



Crown-Indigenous Relations  
and Northern Affairs Canada

Relations Couronne-Autochtones  
et Affaires du Nord Canada

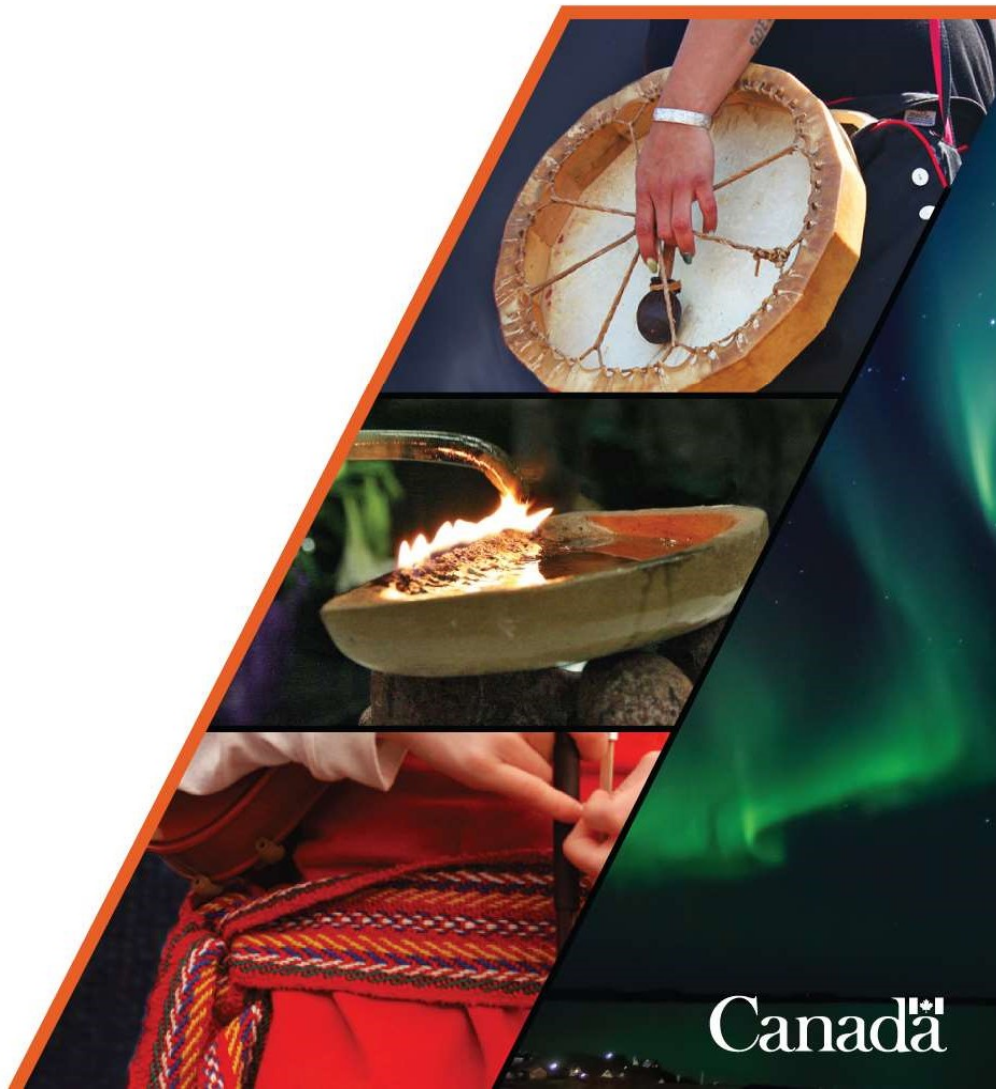
# Evaluation of First Nation Jurisdiction over Land and Fiscal Management

Prepared by: Evaluation Branch

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## List of Acronyms

AFN	Assembly of First Nations
ATR	Additions to Reserves
ALRRCA	<i>Addition of Lands to Reserves and Reserve Creation Act</i>
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
FAFNLMA	<i>Framework Agreement on First Nation Land Management Act</i>
FNFA	First Nations Finance Authority
FNFMA	<i>First Nations Fiscal Management Act</i>
FNFMB	First Nations Financial Management Board
FNII	First Nations Infrastructure Institute
FNTC	First Nations Tax Commission
IIGM	Indigenous Institutions and Governance Modernization Branch
ISC	Indigenous Services Canada
LAB	Lands Advisory Board
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
RC	First Nations Land Management Resource Centre



# Executive Summary

## Overview

In accordance with its [Five-Year Evaluation Plan](#) and the Treasury Board [Policy on Results](#), Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) evaluated the support it provides to First Nations as they exercise their jurisdiction over land and fiscal management. The evaluation assessed the extent to which the activities undertaken by CIRNAC adequately respond to the needs of First Nations and identified areas for improving this support. The focus was placed on activities undertaken by CIRNAC's Indigenous Institutions and Governance Modernization Branch (IIGM), between fiscal year 2017-2018 and 2021-2022, in support of First Nations-led institutions and organizations involved in land and fiscal management.

The evaluation used a mixed-method approach to address the set of evaluation issues and questions. It included a review of relevant documents and performance data; interviews with 28 individuals from First Nations-led institutions and organizations, CIRNAC and other federal departments and agencies; and three case vignettes used to illustrate some of the activities undertaken. An Evaluation Working Group consisting of representatives from First Nations-led institutions and organizations, an Elder and Knowledge Keeper, and CIRNAC, was engaged to provide guidance and advice on the evaluation, including to inform findings and recommendations through reflective sessions.

## Relevance

The process allowing First Nations to reclaim their authority over land and fiscal management rests on a new relationship between Canada and First Nations, which is captured in the letter and spirit of the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP), and the engagement of the whole-of-government in implementing UNDRIP. It is also occurring in an environment where an increasing number of First Nations are engaging with the regimes provided by the [Framework Agreement on First Nation Land Management](#) (Framework Agreement) and the [First Nation Fiscal Management Act](#) (FNFMA).

The support that CIRNAC's Indigenous Institutions and Governance Modernization Branch provides to First Nations-led institutions and organizations takes various forms, including policy initiatives, operational activities and financial support. This work also involves Indigenous Services Canada (ISC), as well as other federal department and agencies. The evaluation has found a direct alignment between the range of activities undertaken by the Branch and the needs and priorities of First Nations-led institutions and organizations. Central to this is the fact that the Branch and First Nations-led institutions and organizations have successfully built and cultivated an open and constructive dialogue, supporting ongoing conversations and collaborations based on respect and a shared vision of the expected outcomes to be achieved. Also, the Branch has demonstrated significant flexibility in its approach and in the range of tools and means it can use



to respond to the nature and scope of the various initiatives it has undertaken in support of First Nations-led institutions and organizations.

There are, however, other factors that may impact the relevance of the Branch's activities moving forward. In particular, the Branch has been facing limitations in terms of internal resources and capacity to ensure timely support on some of the demands placed on its teams. In addition, the engagement of other federal departments and agencies is critical to the success of files in which the Branch is involved. This includes the engagement of central agencies and the Department of Justice Canada on drafting new legislation, exploring new funding options, and renewing the relationship, or the engagement of the Department of Finance in implementing fiscal measures that address the needs of First Nations.

## Design and delivery

The range of means by which the Branch can support First Nations-led institutions and organizations is providing the flexibility required to successfully adapt and respond to emerging needs. There is, however, potential for improving the support offered.

### Funding structure

Through a delegation of authorities, both CIRNAC and ISC were using grants and contributions to provide multi-year funding support to First Nations-led institutions and organizations. CIRNAC provided long-term funding to fiscal institutions (5 years or more) for core operational support and short-term funding (1-2 years) for proposal based project and initiatives. This funding structure is not reflecting the ongoing and foundational nature of these institutions and organizations. As pillars of the Framework Agreement and the FNFMA, these institutions and organizations must operate in a stable and predictable funding environment that is conducive to the successful implementation of their activities and strategies. The current approach is creating challenges relating to organizational long-term planning, and to the ability to recruit and retain the highly specialized personnel that land and fiscal management require. Having the funding provided by both CIRNAC and ISC also adds a layer of complexity in attempting to create that stable funding environment, as each department operates with its own processes and procedures related to funding support.

### Legislative drafting

Establishing and maintaining the proper legislative framework to support First Nations land and fiscal management has been an ongoing process in which the Branch and First Nations-led institutions and organizations have been involved throughout the period covered by the evaluation. To date, First Nations and First Nations-led institutions and organizations have been involved in policy co-development processes through consultation, collaboration, and co-drafting of policy proposals. Key milestones include co-development activities leading to amendments to the FNLMA and FNFMA, and work to establish the First Nations Infrastructure Institute (FNII). However, First Nation-led partners have had no direct involvement in the legislative drafting



process, which is carried out by the Department of Justice on the instructions of Cabinet. As these legislative initiatives directly shape the economic self-determination of First Nations, CIRNAC should continue to work with the Department of Justice and Central Agencies with a view of ensuring that First Nations have ongoing participation in the development of legislation through CIRNA policy and Legal Services officials so that First Nations have the appropriate opportunity to review and indicate agreement with proposed legislation, in accordance with Cabinet decisions, before any such legislation is introduced in Parliament.

### Tax-based initiatives

The vision that First Nations-led institutions and organizations pursue require the implementation of a range of taxation measures, which enable First Nations to broaden their revenue base and proceed with the necessary investments in their social and economic infrastructures. This requires the participation and support of the federal government, and more particularly that of the Department of Finance Canada. Over the period covered by the evaluation, First Nations-led institutions and organizations and the Department of Finance Canada have interacted to explore how to further their collaboration, and CIRNAC has facilitated this process. As the federal government continues to develop its action plan to support the implementation of UNDRIP, there is an expectation on the part of First Nations-led institutions and organizations that this work with the Department of Finance Canada will be pursued, including options to have an ongoing collaboration, rather than ad hoc discussions. CIRNAC is expected to facilitate this process.

### Distribution of roles and responsibilities

Following the dissolution of the department of Indigenous and Northern Affairs Canada and the establishment of CIRNAC and ISC, a delegation of authorities was signed between the two departments, whereby the Minister of Crown-Indigenous Relations is responsible for nation-to-nation relationships with First Nations, including those set by treaties and other agreements, and the Minister of Indigenous Services is responsible for administrative and operational aspects related to the delivery of direct services to eligible Indigenous individuals, organizations and communities.

In the context of land and fiscal management, the delegation of authorities has proven challenging for CIRNAC and ISC representatives, and First Nations-led institutions and organizations. For instance, providing adequate support in relation to land and fiscal management has required activities to be undertaken by both departments, including processes such as Additions to Reserves (ATR) and First Nations Land Management, where the Minister of Crown-Indigenous Relations has delegated some operational and administrative responsibilities to the Minister of Indigenous Services while maintaining other responsibilities related to process milestones<sup>1</sup>.

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<sup>1</sup> On August 29, 2019, the Minister of Crown-Indigenous Relations, pursuant to section 9 of the *Department of Crown-Indigenous Relations and Northern Affairs Act*, delegated the administrative functions and duties of the Additions to Reserve Policy to the Minister of Indigenous Services.



Following the delegation of authorities, CIRNAC is leading the policy work related to improving the First Nations Land Management and ATR process, while ISC is responsible for implementing any such policy changes. During interviews, representatives from CIRNAC, ISC and First Nations-led institutions and organizations noted an improvement over time in clarifying the practical roles and responsibilities between the two departments, but this structural environment is expected to continue raising challenges that require ongoing monitoring efforts.

## Effectiveness and efficiency

CIRNAC's Indigenous Institutions and Governance Modernization Branch and the First Nations-led institutions and organizations have established a strong and productive relationship that led to a number of results, including, for instance the enhancement of the legislative framework related to land and fiscal management, the implementation of the [10-year grants initiative](#), the measures implemented to mitigate the impact of the COVID-19 pandemic, and the renewed discussions and efforts to improve the ATR process.

In terms of efficiency, the period covered by the evaluation has been marked by significant transition and adaptation, as well as having incurred an impact from the pandemic. In this context, areas for improving efficiency include flexibility within other government departments and central agencies to account for the unique relationship and partnership with the Indigenous institutions; ensuring that CIRNAC's Indigenous Institutions and Governance Modernization Branch operate with sufficient resources to keep pace with the range of initiatives being implemented; monitoring the distribution of roles and responsibilities between CIRNAC and ISC to avoid uncertainties or delays; improving the nomination process for appointments to the First Nations Financial Management Board (FNFMB) and the First Nations Tax Commission (FNTC); avoiding delays in adding First Nations to the FNFMA regime (ministerial order to amend the FNFMA schedule); and reviewing the indicators currently used to assess the performance of CIRNAC in relation to land and fiscal management.

## Recommendations

Based on the evaluation findings and conclusions, it is recommended that CIRNAC:

1. In collaboration with ISC, strengthen the current funding structure used to support First Nations-led institutions and organizations involved in land and fiscal management, with a view of providing ongoing, predictable, and long-term funding that reflects the ongoing nature of their mandates.
2. Ensure there is sufficient capacity within CIRNAC's Indigenous Institutions and Governance Modernization Branch, so that all activities and collaborative projects it undertakes in partnership with First Nations-led institutions and organizations can progress efficiently.
3. Engage other federal departments and agencies in supporting a number of priority actions identified in the evaluation, including:





- a. Collaborating with the Department of Finance Canada to co-develop with First Nations-led institutions and organizations an ongoing process to specifically address the fiscal measures required to support the implementation of UNDRIP;
- b. Collaborating with central agencies and the Department of Justice Canada to establish a legislative development process that adequately reflects UNDRIP by ensuring appropriate consultation and cooperation, at all stages of the process, of any legislation or regulations that have a direct impact on the land and fiscal authority exercised by First Nations;
- c. Collaborating with Indigenous partners (including First Nations, Assembly of First Nations (AFN), Lands Advisory Board (LAB) and First Nations Land Management Resource Centre (RC)) and ISC to improve the ATR process;
- d. Reviewing the current process used to appoint individuals to the FNTC and the FNFMB to ensure that no position is left vacated for an extended period of time; and
- e. Improving the current process used to add First Nations to the schedule of the FNFMA, to avoid any delays once all prior requirements have been met.





# Management Response and Action Plan

**Project Title: Evaluation of First Nation Jurisdiction on Land and Fiscal Management**

## 1. Management Response

The evaluation provides guidance to better support First Nations as they exercise their jurisdiction over land, including Additions to Reserve (ATR), and fiscal management. Recommendations were provided as a result of the review of activities undertaken by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC)'s Indigenous Institutions and Governance Modernization Branch (IIGM) in support of First Nations-led institutions and organizations that engage individual First Nations participating in land or fiscal management regimes structured outside of the *Indian Act*.

Many of the findings of the evaluation are related to organizational challenges between CIRNAC and other Departments. These challenges will need to be addressed through a coordinated and coherent government approach.

Over the period covered by the evaluation, several initiatives were implemented and have strengthened the legislative framework related to land management. For example, the *First Nations Land Management Act* was repealed and replaced in December 2022 by the *Framework Agreement on First Nation Land Management Act* (FAFNLMA), therefore recognizing the Framework Agreement as the foundational document when it comes to First Nation land management. As well, strengthening of the legislative framework related to First Nations fiscal management continued via the introduction of Bill C-45, an Act to amend the *First Nations Fiscal Management Act* (FNFMA), to make consequential amendments to other Acts, and to make a clarification relating to another Act. This Bill received Royal Assent on June 19, 2023.

From January 2022 to March 31, 2023, IIGM undertook engagement with First Nations and Indigenous organizations to seek direction on ATR policy redesign. The redesign process included a Call for Proposals, held from March 20, 2023 to May 19, 2023. This Call is to provide funding to support First Nation-led engagement on ATR policy redesign. Indigenous partners whose proposals are selected, will have until Spring 2024 to engage with their community (ies) and provide insight and recommendations for policy redesign. Reports from these processes will help inform ATR policy redesign options in Spring 2025.

In addressing the recommendations, the action plan below provides further information on upcoming IIGM's initiatives where engagement with Central Agencies is critical

Although IIGM benefits from a positive working relationship with First Nation-led institutions and organizations, co-development of certain legislative and regulatory processes is challenging due to the need for Cabinet confidence. In addressing the Report's recommendation of "*ensuring the co-development, at all stages of the process, of any legislation or regulations that have a direct*



*impact on the land and fiscal authority exercised by First Nations”, IIGM will continue to collaborate closely with First Nations through their First Nations-led institutions and organizations to improve transparency related to future legislative and regulatory initiatives while respecting Cabinet confidence.*

## 2. Action Plan

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
1. In collaboration with ISC, strengthen the current funding structure used to support First Nations-led institutions and organizations involved in land and fiscal management, with a view of providing ongoing, predictable and long-term funding that reflects the ongoing nature of their mandates.	In collaboration with ISC, the Treasury Board, the FNFMA institutions and First Nations-led organizations, IIGM will continue to explore options for predictable and long-term funding that reflects the ongoing nature of the institutions and organisations mandate.	Director General, Indigenous Institutions and Governance Modernization	<i>Start Date: April 1, 2024</i> <i>Completion: March 1, 2026</i>
2. Ensure there is sufficient capacity within CIRNAC's Indigenous Institutions and Governance Modernization Branch, so that all activities and collaborative projects it undertakes in partnership with First Nations-led institutions and organizations can progress efficiently.	IIGM will discuss priorities and workload with the FNFMA institutions and First Nations-led organizations with a view to ensure that adequate resources are available and allocated to activities and collaborative projects supporting common objectives and that they progress efficiently	Director General, Indigenous Institutions and Governance Modernization	<i>Start Date: Ongoing – Meetings with the institutions are planned for November 2023</i> <i>Completion: Due to the nature of HR processes, this is an ongoing target.</i>
3. Collaborating with the Department of Finance Canada to co-develop with First Nations-led institutions and organizations an ongoing process to specifically address the fiscal measures required to support the implementation of UNDRIP	IIGM will continue to participate in government-wide discussions related to the implementation of UNDRIP and to facilitate discussions between FNFMA institutions and First Nations-led organizations, the Department of Justice, Finance Canada and other government departments including on fiscal jurisdiction and initiatives.	Director General, Indigenous Institutions and Governance Modernization	<i>Start Date: Already started</i> <i>Completion: Unable to identify a target completion date because implementation details are not yet finalized</i>
4. Collaborating with central agencies and the Department of Justice Canada to establish a legislative development process that adequately reflects UNDRIP by ensuring appropriate	IIGM will continue to explore ways to collaborate and advance co-development with First Nations, FNFMA institutions and First Nations-led organizations and to advocate with other governmental departments, including central agencies and the	Director General, Indigenous Institutions and Governance Modernization	<i>Start Date: Already started</i> <i>Completion: completion will depend on the timelines of Department of</i>



consultation and cooperation, at all stages of the process, of any legislation or regulations that have a direct impact on the land and fiscal authority exercised by First Nations.	Department of Justice, for the establishment of a legislative drafting process that adequately reflects UNDRIP.		<i>Justice as they are the government lead on the implementation of the UNDA. This will be ongoing work, as we will need to ensure future legislative initiatives adequately reflect UNDRIP.</i>
5. Collaborating with Indigenous partners (including First Nations, Assembly of First Nations (AFN), LAB and RC) and ISC to improve the ATR process.	IIGM will continue to collaborate closely with Indigenous partners to implement interim changes to improve the ATR process; and conduct engagement with Indigenous partners, including dedicated funding for First Nations-led engagement, to propose policy options for consideration.  In the longer term, CIRNAC and ISC officials will work with Indigenous partners to co-develop policy options for decision by spring 2025, including discussions on implementation following decision.	Director General, Indigenous Institutions and Governance Modernization	<i>Start Date: ongoing</i>  <i>Completion: Spring 2025</i>
6. Reviewing the current process used to appoint individuals to the FNTC and the First Nations Financial Management Board (FNFMB) to ensure that no position is left vacated for an extended period of time.	In collaboration with the FNFMA institutions, the Department of Justice and the Privy Council Office, IIGM will continue to explore ways to enhance the appointment process, avoid extended vacancies on the FNTC and FNFMB boards of directors and provide more autonomy for the Institutions .	Director General, Indigenous Institutions and Governance Modernization	<i>Start Date: Already started</i>  <i>Completion: Q4 2026</i>
7. Improving the current process used to add First Nations to the schedule of the FNFMA, to avoid any delays once all prior requirements have been met.	In collaboration with the FNFMA institutions, the Department of Justice and the Treasury Board, IIGM will continue to explore ways to improve the process of adding, changing or removing names of First Nations to the Schedule of the <i>First Nations Fiscal Management Act</i> . It is worth noting that the current process of becoming scheduled to the Act is not very onerous.	Director General, Indigenous Institutions and Governance Modernization	<i>Start Date: Already started</i>  <i>Completion: Q4 2026</i>



# 1. Introduction

## 1.1 Evaluation Purpose

In accordance with its Five-Year Evaluation Plan and the *Policy on Results*, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) evaluated the support it provides to First Nations as they exercise their jurisdiction over land and fiscal management. The fundamental purpose of the evaluation was to assess the extent to which the activities undertaken by CIRNAC adequately respond to the needs of First Nations and, as applicable, identify areas for improving this support. As such, the evaluation covered the relevance of the activities undertaken, the effectiveness and efficiency of their delivery, and the results achieved.

## 1.2 Evaluation scope

The primary focus of the evaluation was the activities undertaken by CIRNAC's Indigenous Institutions and Governance Modernization Branch (IIGM) in support of First Nations institutions and organizations that engage individual First Nations participating in land or fiscal management regimes structured outside of the [Indian Act](#).

The scope of this evaluation excludes any assessment of the decisions made by individual First Nations, or the performance achieved by the First Nations institutions and organizations involved in land and fiscal management.

The evaluation covered a period of five fiscal years, from 2017-2018 to 2021-2022. A predominant feature of this period is the COVID-19 pandemic, which had a direct impact on First Nation communities, and on the activities undertaken by CIRNAC.

## 1.3 Evaluation methodology

### Approach and methodology

An Evaluation Working Group, composed of representatives from First Nations institutions and organizations involved in land and fiscal management, and from CIRNAC, was established to guide and support the evaluation process. Working Group participants included representatives from the First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority, First Nations Land Management Resource Centre, Assembly of First Nations, and CIRNAC. Working Group members provided feedback on the evaluation framework, the preliminary findings, and the evaluation report.

The evaluation used a mixed-method approach to address the set of evaluation issues and questions, which are included in annex to this report. The conclusions and recommendations have been developed on the basis of findings from all lines of evidence. The following table provides a brief description of these lines of evidence:



**Table 1: Data Collection Methods**

Document and Performance Data Review	Interviews	Case vignettes (n=3)
A review of relevant program documents and data was completed. It included governance related documents such as departmental performance reports, policy documents, implementation plans, progress reports, annual reports, presentations on program design, and documents produced by First Nations-led institutions and organizations involved in land and fiscal management. The review also included relevant performance data.	Semi-structured key informant interviews were conducted virtually with a total of 28 individuals, representing the following groups: <ul style="list-style-type: none"> <li>• Lands Advisory Board and Resource Centre;</li> <li>• First Nations Tax Commission;</li> <li>• First Nations Financial Management Board;</li> <li>• First Nations Finance Authority;</li> <li>• Assembly of First Nations;</li> <li>• Crown-Indigenous Relations;</li> <li>• Indigenous Services Canada; and</li> <li>• Natural Resources Canada.</li> </ul>	Three case vignettes were developed to illustrate some of the activities undertaken in support of First Nations land and fiscal management. They addressed the following themes: <ul style="list-style-type: none"> <li>• Co-development work leading-up to the amendments to the <i>First Nations Fiscal Management Act</i> (FNFMA) and the <i>First Nations Land Management Act</i> (FNLMA);</li> <li>• Co-development work leading-up to the adoption of the <i>Addition of Lands to Reserves and Reserve Creation Act</i> (ALRRCA); and</li> <li>• Coordination of activities between CIRNAC and Indigenous Services Canada (ISC) related to new entrants to the Framework Agreement and the FNFMA.</li> </ul>

## Limitations

The following table describes the key limitation encountered as part of this evaluation, along with the mitigation strategy.

**Table 2: Limitations and Mitigation Strategy**

Limitations	Mitigation Strategy
The support that CIRNAC provides to First Nations-led institutions and organizations involved in land and fiscal management takes different forms and constantly evolves. Often times, other federal departments and agencies are also involved. As such, it was not possible to cover all activities, including service-delivery in individual First Nations communities.	In collaboration with the Evaluation Working Group, the evaluation issues and questions that were developed allowed for an assessment of the overall alignment of support activities with the needs and priorities of First Nations-led institutions and organizations, and of the effectiveness and efficiency achieved in implementing these activities. This provided strategic insights that can inform future activities, as opposed to a comprehensive assessment of each individual activity undertaken.



## 2. Overview of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) activities

### 2.1 Contextual considerations

#### UNDRIP

For First Nations, exercising their authority over land and fiscal management is at the core of achieving self-determination and self-governance. This vision rests on a new relationship between Canada (including all levels of government, the economic sector, as well as civil society) and First Nations, which is captured in the letter and spirit of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Many articles of the UNDRIP find application when it comes to land and fiscal management, including, but not limited to:

- Article 3, which recognizes that Indigenous peoples have the right to self-determination, including their right to freely determine their economic development;
- Article 18, which recognizes their right to participate in decision-making in matters that affect their rights, through representatives chosen by themselves, and to maintain their own indigenous decision-making institutions;
- Article 20, which recognizes their right to develop their own economic systems and institutions;
- Article 26, which recognizes their right to own, use, develop and control the lands, territories and resources that they possess; and
- Article 32, which recognizes the role of states in supporting the right of Indigenous peoples in determining and developing priorities for land use and development.

Following the Calls to Action 43 and 44 included in the [Truth and Reconciliation Commission of Canada](#) and the Call for Justice 1.2 from the [National Inquiry into Missing and Murdered Indigenous Women and Girls](#), Parliament adopted in 2021 the *United Nations Declaration on the Rights of Indigenous Peoples Act*, which commits the federal government to ensuring that all laws of Canada are consistent with UNDRIP, and to develop an action plan to achieve the objectives of UNDRIP. Other governments in Canada have also initiated the implementation of UNDRIP, notably the provincial government of British Columbia that adopted in 2019 the [Declaration on the Rights of Indigenous Peoples Act](#), along with an [action plan](#) released in 2022 that lays out collectively identified goals and outcomes that form the long-term vision for implementing UNDRIP through 89 priority actions in key areas over the next five years.

#### The engagement of the whole-of-government



As stated in its constituting act, CIRNAC was established in 2019 to help advance reconciliation with First Nations, Inuit and Métis through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on affirmation and implementation of rights, respect, cooperation and partnership<sup>2</sup>.

In the specific context of land and fiscal management, CIRNAC acts as the primary federal interlocutor engaging with First Nations, but the direct participation of other federal departments and agencies, notably Indigenous Services Canada (ISC), the Departments of Finance, the Department of Justice and central agencies, is also required for First Nations to achieve their vision of self-determination.

## **Current land and fiscal management frameworks**

### Land management

The *Indian Act* contains provisions that significantly restrict the ability of First Nations to make decisions related to land management, as the federal government remains largely responsible for overseeing the management of Indigenous land, including approving decisions related to leasing, permits and resource management. In 1996, a group of 13 First Nations signed with Canada the government-to-government Framework Agreement on First Nation Land Management (hereafter the Framework Agreement), which allows First Nations to opt out of these provisions, by recognizing their inherent right to govern their reserve lands. The Framework Agreement has been Incorporated in the laws of Canada through the [Framework Agreement on First Nation Land Management Act](#), which specifically confirms that the Framework Agreement is binding and that it prevails over any other provisions of the Act.

A First Nation that becomes signatory to the Framework Agreement develops its own Land Code that becomes the basic land law of the First Nation. When it comes into effect, approximately 44 sections of the *Indian Act* no longer apply, and Canada is no longer involved in the decision-making of the First Nation's land and resources. This provides signatory First Nations with all the legal status and powers needed to govern and manage their First Nation land and natural resources.

Directly related to land management is the process to add lands to reserves or to create new reserves. As stated in the [Addition of Lands to Reserves and Reserve Creation Act](#) (ALRRCA) and the [Addition to Reserve Policy](#), once a First Nation submits a request in that regard, ISC engages with the First Nation in the assessment and review of the application, and in the development of the proposal, which is ultimately relayed to the Minister of Crown-Indigenous Relations for approval.

### Fiscal management

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<sup>2</sup> [Department of Crown-Indigenous Relations and Northern Affairs Act](#)





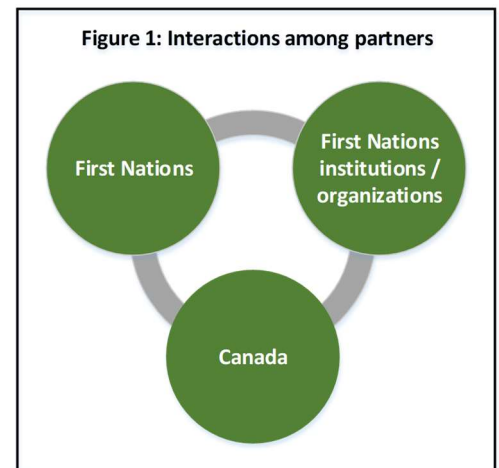
As an alternative to the restrictive framework of the *v0020xsx Act*, the *First Nations Fiscal Management Act* (FNFMA) provides First Nations with the option of expanding their fiscal management authority. Among other things, First Nations participating in the FNFMA regime can exercise real property taxation powers and have access to borrowing and other means to support their economic development. As part of this process, First Nations engage with the three fiscal institutions established through the FNFMA, which are described in the next sub-section.

### Eco-system of institutions and organisations

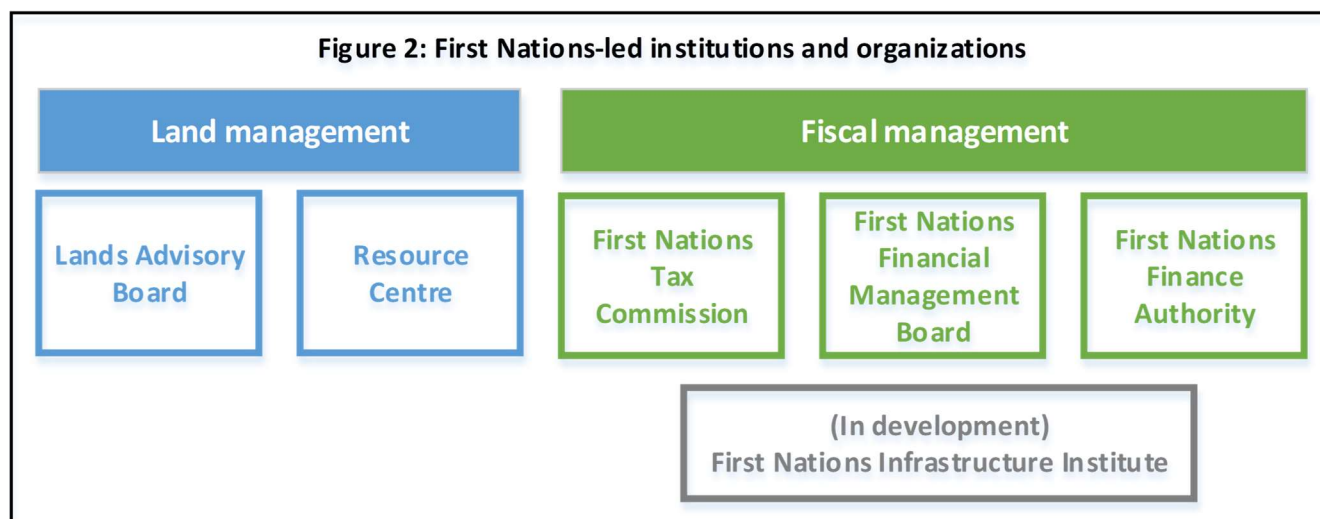
The process of supporting First Nations to reclaim their authority over land and fiscal management involves an ecosystem of First Nations-led institutions and organizations that work with individual First Nations as they establish their own processes and systems related to land and fiscal management, including the required engagement with CIRNAC and ISC, as framed by the Framework Agreement and the FNFMA.

As illustrated in Figure 1, individual First Nations interact with both the First Nations-led institutions and organizations, and Canada as they opt in to the alternate land and fiscal management regimes, and the First Nations-led institutions and organizations also interact with Canada on broader issues that create the overall legislative and policy environment in which land and fiscal management are undertaken.

As illustrated in Figure 2, at the time of the evaluation, there were five First Nations-led institutions and organizations in place, along with one other institution in the process of being fully established.



**Figure 2: First Nations-led institutions and organizations**



Land Advisory Board (LAB)	Created in accordance with the Framework Agreement, LAB is a First Nation established and led organization that supports First Nation signatories to resume control over their reserve lands, natural resources and environment. It represents the interests of First Nations signatories to the Framework Agreement, and works with the federal government to enhance the legislative framework for First Nations land management, negotiate funding and provide strategic direction to the RC.
First Nations Land Management Resource Centre (RC)	The RC is a service-delivery organization that provides technical and professional support to First Nation signatories as they develop and implement their own land codes. The RC provides training, resources and support to Operational First Nations. It works with ISC and CIRNAC to support the Framework's ongoing implementation, and it also provides training, resources, support and information to interested First Nations.
First Nations Tax Commission (FNTC)	The FNTC is an institution responsible for the approval of property tax and new local revenue laws of participating First Nations, and reconciling the interests of First Nations and taxpayers. It also supports the First Nations Gazette and the Tulo Center of Indigenous Economics.
First Nations Financial Management Board (FNFMB)	The FNFMB is an institution that assists First Nations governments in strengthening their financial management regimes. It also provides independent certification of their financial management systems.
First Nations Finance Authority (FNFA)	The FNFA is a not-for-profit corporation that provides financing through bonds issuances on capital markets, investment and advisory services to First Nation governments.

## First Nations Infrastructure Institute (FNII)

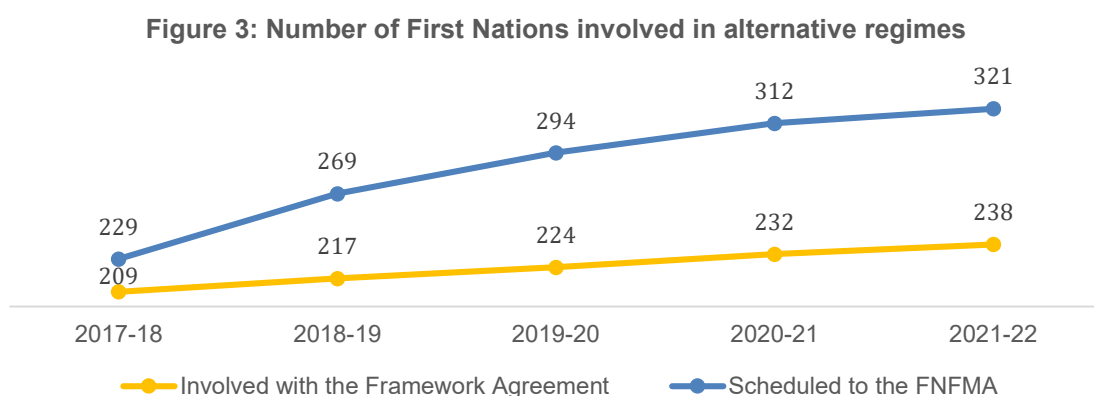
FNII is the latest First Nations-led institution, which is still in the developmental stage.<sup>3</sup> Since 2017, it has been operating with a Developmental Board, and the official establishment of FNII is expected to be accomplished through an amendment of the FNFMA, which has been introduced in Parliament. Once fully operational, it will support First Nations and Indigenous organizations as they plan, procure, own and manage their infrastructure assets on their lands.

In addition to these institutions and organizations, the Assembly of First Nations (AFN) has been leading efforts to enhance the policy and legislative framework related to the addition to reserve and reserve creation process.

## Participation of First Nations in the alternative land and fiscal regimes

As illustrated in Figure 3, the number of First Nations that have engaged with the alternative land and fiscal management regimes provided by the Framework Agreement and the FNFMA has steadily increased during the period covered by the evaluation.<sup>4</sup> This is important contextual information, as this growth results in greater demands for support and services from the land and fiscal institutions and organizations, and from the federal government.

**Figure 3: Number of First Nations involved in alternative regimes**



With 634 First Nation communities in Canada, it also means that 51% of them are scheduled to the FNFMA, and 38% are signatory to, or interested in joining the Framework Agreement.

<sup>3</sup> At the time of this report, the federal government had tabled [Bill C-45](#) (An Act to amend the *First Nations Fiscal Management Act*, to make consequential amendments to other Acts, and to make a clarification relating to another Act), which aims to formally establish FNII. The Bill had completed first reading on March 23, 2023.

<sup>4</sup> Both the Framework Agreement and the FNFMA include incremental processes to fully utilize these regimes. For instance, First Nations who have adhered to the Framework Agreement complete a developmental phase during which a land code is developed, before moving to the operational phase whereby their land code is ratified and approved by its membership. For the FNFMA regime, the participating First Nations work with the FNFMB, the FNTC and the FNFA to be scheduled under the FNFMA, to obtain the required certifications, and to access taxation and borrowing authorities.



## 2.2 Delegation of Authorities

One overarching dynamic over the entire evaluation period is the dissolution of the department of Indigenous and Northern Affairs Canada, which was replaced by the establishment of CIRNAC and ISC through enacting legislation in July 2019. Section 9 of the *Department of Crown-Indigenous Relations and Northern Affairs Act* allows the Minister of Crown-Indigenous Relations to delegate any statutory powers to the Minister of Indigenous Services. Through a delegation of authorities signed between the two departments, the Minister of Indigenous Services has been delegated the administrative and operational responsibilities for Additions to Reserves (ATR) and land management under ALRRCA and FNLMA, including the management of related grants and contributions under these Acts. The Minister of Crown-Indigenous Relations is responsible for significant milestones in the nation-to-nation relationship with First Nations, including the funding relationship with the fiscal institutions under FNFMA and the management of related grants and contributions under this Act.

## 2.3 Range of activities undertaken by CIRNAC

CIRNAC's Indigenous Institutions and Governance Modernization Branch (IIGM) supports First Nations-led institutions and organizations involved in land and fiscal management in various forms, the combination of which is largely determined by the existing and emerging needs and visions of these partners. These activities can typically be grouped in three broad categories:

- Policy initiatives: Policy activities are undertaken to strengthen the framework related to land and fiscal management. This may lead to any number of legislative, regulatory, policy or funding initiatives that reflect emerging needs and priorities of First Nations-led institutions and organizations and the federal government. This policy work is expected to be co-developed with these institutions and organizations, and to involve other federal departments or agencies, or other entities as required.
- Operational activities: In accordance with the applicable legislation, and through the delegation of authorities to ISC, CIRNAC undertakes a number of operational activities relating to land and fiscal management, including but not limited to:
  - Supporting the process to schedule new entrants to the Framework Agreement and the FNFMA;
  - Issuing Ministerial Orders to set land apart as reserve under the additions to reserve and reserve creation provisions of the ALRRCA; and
  - Issuing recommendations on Governor-in-Council appointments to the Boards of the FNTC and the FNFMB.
- Financial support: CIRNAC manages two of the grants and contributions programs that support First Nations-led institutions:
  - The Grant to the First Nations Finance Authority pursuant to the FNFMA, which provided, during the evaluation period, \$1,000,000 yearly to the FNFA; and



- The [Contributions to support Indigenous governments and institutions, and to build strong governance](#), which has provided varying levels of support to the FNTC, the FNFMB and the FNFA, as illustrated in Table 3.

**Table 3: Contribution funding to the FNTC, the FNFMB and the FNFA, per fiscal year**

Authority	2017-18	2018-19	2019-20	2020-21	2021-22
Contributions to support Indigenous governments and institutions, and to build strong governance	\$84,271,171	\$23,385,581	\$26,603,538	\$43,943,659	\$66,450,268

### 3. Key findings

The following subsections describe the overall findings that emerged from all lines of evidence used to assess the support provided by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) to First Nations-led institutions and organizations in the areas of land and fiscal management.

#### 3.1 Relevance

The work undertaken by CIRNAC's Indigenous Institutions and Governance Modernization Branch aligns with the priorities of First Nations-led institutions and organizations, and reflects the commitments made by Canada towards reconciliation and the full implementation of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

#### Alignment with needs and priorities of CIRNAC and First Nations-led institutions and organizations

The Indigenous Institutions and Governance Modernization Branch is part of CIRNAC's Resolution and Partnerships Sector, which also covers settlement agreements and childhood claims, specific claims, and cross sector initiatives. At a fundamental level, the work undertaken by the Branch is driven by the department's commitment to the nation-to-nation relationships and partnerships with First Nations to move forward with reconciliation, including economic reconciliation.

On that basis, the relevance of the activities carried out by the Branch is determined by the extent to which they are adequately aligned with the vision and priorities of the First Nations-led institutions and organizations involved in land and fiscal management. Throughout the evaluation period, these partners have pursued a wide range of initiatives. Far from being an exhaustive list, the following initiatives serve to illustrate some of their priorities:



- Amending the legislative framework relating to land and fiscal management, to ensure that it continues to align with the priorities of First Nations;
- Proceeding with the establishment of the First Nations' National Land Registry;
- Exploring options to enhance processes related to law enforcement, environmental and waste management systems, and internal boundary;
- Expanding the First Nations tax jurisdiction through a number of capacity-building initiatives, and the work of the Tulo Centre of Indigenous Economics;
- Supporting the full establishment and operations of First Nations Infrastructure Institute (FNII);
- Implementing the First Nations Financial Management Board (FNFMB) Roadmap Project, which provides a comprehensive list of actions to be undertaken to support economic reconciliation, in accordance with the principles and commitments found in United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP);
- Increasing the access for First Nations and other First Nations-led organizations to affordable financing in the capital markets; and
- Reforming the addition-to-reserve framework in collaboration with First Nations, and Indigenous partners such as Lands Advisory Board (LAB), First Nations Land Management Resource Centre (RC) and Assembly of First Nations (AFN), among others.

These examples serve as a reminder that, while significant progress has been achieved in establishing alternative land and fiscal management regimes to support the self-determination of First Nations, this ongoing process still requires significant milestones to be achieved.

Evaluation findings confirm that the vision and actions undertaken by the Branch are aligned with the needs of First Nations-led institutions and organizations. Two factors stand out in that regard:

- First, the Branch and First Nations-led institutions and organizations have successfully built and cultivated an open and constructive dialogue, supporting ongoing conversations and collaborations based on respect and a shared vision of the expected outcomes to be achieved. This has proven particularly helpful when considering the complexity and the far-reaching scope of initiatives that have been pursued to date, and those that are expected to progress moving forward; and
- Second, the Branch has demonstrated significant flexibility in its approach and in the range of tools and means it can use to respond to the nature and scope of the various initiatives it has undertaken in support of First Nations-led institutions and organizations.

There are, however, other factors that may have an impact on the Branch's activities moving forward. In particular, the Branch has been facing limitations in terms of internal resources and capacity to ensure timely support on some of the demands placed on its teams. Representatives



from both First Nations-led institutions and organizations, and CIRNAC have pointed to the fact that, while well-intentioned, the teams within the Branch are at times struggling to keep pace with the demands and expectations they face.

In addition, the engagement of other federal departments and agencies is critical to the success of files in which the Branch is involved. This includes the engagement of central agencies, such as the Department of Finance, in implementing fiscal measures addressing the needs of First Nations, and the Department of Justice Canada on drafting new legislation and enforcement issues related to First Nations laws. As such, CIRNAC is in a unique position that requires ongoing coordination efforts and engagement and the Branch must have the capacity to achieve that level within the federal government.

### **Alignment with federal roles and responsibilities and UNDRIP**

As already noted (see subsection 2.1), Parliament has adopted the *United Nations Declaration on the Rights of Indigenous Peoples Act*, in which Canada commits to promoting the self-determination and self-governance of Indigenous peoples, based on their inherent rights, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems, especially their rights to their lands, territories and resources.

At the time of the evaluation, the Department of Justice Canada, on behalf of the federal government, had tabled the [draft action plan](#) for the implementation of UNDRIP, which was co-developed by Canada and Indigenous peoples. Proposed actions related directly to First Nations land and fiscal management include:

- Paragraph 31 addressing the need to develop “guidance on engaging with Indigenous peoples on natural resources projects”;
- Paragraph 48 addressing the need to “develop 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”; and
- Paragraphs 81 to 83 addressing the need to improve the specific claim process, the Additions to Reserves (ATR) process, and the legislative framework provided by the *First Nations Fiscal Management Act* (FNFMA).

The support provided by the Branch is directly aligned with the collaborative work that Canada and Indigenous peoples are conducting to achieve a comprehensive implementation of UNDRIP.

## **3.2 Design and delivery**





CIRNAC's Indigenous Institutions and Governance Modernization Branch has efficiently used a range of tools and means to contribute to First Nations' land and fiscal management. Identified areas of improvement include the funding structure, legislative development process, tax-based initiatives, and the distribution of roles and responsibilities as identified in the delegation of authorities.

This subsection covers operational considerations, particularly as it relates to the range of activities CIRNAC is using to support First Nations' land and fiscal management, and how these activities are coordinated with those of other relevant federal departments.

### **Range of activities undertaken**

As previously noted, CIRNAC's Indigenous Institutions and Governance Modernization Branch (IIGM) has successfully adapted the range of activities it undertakes to respond to the needs and priorities of First Nations-led institutions and organizations involved in land and fiscal management. Through a variety of legislative and policy options, it has contributed to enhancing the organizational capacity of these partners. This flexibility is an important feature that must be maintained and supported through adequate internal resources.

Evaluation findings also provided the opportunity to identify areas for improving the support currently provided, which are described in the following paragraphs.

#### Funding structure

Over the evaluation period, CIRNAC was using grants and contributions to provide multi-year funding support to First Nations-led institutions and organizations. CIRNAC provided long-term funding to fiscal institutions (5 years or more) for core operational support and short-term funding (1-2 years) for proposal based project and initiatives. During interviews, representatives from CIRNAC and First Nations-led institutions and organizations acknowledged that this funding structure, based on a client-department programming relationship, is not reflecting the ongoing and foundational nature of these institutions and organizations.

As pillars of the Framework Agreement and the FNFMA, these institutions and organizations must operate in a stable, sufficient, sustainable, and predictable funding environment that is conducive to the successful implementation of their activities and strategies. The current processes associated with the funding arrangements are creating challenges in terms of organizational responsiveness and long-term planning (i.e. the ability to recruit and retain the highly specialized personnel that land and fiscal management require). Having the funding provided by both CIRNAC and Indigenous Services Canada (ISC) adds a layer of complexity in attempting to create that stable funding environment, as each department operates with its own processes and procedures related to funding support.

#### Legislative drafting process



Establishing and maintaining the proper legislative framework to support First Nations land and fiscal management has been an ongoing process in which the Branch and First Nations-led institutions and organizations have been involved throughout the period covered by the evaluation.

In accordance with the Canadian parliamentary system, developing legislation involves the federal cabinet, central agencies, the Department of Justice Canada (as legislative drafters and advisory legal counsel), the sponsoring or instructing department, and Parliament. Evaluation findings indicated that, First Nations and First Nations-led institutions and organizations have been involved in policy co-development processes through consultation, collaboration, and co-drafting of policy proposals. Key milestones include co-development activities leading to amendments to the FNLMA and FNFMA, and work to establish FNII, which included engagement and consultations with various First Nations, Tribal Councils, Indigenous organizations, Members of Parliament, Senators, government departments, and other stakeholders. However, First Nation-led partners have had no direct involvement in the legislative drafting process, which is carried out by the Department of Justice on the instructions of Cabinet. As these legislative initiatives directly shape the economic self-determination of First Nations, CIRNAC should continue to work with the Department of Justice and Central Agencies with a view of ensuring that First National have ongoing participation in the development of legislation through CIRNA policy and Legal Services officials so that First Nations have the appropriate opportunity to review and indicate agreement with the proposed legislation, in accordance with Cabinet decisions before any such legislation is introduced in Parliament.

### Tax-based initiatives

The vision that First Nations-led institutions and organizations pursue require the implementation of a range of taxation measures, which enable First Nations to broaden their revenue base and proceed with the necessary investments in their social and economic infrastructures. This requires the participation and support of the federal government, and more particularly that of the Department of Finance Canada.

Findings indicate that, over the period covered by the evaluation, First Nations-led institutions and organizations and the Department of Finance Canada have interacted to explore how to further their collaboration, and CIRNAC has facilitated this process. As the federal government continues to develop its action plan to support the implementation of UNDRIP, there is an expectation on the part of First Nations-led institutions and organizations that this work with the Department of Finance Canada will be pursued, including options to have an ongoing collaboration, rather than ad hoc discussions. CIRNAC is expected to facilitate this process.

### **Distribution of roles and responsibilities**

In the context of land and fiscal management, the delegation of authorities has proven challenging for CIRNAC and ISC representatives, and First Nations-led institutions and organizations. For



instance, providing adequate support in relation to land and fiscal management has required activities to be undertaken by both departments, including processes such as Additions to Reserves (ATR) and First Nations Land Management, where the Minister of Crown-Indigenous Relations has delegated some operational and administrative responsibilities to the Minister of ISC while maintaining other responsibilities related to process milestones<sup>5</sup>.

Following the delegation of authorities, CIRNAC is leading the policy work related to improving the First Nations Land Management and ATR process, while ISC is responsible for implementing any such policy changes. During interviews, representatives from CIRNAC, ISC and First Nations-led institutions and organizations noted an improvement over time in clarifying the practical roles and responsibilities between the two departments, but this structural environment is expected to continue raising challenges that require ongoing monitoring efforts.

### 3.3 Effectiveness and efficiency

During the period covered by the evaluation, CIRNAC and First Nations-led institutions and organizations have successfully advanced a number of priorities related to First Nations land and fiscal management, including several that involved a co-development approach. Moving forward, a number of areas for improving the efficiency of this process have been identified.

This subsection addresses the extent to which CIRNAC's support has enhanced the capacity of First Nations-led institutions and organizations, including their involvement in policy dialogue on additions to reserves and reserve creation. It also addresses the efficiency of the current processes in place, and the measurement of results achieved.

#### Relationship

Evaluation findings indicate that CIRNAC's Indigenous Institutions and Governance Modernization Branch and the First Nations-led institutions and organizations have established a strong and productive relationship that led to a number of results, some of which are documented in this subsection for illustrative purposes. This relationship is seen as having been pivotal in building the trust and confidence required for nation-to-nation relationships, and the full implementation of UNDRIP.

#### Fiscal management

##### Legislative framework

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<sup>5</sup> On August 29, 2019, the Minister of Crown-Indigenous Relations, pursuant to section 9 of the *Department of Crown-Indigenous Relations and Northern Affairs Act*, delegated the administrative functions and duties of the Additions to Reserve Policy to the Minister of Indigenous Services.



As it relates more specifically to fiscal management, one important result achieved during the evaluation period is the enhancement of the legislative framework contained in the FNFMA. Bill C-86, which received Royal Assent in December 2018, clarified and simplified certain provisions of the FNFMA, and expanded the scope of the regime to a wider range of Indigenous organizations and First Nation communities. During the process used to develop these legislative amendments, First Nations-led institutions and organizations were consulted through CIRNAC, while not directly and fully engaged in the legislative drafting process.

In March 2023, the federal government introduced [Bill C-45](#) seeking further changes to the FNFMA. If adopted, it will expand the mandates of the First Nations Tax Commission (FNTC) and the First Nations Financial Management Board (FNFMB), in addition to establishing FNII. Here again, First Nations-led institutions and organizations were consulted to develop amendments, while not directly engaged in the legislative drafting process.

### 10-year grants initiative

In 2017, the AFN and ISC, in close collaboration with the FNFMB, initiated the implementation of a co-developed new fiscal relationship initiative, which includes the provision for First Nations of 10-year grants. By offering longer-term funding, these grants allow First Nations to proceed with stronger planning that better responds to the evolving needs of their communities. The FNFMB provides a wide-range of support to First Nations interested in pursuing this option, including the process of confirming their eligibility, as the FNFMB financial management standards are used as eligibility criteria for this initiative.

The [2021 federal budget](#) added a grant escalator starting in 2021-2022 that would be based on inflation and the population of each participating community, with a minimum of two percent (2%) annual growth.

During interviews, representatives from ISC, CIRNAC and First Nations-led institutions and organizations emphasized the importance of the 10-year grants as illustrating what co-development can achieve, and how these types of grants are contributing to building a more stable fiscal environment that is conducive to successful fiscal management.

### COVID-19 relief measures

CIRNAC, ISC, First Nations Finance Authority (FNFA), FNTC and FNFMB collaborated in assessing the impact of the COVID-19 pandemic on Indigenous economies and in developing policy options to provide support to mitigate these impacts. Among other things, following the [Fall Economic Statement of 2020](#), the FNFMB and FNTC provided direct operational support to ISC in the provision of COVID-19 emergency grant funding. Also, First Nations with existing loans with the FNFA were able to obtain interest relief to help maintain financial stability and allow for continued growth despite the economic challenges related to the pandemic.



## Land management

### Legislative framework

Several initiatives implemented during the evaluation period have strengthened the legislative framework related to land management. First amended in 2018 to include provisions related to the addition of reserve land for First Nations with a land code in force, the FNLMA was repealed and replaced in December 2022 by the *Framework Agreement on First Nation Land Management Act* (FAFNLMA). This new legislation responded to a long-standing objective on the part of signatory First Nations and the LAB to establish the Framework Agreement as the foundational document when it comes to land management. The FAFNLMA confirms that the Framework Agreement has the force of law, is binding, and that it prevails in the event of any inconsistency or conflict between other provisions in the Act and the Framework Agreement.

As it was the case with legislative changes made in relation to fiscal management, First Nations-led institutions and organizations were consulted as part of these amendments, but they did not co-develop it in the manner described in subsection 3.2.

### Addition to Reserves (ATR) process

For decades, ATR have proven to be a challenging process that Canada and First Nations have struggled to improve. Shortcomings in fully engaging First Nations in a comprehensive co-development process has further complicated the establishment of the policy and legislative framework related to the ATR process. The most recent Addition to Reserve Policy, jointly drafted with the AFN in 2016, was subsequently criticized by the AFN for lacking a proper engagement of First Nations. Following the adoption of the *Addition of Lands to Reserves and Reserve Creation Act* in 2018, the AFN passed a resolution rejecting the approach adopted by Canada in enacting this legislation without, again, the proper engagement that a co-development approach would have required.

A number of factors have contributed to the complexity of ATRs. In particular, findings from interviews and the document review point to a lack of adequate data on ATRs, including the fact that there is no published data on the volume of current ATR requests. However, the AFN estimates that there are currently more than 1,300 active ATR files under review. Also, as previously noted, the processing of ATR requests is largely undertaken by ISC, under delegated authority, while the approval of each request rests with the Minister of Crown-Indigenous Relations.

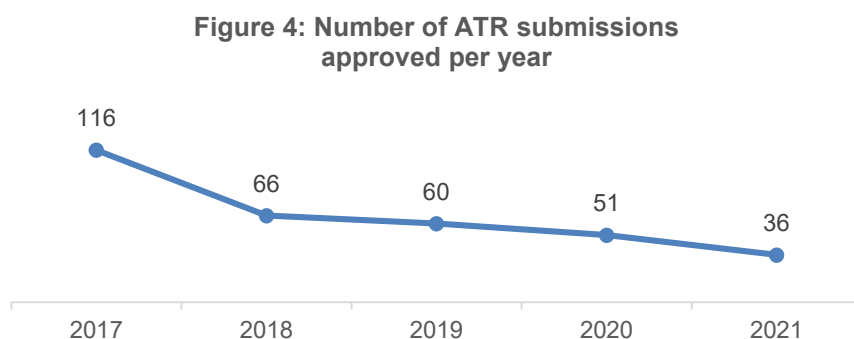
New efforts to improve the ATR process reached a milestone when Canada and the AFN agreed in 2019 to establish a joint technical AFN-federal Lands Table involving the AFN, the Resource Centre, the National Aboriginal Lands Managers Association, CIRNAC and ISC. To further support these efforts, the federal government announced, as part of its Budget 2021, an allocation of \$43 million over 4 years (starting in 2021-2022) to ISC and CIRNAC to work with Indigenous partners and other interested parties to redesign the ATR process with the goal, once again, to



enhance its efficiency. The objective is to have new policy developed by March 2025, with implementation taking place afterwards.

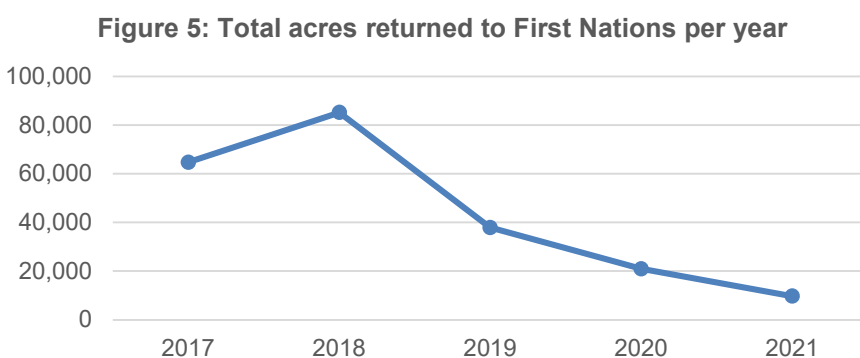
In the meantime, the number of ATR submissions approved per year has steadily declined during the period covered by the evaluation, from 116 in 2017 to 36 in 2021 (see Figure 4). While a number of factors may have contributed to this trend, interview findings indicate that the COVID-19 pandemic may have slowed down the various steps required to complete an ATR application even further.

**Figure 4: Number of ATR submissions approved per year**



As a result of this slowdown, the total number of acres per year that have been returned to First Nations has also declined sharply during the evaluation period (see Figure 5).

**Figure 5: Total acres returned to First Nations per year**



As evaluation evidence indicates, the ATR process is far reaching, and involves a wide range of organizations, such as CIRNAC, ISC, Natural Resources Canada, Department of Justice, First Nations, and municipal governments. The process is perceived, almost unanimously by all key informants, to be challenging and ineffective. For instance, First Nations bear the burden of consulting and negotiating with municipalities, while there is little to no incentive for municipalities



to support ATRs. In this context, CIRNAC's Indigenous Institutions and Governance Modernization Branch has provided support to this process through policy re-design and [Indigenous-led engagement activities](#) to reform the ATR policy.

## **Efficiencies**

With the combination of a restructuring leading to the establishment of two new departments (CIRNAC and ISC) and the COVID-19 pandemic, much of the period covered by the evaluation has been marked by transition and adaptations. The analysis of the extent to which the support provided by the Branch is delivered efficiently has therefore focused on four aspects that have emerged from the evaluation findings, and that are presented in the following paragraphs.

### Level of resources

As noted in subsection 3.1, CIRNAC's Indigenous Institutions and Governance Modernization Branch has been operating with limited internal resources. Considering the range of activities in which the Branch has been involved, the pace at which these files have been evolving, and the increasing number of First Nations reclaiming their authority over land and fiscal management, evaluation findings raise questions as to the sustainability of the current approach. As noted during interviews with First Nations-led institutions and organizations, issues and policies related to land and fiscal management are, by their very nature, highly complex and technical, and they require adequate subject-matter expertise to engage in these files. It is therefore essential that the Branch can maintain both the level of human resources required, and the range of subject-matter expertise required.

Evaluation findings also indicate that the distribution of roles and responsibilities between CIRNAC and ISC when it comes to land management in particular will continue to require careful monitoring and refinement.

### Nomination process

In accordance with the FNFMA, the federal government is responsible, through Governor-in-Council orders issued on the recommendation of the Minister of Crown-Indigenous Relations, for the appointments of the Chair and a majority of Board Members on the FNFMB, and for the appointment of the Chief Commissioner and a majority of commissioners on the FNTC.

Having those leadership positions filled with capable and qualified individuals is pivotal to ensuring that these two organizations can adequately fulfill their respective mandates. Evaluation findings indicate that significant delays have been encountered, at times, in nominating the required individuals to these positions. In response, the Branch and the two institutions have collaborated in creating a pool of potential candidates to these positions. Ultimately, however, it is up to the federal government to issue these orders. Should this issue prove to be a lasting challenge, it was suggested that alternative options be considered to nominate at least some of the positions currently covered by the Governor-in-Council appointment process.





### Process to amend the FNFMA schedule

Adding a First Nation to the FNFMA regime requires an amendment to the FNFMA schedule, which is achieved through an order issued by the Minister of Crown-Indigenous Relations. During interviews, it was noted that delays are at times encountered in completing the process leading up to the issuance of the ministerial order. This, in turn, delays the ability of a First Nation that has successfully satisfied all requirements to benefit from the FNFMA regime. Improving the expediency of this process is therefore seen as important, particularly in light of the ongoing increase in the number of First Nations engaging in this process.

### Measurement process

CIRNAC reports annually on the range of activities it undertakes in relation to First Nations land and fiscal management, including those activities undertaken by the Branch to support First Nations-led institutions and organizations. The evaluation notes that, throughout the period covered by the evaluation, CIRNAC has used a range of performance indicators to report on this work, including several indicators related to decisions made by First Nations, such as:

- % of First Nations adopting alternatives to the *Indian Act*;
- % of First Nations with FMS Certification;
- % of First Nations with real property taxation regimes;
- % of First Nations with fiscal bylaws or laws;
- % of First Nations with established land code; and
- % of First Nations with land use plans.

This approach is not providing an accurate or meaningful measure of success. In particular, the regimes offered by the Framework Agreement and the FNFMA are optional regimes, and it is up to each First Nation community to determine the extent to which they wish to pursue them. As a result, the performance of CIRNAC should not be completely dependent on the nature of decisions made by First Nations.

As the work of the Branch is centered on enhancing the capacity of First Nations and First Nations-led institutions and organizations to act in the areas of land and fiscal management, it would be more informative to have indicators that provide insights on the extent to which First Nations that wish to engage in the land and fiscal management regimes offered by the Framework Agreement and the FNFMA are, in fact, successful at doing so, and the extent to which they may be facing systemic barriers as part of this process.

Ultimately, performance indicators used to monitor the success of the support provided by the Branch should be focussed on those activities undertaken by CIRNAC, and the efficiencies achieved in implementing them.



## 4. Conclusions and recommendations

### 4.1 Conclusions

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC)'s Indigenous Institutions and Governance Modernization Branch (IIGM) and First Nations-led institutions and organizations have been collaborating to build and enhance the legislative and policy environment that allow First Nations to reclaim their authority over land and fiscal management. This work directly supports the efforts toward reconciliation, and the full implementation of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The evaluation provided an opportunity to assess the extent to which the Branch is capable of fulfilling its mandate, particularly as it relates to the support it provides to institutions and organizations that are directly working with First Nations in the context of the Framework Agreement and the *First Nations Fiscal Management Act* (FNFMA). Findings from the evaluation confirm that significant progress has been achieved over the evaluation period, particularly in establishing a constructive relationship between the Branch and the First Nations-led institutions and organizations, which is based on trust and a shared vision as reflected in UNDRIP. Progress has also been achieved in strengthening the legislative and policy frameworks related to land and fiscal management.

Despite these advances, the evaluation also identified ongoing challenges stemming from the complexity of these activities, the range of partners involved, and the limitations in organizational capacity within the Branch. Also, the establishment of two new departments, combined to the COVID-19 pandemic, have forced all partners to advance their respective priorities in an environment marked by transition and uncertainties.

### 4.2 Recommendations

Based on the evaluation findings and conclusions, it is recommended that CIRNAC:

1. In collaboration with Indigenous Services Canada (ISC), strengthen the current funding structure used to support First Nations-led institutions and organizations involved in land and fiscal management, with a view of providing ongoing, predictable and long-term funding that reflects the ongoing nature of their mandates.
2. Ensure there is sufficient capacity within CIRNAC's Indigenous Institutions and Governance Modernization Branch, so that all activities and collaborative projects it undertakes in partnership with First Nations-led institutions and organizations can progress efficiently.
3. Engage other federal departments and agencies in supporting a number of priority actions identified in the evaluation, including:



- a. Collaborating with the Department of Finance Canada to co-develop with First Nations-led institutions and organizations an ongoing process to specifically address the fiscal measures required to support the implementation of UNDRIP;
- b. Collaborating with central agencies and the Department of Justice Canada to establish a legislative development process that adequately reflects UNDRIP by ensuring the appropriate consultation and cooperation, at all stages of the process, of any legislation or regulations that have a direct impact on the land and fiscal authority exercised by First Nations;
- c. Collaborating with Indigenous partners (including First Nations, Assembly of First Nations, Lands Advisory Board (LAB) and First Nations Land Management Resource Centre (RC)) and ISC to improve the Additions to Reserves (ATR) process;
- d. Reviewing the current process used to appoint individuals to the First Nations Tax Commission (FNTC) and the First Nations Financial Management Board (FNFMB) to ensure that no position is left vacated for an extended period of time; and
- e. Improving the current process used to add First Nations to the schedule of the FNFMA, to avoid any delays once all prior requirements have been met.



## Annex A – Logic Model

