthcoming about their decision-making process. This has undermined First Nations' trust in the overall process.

Canada's confidentiality processes and procedures significantly contributed to an opaque process that made it difficult for First Nations to work in collaboration. As a result of confidentiality barriers imposed by the DOJ, broader engagement between First Nations and First Nations organizations was limited.

Lastly, the Action Plan process was developed largely without First Nations input, which has resulted in a department-led approach that favours government time-lines and processes. The DOJ resisted the AFN's input into both the process and



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the Action Plan itself. The draft Action Plan reflects this approach, as it is a document that is largely focused on achieving and reframing the government's existing initiatives instead of First Nations priorities and First Nations-led measures that will implement the UN Declaration.

THE PROCESS GOING FORWARD

First Nations and the Assembly of First Nations expect Canada to approach its relationship with First Nations in a distinctions-based Nation-to-Nation manner. The federal government must move away from the status-quo approach of developing initiatives first and consulting First Nations later.

Moving forward, the Action Plan process must take a new approach. All First Nations must be given the opportunity to participate in developing and amending the Action Plan. Canada must commit to an ongoing process to evaluate and update the Action Plan, not based on government priorities, but instead based on the perspectives and input of First Nations.

The contents of the requirements to consult and collaborate with First Nations must be built out through a First Nations-led process and Canada must commit to abide by First Nations conceptions of consultation and cooperation.



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SELF-GOVERNANCE, SELF-DETERMINATION AND THE RECOGNITION OF TREATIES

Summary:

These themes are meant to address articles 3, 4, and 37 of the *Declaration*. These articles speak to the fundamental rights to determine political status and freely pursue economic, social, and cultural development. In exercising these rights, autonomy or self-government is key, and processes are necessary to exercise them effectively. Treaties are raised in Article 37 as arrangements that states must “honour and respect.” The draft Action Plan does not commit to substantive rights in these areas and fails to honour and respect historic treaties.

Necessary Outcomes from Canada’s Action Plan

Canada’s Action Plan must be focused on achieving the following outcomes:

- First Nations are self-governing, self-determining Nations whose Inherent rights, title, and jurisdiction is respected and fully implemented.
- All Treaties and agreements between the Crown and First Nations are fully respected and upheld in a manner consistent with First Nations perspectives and the UN Declaration.
- Fiscal self-determination provides the stability and appropriateness of funding necessary to enable capacity growth, greater sustainability of programs, and service delivery success. This moves First Nations away from the federal government managing poverty to First Nations managing prosperity.



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AFN Essential Elements Required in Canada's Action Plan

To meet the minimum standards under the UN Declaration, Canada's Action Plan must include the following elements:

Jurisdiction and Control over First Nations Lands, Territories and Resources

- Canada must formally repudiate racist doctrines (such as the doctrines of discovery and *terra nullius*) used to assert Crown sovereignty over First Nations' lands.
- Canada must repeal the Comprehensive Land Claims Policy (CLCP) and Inherent Right to Self-Government (IRSG) Policy and commit to working with all First Nations to develop rights-based approaches that fully recognize and facilitate First Nations' self-determination.
 - Any requirement that extinguishes or exchanges rights must be abandoned.
 - Any focus on "certainty and predictability" must be abandoned, along with any concepts that are not directed at fulfilling First Nations rights but instead prioritize non-First Nations interests.
 - Canada must adopt a preference for rights recognition negotiations over litigation, with litigation being the action of last resort.
 - Federal negotiators must be provided mandates that are consistent with the UN Declaration.
 - Canada must follow the "living tree" constitutional doctrine and depart from taking positions that "freeze" rights and title at the point of contact.
 - First Nations must be able to freely determine whether settlement lands are recognized as section 91(24) lands, rather than being automatically designated as fee simple lands.
- Canada must develop federal policies, laws, and principles that fully recognize First Nations' jurisdiction over their lands, territories, and resources without qualification, including:



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- Policies to consult and cooperate that are robust and responsive to First Nations positions and perspectives, and are consistent with the requirements of the UN Declaration, including respecting First Nations rights to free, prior, and informed consent.
- Nation-to-Nation processes that are fair, transparent, flexible, fully funded, consistent with the Honour of the Crown, and fully mandated to address First Nations priorities, including the recognition of First Nations lands, territories, and resources.

New Fiscal Relationship

- Canada must maintain the option for First Nations to access the New Fiscal Relationship Transfer as an alternative to funding through contribution agreements.
- Canada must work with the AFN and First Nations to continue to expand and improve the NFR Transfer, including by expanding eligibility to First Nations aggregates, such as Tribal Councils and Health Authorities.
- As called for by the Joint Advisory Committee on Fiscal Relations, Canada must adopt a co-developed accountability framework to measure and report on progress in closing socio-economic gaps for First Nations.
- Canada must Repeal the Default Prevention and Management Policy (DPMP) and institute a collaborative approach that supports First Nations capacity development and mutual accountability while respecting the rights and authority of First Nations.

Data Sovereignty

- Canada must ensure Ownership, Control, Access, and Possession (OCAP®) principles are upheld in all First Nations initiatives.
- Canada must support First Nations to develop First Nations-led data standards and systems for First Nations Health Care Data, including to:
 - Uphold and operationalize First Nations principles of OCAP®.
 - Address the current patchwork of local, provincial, and federal health data.
 - Adhere to the right of Free, Prior and Informed Consent.



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- Indigenous Services Canada (ISC) must meet its commitment, as per Canada's National Action Plan on Open Government 2022-24, to collaborate with Indigenous Peoples and external stakeholders to create a data-sharing policy that would facilitate data-sharing with Indigenous governments and organizations and their partners, while addressing key governance issues, such as protecting confidentiality of community-level information.
- Canada must work in consultation and cooperation with Indigenous partners to protect Indigenous arts, traditional knowledge, and cultural expressions, including through the exploration of specifically adapted legislative protection and potential amendments to the *Patent Act*, the *Copyright Act*, and the *Trademarks Act*.



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ECONOMIC, HEALTH, AND SOCIAL RIGHTS

Summary:

This theme is intended to address articles 20, 21, 22, and 23 of the *Declaration*. These articles carry great potential for transformational change to economic and social systems—especially when taken in conjunction with other rights related to lands and resources. These articles recognize rights to development and offer the potential for non-discriminatory improvement of social conditions, in particular to recognize and address the needs of vulnerable groups. The draft Action Plan as it relates to the themes of Economic and Social Rights will not lead to the type of transformation that proper implementation of the UN Declaration requires.

Necessary Outcomes from Canada's Action Plan

Canada's Action Plan must be focused on achieving the following outcomes:

- Every First Nation has a thriving local economy, the fiscal capacity to exercise their jurisdictions, and the means to participate fully within the global economy in the manner they see fit.
- First Nations freely determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
- All First Nations individuals, from their earliest days, are instilled with an unassailable sense of hope, purpose, meaning and belonging, and therefore can pursue unique and priority means to life promotion and growth through cultural, spiritual, linguistic, artistic, educational, sport- and land-based means.
- Healthy, safe, and sustainable First Nations are supported by an inclusive, holistic, and culturally-based, social development system that promotes First Nations control and jurisdiction.
- Each First Nation has the right and responsibility to set their own housing vision for the future. As stated in the National First Nations Housing and Related Infrastructure Strategy (the Strategy), our vision is "Responsive, innovative housing governance systems that support First Nations transitions to care, control, and management of housing and related infrastructure."
- Canada recognizes that the homelessness crisis facing First Nations is an emergency, and urgently and immediately responds by making every effort to



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ensure that funding that has already been committed and allocated for First Nations distinctions-based homelessness responses under Canada's national homeless strategies can reach First Nations without delay.

- First Nations housing and all community infrastructure is at the same level as the rest of Canada, and helps to prevent homelessness. First Nations have the capacity to house and support First Nations citizens experiencing homelessness both within and away from their communities, including those experiencing homelessness off-community who wish to return to their communities.

AFN Essential Elements Required in Canada's Action Plan

To meet the minimum standards under the UN Declaration, Canada's Action Plan must include the following measures:

- Canada must review federal funding arrangements and policies to address issues of chronic underfunding and the intergenerational inequities caused by this long-standing policy approach.

Agriculture & Aquaculture

- Canada must support First Nations food security, sovereignty, and sustainability through:
 - funding and other program measures.
 - promoting food-focused research to better understand the intersection of First Nations food security, sovereignty, and sustainability.
 - promoting trade in First Nations food products and removal of barriers to that trade.
- Canada must consult and cooperate with First Nations to co-develop national aquaculture legislation that affirms the Inherent rights and title of First Nations and provides a framework and structure of support for First Nations to freely chose to implement their own jurisdiction in respect of aquaculture and to grant or withhold their free, prior, and informed consent for the issuing and cancelling of leases and licences in their territories.



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- Canada must provide funding to First Nations to participate equally in co-development, engagement, and implementation processes.

Procurement & Labour Market

- Canada must reaffirm First Nations jurisdiction over the governance of skills training and employment services and programs for their citizens, regardless of residency.
- Canada must increase First Nations procurement opportunities and benefits to meet and exceed the current 5% target.
- Canada must implement changes to policies that incorporate First Nation recommendations.
- Canada must implement the Indigenous Business Definitions once concluded by the National Indigenous Procurement Working Group in all Federal Government programs.
- Canada must reinstate the Canada Summer Jobs program for funding to flow through First Nations Labour Market Agreement holders and increase investments for First Nations youth training and employment.

Connectivity & Digital Infrastructure

- Canada must invest and take actions to ensure all First Nations and their citizens have connectivity that meets the minimum standard of 50/10 megabytes per second (Mbps) target set by the Canadian Radio-television and Telecommunications Commission (CRTC) by 2030, including futureproof, scalable connectivity infrastructure.
- Canada must ensure all First Nations and their citizens have spectrum access and affordable high-speed connectivity to ensure First Nations and their citizens are universally connected to high-speed connectivity.
- Canada must eliminate funding inequities between provincial health agencies, First Nations health organizations, and communities who continue to face challenges with care coordination due to their lack of digital health infrastructure.
- Canada must create funding solutions that are meaningful and sustainable.



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- Canada must support First Nations health organizations to adopt and sustain use of digital health tools.

Health

- Canada must work with First Nations to develop policies and mechanisms to ensure fair and equitable funding for First Nations health and wellness funding, based on First Nations population, the real cost of service delivery in First Nations, the right to substantive equality, and the urgency of eliminating all discriminatory barriers to accessing high quality, culturally appropriate health-care, no matter where First Nations individuals live.
- Canada must work with First Nations to adopt distinctions-based Indigenous health legislation consistent with First Nations Inherent and Treaty rights and the UN Declaration. To achieve successful outcomes, the co-development process must:
 - Recognize the right to self-determination and Inherent right of self-government to determine preferred health care models.
 - Ensure that First Nations' specific regional health landscapes are considered.
 - Respect First Nations directions on how legislation will embed Inherent, Treaty and international obligations, including direction about the non-derogation, non-abrogation, and non-prejudicing of Inherent rights and rights protected by Treaty.
 - Allow and ensure an opt-in basis transfer of service delivery, capacity, and jurisdiction.
 - Create a mechanism for increased, stabilized statutory funding for First Nations.
 - Achieve clarity on the role of provinces and territories.
- Canada must work with the AFN to determine the scope of refurbishment, and most effective processes to meet the 2026 deadline to implement the *Accessible Canada Act* by First Nations.



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- Canada must adopt a resourced and whole-of-government approach to ensure coordination across all relevant government departments to support First Nations to overhaul buildings, homes, and all public services to accommodate the needs of citizens living with all forms of disabilities.
- Canada must invest in mental health and wellness strategies co-developed with First Nations and enable systems change.
- Canada must co-develop reforms to the Assisted Living and Home and Community Care Programs on-reserve to reflect a Seven Generations Continuum of Care approach.
- Canada must work with First Nations to greatly increase resources and support for regionally and locally based programs and services in the following areas:
 - Treatment centres for substance misuse;
 - Midwifery and birthing;
 - Assisted living and allied health services (e.g., occupational and physical therapy);
 - Palliative and end-of life care; and
 - Standard health interventions and diagnostics.

First Nations Child and Family Services

- Canada must continue its commitment to long-term reform of the First Nations Child and Family Services (FNCFS) Program and implementation of the *Act Respecting First Nations, Inuit and Métis children, youth and families* (the Act) that is centred on First Nations rights to self-determination over services for their children and families, with the ultimate goal of improving the well-being of First Nations children, families, and communities for generations to come. Critical reforms include:
 - Making long-term, sustainable investments in First Nations planning, capacity building and transitions to ensure that First Nations are supported to take on control and determination over the FNCFS Program.



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- Ensuring that First Nations establishing their own laws and programs under the Act are not provided with less funding than they would have received had they remained under the reformed FNCFS Program.
- Providing funding to First Nations to explore options to assert their jurisdiction under the Act or other mechanisms, including funding to research, engage, draft, and implement laws.

Jordan's Principle

- Canada must work with First Nations on a long-term approach to implement Jordan's Principle fully and properly, consistent with First Nations control and jurisdiction over Jordan's Principle.
- Canada must make long-term, sustainable investments in First Nations planning, capacity building, and transitions to ensure that First Nations are supported to take on control and determination over Jordan's Principle how and when they wish to do so.
- Canada must address all gaps in federal programs and services for First Nations, and work with provinces and territories to address persistent gaps in provincial/territorial programs and services to guarantee First Nations children can access needed supports without delays or denials.

Income Assistance & Poverty Reduction

- Canada must commit to work with First Nations to establish income assistance rates reflective of costs of living in First Nations, rather than utilizing rates that are established by the provinces.
- Canada must increase funding for administrative capacity, data capacity, and programming for First Nations, and support the phased implementation of programming and sustainable funding agreements to allow for First Nations to assume full care and control over the Income Assistance Program on their own terms.
- Canada must work with First Nations to co-develop First Nations specific indicators of poverty and well-being and provide funding for First Nations to collect and store data on these indicators.
- Canada must work with First Nations to co-develop a First Nations-specific Poverty Reduction Strategy, accompanied by sustainable funding to alleviate



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poverty in First Nations.

- Canada must undertake further social program reform to include housing, health, disability programming, economic development and more for a full-some First Nations social safety net.

Housing and Homelessness

- Canada must urgently commit to fully address the First Nations housing crisis to ensure that First Nations citizens can access adequate housing within their communities to prevent migration—caused by a lack of housing and other supports—away from communities, which form the center of sovereignty, jurisdiction, and nationhood as dedicated land bases for many First Nations.
- Canada must ensure First Nations have access to adequate, sustained funding to strengthen local and regional capacity to develop First Nations-led service delivery and funding administration for homelessness programming across the country.
- Canada must work with the AFN to enable transfer of funding control for First Nations homelessness, currently under the national Reaching Home strategy, to be transferred to programs and processes that are controlled by, and directly accountable to, First Nations.
- Canada must work jointly with First Nations to realize the co-developed First Nations housing vision whereby First Nations gradually assume full control of their housing systems.
- Canada must work with First Nations to co-develop all federal government housing initiatives from the outset, including new or revised programs, to ensure First Nations-exclusive carve-outs of programs of general application.
- Canada must co-determine with First Nations how to direct the use of the almost \$4 billion investment for on-community housing announced in 2022.
- Canada must publicly acknowledge the scope of the housing challenge, and commit multi-year, phased implementation of the estimated investment of \$135.1 billion to close the housing gap by 2030, and ensure that additional



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corresponding investments are made so that community infrastructure keeps pace with new housing.

- Canada must ensure First Nations continue to have low-cost loan options for social housing like Canada Mortgage and Housing Corporation's Direct Lending.
- Canada must fully support First Nations housing governance, management, information sharing, skills development, and capacity needs.
- Canada must support the creation of a National First Nations Housing Policy & Research Centre.
- Canada must work with First Nations through a distinctions-based process to co-develop federal roles and responsibilities to support First Nations strategies to address the housing needs of First Nations citizens living off-community, including First Nations control of all funds committed to that purpose and intended to benefit First Nations citizens no matter where they live.
- Canada must clarify and strengthen departmental/agency transfer of control negotiating mandates.
- Canada must work to ensure Minister's mandates include the means to increase transparency and strengthen partnerships by suspending Cabinet secrecy rules to allow co-drafting housing-related Memoranda to Cabinet with First Nations.

Infrastructure and Drinking Water

- Canada must co-develop with First Nations a First Nations institution to manage delivery of multi-year infrastructure funding to First Nations.
- Canada must ensure policies and solutions related to access to clean and reliable drinking water, adequate wastewater, and safe and sustainable community infrastructure are First Nations-led and developed.
 - Such policies must recognize First Nations interests and rights to water and must support the real cost of service delivery in First Nations, the right to substantive equality, and the urgency of eliminating the infrastructure gap.



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- Canada must recognize the UN-affirmed right to water and sanitation and ensure that all First Nations have access to safe, clean, reliable, and sufficient drinking water and adequate wastewater by ensuring minimum standards, establishing long-term and sustainable funding commitments, supporting strong First Nations water governance institutions, ending all drinking water advisories, and providing support for the transition of care and control of water and wastewater programs, services, and funding to First Nations entities and organizations.
- Canada must work with First Nations and the AFN to co-develop a federal Strategy and Implementation Plan to close the Infrastructure Gap by 2030, which prioritizes First Nations-led community development and visioning.
- Canada must transfer significant financial support that is representative of the actual life-cycle costs of infrastructure to First Nations to ensure the long-term successful transition of care and control of infrastructure programs and services, allowing for the innovation and creation of new programs and services that are First Nations-led and developed.
- Canada must co-develop with First Nations at least 20–30-year infrastructure investment commitments so First Nations can properly plan and deliver housing, education, healthcare, connectivity, and other capital buildings and services to meet their communities' needs.



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CIVIL AND POLITICAL RIGHTS

Summary:

This theme is meant to address articles 6, 7, 9, 17, 33, 35, and 36 of the *Declaration*. The term “civil and political rights” usually refers to individual rights in relation to government, or “rights of a citizen”. As such, the AFN is honing in on the topic of **membership and citizenship** as a focus area under this theme. The AFN heard in regional engagement sessions that control over membership is a priority area.

Necessary Outcomes from Canada’s Action Plan

Canada’s Action Plan must be focused on achieving the following outcomes:

- First Nations who wish to disengage and opt out of the Indian Act can develop and implement governance regimes and citizenship laws in accordance with their own customs and traditions.
- First Nations’ jurisdiction is fully and meaningfully affirmed and enforced to restore and implement First Nations traditions, laws, and legal orders.
- A wholistic system of healing exists to address intergenerational trauma caused by acts of genocide and to promote healthy, prosperous, and safe First Nations communities.
- Effective measures are in place so that all First Nations Peoples are safe, secure, and equal before the law.

AFN Essential Elements Required in Canada’s Action Plan

To meet the minimum standards under the UN Declaration, Canada’s Action Plan must include the following measures:

Citizenship

- Canada must immediately cease tabling any *Indian Act* amendments until all First Nations have been adequately consulted and have received sufficient resources to engage with their community members.



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- Canada must provide adequate funding for all First Nations to engage with their community members on the transition away from the *Indian Act* membership system, including establishing and operating their own citizenship laws and processes.
- Canada must eliminate the second-generation cut-off provision in the *Indian Act* and work with First Nations to ensure all remaining impacts of gender discrimination arising from the *Indian Act* are acknowledged and addressed by the Government of Canada.

First Nations seeking to create a Band or New Reserve

- Canada must create a senior officials or Ministerial level table, including impacted AFN-recognized First Nations, to provide a political mechanism capable of mobilizing federal departments to identify and implement targeted solutions to the challenges faced by AFN-recognized First Nations seeking recognition and/or to create a new reserve.
- Canada must remove arbitrary procedural and policy barriers, such as the cost neutrality principle in the New Bands/Band Amalgamation Policy (NBBA), that hinder the recognition of First Nations rights and the creation of a new band or reserve.
- Canada must ensure a transparent, clear, and co-developed process to recognize and create new reserves that upholds the requirements of the UN Declaration and all applicable principles of international and domestic law, and that is consistent with the Honour of the Crown.

Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ (2-Spirit [Two Spirit], lesbian, gay, bisexual, trans, queer, questioning, intersex, asexual)

- Canada must take measures to eliminate violence against Indigenous Women, Girls and 2SLGBTQQIA+ peoples through actions taken to address all socio-economic factors, including equitable access and self-determination over land, culture, language, housing, child care, income security, employment, education, and physical, mental, sexual, and spiritual health.
- Canada must ensure that culturally appropriate, culturally safe, and long-term “wrap-around” services are available for families and survivors, including:



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- Accessible toolkits on what actions to take when experiencing violence or when a loved one goes missing or is murdered;
 - Mental health and grief supports;
 - access to First Nations legal advocates to provide advice on police procedures and the legal system, and to accompany survivors when providing evidence and giving statements;
 - supports for survivors of family violence (safe houses, financial aid, transportation, and legal advice);
 - community-based spaces to increase access to justice; and
 - land-based healing supports.
- Canada must fund and work with First Nations to create an independent National Investigative Taskforce to review or reopen cold case investigations involving First Nations women, girls, and 2SLGBTQIA+ People.
 - Canada must ensure First Nations men and boys have access to culturally appropriate, long-term programs and supports to break cycles of intergenerational trauma, including personal counselling and therapy, cultural traditions, role models, and mentoring.
 - Canada must work with First Nations to revitalize, respect, and uphold First Nations traditional and customary laws within the Canadian legal system and by policing and enforcement services.
 - Canada must establish a National Indigenous Human Rights Ombudsperson and National Indigenous Human Rights Tribunal.
 - Canada must increase funding for First Nations justice initiatives and restorative justice, and culturally appropriate victim offender treatment programs.
 - Canada must create independent, third-party oversight bodies for all police forces across the country, which are accountable to the First Nations and First Nations citizens they serve.

Residential Institutions

- Canada must ensure all records, information, and documents pertaining to Residential Institutions are disclosed to First Nations and commit to search



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and release all records and related materials in all Catholic and government archives, including the Vatican archives, related to Residential Schools and child/student deaths in church-run school facilities, and all related burials.

- Canada must provide adequate funding and support to First Nations to conduct ground searches and recovery efforts at former Residential Institution sites, and to ensure proper protocols are followed.
- Canada must provide adequate funding and resources for First Nations to develop culturally appropriate, long-term healing and commemoration programs.
- Canada must fully comply with all the TRC Calls to Action related to providing plot maps, locations of deceased children, collaboration with private landowners as needed, and reburial of remains in home communities as requested. This includes financial compensation to fully comply with the financial obligations of the Indian Residential Schools Settlement Agreement and for ongoing education, cultural, linguistic, and spiritual reclamation efforts.
- Canada must provide financial and technical assistance to implement the Calls to Action and address the legacy of Indian Residential Institutions.

First Nations Policing

- Canada must co-develop First Nations policing legislation that recognizes First Nations policing as an essential service and First Nations jurisdiction over police services.
- Canada must provide funding for First Nations police services that is sufficient to provide services equitable to those received by non-Indigenous peoples in Canada.

Restorative Justice

- Canada must establish a First Nations component of the federal government's Indigenous Justice Strategy (IJS).
- Canada must work to mitigate the inequities First Nations face in Canada's justice system.
- Canada must assist First Nations in the reclamation of their traditional legal and justice systems.
- Canada must provide adequate funding to support regional and community-based, self-administered, wholistic approaches to justice that are grounded



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in First Nations principles, protocols, laws, and traditions.

LANDS, RESOURCES AND TERRITORIES; AND ENVIRONMENT

Summary:

These themes are intended to cover articles 10, 26–30, and 32 of the UN Declaration. These articles carry great potential for transformational change to uphold First Nations jurisdiction and spiritual and cultural relationships to lands, territories, resources, and the environment. They recognize First Nations right to their lands/territories and to conserve and protect the environment. They require states to consult and cooperate in good faith to obtain First Nations free, prior, and informed consent before any projects can be authorized on First Nations lands/territories. The transformational promise of these articles is not reflected in the draft Action Plan.

Necessary Outcomes from Canada's Action Plan

Canada's Action Plan must be focused on achieving the following outcomes:

- First Nations have access to sufficient lands, territories, and resources to meet the existing and future needs of their Peoples.
- First Nations are freely able to exercise Inherent jurisdiction and control over their lands, territories, and resources, including control over developments affecting them and their lands, territories, and resources.
- First Nations own, use, develop, and control the lands, territories, and resources they have traditionally owned, occupied or otherwise used or acquired.¹
- First Nations' right to the conservation and protection of their environment and productive capacity of their lands and resources is fully respected and implemented through, among other necessary measures, assistance programs for such conservation and protection.²
- Hazardous materials are not stored or disposed of in First Nations' territories, lands, and waters, without their free, prior, and informed consent.³

1 UNDRIP, *supra* note 12, Article 26.

2 *Ibid*, Article 29.

3 *Ibid*, Article 29(2).



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- First Nations are supported to govern, steward, and manage their inland and marine waters in a manner that recognizes their Inherent and everlasting responsibilities, to rebalance our relationship with all of Creation.

AFN Essential Elements Required in Canada's Action Plan

To meet the minimum standards under the UN Declaration, Canada's Action Plan must include the following measures:

Natural Resources

- Canada must support First Nations' engagement and meaningful involvement in decisions, planning, and processes that pertain to natural resources development that result in:
 - Strong and functional relationships and engagement protocols with federal, provincial, and territorial governments involved in resource planning, harvesting, and/or other extractive industries.
 - Tools built and disseminated to support information sharing among First Nations, industry, and financial institutions interested in major projects.
 - Commitment to obtaining the free, prior, and informed consent of First Nations before any resource development initiatives on First Nations lands and traditional territories.
 - Agreements to share with First Nations those revenues generated by resource development at levels fairly reflecting the generative potential of projects, as well as the impacts of resource extraction activities on other elements of First Nations' lands and livelihoods.

Indigenous Fisheries Laws and Policies

- Canada must consult and cooperate with First Nations to establish effective mechanisms and processes to address systemic racism in the enforcement of fisheries laws and regulations by the Department of Fisheries and Oceans (DF), Royal Canadian Mounted Police (RCMP), and other federal agencies.
 - Canada must create an independent oversight mechanism able to investigate violations of First Nations rights and compel appropriate action.
 - Such a mechanism must be independent of the agencies responsible for enforcement.



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- Canada must consult and cooperate with First Nations to conduct a five-year review of the 2019 *Fisheries Act*.
 - Canada must focus on data sharing, ability to adopt and enforce First Nations laws and regulations, and other cooperative relations between federal agencies and First Nations.
- Canada must provide funding for First Nations to explore options to develop a National Secretariat to implement First Nations fishing rights consistent with the UN Declaration.

Climate Action

- Canada must adopt urgent and transformative climate action that meets the requirements outlined in the reports by the Intergovernmental Panel on Climate Change (IPCC) and Canada in a Changing Climate (2019) to reduce emissions in Canada by 60% below 2010 levels by 2030 and reach net-zero emissions by 2050.
 - Canada must work with First Nations to develop a First Nations-led climate strategy to achieve the objectives above and simultaneously address income inequality within First Nations as part of the mobilization for a just transition.
- Canada must support all efforts to improve First Nations' full and effective participation in the United Nations Framework Convention on Climate Change (UNFCCC).
 - Canada must provide needs-based financial support for all First Nations to participate in UNFCCC processes.
- Canada must invest in capacity building for First Nations to identify, document, and implement self-determined solutions for the rapidly evolving impacts of climate change, including, but not limited to, emergency management, pandemic planning, and developing and implementing adaptation plans that assist First Nations in building resiliency to a changing climate.
 - Canada must fund the creation of a national network of First Nations climate and emergency coordinators at the community and regional levels to conduct resilience and self-sufficiency planning for future environmental catastrophes.



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- Canada must fund the creation of a First Nations Climate Institute, broadly responsible for expert support, facilitation, and coordination for First Nations-led climate initiatives.

Conservation and Biodiversity

- Canada must consult and cooperate with First Nations in all legislative, regulatory, policy, and program decisions related to conservation, particularly the creation of conservation areas and other protected areas; support the full and effective participation of Indigenous Knowledge holders in such processes; and ensure that traditional land use and cultural practices are protected and prioritized in the decision-making process.
- Canada must ensure processes include adequate and representative inclusion of Indigenous voices and individuals in advisory bodies, including but not limited to the First Nations Nature Table, Pathway National Steering Committee, Indigenous Stewardship Framework, and other relevant guidance and working groups.
- Canada must support First Nations-led conservation efforts, including the establishment and maintenance of Indigenous Protected and Conserved Areas (IPCAs) and Guardian programs, and the exploration of ecosystem services and nature-based climate solutions.
- Canada must work collaboratively with First Nations to review, and where necessary, amend and/or create legislation, policies, mandates, tools, and institutional support required for the legal recognition of IPCAs, taking into consideration the spectrum of IPCA governance models.
- Canada must support the establishment of a First Nations Nature Table to act as a technical body to interface between First Nations and all relevant government departments on the design and implementation of Canada's National Biodiversity Strategic Action Plan and Nature Agenda, as well as the implementation of the Kunming-Montreal Global Biodiversity Framework, in a manner that addresses, promotes, and respects First Nations' self-determined nature priorities.

Environmental Health and Food Sovereignty

- Canada must consult and cooperate with First Nations to identify and co-develop necessary reforms to laws, policies, regulations, and programs to close the long-standing gaps in environmental protection on First Nations lands and



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address issues regarding First Nations food security, including the full recognition of First Nations Inherent and Treaty rights relating to food sovereignty, self-determination, stewardship, conservation, and health.

- Canada, in cooperation with provincial and territorial governments, must develop funding programs to assist First Nations to develop, maintain, and strengthen their own conservation, surveillance, wildlife health, food sovereignty, environmental protection, and human health programs and promote ongoing research and project implementation.

Major Projects and Impact Assessment

- Canada must work with First Nations to co-develop amendments, regulations, and guidelines to improve the impact assessment process and make it consistent with the UN Declaration.
 - This co-development process must include amending the Impact Assessment Project List, to include “in situ” oil sands projects, small modular nuclear reactors, and other projects that may impact First Nations rights, title, and jurisdiction. Other regulations must include the *Time Management and Co-Administration Regulations*.
 - First Nations’ jurisdiction and authority over resource development and major projects in their territories must be fully recognised, including through collaborative agreements and co-administration of the *Impact Assessment Act*.
 - Free, prior, and informed consent is required prior to resource development and major projects in First Nations’ territories.
 - Indigenous Knowledge must be properly valued, sufficiently resourced and subject to the principles of OCAP®.
 - First Nations must have adequate and sustainable funding to support their full and effective participation in impact assessments, with simplified and respectful application and reporting requirements. This must include supports to develop and conduct First Nations’ own impact assessments in line with their laws and legal orders.

Sustainable Development Goals (SDGs)



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- Canada must work in full partnership with First Nations to support self-determination, participation, and inclusion of First Nations approaches in all measures to meet the UN sustainable development goals (SDGs) and implement Canada's 2030 Agenda National Strategy.
 - Canada must provide clear instruction to all federal departments and agencies that measures to implement the SDGs must be consistent with the UN Declaration.
 - Canada must instruct all federal departments to share relevant data with First Nations necessary to implement and evaluate the SDGs.
 - Canada must provide long-term, sustainable, adequate, and distinctions-based funding to support First Nations engagement to monitor and evaluate the implementation of national strategies.
 - Canada must ensure a clear and transparent mechanism exists to aid in the implementation of the SDGs.
- Canada must provide specific long-term, sustainable, and adequate funding for First Nations-led, distinctions-based research, training, and other capacity building to support First Nations to implement sustainable development practices in their own communities and territories.
- Canada must provide long-term sustainable funding to support First Nations to develop and implement their own indicators to track and evaluate SDG implementation, in a manner that respects OCAP®.

Hazardous & Nuclear Waste / Small Modular Reactors

- Canada must work with First Nations to ensure all federal laws and regulations pertaining to the storage and disposal of nuclear waste and other hazardous materials include clear requirements that such storage will not take place unless First Nations whose lands and territories are affected have given their free, prior, and informed consent.
- Canada must dedicate resources to enhance capacity and support the First Nation-led development of on reserve regulations respecting hazardous substances, wastes, toxics, and contaminants and ensure the adequate capacity of First Nations to appropriately and effectively enforce such regulations.
- First Nations in consideration to host long-term nuclear waste storage faci-



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ties must have access to long-term, sustainable, and adequate funding, training, and other capacity building resources to educate the citizens of their communities about the potential impacts and opportunities.

- Canada must improve the Impact Assessment Project List and Time Management regulations, to include existing (or “in situ”) oil sands projects, small modular nuclear reactors, and other projects that may impact First Nations rights, title, and jurisdiction, and further respecting the sovereignty of each Nation.

Marine Indigenous Protected and Conserved Areas (Marine IPCAs)

- Canada must allocate dedicated distinctions-based funding to support marine IPCAs and other First Nations-led marine conservation projects that contribute to Canada’s 2025 and 2030 targets for ocean conservation.
- Canada must provide the DFO with an explicit Ministerial mandate to co-develop marine IPCAs with First Nations.
- Canada must work cooperatively with First Nations to identify and address structural, operational, legislative and policy, and capacity barriers within the DFO that have led to slower progress on marine IPCAs when compared to progress on terrestrial IPCAs.



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GENERAL PRINCIPLES; IMPLEMENTATION AND REDRESS; PARTICIPATION IN DECISION-MAKING AND INDIGENOUS INSTITUTIONS

Summary:

These themes are meant to address articles 1, 2, 5, 18, 19, 34, 39, 40, and 41–46 of the UN Declaration. These articles are fundamental to the understanding that the UN Declaration constitutes the “minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.” They also underscore process rights that are inextricably linked to each of the substantive rights in the UN Declaration. They engage with the requirement of free, prior, and informed consent and they emphasize the importance of Indigenous institutions for implementation of UN Declaration principles and accountability now and in the future.

Necessary Outcomes from Canada’s Action Plan

Canada’s Action Plan must be focused on achieving the following outcomes:

- First Nations views and perspectives are fully incorporated in the Action Plan and all Action Plan processes uphold the obligations and mechanisms of FPIC.
- The Action Plan is implemented in a manner that fully respects and upholds First Nations rights consistent with the UN Declaration.
- Where lands, territories, and resources have been confiscated, taken, occupied, used, and/or damaged without First Nations free, prior, and informed consent, First Nations have access to fair, independent, open, and transparent redress mechanisms that provide timely redress, including return of land, consistent with the requirements of the UN Declaration.

AFN Essential Elements Required in Canada’s Action Plan

To meet the minimum standards under the UN Declaration, Canada’s Action Plan must include the following measures:

Timeframe

- Canada must identify the Action Plan completed by June 21, 2023, as Canada’s *first* action plan on implementing the UN Declaration.



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- Canada must ensure the processes and mechanisms for oversight, monitoring, and accountability in the action plan include means for continued consultation and cooperation with Indigenous Peoples to enable amendment of, and additions to, the action plan as needed.
- Canada must include a formal commitment to develop a second action plan in consultation and cooperation with Indigenous Peoples no later than June 21, 2028.

Consultation and cooperation with First Nations in the implementation of the UN Declaration

- Canada must affirm that measures to implement the UN Declaration will be undertaken only with the free, prior, and informed consent of Indigenous Peoples.
- Canada must provide mandate letters to all Ministers setting out a clear expectation that all federal departments and agencies will work in consultation and cooperation with Indigenous Peoples to ensure the timely implementation of the Action Plan.
- Canada must establish a high-level contact point within the government to facilitate open, transparent, and good faith information sharing across departments and agencies, and with Indigenous Peoples.
- Canada must establish adequate, sustained, multi-year, distinctions-based funding to support full and effective participation of First Nations in all implementation processes, including funding for capacity building, policy development, advocacy, and ongoing engagement.
 - Funding should include support for community-based assessments of needs and UN Declaration implementation, along with means to store and protect this data consistent with the OCAP® principles.
- Canada must enter into a Memorandum of Understanding with the AFN to define co-development and set out mutually agreed processes and procedures, based on the AFN draft Principles of Co-development.
- Canada must provide an opportunity for all First Nations and First Nations regional bodies to enter into similar agreements.



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Consistency of the laws of Canada

- Canada must fund the creation of a National First Nations Expert Panel to carry out research and analysis to support continued evaluation, refinement, and further development of Canada's Action Plan.
 - Membership of the Expert Panel will be selected from each AFN region and tasked with identifying tangible measures to ensure the laws of Canada are consistent with the requirements of the UN Declaration.

Oversight and coordination

- Canada must commit to co-developing every annual report, including the identification of priorities, with First Nations.
- Canada must share drafts of any evaluative commentary generated by federal departments with First Nations' representative institutions, including the AFN, early enough to provide meaningful opportunity to review and respond.
- Canada must ensure that First Nations views are included in the report tabled in Parliament, particularly where there are disagreements on evaluative comments.
- Canada must establish a joint implementation steering committee with the AFN mandated to gather and share information on all aspects of Action Plan implementation, oversee the annual reporting process, and develop ongoing processes to inform future development of the Action Plan.

Independent auditing

- Canada must establish an independent office, within or parallel to the Office of the Auditor General of Canada, with a specific mandate and necessary capacity to investigate and report on the adequacy of funding to First Nations, including whether funding levels are adequate to meet First Nations needs and the real costs of program and service delivery; whether funds are being released in a timely and appropriate way; and whether the objectives set out in the Action Plan can be met within these arrangements.



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Recourse

- Canada must Appoint an independent special interlocutor, knowledgeable of First Nations laws, protocols, and traditions, to engage with First Nations on options for a recourse mechanism, including:
 - The scope and mandate of such mechanism;
 - How the mechanism would be structured to ensure that is it trusted by, and accessible to, First Nations.
- Canada must provide adequate funding for a robust, First Nations-led engagement around the options and recommendations set out by the special interlocutor.

Redress: Specific Claims

- Canada must remove the Specific Claims Tribunal from the *Administrative Tribunal Support Services of Canada Act* and restore all protections for the Tribunal's institutional and judicial independence.
- Canada must co-develop an independent centre for the resolution of specific claims that will be fair, open, and transparent; will recognize Indigenous laws, legal orders, and systems of land tenure; and will provide just, fair, and equitable redress to First Nations.
- Canada must remove all arbitrary limits on financial compensation in the specific claims process, including the \$150 million limit on financial compensation under the *Specific Claims Tribunal Act*.

Redress: Additions-to-Reserve

- Canada must adopt a new ATR policy or process driven by First Nations' recommendations that is effective, efficient, transparent, and ensures:
 - Respect for the constitutional status of First Nations' Treaty rights and upholds the Honour of the Crown;
 - A timely, fair, and equitable approval process;
 - The settlement of all outstanding ATR applications based on legal obligations;
 - The establishment of an impartial, open, and transparent conflict resolu-



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tion mechanism to address non-First Nations interests; and,

- Increased transparency and accountability respecting the Government of Canada's operation and implementation of the ATR policy and process.

CULTURE, LANGUAGE AND EDUCATION

Summary:

These themes are intended to cover articles 8, 11–16, 25, and 31 of the UN Declaration. These articles are both forward- and backward-looking to protect culture and language now, promote self-determination in the future, and to provide redress for past assimilation and repatriation of our objects and remains. Articles on education, information and media are inextricably linked to eliminating discrimination and prejudice. These articles are also tied to self-governance, where maintaining and celebrating distinct culture is central to self-determination.

Necessary Outcomes from Canada's Action Plan

Canada's Action Plan must be focused on achieving the following outcomes:

- First Nations' Inherent and Treaty rights, title, jurisdiction, and control over First Nations education and languages are fully and meaningfully affirmed and enforced, free from prejudice and discrimination.
- The natural intergenerational transmission of First Nations languages is restored and fully supported.
- Effective measures are in place so that First Nations students enjoy their right to education on an equal footing with non-Indigenous students. This includes the right to substantive equality in funding that meets First Nations' specific needs and circumstances, considering First Nations children's cultural, linguistic, and geographical needs, as well as historical realities.



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AFN Essential Elements Required in Canada's Action Plan

To meet the minimum standards under the UN Declaration, Canada's Action Plan must take the following measures:

- Canada must amend specific legislation to reflect cultural, religious, and linguistic rights as well as rights to education, information, and media. This would include amendment to the *Canada National Park Act*, *Official Languages Act*, *Copyright Act and Trademarks Act*, *Indigenous Languages Act*, and *Canadian Radio-television and Telecommunications Commission Act*.
- Canada must develop media measures, such as a requirement for Indigenous-specific content in broadcasting, a policy that will implement OCAP® principles for Indigenous digital content and art, and standards for Indigenous-led content including anti-racism programming in privately owned media.
- Canada must commit to First Nations self-governance in stewardship of heritage places, archaeological sites, and historical sites. This will interact with provincial jurisdiction over lands and resources, as well as the *Canadian Energy Regulator Act*.
- Canada must reform education and promote Indigenous jurisdiction over education, while also aligning with the Truth and Reconciliation Commission Calls to Action for investment to end the backlog of First Nations students seeking post-secondary education.

Languages

- Canada must ensure that allocations for First Nations languages under the Indigenous Languages and Cultures Program reflect actual funding needs for program development and delivery for all First Nations and First Nations-led organizations.
- Canada must work with First Nations towards a First Nations-led system to distribute funding that includes improved processes for access by Regionally Designated Organizations.
- Canada must ensure Federal-Provincial-Territorial alignment with the Indigenous Languages Act (ILA) and amend the ILA as required to be consistent with the UN Declaration.



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Early Learning and Child Care

- Canada must implement the First Nations Early Learning and Child Care (ELCC) Policy Framework and a First Nations-determined funding model for ELCC.
- Canada must meaningfully engage with First Nations on the draft ELCC legislation, including providing First Nations with resources to lead engagements to identify priorities and positions on the legislation.
- Canada must support First Nations to implement the First Nations ELCC Framework and transition to First Nations control and determination over ELCC, including the co-development of an accountability mechanism with First Nations to monitor the results of implementation of the Framework.
- Canada must make long-term investments in First Nations ELCC to ensure progress on a First Nations system of ELCC is not lost, and work continues to advance program innovation, regional governance structures, and job creation.

K-12 Education

- Canada must support First Nations to develop their own local, regional and/or Treaty based education agreements that identify the funding required to implement their vision of First Nations control over education.
- Canada must work with First Nations to review Canada's support for First Nations special education with the objective of moving to regionally appropriate funding methodologies that are evidence-based and responsive to First Nations' needs.

Post-Secondary Education

- Canada must recognize that First Nations Inherent and Treaty Rights to lifelong learning include post-secondary education.
- Canada must work collaboratively with First Nations to transfer control of First Nations post-secondary education.
- Canada must fully support all First Nations to negotiate and conclude local, regional, and Treaty-based post-secondary education models.
- Canada must commit to long-term, adequate, and sustainable funding for models based on First Nations-led assessments of real needs.



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- Canada must work collaboratively with First Nations to support the holistic vision of adult education and the transfer of jurisdiction to First Nations, with adequate, predictable, and sustainable funding.
- Canada must work to remove barriers for all First Nations to access adult education delivery beyond secondary school completion on-reserve, including, but not limited to, supporting adult upgrading, and adult language and culture programs.

Education Infrastructure

- Canada must increase funding to alleviate overcrowding and poor conditions in First Nations education schools and teacherages which require immediate replacement or additions.
- Canada must increase funding to address the critical operational and maintenance needs in First Nations education facilities to ensure First Nations assets last for their intended lifecycles.
- Canada must work with the AFN to identify operational reforms to the Capital Facilities and Maintenance Program and First Nations Enhanced Education Infrastructure Fund to achieve greater transparency in decision-making, streamline access to funding, and support the transfer of authority to First Nations controlled educational systems.



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CRITICAL PRINCIPLES FOR FIRST NATIONS PARTICIPATION IN CANADA'S ACTION PLAN

Inherent Rights

First Nations are sovereign Nations with Inherent rights to self-determination and self-government. First Nations sovereignty exists through Indigenous laws and legal orders, not colonial legal systems. As a result, First Nations sovereignty is independent of Canadian common and civil law and cannot be extinguished by unilateral Crown action.

Inherent rights exist because First Nations have always been self-governing Nations. Prior to European contact in what is now known as Canada, First Nations had viable and thriving social, political, and legal systems.⁴ Inherent rights stem from First Nations sovereignty, self-determination, laws and legal orders, traditions, cultures, and practices. Inherent rights predate Canada and the Canadian Constitution, and as such, they exist outside of Canadian Constitutional structures.

Inherent rights cannot be extinguished or unilaterally altered by Canada because Inherent rights are not rooted in Canadian law. Recognition of Inherent rights under Canadian laws does not change the nature of those rights.

Nothing about us without us

Every aspect of implementing the UN Declaration must be developed, carried out, assessed, and refined in meaningful partnership with First Nations. It is not enough to talk about "co-development." First Nations and the Crown must have a shared understanding of what co-development means and requires. Mutual accountability must exist to ensure that agreed processes are followed in good faith. Transparency is essential. Further, First Nations full and meaningful participation must be supported in any implementation process, including through resources for research, policy development, and on-going community engagement.

4 Kent McNeil, "The Doctrine of Discovery Reconsidered: Reflecting on Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies, by Robert J Miller, Jacinta Ruru, Larissa Behrendt, and Tracey Lindberg, and Reconciling Sovereignties: Aboriginal Nations and Canada, by Felix Hoehn" *Osgoode Hall Law Journal* 53, no. 2 (2016) article 10 at 699.



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First Nations Essential Elements

Self-determination and the Nation-to-Nation relationship

The AFN supports the right of every First Nation to negotiate implementation measures specific to their citizens and territories. Where new laws, programs, or other measures are adopted on a national basis, every Nation must be free to make their own decision to opt-in or not, and when. Adequate resources must be made available to ensure all Nations have the opportunity and capacity to fully participate, if or when they choose to do so.

No backtracking in the level of services and supports available to First Nations

The UN Declaration affirms the existing rights of First Nations, including Inherent and Treaty rights. Actions under the UN Declaration are expressly named as “minimum standards.” No implementation measure should fall below the requirements of the UN Declaration—or other international laws—and no implementation measure should leave First Nations worse off than they are now. The objective is always to uphold Inherent and Treaty rights and provide real remedies for the long history of rights violations.

Substantive equality

The UNDA echoes the words of the UN Declaration when the UNDA acknowledges that Indigenous Peoples “suffered historic injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources.”⁵ Meaningful implementation of the UN Declaration requires concerted effort to address and undo the harms that the Crown inflicted on First Nations and First Nations individuals, families, and communities.

Numerous circumstances exist where there is urgent need to increase the resources allocated to meet First Nations’ needs. In many cases, the first step is to eliminate the discriminatory gap in funding between First Nations and non-Indigenous communities. The ultimate goal is to ensure that funding and other resources are sufficient to address the real needs created by decades and centuries of genocide, colonialism, systemic racism, and other injustices.

5 UNDA, supra note 1, Preamble.



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First Nations Essential Elements

First Nations-led assessment

First Nations needs—and progress toward meeting those needs—must be assessed by First Nations and based on First Nations values, priorities, and knowledge systems. Implementation of the UN Declaration must include effective supports for First Nations to build capacity to carry out community-based needs assessments and ongoing monitoring of progress and shortcomings in implementation measures.

First Nations data sovereignty

Consistent with the OCAP® Principles, implementation of the UN Declaration must respect the right of First Nations to own, control, access, and protect their own data. This requires meaningful investments to support First Nations to gather, develop, record, and analyse data and to protect these data for the use of future generations. First Nations data sovereignty also requires the cooperation of all government departments and agencies in sharing relevant data that these departments hold. This includes transparency and accountability for how data is used in informing Crown decision-making.

Respect for First Nations' laws, protocols, and procedures

Article 40 of the UN Declaration requires “due consideration” for the “customs, traditions, rules, and legal systems” of Indigenous Peoples, including in implementation measures such as processes to resolve conflicts and disputes. Business-as-usual approaches that automatically privilege current federal laws, policies, and working methods are a barrier to the full realization of First Nations rights.

Whole of government implementation

Implementation of the UN Declaration cannot be siloed to a few federal departments. Clear direction must be provided for all departments to cooperate to ensure laws, regulations, policies, and programs are consistent with the requirements and fulfillment of the UN Declaration. The federal government's unique responsibility under international law also requires the federal government to actively promote provincial and territorial UN Declaration implementation and to work with First Nations to remove provincial and territorial barriers to implementation