



**YUKON
REGION**

A Yukon that Leads

United Nations Declaration on the Rights of Indigenous Peoples Act National Action Plan

Assembly of First Nations – Yukon Region Engagement and
Recommendations Report

May 15, 2023

Disclaimer. The contents of this document do not reflect the position of Yukon First Nations, or, unless otherwise stated, any individual First Nation, and should therefore not be considered a consultation document. This document was developed to summarize discussions and engagements with Yukon First Nation participants around the development of a federal action plan to realize the objectives of the United Nations Declaration of the Rights of Indigenous Peoples.

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Introduction

In June 2021, when the Government of Canada made the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) a federal law, it took its first substantive step towards ensuring that all federal laws align with the inherent rights of Indigenous peoples in Canada. The Declaration describes fundamental human rights of Indigenous people around the world; it describes collective rights and defines how states such as Canada should relate to Indigenous peoples, and the basic standards they must follow to uphold the human rights of Indigenous peoples.

Canada's National Action Plan (NAP) for applying the UN Declaration to federal laws, policies, and institutions requires extensive input from First Nations across the country and it is important that Canada engages directly with the 14 Yukon First Nations to ensure that the implementation of UNDRIP addresses the unique circumstances that exist among First Nations in the Yukon. We at the Assembly of First Nations (AFN) – Yukon Region conducted research, analysis, and various forms of community engagement with all 14 Yukon First Nations to gather their input on the Declaration itself, what they would like to see included in the NAP, as well as their priorities as they relate to UNDRIP and its implementation.

This report summarizes the engagement activities that we conducted with Yukon First Nations since October 2022, and provides Canada with a list of recommendations for implementation of its UNDRIP action plan to address Yukon First Nation-specific priority areas.

AFN Yukon Region Engagement

'UNDRIP 101' Materials

At the direction of Yukon First Nations leadership and technicians, our AFN Yukon Regional Office developed 'UNDRIP 101'-style materials to provide a Yukon First Nation audience with foundational information about the rights and freedoms found within the Declaration. These materials also explained Canada's *UN Declaration on the Rights of Indigenous Peoples Act* (UNDA) more thoroughly. In late 2022, we asked each Yukon First Nation to share any specific questions or considerations they wanted more information about related to the Declaration and Canada's implementation planning. Based on their feedback, our AFN Yukon Regional Office created two 'placemat' documents: one summarizing the categories of rights that are included in UNDRIP, and the other answering frequently asked questions Yukon First Nation respondents identified. These materials are available on the AFN Yukon Region's website and were shared widely on our AFN Yukon Region Facebook page beginning in February 2023. Hard copies of the materials were also mailed to each Yukon First Nation.

Discussion Paper

In December 2022, through the leadership of barrister and solicitor Victoria B. Fred, we at AFN Yukon developed a discussion paper that offered considerations and draft recommendations for the NAP from a general Yukon First Nation perspective. The discussion paper included significant consideration for the unique modern treaty context and ongoing discussions related to the

recognition and protection of Aboriginal rights, titles, and interests in the Yukon, and provided a series of proposed draft recommendations for consideration related to Canada's implementation of UNDRIP. The paper was developed as an informational document to support further regional discussions on the NAP and was not intended to reflect the position of Yukon First Nations individually or collectively.

Survey

In March 2023, our AFN Yukon Regional Office developed an online survey asking Yukon First Nations citizens to share what they would like to see included in the NAP. The survey was open for over five weeks, from March 2 until April 10, 2023. During this period, a QR code and links to the online survey were shared twice a week on the AFN Yukon Region's social media pages. All Yukon First Nations received email communications with links and information on how to access the survey, and hard copies of the survey, QR code, and information on how to access the survey were mailed to all 14 Yukon First Nations.

The results of the survey have been summarized within this report and have informed the recommendations in this report.

UNDRIP Implementation Virtual Open Houses

In March 2023, our AFN Yukon Region team led virtual open house-style meetings with Yukon First Nations governments to share an overview of Canada's plans to implement UNDRIP, the draft recommendations found within the AFN Yukon discussion paper, and upcoming opportunities for Yukon First Nations to provide further feedback on the implementation of UNDRIP in the Yukon context. Participants were invited to attend the virtual open houses, ask questions, and share their perspectives on the AFN Yukon discussion paper, UNDRIP 101 materials, and, eventually, the draft NAP. The open houses were an early opportunity for technicians at Yukon First Nations to become familiarized with the Declaration, the draft NAP, and the process being undertaken by the federal government to collect feedback for implementation in advance of the Yukon Region's roundtable sessions hosted in April.

Roundtable Sessions

In April 2023, we hosted a series of three dialogue sessions online and in-person in Whitehorse to hear from a wide range of Yukon First Nation perspectives on their priorities and feedback for UNDRIP implementation. The three sessions were held with the focus of hearing from specific groups of Yukon First Nation voices: 1) First Nations leadership and technicians, 2) Elders and youth, and 3) women and 2SLGBTQIA+ people. Each session included an in-depth presentation about the Declaration, the NAP, and the related Yukon First Nation engagement that had been conducted to date. Following the presentations, facilitated discussions were held with participants. They were asked to consider and answer key discussion questions as a group, and their input, responses, and reflections have been summarized within this report and have informed our AFN Yukon Region recommendations to Canada on the implementation of the UN Declaration.

Yukon Context

Almost half of the Indigenous groups in Canada with Modern Treaties are based in the Yukon, making the region a national leader when it comes to First Nations modeling of self-government. Currently, 11 of the 14 Yukon First Nations have entered final and self-government agreements, consistent with the framework established by the Umbrella Final Agreement (UFA). The Teslin Tlingit Council, First Nation of Na-Cho Nyäk Dun, Vuntut Gwitchin First Nation, and Champagne and Aishihik First Nations have been implementing their self-government agreements since 1995. The Little Salmon/Carmacks First Nation and Selkirk First Nation entered their respective modern treaties and self-governments in 1997, and the Tr'ondëk Hwëch'in entered into their own agreement in 1998. The modern treaty and self-government agreements for the Ta'an Kwäch'än Council were brought into legal effect in 2002, for Kluane First Nation in 2003, and for Kwanlin Dün First Nation in 2005. Carcross/Tagish First Nation ratified their Final Agreement in 2005.

Liard First Nation, Ross River Dena Council, and White River First Nation have not entered into land claim or self-government agreements. They have long been engaged in various discussions with public governments with respect to the recognition and protection of their Aboriginal rights, titles, and interests.

Therefore, Canada's Action Plan for implementing UNDRIP in the Yukon must be two-fold:

1. It must address the circumstances of Yukon First Nations that have land claim and self-government agreements, and enhance the implementation and enforcement of those agreements; and
2. It must establish specific measures to protect the rights, titles and interests of Yukon First Nations that have not entered into self-government agreements and establish new collaborative relationships with public governments with respect to land and resource management.

Recommendations on Canada's UNDRIP National Action Plan

Collaboration, Partnerships, and Government-to-Government Relationships

Recommendation 1: Create a distinct Yukon Chapter within the National Action Plan to address the unique regional circumstances of Yukon First Nations

To address the unique circumstances and context of Yukon First Nations, Canada's NAP should include a separate and distinct Yukon Chapter. Yukon First Nations have clearly articulated the need and willingness to come together to collectively address federal issues which impact all 14 First Nations. Part of what makes the Yukon Region unique are the distinctions that exist within it; the varying self-governing contexts of all 14 Yukon First Nations and the different approaches that have been taken within the region to advance the inherent right to self-government of each First Nation.

Including a Yukon Chapter within the action plan would allow for these varying approaches to self-government to be highlighted nationally and would demonstrate the federal government's support

for First Nations exercising their inherent rights to self-government in diverse manners that are contextually applicable, appropriate, and most importantly, determined by First Nations themselves.

Recommendation 2: Extend the timeline for formal input from First Nations on the National Action Plan in accordance with the AFN Resolution #20/2023

Throughout our AFN Yukon engagements, Yukon First Nations articulated frustration with the federal government’s process of collecting input for the NAP, explaining that its short and unrealistic timelines for collecting feedback contradict the exact principles of UNDRIP that Canada says it wants to align its laws with.

These frustrations were also echoed at the national level. On April 6, 2023, at the AFN Special Chiefs Assembly in Ottawa, the Chiefs-in-Assembly passed *Resolution #20/2023: United Nations Declaration on the Rights of Indigenous Peoples Act Draft National Action Plan*. The Resolution identifies that the federal government has imposed unrealistic and unreasonably short timelines for feedback on the NAP to meaningfully be collected from First Nations, and it calls for the federal government to amend Section 6(1) of the *UNDRIP Act* to extend the date for tabling the NAP with Parliament.

“The Department of Justice, tasked with drafting the Action Plan, has established an unreasonably shortened timeline for community engagement and consultation. The timeline has not been adjusted, in spite of the Government’s failure to release the Draft Action Plan by the date provided for in the timeline, thereby depriving First Nations of the opportunity to conduct meaningful community engagement and consultation. This has resulted in grossly inadequate time to provide feedback on the Draft UNDA National Action Plan.”

- AFN Resolution 20/2023: United Nations Declaration on the Rights of Indigenous Peoples Act Draft National Action Plan

If Canada is unable or unwilling to amend Section 6(1) of the *UNDRIP Act*, the Resolution directs the AFN to “call on the Government of Canada to ensure additional funds and resources to be made available to all First Nations who wish to participate in the consultation of the Action Plan, in order to meet the requirements of free, prior and informed consent as per Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples and the duty to consult and accommodate.”

First Nations are being asked to provide their input and feedback on deadlines that have been set by the federal government – not Indigenous peoples themselves – and these constraints only serve to exacerbate existing capacity challenges within communities. Providing feedback on UNDRIP implementation and the Action Plan is incredibly important to the future of Canada’s relationships

with First Nations, Inuit and Métis people and communities however, First Nations are facing several other overlapping crises and issues within their communities.

The process of receiving feedback on the NAP is not a form of stakeholder engagement. As rightsholders, First Nations must be provided with the adequate time, space, and platforms to be heard as part of this process. As a regional organization, we at AFN Yukon aim to support Yukon First Nations by facilitating engagements, reporting on feedback that is shared, and analyzing suggested actions that are brought forward. However, Canada must support rightsholders as the true leaders of this work.

By imposing arbitrary and unreasonable timelines for their feedback on the NAP, many First Nation voices are being excluded from this process. The AFN Yukon Region recommends that the federal government adhere to the calls to action set out by AFN *Resolution #20/2023* to ensure that sufficient time and resources are provided for First Nations to meaningfully engage in the process of understanding and providing in-depth feedback on the NAP.

Recommendation 3: Support First Nations' rights set out in UNDRIP Articles 18 and 19 by creating dedicated resources for each First Nation, as well as representative regional organizations, to explore the creation of new forums for meeting with Canada on a bilateral basis.

As UNDRIP Article 19 explains, “states shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”. Accordingly, Yukon First Nations require a formal, permanent, and consistent engagement forum for Chiefs and leadership to meet with the Prime Minister, relevant federal Ministers, and other partners when appropriate.

For some time, Yukon First Nations have been calling for the creation of a permanent bilateral mechanism with the federal government so that they may engage on a government-to-government, Nation-to-Nation basis on matters impacting their rights and traditional territories, instead of interacting with federal counterparts on an issue-to-issue basis.

At the AFN Yukon Annual Summit held in October 2022, Yukon First Nations Chiefs passed *Resolution #05/2022: Development of Yukon First Nations-Federal Government Bilateral Process*, which directs the AFN Yukon Regional Office to work to develop a Yukon First Nations–Crown bi-lateral model. This bilateral mechanism must be established and designed by First Nations themselves, and therefore will require the federal government to provide dedicated resources for each Yukon First Nation to explore the creation of what a permanent bilateral forum between themselves and Canada should look like. This is a matter of supporting Indigenous peoples’ rights as described in Article 18 of UNDRIP “to participate in decision-making in matters

“UNDRIP is a great baseline, but the Canadian government needs to work with each and every First Nation community to ensure an equitable delivery.”

- Survey respondent

which would affect their rights, through representatives chosen by themselves in accordance with their own procedures”.

Yukon First Nations must also be the ones to set the agenda for these bilateral tables. These ongoing annual engagements between Canada and Yukon First Nations will be designed to support various priorities including, but not limited to:

- Identifying and reviewing federal laws (both statutory and common laws) for the purposes of aligning them with UNDRIP;
- Ensuring the recognition and protection of Yukon First Nation laws so that they are not diluted or discarded to conform to Canadian legal norms;
- Educating and informing federal bureaucrats about the inherent and legislated rights of all 14 Yukon First Nations and how Canada’s laws and policies must reflect them; and
- Building relationships with federal counterparts to ensure that Yukon First Nations rights are respected, adhered to, and supported in a good way by the federal government.

The federal government must commit to supporting each First Nation in identifying their preferred approach by providing dedicated resources to explore what such a forum or structure should involve.

Recommendation 4: Provide dedicated financial resources to encourage and ensure participation of youth, Elders, women and girls, LGBTQIA2S+ people, and people living with mental and physical disabilities in UNDRIP-related engagements

The NAP – and all federal actions taken to implement UNDRIP – will have significant impacts for all First Nations, Inuit, and Métis people in Canada. In addition to the diversity that exists between each distinct First Nation community, there is also a diversity of perspectives that must be considered based on the individual identities and experiences that exist within communities. First Nations youth, Elders, women and girls, 2SLGBTQIA+ people, and people living with mental and physical disabilities will be impacted differently by the application of UNDRIP and therefore, each of their voices must be included in any formal engagements that have such a direct impact on their rights.

To ensure the full and meaningful participation of Yukon First Nations in reviewing federal laws and aligning them with UNDRIP, Canada’s formal engagements must be coupled with financial resources to ensure that consultations capture the broad spectrum of experiences, priorities and concerns that Yukon First Nations have related to the alignment of Canada’s laws and the UN Declaration. During regional roundtable engagement sessions, Yukon First Nations provided strong recommendations that there must be adequate and reliable funding put in place by the federal government to ensure the full participation of Yukon First Nations, specifically including youth, Elders, women and girls, 2SLGBTQIA+ people, and those living with mental and physical disabilities. This is vital to ensuring that a broad spectrum of experiences and perspectives are captured by the work that is done to align Canada’s laws with the UN Declaration.

Implementation of Yukon First Nation Land Claim and Self-Government Agreements

Recommendation 5: Commit to supporting the full implementation of Yukon First Nation Land Claim and Self-Government Agreements through ongoing collaborative reviews of federal mandates, policies, and implementation strategies

Modern treaty agreements that exist in the Yukon are protected under Section 35 of the Constitution, and UNDRIP must provide for the implementation of these modern treaties.

For the 11 Yukon First Nations with signed Self-Government Agreements, these agreements are the foundation of the relationship between the First Nation and the federal government. Canada must be committed to supporting the full implementation of these 11 Self-Government

“Prior to UNDRIP, our right to self-determination has already been realized through our Inherent Rights and Modern Treaties. UNDRIP is a narrative - implement our Treaties.”

- Roundtable session participant

Agreements, and the NAP can be an effective tool in the federal government’s implementation work. To improve the meaningful implementation of these Agreements, the Action Plan “will require a change in federal policies and mandates and the reconsideration of common law decisions, which individually and collectively have handcuffed the full and meaningful realization of Yukon First Nation aboriginal rights and the inherent right to self-government”¹. Therefore, the NAP should provide for ongoing collaborative review between Canada and Yukon First Nations of:

- Federal mandates (Negotiations);
- Federal policies (Treaty implementation); and
- Federal strategies (court cases impacting Aboriginal Rights, Title, and interests)

“Any policy or law that gets changed needs to reflect our Modern Treaties. There has not been sufficient policy changes to ensure that they are implemented.”

- Roundtable session participant

Land use planning is a key element of the land claim agreements in the Yukon. It is part of the fundamental bargain of the *Umbrella Final Agreement* as Yukon First Nations retained parcels of settlement land on the understanding that they would play a significant role in the management of non-settlement land and the resources located on and under non-settlement land. Canada must provide funding under the UFA Implementation Plan

to complete the development, approval, and administration of land use plans in the Yukon pursuant to “Chapter 11 – Land Use Planning” of the 11 Land Claim Agreements in the Yukon.

¹ V. Fred, “Yukon First Nation Modern Treaty Context: A road to reconciliation Discussion Paper”, (Prepared for AFN Yukon Region), 2022, p. 5.

Recommendation 6: Clearly and formally commit that none of the actions taken to implement UNDRIP will interfere with or undermine the already negotiated and established rights set out in signed Land Claim and Self-Governing Agreements, and that the Declaration Act will support a broader approach to interpreting signed Final Agreements

UNDRIP may be used as a tool to complement the implementation of signed Self-Government Agreements by allowing for a broader interpretation of the Agreements to be taken, but it cannot replace them. During regional roundtable engagement sessions, as well as in online survey responses, Yukon First Nations articulated concerns that UNDRIP and the creation of the NAP may be used to “water down” or undermine rights that have already been negotiated through the *Umbrella Final Agreement*. To be sure that this does not happen, Canada must clearly and formally articulate that none of its actions for implementing the UN Declaration will interfere with, undermine, or replace any of the rights that have already been negotiated and established in 11 signed Self-Governing Agreements in the Yukon and in fact, its actions to implement UNDRIP will create the space for broader and more inclusive interpretation of the 11 Agreements.

Recommendation 7: Formally partner with Yukon First Nations to develop federal mandates for matters including administration of justice, program and service transfers, and tax sharing

Canada, the Yukon Government and the 11 Yukon First Nations with signed Self-Government Agreements agreed to enter negotiations to conclude additional agreements on key matters, including the administration of justice, program and service transfers, and tax sharing agreements.

These additional agreements must be negotiated to fully implement the 11 Self-Government Agreements that have been signed in the Yukon. However, more than 25 years after the initial Self-Government Agreements were brought into legal effect in the Yukon, little progress has been made on their implementation. Only one Administration of Justice Agreement has been achieved in the Yukon (by the Teslin Tlingit Council), no new program and service Transfer Agreements have been reached for many years, and while tax sharing agreements relating to income tax and GST are in place, any agreements relating to business, commodity, and other taxes have not been discussed by the federal government in any substantive way.

To be consistent with the principles of UNDRIP and the Crown’s constitutional duties, Canada must work directly with Yukon First Nations to develop formal federal mandates for these matters in a way that is specifically applicable to the 11 Yukon First Nation Self-Government Agreements.

Supporting Liard First Nation, Ross River Dena Council and White River First Nation

Recommendation 8: Canada must work directly with Liard First Nation, Ross River Dena Council and White River First Nation to establish processes that strengthen their rights to self-government

Liard First Nation, Ross River Dena Council and White River First Nation have unceded Indigenous traditional territories must be recognized as fully and independently self-governing First Nations.

While these three First Nations have not concluded a Final or Self-Government Agreement under the Umbrella Final Agreement, they retain an inherent right to self-government. This inherent right is set out by UNDRIP and has been upheld in Canadian common law, and it cannot be given or taken away by any level of government or authority.

Canada has a fiduciary obligation to recognize and work directly with Liard First Nation, Ross River Dena Council and White River First Nation to support and promote their efforts to exercise their inherent right to self-government. This must be done in response to the needs of each respective First Nation and may involve the establishment of community-based self-government authorities, collaborative management processes, and administration and delivery of programs and services to the citizens of each First Nation. It may also mean the provision of funding for new community infrastructure or economic development opportunities, such as revenue sharing agreements. Canada must work bilaterally with Liard First Nation, Ross River Dena Council, and White River First Nation to adequately understand and support each of their unique governance priorities and support their development of specific mandates based on those priorities. This would advance the objective of reconciliation and protecting the respective rights, titles, and interests of all First Nations, regardless of whether they are signatories to a Modern Treaty or not.

As an appendix to this report, Ross River Dena Council (“RRDC”) and White River First Nation (“WRFN”) are providing supplementary submissions on the draft Action Plan, reflecting their unique situations in the Yukon. Both Nations (i) are amongst the minority of First Nations in the Yukon that have not entered into land claim or self-government agreements pursuant to the Umbrella Final Agreement, and also (ii) have no designated reserve lands, unlike Nations in other parts of Canada where treaties or land claims have not been completed.

For that reason, RRDC and WRFN have a distinct relationship with the Crown, which engages dynamics and nuances not necessarily present in the Indigenous-Crown relationship of other First Nations, including those in the Yukon and those situated elsewhere across the country.

From this distinct perspective, RRDC and WRFN submit that the Action Plan ought to include, among other key matters detailed in the appendix, commitments for Canada to:

- Comprehensively review and modernize the Yukon Environmental and Socio-economic Assessment Act, including to amend problematic provisions that governments have interpreted in a manner that places non-UFA Final Agreement Nations (such as RRDC and WRFN) on an unequal footing as compared to Final Agreement Nations;
- Prioritize working with RRDC and WRFN to access commitments made under UFA-related agreements (such as programs and services transfers with adequate funding, the administration of justice, tax agreements, and comprehensive funding agreements); and
- Provide to RRDC and WRFN lands s. 87 Indian Act-style tax benefits to begin to remedy the continuing injustice of Canada’s failure to set aside reserve lands for these two Nations.

The submission from Ross River Dena Council and White River First Nation is included as an Appendix to this report.

Free, Prior and Informed Consent

Recommendation 9: Provide First Nations with dedicated resources for creating capacity to establish their own processes of defining Free, Prior and Informed Consent based on their core values and protocols

Thresholds for “free, prior and informed consent” (FPIC) cannot be determined or defined by the federal government as each Yukon First Nation has its own distinct values, traditions, and ways of decision-making.

“I think the power needs to go back to the people. The government needs to give First Nations communities a seat at the table to allow them to have a say on what is being done to them and their families. We need to stop doing things to the community and start doing things for the community.”

- Survey respondent

Draft NAP item #48 proposes the development of “frameworks, mechanisms, and/or processes for a coordinated, whole-of-government approach to the implementation of the right to participate in decision-making related to legislative, policy and program initiatives, informed by the Declaration’s articles that include free, prior and informed consent”. However, any framework, mechanism or process that is developed must be done in direct partnership with Yukon First Nations and must create space for First Nations to define for themselves what free, prior, and informed consent should include. This process must also consider that for the 11

Yukon First Nations with signed Self-Government Agreements, the Final Agreements provide a definition of Consultation and is further informed by the common law that includes the following cases: *Tsleil-Waututh Nation v. Canada (2018)*; *Mikisew v. Canada (2018)*; *Beckman v. Little Salmon (2010)*; and *Haida Nation v. BC (2004)*.

Yukon First Nations have traditional ways of achieving consent and understanding for decision-making, and they must determine how consent is reached on various decisions, including what protocols are followed, and what a threshold or test for achieving FPIC must involve. This will require the creation of dedicated resources for First Nations to allow for diverse perspectives to be captured and included in any decision-making processes.

In addition to the creation of such resources, Canada must demonstrate that it is prepared for First Nation-led decision-making processes to take place on their own timelines, and the federal government cannot impose its own constraints or timelines upon First Nations as they determine what Free, Prior, and Informed Consent means to them.

Recommendation 10: Include a section in the NAP on the use of federal emergency powers to ensure that Indigenous governments are involved in decision-making around emergency circumstances which impact Indigenous people’s health, safety, and traditional territories

There are serious concerns surrounding the lack of consultation with First Nations in instances where the federal government exercises its powers under the *Emergencies Act* and in other circumstances that are emergencies. For example, earlier this year, an unidentified object was shot down over the territories of Yukon First Nations without any consultation or prior information being shared with Yukon First Nation governments. The Department of National Defence only reached out to Yukon First Nations after the event had already occurred, despite several long-standing requests from Yukon First Nations to be included in discussions related to Arctic sovereignty and northern security.

“Indigenous people need to be part of the emergency process, especially if there is impact on our health and wellbeing or safety, and our traditional territories.”

- Roundtable session participant

Yukon First Nations must be part of these federal emergency decision-making processes, especially given the potential impacts that such circumstances have on the health, safety and wellbeing of Yukon First Nation citizens and their traditional territories.

The NAP must include a section that focuses on the use of federal emergency powers, and

Canada’s obligations to include Indigenous governments in decision-making that impacts Indigenous peoples’ health and safety, and the security of their traditional territories. This is a commitment that must be made by various federal departments, including the Department of National Defense.

Oversight of Yukon Government

Recommendation 11: Uphold Canada’s constitutional responsibility to provide oversight of Yukon Government’s decisions and actions and, where necessary, intervene in Yukon Government’s decisions.

As a territory, the Yukon has a unique status. It does not own the lands and resources within the Yukon and does not have any powers under Sections 92 and 92a of Canada’s *Constitution Act, 1867*. Canada transferred administration and control of certain public lands and resources to the Yukon Government in 2003 under the Yukon Devolution Transfer Agreement (the “YDTA”), subject to certain terms and conditions, and the *Yukon Act* establishes the Yukon as a territory and sets out its unique powers and authorities.

However, Canada retains the power under the *Yukon Act* to take back management and control of lands and resources that were transferred to the Yukon Government through the YDTA if: a) it is a matter of national interest, b) it impacts the welfare of Indigenous peoples, or c) it impacts the settlement or implementation of a Land Claim Agreement.

In addition to having these powers, Canada has an ongoing constitutional responsibility to provide oversight of the Yukon Government's decisions and actions and, where necessary, Canada must be committed to act to protect treaty and Aboriginal rights, titles and interests, promote reconciliation, and ensure that the Yukon Government is fulfilling the duties it owes to Yukon First Nations, when acting as the Crown. In some cases, this may mean that Canada must disagree with the positions taken by the Yukon Government with respect to the implementation of the Land Claim and Self-Government Agreements. Canada must exercise its powers under the *Yukon Act* (Sections 49 to 53) to stand up to the Yukon Government in support of the interests of Yukon First Nations.

"It can be challenging when development projects that are opposed by the First Nation are granted approval by the Yukon Government."

- Survey respondent

In the past, the Yukon Government has made decisions that have been inconsistent with signed Land Claim Agreements, as well as UNDRIP, and in these cases, Canada has failed to intervene, despite requests by Yukon First Nations to do so. This has disrupted and set back the reconciliation process in the Yukon. Canada must commit to upholding its constitutional responsibilities when it comes to providing oversight of Yukon Government's decisions and actions and, where necessary, intervening in those decisions when it impacts the welfare and rights of Yukon First Nations.

Additional Areas of Priority

Species at Risk

Recommendation 12: Examine UNDRIP legislation alongside the Species at Risk Act to ensure that Aboriginal rights remain upheld indefinitely

There are several species whose population health are in crisis in the Yukon, and many of these species hold important cultural significance for Yukon First Nations, their traditional food sources, cultural activities, and more. For example, Yukon salmon populations remain in a dire state of crisis which has been devastating for generations of Yukon First Nations who rely on salmon for food year-round, yet they are not formally declared a species at risk under federal legislation. Salmon and other at-risk species require special protection, which could be achieved under the *Species at Risk Act*, to ensure that they do not go completely extinct, and to support strategies for the replenishment and revitalization of their populations.

However, Yukon First Nations also voiced concerns about the degree to which Aboriginal harvesting rights would be upheld if species at risk eventually replenish themselves. First Nations' harvesting rights cannot be derogated from and must be upheld and adhered to indefinitely when it comes to the federal government's protection of all species at risk. The NAP must examine the implementation of UNDRIP alongside the *Species at Risk Act*, ensuring that the legislation provides absolute protection of harvesting rights and all other rights upheld by Section 35.

Recommendation 13: Amend Draft National Action Plan item #39 to include Yukon First Nations

Currently, Draft NAP item #39 calls for the Department of Fisheries and Oceans (DFO) to: “implement the Pacific Salmon Strategy Initiative (PSSI) to protect and revitalize salmon populations and their habitats in B.C. through meaningful collaboration and partnerships with Indigenous groups and B.C./Yukon partners”. This language is a demonstration of how the Yukon is often excluded from decision-making that impacts Yukon salmon and their habitats, despite the vital importance that salmon has for Yukon First Nations’ food security, health, and cultural continuity.

Yukon salmon originate in the Yukon, not in B.C. Further, Yukon First Nations should not be referred to as “Indigenous groups”; they are legitimate orders of government that carry important roles and responsibilities akin to provinces and territories. Therefore, any work related to the implementation and enforcement of the PSSI must include true collaboration and partnership building with Yukon First Nations, in addition to partners in B.C.

It is recommended that the NAP item #39 be revised to read: “Implement the Pacific Salmon Strategy Initiative (PSSI) to protect and revitalize salmon populations and their habitats in the Yukon and B.C. through meaningful collaboration and partnerships with First Nation governments in the Yukon and B.C.”

Recommendation 14: Collaborate with Yukon First Nations to reconvene the Yukon River Panel and identify strategies to address the ongoing Yukon River salmon crisis

Yukon First Nations mourn the cultural loss of the Yukon River salmon fishery and its impact on their sustenance. Further, the salmon crisis has been made more complicated by the fact that the Yukon is a territory that shares a colonial border with the United States. Therefore, Yukon First Nations require the support of the federal government in advocating for – and taking action towards – the protection of Yukon salmon.

The Yukon River Panel makes recommendations to Canadian and American management entities about the conservation and management of salmon originating in Canada. The Yukon River Panel’s main responsibilities pertaining to Yukon River salmon stocks of Canadian origin are to develop and implement agreed research and management programs and make annual recommendations to the respective responsible management agencies of both countries concerning salmon conservation and management.

It is recommended that Canada work alongside Yukon First Nations to reconvene the Yukon River Panel and work together to identify and enact strategies to address the ongoing crisis facing Yukon River salmon, including strategies to influence the United States to meet the conservation objectives of the Yukon River Salmon Agreement.

Health and Wellness

Recommendation 15: Prioritize Draft National Action Plan item #57 to address Yukon First Nations' concerns surrounding accessible, culturally safe health and dental care, including a review of the Non-Insured Health Benefits (NIHB) Program

Yukon First Nations have long-standing and deep concerns about the provision of health and dental care programs and services in the territory. These programs and services are often inaccessible, poorly resourced, and are not culturally appropriate. Many Yukon First Nation citizens do not have a family doctor in the territory and as a result, are unable to receive the medical attention that they may require in a timely manner. Additionally, the absence of culturally appropriate residential treatment facilities in the Yukon, both in Whitehorse and within First Nations, further exacerbates gaps in health outcomes, as well as the challenges of maintaining a person's wellness and sobriety during and following acute care.

First Nation, Inuit and Métis people and communities have been speaking out about systemic racism in health care for decades. Systemic racism continues to manifest itself within the health care system and the scope of services that are available to Yukon First Nations through racist stereotyping, microaggressions, overt racism and bullying, culturally inappropriate forms of care, communication, and more. The existence and prevalence of this systemic racism has both direct and indirect impacts on the health outcomes, life expectancy, and overall wellness of First Nations people and communities, and the federal government has a responsibility to address these gaps.

Currently, Draft NAP item #57 includes the call to “improve health equity, access to culturally appropriate health services and support for holistic approaches to healing, including community-based, culturally relevant and trauma informed mental health services, and Indigenous autonomy over service delivery by co-developing distinctions-based Indigenous health legislation with First Nations, Inuit, Métis and Intersectional partners”. Yukon First Nations have been heavily impacted by converging crises including the impacts of COVID 19 pandemic-related isolation, mental health challenges, toxic drug supply, and a significant lack of access to culturally relevant care for those struggling with their own wellness.

Additionally, the NIHB Program continues to pose significant gaps and challenges for Yukon First Nations trying to access adequate care in the territory. As a costs-based program, it fails to address the true wellness and health care needs of Yukon First Nations. The Programs' burdensome administrative processes also create significant barriers to accessing medical travel funds, which discourages citizens from accessing the care that they need, while further highlighting the need for more culturally-safe, accessible, and high-quality services closer to home. The federal government should conduct a thorough review of the NIHB Program, with a specific lens for the challenges faced by Yukon and other northern First Nations.

Individual and community health and wellness is essential to the success and prosperity of Yukon First Nations, and all Indigenous peoples in Canada. The federal government's NAP must prioritize concerns about access to safe and distinctions-based health care to begin addressing these converging health crises in a meaningful way.

Education

Recommendation 16: Explore a partnership with Yukon First Nations to ensure that they have responsibility for the education of their children and the operation of schools for First Nation students.

For decades, the Yukon Government's education system has failed Yukon First Nation students. The (federal) Auditor General released reports in 2009² and 2019³ that found that the territorial government had made little effort to identify, understand and address the root causes of long-standing gaps in student outcomes that exist between First Nations and other Yukon students, and between rural and urban students. The 2019 audit also found that the Yukon Government did not do enough to create a partnership with Yukon First Nations that would allow it to fully develop and deliver education programs that reflected Yukon First Nations culture and languages, nor did it provide schools with enough direction, oversight, and support to help them deliver culturally inclusive programming.

Ultimately, the 2019 audit found that the territorial government had made little progress to address the issues that had been raised a decade prior in the 2009 audit.

"We need to actively teach our ways of life, our histories, our songs, our art, and our languages, in order to instill these vitally important values, teachings and knowledge to our next generations... We need to have our own schools!"

- Survey respondent

While Canada has made an initial commitment to work with the Yukon First Nation Education Directorate to negotiate a regional education agreement for Indigenous students in the Yukon, Canada should also express its willingness to explore a partnership with Yukon First Nations to ensure that they are made responsible for the education of their own children and manage, administer, and operate schools for First Nation students.

Recommendation 17: Prioritize Draft National Action Plan item #19 to meaningfully educate all Canadians on the Declaration and the rights of Indigenous peoples.

As a matter of advancing reconciliation, all people in Canada – Indigenous and non-Indigenous – must learn about the histories, cultures, rights and contributions of First Nations, Inuit, and Métis people in this country. Throughout engagement, Yukon First Nations emphasized the importance of educating the public – including children, youth, and emerging leaders – about the events in history that have led to where Canada is today as a Nation, and why the rights that are included in UNDRIP are so vital to the future of Canada as a whole. Truth must come before reconciliation.

² Office of the Auditor General of Canada, 2009. https://www.oag-bvg.gc.ca/internet/docs/yuk_200901_e.pdf.

³ Office of the Auditor General of Canada, 2019. https://publications.gc.ca/collections/collection_2019/bvg-oag/FA3-153-2019-eng.pdf.

Draft NAP item #19 calls for Justice Canada and various other federal departments to “develop and distribute communication and educational materials to inform Canadians on the Declaration and the human rights of Indigenous peoples by June 2024”. This must be treated as a priority by the federal government.

“The biggest challenge is education and knowing the true history of Canada, especially regarding the non-Indigenous population. Education institutions have done an extremely poor job in informing all Canadians on the history of this land and how we got to where we are today.”

- Survey respondent

Too many Canadians do not understand the truths about Indigenous peoples in this country, including our shared histories (the Doctrine of Discovery, the *Indian Act*, residential schools, the ongoing crisis of missing and murdered Indigenous women, girls, and

2SLGBTQIA+ people), as well as their contributions, and their rights – both inherent and legislated.

If Canada is going to meaningfully implement UNDRIP through the alignment of its laws and policies, it must make it a priority to educate all Canadians on the distinct rights that First Nations, Inuit, and Métis peoples in this country have. Reconciliation requires knowledge, action, understanding and humility from all people in Canada, and the federal government has a responsibility to lead the way in this work, starting with the education of all citizens.

Community Safety

Recommendation 18: Amend Draft National Action Plan item #47 to include metasynthesis-based, Indigenized research to inform culturally appropriate Community Safety Officer Pilot projects

Currently, Draft NAP item #47 calls for exploring “community-based approaches to public safety in Indigenous communities by supporting the implementation, and assessing the effectiveness, of Community Safety Officer Pilot projects approaches to help meet community safety needs of Indigenous communities”. However, this action should be strengthened to better reflect the diversity of Indigenous communities across Canada and ensure that any community safety initiatives are centered in Indigenized research and data methods.

It is recommended that NAP item #47 be revised to read: “Explore community-based approaches to public safety in Indigenous communities by engaging in metasynthesis-based, Indigenized research to inform the development, implementation, and assessment of culturally appropriate Community Safety Officer Pilot projects, tailored to address the unique safety needs of each Indigenous community.”

This recommended revision emphasizes the importance of Indigenized metasynthesis-based research in understanding the diverse needs and contexts of Indigenous communities. A one-size-fits-all approach to public safety is unlikely to be effective, as Indigenous communities have unique cultures, histories, and experiences. Incorporating Indigenized, metasynthesis-based research will ensure that the Action Plan recognizes the diversity and distinctiveness of Indigenous communities,

and will provide the necessary context to develop culturally appropriate and community-specific solutions. Additionally, engaging with Indigenous communities in the Indigenized metasynthesis process will foster ownership of public safety initiatives and empower First Nations to take control of their safety and well-being; an approach which aligns with the principles of self-determination and autonomy enshrined in UNDRIP.

Finally, by utilizing Indigenized metasynthesis-based research to inform the development and implementation of pilot projects, the federal government can better assess the effectiveness of these initiatives and make evidence-based decisions on how to allocate resources and support Indigenous communities in the long term.

Support for Indigenous Women, Girls, and LGBTQIA2S+ People

Recommendation 19: Fund and implement the Yukon’s Strategy on Missing and Murdered Indigenous Women, Girls, and Two-spirit+ People

The ongoing emergency surrounding Missing and Murdered Indigenous Women, Girls and Two-spirit+ People (MMIWG2S+) is yet another direct byproduct of anti-Indigenous racism in Canada. In 2022, the Yukon Advisory Committee on MMIWG2S+ released *Changing the Story to Upholding Dignity and Justice: Yukon’s Missing and Murdered Indigenous Women, Girls and Two-spirit+ People Strategy*. The Yukon Strategy on MMIWG2S+ is a response to the federal government’s National Inquiry into Missing and Murdered Indigenous Women and Girls, and takes a Yukon-centered approach to addressing violence against Indigenous women, girls, and two-spirit+ people.

The federal government must implement the National Inquiry’s Calls to Justice in a way that is relevant, appropriate, and applicable to the many diverse Indigenous populations across Canada and *Changing the Story to Upholding Dignity and Justice* provides the roadmap for how this work should be done in the Yukon. It brings together the stories, experiences, and expertise of MMIWG2S+ families, survivors, and community organizations who have the local knowledge required to address violence against Yukon First Nations women, girls, and LGBTQIA2S+ people. The Yukon Strategy clearly lays out 12 priority action items along with concrete objectives, organizational leads, milestones and considerations for implementation, and federal government must make funds available to support the implementation of the Strategy.

In addition to supporting its implementation in the Yukon, it is recommended that Canada look to the Yukon Strategy to inform the NAP. Currently, Draft NAP item #12 calls to end systemic violence against Indigenous women,

“Use [the Yukon Strategy] as a template to inform the federal action plan. It’s a blueprint.”

- Roundtable session participant

girls, and gender-diverse people by implementing the Federal Pathway to address the root causes of violence against Indigenous women, girls, and LGBTQIA2S+ people, and by “developing a comprehensive Violence Prevention Strategy to expand culturally relevant supports for Indigenous women, children, families and 2SLGBTQI+ people facing gender-based violence”. While it is a Yukon-centered approach, *Changing the Story to Upholding Dignity and Justice: Yukon’s Missing and Murdered Indigenous Women, Girls and Two-spirit+ People Strategy* should be used as a template for how the federal government will support the work of local families, communities, and organizations in addressing violence against Indigenous women, girls and two-spirit+ people.

Recommendation 20: Prioritize Call for Justice 13.2 and the implementation of Gender-Based Analysis+ (GBA+) for all levels of government and industry actors operating projects on First Nations’ territories

The GBA+ model, which is often promoted by the federal government and its various departments, is about guiding how decisions are made to uphold the safety of communities, specifically for diverse or typically marginalized individuals within those communities. The GBA+ lens must be applied across all sectors of society in understanding how to protect and support Indigenous women, girls, and 2SLGBTQIA+ people.

The Yukon is the site for many ongoing and prospective development and resource extraction projects. These projects often involve labourers from outside of the territory residing on Yukon First Nations’ traditional territories for extended periods of time. Prior to these projects being approved, for example, there must be robust gender-based analysis work performed to evaluate the safety and security risks that may be posed to any community where outside workers are entering.

The National Inquiry’s Call for Justice 13.2 calls for: “all governments and bodies mandated to evaluate, approve, and/or monitor development projects to complete gender-based socio-economic impact assessments on all proposed projects as part of their decision making and ongoing monitoring of projects. Project proposals must include provisions and plans to mitigate risks and impacts identified in the impact assessments prior to being approved.”

The federal government must prioritize the enforcement of this Call for Justice to ensure that all levels of government and industry actors are upholding their responsibilities to perform an accurate and community-focused analysis. This must involve robust engagement and collaboration with the communities involved so that there is broad understanding of the risks that may be posed to First Nations and their citizens upon the commencement of a new project on their territories.

Recommendation 21: Provide core funding to local community organizations that work with MMIWG2S+ families and 2SLGBTQIA+ people in the Yukon

Draft NAP item #52 calls for CIRNAC to “increase the ability of grassroots organizations to bring forward the interests and perspectives of Indigenous women’s and 2SLGBTQIA+ grassroots organizations’ voices to influence the development of federal policy, programs, and legislation”. To

do this, the federal government must create dedicated, predictable, and long-term resources for these community organizations to do their work.

“Support and fund [community organizations], then get out of the way. We have the experts and knowledge in place. That’s who should be guiding this.”

- Roundtable session participant

In the Yukon, there are grassroots Indigenous organizations who work alongside women’s organizations and others to undertake vital work at the community level, supporting the safety, security, and wellbeing of Yukon First Nation women, girls, and 2SLGBTQIA+ people.

During the roundtable session for Yukon First Nation women and 2SLGBTQIA+ people, participants clearly identified the need for local organizations to be provided with core funding that would allow for sustainable, consistent, and long-term support in addition to the existing project-based funding. Long-standing Indigenous organizations like Yukon Aboriginal Women’s Council (YAWC), Liard Aboriginal Women’s Society (LAWS) and Whitehorse Aboriginal Women’s Circle (WAWC) have the knowledge and expertise required to uplift community voices and address the distinct community needs that Yukon First Nation women, girls, and 2SLGBTQIA+ people have. However, to support these grassroots organizations in bringing forward the interests and perspectives of Indigenous women and 2SLGBTQIA+ people – as is proposed by Draft NAP item #52 – the federal government must provide them with adequate and consistent core funding.

Cross-border Rights

Recommendation 22: Engage directly with Yukon First Nations to develop policy and legislative mechanisms that support the full implementation of Article 36 of UNDRIP

According to Article 36 of UNDRIP, “Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.” Further, it says that “States, in consultation and cooperation with Indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.”

Under Canada’s *Declaration Act*, the federal government has a responsibility to facilitate cross-border access for Indigenous peoples. Canada’s border laws and policies must recognize Yukon First Nations’ kinship ties and relationships with communities located on the other side of arbitrary colonial borders, including the one separating the Yukon and Alaska. Despite this, Yukon First Nations and other Indigenous peoples in Canada continue to face significant challenges crossing borders and freely accessing their traditional territories.

Canada must commit to working closely with Yukon First Nations, to address border crossing issues that continue to be experienced by Yukon First Nations and Indigenous peoples, particularly those divided by arbitrary colonial borders. The NAP should provide clear direction for engagement with Yukon First Nations whose traditional territories and nations span international borders, as well as with relevant international partners to develop mechanisms – legislative, policy, or otherwise – that reflect the self-determination of such Nations to facilitate the full implementation of Article 36 of UNDRIP.

Indigenous Media and Broadcasting

Recommendation 23: Realize the rights described in UNDRIP Articles 16 and 19 by:

- ***Updating CRTC standards, policies, and procedures to align with the Declaration (with a specific focus on upholding free, prior, and informed consent), and mandating the regulator to work more closely with Indigenous communities to ensure media and telecommunications service providers recognize Indigenous peoples as rightsholders with authority over how these services operate on and over their territories***
- ***Re-designing the Department of Canadian Heritage's media funding policies and programs, in collaboration with Indigenous peoples, to enable Indigenous peoples and community to maintain, develop, and have ownership over their own media and communications networks***

The principles of free, prior, and informed consent cannot be limited to resource extraction or infrastructure development on and over Indigenous territories. It must apply to all matters that have potential and real impacts on a First Nation's territory and peoples, as well as all industries that wish to do business on and over these territories. In the digital and online reality of today, this must include telecommunications, internet, and broadcasting services.

For too long, service providers have viewed Yukon First Nations people and communities, as well as other Indigenous communities, as consumers of radio, television, internet, and online media, as opposed to rightsholders with authority over how these services operate on and over their territories. This has limited the full realization of Article 16 and 19 of UNDRIP, which emphasizes the right of Indigenous peoples to maintain, develop, and have ownership over their own media and communications networks.

To this end, we recommend the following actions to ensure the government takes strong enough measures to appropriately realize Article 16 and 19 for Yukon First Nations:

1. Canada must include an action in the NAP committing the Canadian Radio-Television and Telecommunications Commission to update its standards, processes, policies, and principles to reflect the spirit and intent of the UN Declaration, with a focus on how FPIC principles must be applied in their decision-making, specifically around approvals and management of telecommunications projects and radio-television licensing.

2. The CRTC should establish a consultation process with Yukon First Nations and other Indigenous communities to ensure that the principles of free, prior, and informed consent are incorporated into decision-making around telecommunications projects and radio-television licensing.
3. The Department of Canadian Heritage must conduct a full review of its media funding programs, in partnership with Indigenous peoples, to ensure that Indigenous nations, including Yukon First Nations, are empowered to access resources to create and maintain their own independent media. This should include targeted funding for (telecommunications and broadcast media) language revitalization and learning initiatives.
4. The Department of Canadian Heritage should ensure that the eligibility criteria and application processes for its media funding programs are clear and accessible to Indigenous peoples, including Yukon First Nations. This may involve developing specific resources and supports to assist Indigenous applicants in accessing these programs, including for media training and development.

Radio, television, and online media are key to disseminating information and can be impactful tools to further community connection, support language revitalization and learning. By taking these actions, Canada can ensure that Yukon First Nations have the resources, support, and authority they need to maintain, develop, and have ownership over their own media and communications networks, in line with the rights set out in Article 16 and 19 of the UN Declaration on the Rights of Indigenous Peoples.



ROSS RIVER DENA COUNCIL
General Delivery, Ross River,
YT Y0B 1S0
Telephone (867) 969-2277
Fax: (867) 969-2405



WHITE RIVER FIRST NATION
Box 2 - Beaver Creek
Yukon Y0B 1A0
Telephone (867) 862-7802
Fax: (867) 862-7806

April 27, 2023

RE: RRDC/WRFN Submission on the Government of Canada's draft UNDRIP Action Plan

I. INTRODUCTION AND OVERVIEW

We write to provide comments jointly on behalf of Ross River Dena Council and White River First Nation (“**RRDC**” and “**WRFN**”), in connection with Canada’s action plan (the “**Action Plan**”) which Canada must develop and implement, in consultation and cooperation with Indigenous Peoples, to achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples (the “**Declaration**”). Pursuant to section 6 of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (Canada) (the “**UNDRIP Act**”), the Action Plan must be developed by June 21, 2023.

RRDC and WRFN are uniquely situated given that they (i) are amongst the minority of First Nations in the Yukon that have not entered into land claim or self-government agreements pursuant to the *Umbrella Final Agreement* (“**UFA**”), but also (ii) have no designated reserve lands, unlike First Nations in other parts of Canada where treaties or land claims have not been completed.

For that reason, RRDC and WRFN have a distinct relationship with the Crown, which engages dynamics and nuances not necessarily present in the Indigenous-Crown relationship of other First Nations, including those in the Yukon and those situated elsewhere across the country.

RRDC and WRFN therefore provide these supplemental comments to the Assembly of First Nations Yukon Region submissions to capture their unique perspectives and in recognition of the distinct relationship that each of them have with the Crown.

The following matters are addressed below:

- a) a brief overview of the unique situations of RRDC and WRFN, and how they relate to the Indigenous-Crown relationship; and
- b) comments on the draft Action Plan, divided into the following sections:
 - i. legislative amendments and policy review; and
 - ii. fiscal, infrastructure, and administration-related matters.

Among the vast range of important matters addressed in the draft Action Plan, RRDC and WRFN have decided to focus their efforts on commenting on the above, as they relate directly to the unique constitutional and legal situation of our two Nations.

However, RRDC and WRFN remain of the view that it is critical to revisit the Indigenous-Crown relationship in relation to all matters noted in the draft Action Plan. Both Nations anticipate that there will be much valuable commentary provided on all subjects from a variety of Indigenous groups and organizations. A lack of comment on any particular item in the draft Action Plan should not be interpreted as a lack of interest by RRDC and WRFN.

II. DISCUSSION

(a) Overview of RRDC and WRFN

WRFN is located in central and western Yukon. Its main population centre is Beaver Creek. It has approximately 170 status members at present, and approximately another 70 non-status members, for a total of around 240-50 members total. The language originally spoken by the contemporary membership of WRFN were the Athabaskan languages of Upper Tanana and Northern Tutchone.

RRDC's main community is Ross River, which is located at the confluence of the Ross and Pelly Rivers in the Yukon Territory. RRDC is part of the wider Kaska Nation. Kaska traditional territory is one of the largest in Canada, spanning three provinces and territories (British Columbia, Yukon, and Northwest Territories) and constitutes 25% of the Yukon Territory and 10% of British Columbia.

Two distinguishing features of RRDC and WRFN call for particular attention by Canada when formulating the Action Plan:

- Canada's outstanding duty to deal honourably with Nations who did not sign a Final Agreement under the UFA (such as RRDC and WRFN); and
- In tandem with that outstanding duty, the historic and continuing injustices caused by Canada's decision not to set aside reserve land for RRDC and WRFN.

These distinguishing features require Canada to take a distinct approach to engaging with RRDC and WRFN. In particular, a "one size fits all" approach to engaging with Yukon First Nations is not appropriate as evidenced by the fact that such an approach has caused highly inequitable ripple effects in the past to both RRDC and WRFN. As recognized in the Preamble to the UNDRIP Act, "*measures to implement the Declaration in Canada must take into account the diversity of Indigenous peoples and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit and the Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge.*"

(b) Comments on the draft Action Plan

i. *Legislative amendments and policy review*

As a preliminary matter, RRDC and WRFN call on Canada to engage with them on the understanding that they do not necessarily have the same interests, priorities, and views as other Yukon First Nations.

In addition to being rooted in the Declaration and the preamble to the UNDRIP Act, these actions items are also reflected in Principle 10 of the *Principles Respecting the Government of Canada's relationship with Indigenous Peoples* ("**Principles**"), which acknowledges that "a distinctions-based approach is needed to ensure that the unique rights, interests, and circumstances" of individual First Nations are acknowledged, affirmed, and implemented.

RRDC and WRFN's specific comments are provided below.

1. **Comprehensive review of the *Yukon Environmental and Socio-economic Assessment Act* ("YESAA")** (Declaration Articles 2, 8(2)(b), 25, 26, 29, 32, and 37)

As presently drafted, YESAA purports to implement environmental assessment commitments from the UFA in a manner that places non-UFA Final Agreement Nations such as RRDC and WRFN on an

unequal footing as compared to UFA Nations. While there are viable interpretations of YESAA's existing provisions that may avoid this inequality, RRDC and WRFN have found the consistent positions of government entities interpreting YESAA to be such that non-UFA Final Agreement Nations, such as themselves, are afforded lesser protections under that legislation.

This is a significant problem from the lens of the requisite rights protections under the Declaration, and more broadly due to the substantive inequality that stems therefrom.

Additionally, YESAA is badly outdated both in relation to interfacing with Crown consultation and reconciliation commitments, and as a matter of environmental assessment best practices.

For those reasons, and building on the statutory obligation under section 5 of the UNDRIP Act (which requires the Government of Canada to, in consultation and cooperation with Indigenous Peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration), RRDC and WRFN recommend that the Action Plan include a commitment to promptly and comprehensively review YESAA, including to:

- Clarify that non-UFA Final Agreement Nations' participatory rights (and regulators' corresponding obligations) are equal to those of UFA Final Agreement Nations;
- Clarify that YESAA assessments are required to take rights, culture and way of life considerations into account when conducting their duties, to avoid the problem of the Crown having to backfill consultation in an inefficient and prejudicial "Phase 3" disconnected from the assessment process;
- Better align YESAA with the *Impact Assessment Act* (Canada), especially in relation to recognition of Indigenous jurisdictions, assessment processes (such as the Tū Ƙidłini Assessment Process for RRDC), and participatory rights;
- Recognize and comply with Indigenous land use plans;
- Provide for comprehensive cumulative impact assessments co-designed with First Nations (including for certainty non-UFA Final Agreement Nations such as RRDC and WRFN);
- Enable regional assessments where requested by an Indigenous nation, implement moratoriums on new project / tenure approvals until such assessments are completed, and a path forward developed with First Nations to ensure the assessment recommendations are implemented; and
- Pre-amendment pilot project(s) on the above items.

In addition to being rooted in the Declaration, the above-listed actions items are also reflected in Canada's Principles respecting the Government of Canada's relationship with Indigenous peoples – including Principle 5 (whereby Canada has acknowledged that reconciliation can take multiple forms and that a one-size-fits all approach to resolving claims is inappropriate) and Principle 10 (whereby Canada acknowledges the need for a distinctions-based approach).

2. Consent-based decision-making models (Declaration Articles 3, 5, 8(2)(b), 18, 19, and 40)

The Action Plan must include a commitment to negotiate consent-based decision-making agreements with Nations, including RRDC and WRFN.

This must include the development of a framework under federal law for the entering of decision-making agreements regarding administrative decisions, as is present in sections 6 and 7 of British Columbia's *Declaration on the Rights of Indigenous Peoples Act*.

Though not directly contemplated in the text of Canada's UNDRIP Act, in the view of RRDC and WRFN such a mechanism flows naturally from, and is indeed compelled by, the obligations under the Declaration to seek and secure free, prior, and informed consent before taking actions that impact Indigenous interests.

In addition to being rooted in the Declaration, these actions items are also reflected in Canada's Principle 6 (through the recognition therein that "meaningful engagement with Indigenous peoples aims to secure their free, prior and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources").

3. Indigenous Protected and Conserved Areas (Declaration Articles 25, 26, 29, and 32)

The Action Plan must include engagement and enhanced federal support for the creation of new Indigenous Protected and Conserved Areas where Indigenous governments have the primary role in protecting and conserving ecosystems through Indigenous laws, governance and knowledge systems.

Required supports include funding, land transfers, transfers of management and control of lands, and directions to the Government of Yukon where applicable.

4. Species at risk (Declaration Articles 8(2)(b), 24, 25, 26, and 32)

The Action Plan must commit Canada to: (i) taking a more active role to ensure the protection of species at risk and their habitat; and (ii) co-designing a process with Indigenous groups for the listing and management of endangered species within their Territories, under the *Species at Risk Act* or successor legislation (including the establishment of critical habitat areas, and development of management and recovery plans).

These commitments could be acted on, for example, via transfers of land, or co-management/control thereof with Indigenous groups.

Concurrently, Canada must provide funding to enable Indigenous Guardians and lands departments to gather information and conduct studies to support the protection of species at risk and their habitat.

5. Review of Yukon Act for compliance with the Declaration (Declaration Articles 8(2)(b), 25, 26, 29, 32, and 37)

A conspicuous absence from the draft Action Plan is a commitment to review the *Yukon Act* for compliance with the Declaration. It is federal legislation like any other and it must be subject to the same scrutiny as others.

Particular items of potential reform, to better align the following matters with the principle of co-governance of the Territory with Yukon First Nations, as reflected in the Declaration, include the legislative powers of the Yukon Legislature (s. 18), including in relation to: natural resources (s. 19); wildlife conservation (s. 22); and the administration and control of real property, water, oil, and gas (ss. 45-53).

6. Recognition of Indigenous land use plans (Declaration Articles 8(2)(b), 18, 25, 26, 29, and 32)

Finally, the Action Plan must include a commitment to: fund non-UFA Final Agreement Nations to develop and implement their own Indigenous land use plans; provide support in implementing interim land and resource withdrawals; and impose moratoriums on the issuance of further tenures/authorizations until such land use plans are adequately incorporated into consent-based land use decisions.

ii. Fiscal, infrastructure, and administration-related matters

7. Capacity support (Declaration Articles 3, 4, 5, 18, 19, 27, and 39)

Internal capacity among Indigenous governments is a critical factor in enabling any Nation to actually realize the various commitments in the Action Plan (or any other federal initiative).

Accordingly, the Action Plan must include a commitment to provide capacity for Indigenous governments to hire, train, and retain staff that can engage with government, prepare funding applications, and follow through and execute programs.

In addition to being rooted in the Declaration, these actions items are also reflected in Canada's commitments made pursuant to Principle 8 (i.e., reconciliation requires a renewed fiscal relationship).

8. Equitable access to commitments made under UFA-related agreements
(Declaration Articles 2 and 37)

The Action Plan needs to include a provision for Canada to prioritize working with RRDC and WRFN to access commitments made under UFA-related agreements, including, for example:

- programs and services transfers;
- the administration of justice;
- tax agreements; and
- comprehensive funding agreements.

Canada cannot use its outstanding, unfilled honourable obligations to RRDC and WRFN as an excuse toward putting those Nations on an inequitable footing as compared to other Yukon First Nations, and other First Nations across the country.

In addition to being rooted in the Declaration, these actions items, as well as those set out in sections 9-11, below, are also reflected in Canada's Principle 8 (which recognizes that reconciliation requires a renewed fiscal relationship).

9. Tax equity (Declaration Articles 2, 37, and 39)

An aspect of continuing injustice visited upon RRDC and WRFN is that while Canada has not discharged its honourable obligations to settle claims with them, at the same time it has never set aside reserves for them. Among other things, this means that RRDC and WRFN land does not trigger the application of s. 87 of the *Indian Act*.

The Action Plan must include a commitment for Canada, as an interim step before overall lands questions are resolved, to enter into retroactively-applicable arrangements providing RRDC and WRFN substantively similar protections as s. 87 of the *Indian Act* where the "property" at issue is located on RRDC and WRFN lands.

10. Centring funding needs on the community's perspective (Declaration Articles 2, 3, 4, and 18)

The Action Plan also needs to include a commitment to have federal funding be accessed at levels based on community need – as determined by the community itself – rather than being set unilaterally by federal decision-makers far removed from the on-the-ground life of the community.

11. Closing the infrastructure gap (Declaration Articles 1 and 39)

Currently, RRDC and WRFN only tend to see infrastructure improvements when needed to support resource extraction projects in their respective Territories.

As a matter of basic human rights and equality, the Action Plan must commit to measures that effectively close the infrastructure gap, beginning with priorities identified by Indigenous groups themselves. For example, in the case of RRDC and WRFN, a matter of first priority would be addressing road systems in and out of community, as guided by discussions with each of their governments.

12. Food security (Declaration Articles 7(1), 21, 23, and 24)

The Action Plan must include a commitment to ensuring RRDC and WRFN have food security, including through funding, recognition of land use plans (protecting valuable habitat needed for wildlife to thrive), and limitations on non-Indigenous hunting/fishing/trapping within the Territories.

13. Guardian stewardship programs (Declaration Articles 5, 25, 26, and 29)

The Action Plan must include commitments to support Guardian stewardship programs, training, and education. This is critical to recognizing RRDC and WRFN's rights to steward their Territories, including in relation to non-Indigenous resource users.

14. Transboundary and international issues (Declaration Articles 4, 17(1), and 36)

WRFN's main community at Beaver Creek is situated very near the international border with the USA at Alaska and it has members on the American side. It is currently involved in various reconciliation tables regarding border issues. From WRFN's perspective, the Action Plan ought to include a commitment for Canada to engage with Indigenous groups on all aspects of international border issues (bilateral treaty matters between Canada and the USA; passage of Indigenous peoples and their goods for cultural and livelihood purposes; and the regulation and management of cross-border wildlife matters).

RRDC requires Canada's involvement in engagement on cross-territorial boundaries (i.e., between Yukon and the Northwest Territories), given that the Kaska Territory extends across that boundary. To date, RRDC has had limited engagement from Northwest Territories, and is thereby witnessing significant adverse impacts to its Territory in the Northwest Territories, notwithstanding its Aboriginal title and rights thereto.

15. Other priority areas of enhanced engagement

RRDC and WRFN have also identified the following other priorities for enhanced engagement with Canada in the Action Plan:

- Ensuring oversight and accountability on the implementation of the Declaration;
- The environment (including incorporating Indigenous knowledge into Environment and Climate Change Canada's work, creating a Canada Water Agency and modernizing the *Canada Water Act* to reflect Indigenous rights);
- Improving health equity and reducing racism in the healthcare context;
- Supporting initiatives aimed at increasing First Nations control over service delivery; and
- Supporting First Nations control over education and self-determined education approaches.

These matters must also be addressed in the Action Plan to ensure Canada fulfills its commitments to full implementation of the Declaration.

III. CLOSING

RRDC and WRFN look forward to continuing dialogue with the Crown as to how to implement the Declaration and advance the goals of the UNDRIP Act.

Both Nations emphasize that these comments ought to be seen not as yet another box-ticking consultation exercise, but as the beginning of a process leading to a foundational reassessment of the Indigenous-Crown relationship between Canada and each of RRDC and WRFN.

Sincerely,



Chief Dylan Loblaw
Ross River Dena Council



Chief Bessie Chasse
White River First Nation

