

STRENGTH

PEACE

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June 2, 2023

OPEN LETTER

The Honourable Minister David Lametti
Minister of Justice and Attorney General for Canada
House of Commons
Ottawa, Ontario
Canada
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email: David.lametti@parl.gc.ca

Re: Key findings and recommendations of the Kanien'kehá:ka of Kahnawà:ke on draft federal action plan for the implementation of UNDRIP

Wa'tkwanonhwerá:ton Minister Lametti,

As promised in our letter of April 27, 2023¹ you will find attached the key findings and recommendations stemming from the Mohawk Council of Kahnawà:ke's engagement with our community regarding the federal draft UNDRIP action plan. These findings and recommendations stem directly from the Kanien'kehá:ka of Kahnawà:ke and should be addressed along with the key gaps and recommendations made by the MCK in our April 27, 2023 letter.

While we understand that there will be very little time to incorporate the recommendations and amendments stemming from community engagement into a final version of the Action Plan, our expectation is that you will make the time to apply our recommendations to your action plan. The MCK will be expecting a positive response to our submissions and a follow-up meeting, to illustrate how the recommendations made by MCK on April 27, 2023 and through this community engagement have been substantively incorporated into the final Action Plan.

Please note that this letter, and accompanying recommendations, are listed as an "open letter" format. In the spirit of transparency and accountability, we are making this submission publicly available as our recommendations pertain to matters facing not only our community, but also other Indigenous rights holders.

Respectfully,

ON BEHALF OF THE OFFICE OF THE COUNCIL OF CHIEFS

MOHAWK COUNCIL OF KAHNAWÀ:KE


Grand Chief Kahsennéhawe Sky-Deer

¹ Letter from Grand Chief Kahsennéhawe Sky Deer to Minister David Lametti, dated April 27th, 2023 re: Mohawk Council of Kahnawà:ke (MCK) ongoing review of draft UNDRIP Action Plan and Identification of Key Gaps that must be immediately addressed.

Key Findings

- Direct dialogue with Kahnawà:ke is needed to ensure the draft Action Plan supports and facilitates cooperation and collaboration to implement UNDRIP in a way that is meaningful to Kahnawà:ke. This may involve joint development of measures and “co-drafting”;
- Significant concerns exist about the draft Action Plan in its current form, and around Canada’s approach to implementing UNDRIP;
- There is a disconnect between the draft Action Plan and community members:
 - Vagueness: A general vagueness and lack of clarity was frequently raised in relation to the many of the commitments included in the plan: it was difficult to understand what actions Canada will concretely undertake to change the status quo
 - Inaccessible language and jargon: Several participants also noted that the draft Action Plan uses language that is neither accessible, nor easy to understand and to interpret
 - Lack of available information about components of the plan and existing programs, policies and agencies: Several participants noted that they were unaware of many of the programs, agencies, initiatives and policies mentioned in the draft Action Plan, making it difficult to provide feedback on the document without complete information and context
 - Structure of the plan and categories of measures: More information is needed about the broad categories structuring the draft Action Plan, notably the “cross-cutting issues” category. Some participants raised concerns that this category reflects a non-specific, “pan-Indigenous” approach that does not adequately reflect the diverse and unique contexts, realities, rights and positions of Indigenous communities and Nations for the purpose of meaningfully implementing UNDRIP in Canada.
- Canada should be engaging in direct dialogue with Indigenous rights-holders to implement UNDRIP. Reliance on established national bilateral mechanisms for engagement and development is a significant concern. There is a strong sense that these bilateral mechanisms are not representative of the diversity of Indigenous experiences, positions and approaches to self-determination, land rights and Indigenous rights across communities and Nations. Bilateral mechanisms cannot be relied on to access true rights-holders and ensure a strong connectivity with communities;
- There is a deep desire to make the implementation of the Declaration real and impactful, to implement it fully and meaningfully. As it was often reiterated, “words are not enough” ... “it needs to be real”...
- ... and yet, words remain important, with participants identifying the need to strengthen many of the commitments included in the draft Action Plan;

- Discussions demonstrated that significant work is needed on the part of Canada, over the long term, to build a respectful relationship with Kahnawà:ke and to build trust. Canada must act as a trustworthy partner to succeed in fully implementing UNDRIP.
- Key gaps identified in the draft Action Plan include:
 - Measures to **address Indigenous Lands and territories**
 - Including measures to work directly with Indigenous rights holders to establish a process to address Aboriginal Title, acknowledge unceded territory and facilitate respectful coexistence on Indigenous lands
 - Including measures addressing water rights
 - Including an independent mechanism to address conflicts rooted in land-based rights and interests
 - Measures to **ensure Canada fulfills its obligation to respect, protect and uphold Indigenous rights and jurisdiction**, including by addressing provincial actions, laws, policies, regulations and/ or practices that negate, disrespect or violate these rights in a range of sectors, including:
 - Education
 - Culture and language
 - Health
 - Citizenship and membership rights
 - Justice
 - Harvesting
 - Border rights
 - Mechanism(s) for direct dialogue and joint decision-making with Indigenous rights holders to work on implementing UNDRIP
 - Measures to support Indigenous Education
 - Measures to implement Indigenous-governed citizenship and membership rights
 - Measures to ensure respect for Indigenous Justice systems, notably Kahnawà:ke's justice system
 - Measures dedicated to establishing a process to protect and uphold Indigenous jurisdictions in the legislative process and in situations where there are potentially overlapping laws and jurisdictions.

Recommendations – Content of the Action Plan

General recommendations

- a) ***Review the draft Action Plan with Indigenous rights-holders, including the feedback received by the MCK and the Kanien'kehá:ka of Kahnawà:ke. Given the short time frames***

for review of the draft Action Plan, Canada must also include a process for ongoing revisions/consultations on the Action Plan after it is finalized.

- b) Add measures to establish a process for direct dialogue, engagement and joint decision-making with Indigenous rights-holders, including Kahnawà:ke, in the implementation of the Action Plan.** Established national bilateral mechanisms are not appropriate or legitimate primary interlocutors for this work.
- c) Add language to clarify, throughout the Action Plan, that all development and implementation processes will be founded on direct dialogue, engagement and joint decision-making with Indigenous rights holders.**
- d) Ensure the content of the plan is clear, concise and accessible:** This includes simplifying language and avoiding jargon; clearly defining terms and categories used to structure the Action Plan; providing adequate background information on the programs, policies and initiatives mentioned in the plan; and improving communications and outreach about the Action Plan and related information.
- e) Incorporate measures to fulfill Canada's obligation to respect, protect and uphold Indigenous rights, jurisdiction and self-determination.** This theme was recurrent throughout engagement sessions: to be meaningful and impactful, UNDRIP must be implemented everywhere and at all government levels in Canada. The Action Plan should incorporate strong commitments and measures to respect, protect and uphold Indigenous rights, jurisdiction and self-determination. This includes effectively addressing obstruction, inaction, undermining and lack of respect for these rights by provinces and third parties. Participants identified some of the areas for which they frequently experience problems stemming from inaction or direct undermining of Indigenous rights:
- Land rights and title
 - Language and culture
 - Harvesting rights, both for sustenance and as an economic activity
 - Health rights, including access to services in English
 - Education
 - Child and family services
 - Economic activity (tobacco, cannabis, gaming, etc.), including the right to work in English.
- f) Add a measure to jointly establish a process to protect and uphold Indigenous jurisdictions in the legislative process and in situations where there are potentially overlapping laws and jurisdictions.** This process should be relied on in the review of Canadian laws to ensure their alignment with UNDRIP (Participation in decision-making and Indigenous Institutions).
- g) Strengthen commitments and measures to fully investigate and holistically address the cases of Missing and Murdered Indigenous Women and Girls in Canada.**
- h) Strengthen measures aimed at providing education and training to non-Indigenous people:** Emphasize sensitivity training and education about residential schools, notably in the context

of work to eliminate discrimination in the access to healthcare (Draft Action Plan Measures #4 and 6).

- i) **Add a measure to ensure funding for Indigenous People to participate in consultations on what is taught in Canadian schools as a key measure to educate the public on Indigenous issues. Canada must take measures to ensure that provinces collaborate to achieve this objective.** (Promoting mutual respect and understanding as well as good relations, including through human rights education; Addressing injustices, prejudice, violence, systemic racism and discrimination).
- j) **Incorporate actions and measures to support and facilitate the respectful coexistence of Kahnawà:ke's Justice System with other jurisdictions.** This includes providing adequate funding and working with Kahnawà:ke and other parties to ensure Kahnawà:ke's Justice System is respected and upheld in all jurisdictions. (Self-determination, self-government and recognition of treaties)
- k) **Incorporate language to clarify that all federal approaches and policy reforms for addressing land rights and Indigenous self-determination will be developed based on direct dialogue, collaboration and joint-decision-making with Indigenous rights-holders.** (Self-determination, self-government and recognition of treaties; Lands, territories and resources)
- l) **Incorporate measures to work with Indigenous right-holders to address land rights, including title, and support peaceful and respectful coexistence on Indigenous lands, particularly on unceded lands.** This component should be a key focus of the Action Plan. (Lands, Territories and Resources). This aligns with MCK recommendation made on December 16, 2022 and April 27, 2023 to the effect that Canada must proactively acknowledge the regions within present day Canada that have never been ceded to the Crown (including much of the present-day Maritimes, Quebec and British Columbia). This acknowledgement must take the form of a formal declaration and be accompanied with binding measures on how Indigenous peoples can exercise decision-making authority regarding their title lands, exercise stewardship rights and responsibilities (including conservation) and benefit (financially and otherwise) from the development/resource extraction of these lands.
- m) **Incorporate language to clarify that Indigenous rights-holders will set the standards for how to be consulted on natural resources project, through the establishment of jointly-developed mechanisms to facilitate this process.** This including processes, standards and mechanisms to fully implement FPIC. (Lands, Territories and Resources)
- n) **Amend Measure #31** (Lands, territories and resources): Participants expressed concerns around the vagueness of language used in this measure, for instance, the meaning and import of the term "guidance". They stated that clearer language should be used.

Participants recommend amending Measure #31 as follows:

31. ~~"Develop guidance on engaging~~ Engage directly with Indigenous rights holders to establish an engagement process on natural resources projects in consultation and collaboration with Indigenous partners, and in collaboration with provinces, ~~and territories, and industry,~~ that:

- o Aligns with the Declaration, including article 32.2, which calls for consultation and cooperation in good faith with the Indigenous peoples concerned in

order to obtain free, prior and informed consent, prior to the approval of any project affecting their lands or territories and other resources

- ~~Provides practical recommendations for successful~~ Establishes standards for the implementation of free, prior and informed consent ~~implementation~~ (including in situations where multiple regulatory processes are involved)
- Supports the meaningful inclusion and integration of unique and localized Indigenous knowledge in the foundational design and governance of projects (Various departments)

This proposed amendment should be read in addition to the MCK's proposed amendment to Measure #31 sent to Minister Lametti in our letter of April 27, 2023.

o) Amend Measure #32 (Lands, territories and resources): Participants recommending amending this measure as follows:

32. Work closely with Indigenous peoples to develop and implement actions to ensure Indigenous peoples and their communities equitably and consistently benefit from natural resource development ~~that occurs on Indigenous lands.~~ (Natural Resources Canada)

p) Amend Measures #34, 35 and 38 as recommended by participants (Lands, territories and resources), measures 34, 35 and 38 should be amended as follows. In addition, participants identified the need to engage more federal departments, such as Natural Resources and Environment and Climate Change Canada in these issues, not only DFO.

34. Pursue amendments and reforms of fisheries and harvesting legislation, regulation or policies to support self-determination and meaningful implementation and exercise of Indigenous ~~fishery~~ rights. (Fisheries and Oceans Canada)

35. Enhance collaborative tools agreements and transparent approaches to better deliver on the collaborative design, development, delivery and management of fisheries and wildlife, as well as conservation and protection of fish and wildlife habitat, and in conjunction with Crown-Indigenous Relations and Northern Affairs Canada, continue to pursue fisheries and wildlife-related collaborative governance opportunities through nation-to-nation, Inuit-Crown and government-to-government negotiations. (Fisheries and Oceans Canada)

38. Develop and employ mechanisms that respect and incorporate Indigenous Knowledge as a distinct knowledge system in the management of fisheries, fish habitat, conservation, marine safety, ~~and~~ protection of the marine environment, wildlife and wildlife habitat. (Fisheries and Oceans Canada)

q) Amend Measure #81 (Lands, territories and resources): Participants expressed concern around the vagueness of the language of this measure, notably regarding the mention of a reform of the Specific Claims program. They reiterated that direct engagement with rights-holders to carry out this work is a key requirement to guide any reform envisioned by Canada. They also noted the absence of an independent body in the Specifics Claims process, as well as the lack of independent funding.

Participants recommend amending Measure #81 as follows:

~~81. Continue to co-develop options for Engage with rights holders to reform of the Specific Claims program, and the development of a reformed specific claims resolution process, including an independent Centre for the resolution of specific claims, and independent funding support, to administer and oversee the process presently performed by Crown-Indigenous Relations and Northern Affairs Canada. (Crown-Indigenous Relations and Northern Affairs Canada)~~

This aligns with MCK recommendations made in the letter to Minister Lametti, dated December 16, 2022 to the effect that Indigenous rights holders must also be directly involved in the reform process. Restitution must be at the forefront of the reform process, including prioritizing the return of lands (article 28 UNDRIP).

r) **Amend Measure #83** (Lands, territories and resources): Participants recommend amending Measure #83 as follows:

~~83. Engage with rights-holders to co-develop a redesign of the Additions to Reserve Policy. (Crown-Indigenous Relations and Northern Affairs Canada)~~

s) **Add measures to establish an independent mechanism to address land-based conflict.** (Lands, territories and resources)

t) **Strengthen measures to address anti-Indigenous racism, racial profiling and hate crimes against Indigenous People** (Civil and political rights).

u) **Amend Measure #45 or add measures to fully address and uphold Haudenosaunee border rights.** The unique status and rights of Haudenosaunee people should be addressed and reflected in any measure to address border-crossing. Such measures should be distinct from frameworks applicable to immigration and refugee issues and include actions to implement the recognition of Haudenosaunee passports and documentation.

v) **Strengthen the Action Plan commitments to fully implement Indigenous Nations' collective right to determine their own membership and citizenship.** (Measures 84 and 85, Civil and political rights) Measures should include the establishment of a process to work with Indigenous rights-holders to meaningfully implement this right. Such a process should:

- consider and effectively address cumulative impacts of past legislation and policies on contemporary Indigenous membership and citizenship issues;
- respectfully address complexity, including areas of conflict and overlap between the implementation of the right to determine membership and citizenship and attempts to address gender-based discrimination stemming from the *Indian Act*.

w) **Amend Measures #48 and 50 as recommended above.** (Participation in decision-making and Indigenous institutions)

x) **Incorporate measures to ensure full access to healthcare for all members of the community, including mental health supports to help break cycles of trauma caused by assimilation policies, colonial legislation and structural violence against Indigenous Peoples.** (Economic, health and social rights)

- y) **Modify measure #61 to include an explicit commitment to provide funding to support Indigenous women's entrepreneurship.**
- z) **Incorporate measures to support and facilitate the development of economic activity based on sustainable harvesting and commerce of renewable species.** (Economic, health and social rights / Lands, territories and resources)
- aa) **Amend Measure #68 to incorporate a strong commitment to ensuring Indigenous Peoples' roles and stewardship responsibilities for natural and cultural heritage are upheld beyond sites administrated by Parks Canada.** (Cultural, religious and linguistic rights)
- bb) **Amend Measure #69 to incorporate language to ensure that Indigenous knowledge will be adequately protected under the conditions determined by Indigenous rights-holders.** (Cultural, religious and linguistic rights)
- cc) **Amend Measure #70 to strengthen the commitment to returning Indigenous cultural property and ancestral remains to their communities.** (Cultural, religious and linguistic rights)
- dd) **Incorporate strong measures to support Indigenous education and respond to the educational needs of Indigenous communities.** This should include a strong commitment to fund Indigenous Education (Education, information and media)

Kahnawà:ke specific recommendations

- ee) **Provide for the establishment of community specific implementation action plans, and work with Kahnawà:ke to create a Kahnawà:ke-specific UNDRIP Implementation Action Plan.**
- ff) **Amend Measure #64 to incorporate language acknowledging Indigenous jurisdiction over gaming, as well as robust commitments to respect and uphold Indigenous gaming jurisdiction . (Economic, health and social rights).** This aligns with recommendations made by MCK on December 16, 2022 and April 27, 2023 to Minister Lametti to the effect that the Federal Government should be amending the Criminal Code to specifically state that it is legal "for a lottery scheme to be conducted and managed by an Indigenous governing body, pursuant to the terms of an agreement with the Government of Canada".
- gg) **Support initiatives and programs to address the lack of safety and exclusion faced by women and members of gender-diverse communities that are grounded in a Kanien'kehá:ka cultural perspective .**

Guiding Principles and Recommendations – Engagement and Joint Decision-Making Process for federal Implementation of UNDRIP

Participants were asked to identify components and characteristics of a good engagement and joint decision-making process to implement the Declaration moving forward. Community members expressed their expectation to be meaningfully involved at all stages of the implementation process, including the drafting and implementation of the Action Plan. Among several recommendations, participants identified the expectation to be listened to and acknowledged; the expectation of a respectful process being established; and the expectation that Canada will follow-up on its commitments and act consistently. The following guiding principles and recommendations were formulated based on community members' input and recommendations:

Recommendations at National Level:

- **Indigenous rights-holders must drive the implementation of UNDRIP and, more specifically, the establishment of standards and processes to achieve UNDRIP's objectives.**
- **Provide sufficient funding and resources for communities to fully engage in the process:** The full participation of Indigenous rights-holders must be adequately funded.
- **The process must address the historical, legal and structural roots of systemic violations of Indigenous rights in Canada:** Canada must be willing to look back to examine, address and correct structures, laws, policies and practices that are foundational to Canada's legal order, perpetuate discrimination and prevent the full acknowledgement, respect for and exercise of Indigenous rights and jurisdiction, including lands rights. This includes addressing the assertion of European sovereignty and its impacts on legal, economic and social systems in Canada. For UNDRIP to be meaningfully implemented, profound changes must take place in Canada; it will not be possible to do so while preserving the status quo. MCK notes that this aligns with MCK and AFN's key recommendation that a review of the common law's conformity with the UNDRIP must be undertaken (see MCK letter of April 27, 2023).
- **Establish a regional forum dedicated to the implementation of UNDRIP:** This forum, focused specifically on UNDRIP implementation would provide a Nation-based or region-based space to access and share information. This forum should:
 - Respect the chosen representatives and leaders identified and mandated by Indigenous communities to represent them and report back. This should be inclusive and could include delegations mandated by communities, such as:
 - Elected Chiefs
 - Longhouse leadership
 - Clan mothers
 - Other community members
 - Enable access to, and sharing of, information
 - Respect the diversity of positions of distinct Nations and communities
 - Facilitate the process of integrating community feedback into the decision-making process.
- **Create links and feedback loops at the local, regional and Nation level:** a robust process would incorporate links at different levels (community, region, Nation) to ensure connectivity with communities while anchoring the process at a local, regional and Nation level, depending on the nature of the issue being addressed. This is essential to ensure analysis not carried out in a vacuum and disconnected from the specific realities of distinct Indigenous Peoples.
- **Improve communications and outreach around the Action Plan and the implementation process at large:** the draft Action Plan was widely perceived as inaccessible by participants, both as a result of the terminology used, lack of accessible information about many agencies, programs, initiatives mentioned in the plan, and the amount of content. Information should be clear, concise and accessible to communities, with information-sharing opportunities being provided on a regular basis.
- **Establish a jointly designed conflict resolution mechanism:** Such a mechanism must support and facilitate the resolution of impasses and be equitable and fair.

Recommendations specific to the Kanien'kehá:ka of Kahnawà:ke

- ***The implementation process must be grounded in a meaningful Nation-to-Nation relationship, based on the principles of the Two-Row Wampum:*** The Two-Row Wampum principles must apply to all aspects of the implementation of UNDRIP. The process must be free from dynamics of domination and control of one Nation over the other. Canada must be ready to meet Kahnawà:ke on its own terms and to be responsive to Kahnawà:ke's issues, priorities and approaches. Partners must respect each other and work together to address their shared responsibilities. Respect is the word. For this to be possible, Canada must be educated on the Two-Row Wampum and develop a better understanding of its principles.

- ***Direct dialogue and engagement with the community is the starting point.*** Participants in community engagement sessions expect Canada to take the time to come to Kahnawà:ke and have direct dialogue with the community at all stages of the implementation process. Canadian representatives should be prepared to explain how Kahnawà:ke's priorities and issues will be reflected in the Action Plan and implemented. Community members emphasized the importance of direct, person to person contact. While other tools and approaches can be useful to increase accessibility, in-person contact supports a fuller and more contextualized understanding of Kahnawà:ke's issues and situations.

One participant recommended a trauma-informed approach be adopted, since many subjects may evoke painful experiences for many community members. Another community member recommended reaching out to Elders first, and then moving to younger generations and youth.

Based on this direct relationship, parties can identify guiding principles, concrete parameters, specific mechanisms, procedures and processes to advance the implementation of the Declaration.

- ***Establish a Kahnawà:ke-specific process:*** Participants repeatedly raised concerns about the risks of a homogenous approach to the implementation of UNDRIP, highlighting significant differences between communities and Nations and pointing to the fact that a failure to reflect this diversity could negatively impact some communities. As one community member said, "we are not homogenous, we are different. We have our own experience, our own culture, language, political culture... some approaches are very specific to us and must be addressed respectfully and acknowledged". Mechanisms and agreements made should be specific to Kahnawà:ke and reflect Kahnawà:ke's priorities, issues and aspirations in relation to self-determination and the exercise of collective rights and responsibilities.

- ***The process should be open-ended, iterative, and envisioned for the long term:*** Community members emphasized that the implementation process will take time and a strong commitment to ongoing dialogue over the long term. Kahnawà:ke expects to be engaged and involved in decision-making on all matters affecting Kahnawà:ke ("Nothing about us without us!"). It takes time to come to a decision, and this process should not be rushed. A serious process:

- Provides sufficient timeframes throughout the implementation
- Provides opportunities for dialogue and feedback at regular intervals and key moments
- Ensures strong federal teams are present over the long term (frequent turn-over of federal teams is a factor identified by participants as hindering progress in discussions)
- Has a built-in capacity to adapt to evolving contexts – ("A living tree").

In addition, the **process for moving forward together in the implementation of UNDRIP must be iterative**. Developing viable proposals will require back and forth, ongoing discussions, clarifications

and joint problem solving. The process will require time and ongoing dialogue to ensure it is carried out in a respectful and effective manner.

- **Discussions must reflect Kahnawà:ke's priorities:** Kahnawà:ke's priorities must be respected. This applies for overall priorities as well as in the context of the review of Canadian laws to ensure alignment with UNDRIP. Discussions should not be restricted based on Canada's interests or concepts, frameworks or policies incompatible with self-determination and the full implementation of UNDRIP's objectives.
- **Canada must listen to Kahnawà:ke, respect Kahnawà:ke and become a trustworthy partner in the implementation of UNDRIP:** A key message from community members to Canada: the expectation to be respected and listened to, and for meaningful action to follow. The importance of this to community members cannot be overstated. When prompted to describe what being listened to means, participants offered the following guidance:
 - Listening is not just saying you heard us; it's following through and taking meaningful action in alignment with what was discussed (including addressing gaps identified)
 - Listening implies considering what was said moving forward and modifying conduct, approaches and behavior accordingly to reflect Kahnawà:ke's positions, priorities and concerns. It means that "our words have weight, they can't be just pushed aside".

When prompted to describe what respect means and looks like, participants offered the following guidance:

- Stopping actions that negate or contradict commitments to uphold Indigenous Rights, "Canada doing as it says". Actions must be aligned with words.
- Taking action to address contradictions between discussions, commitments, and realities on the ground, whether these are laws, policies, structures or actions that impede the full exercise and respect for Indigenous rights. For instance, participants expressed that Canada should have taken action to protect and uphold cultural and linguistic rights in the context of the adoption of Bill 96 by the Quebec Government. Allowing laws to cancel each other and rights to be disregarded by the province is not acceptable.
- A commitment to engaging with and jointly addressing historical and legal complexities: it is not acceptable to fall back on status quo or a zero-sum logic to impose individual rights over collective rights (e.g. membership vs. gender equity) and the supremacy of federal and provincial legislation.