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Hon. Caroline Cochrane
Premier
Government of the Northwest Territories
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January 17, 2020

Greetings Premier Cochrane;

Re: Implementation of the UN Declaration on the Rights of Indigenous Peoples

We are writing to you to provide Nihtat Gwich'in and Inuvik Native Band recommendations to GNWT on elements necessary to implement the UN Declaration. We are recommending that this be done through GNWT passing a law, along with an implementation plan.

As you are aware from our previous correspondence, and as indicated in the attached recommendations, implementing the UN Declaration is particularly important for the self government agreement we are currently negotiating, a central element of our vision for social and economic prosperity.

We look forward to learning more about the GNWT approach to implementing the UN Declaration, and participating in co-development of legislation, mandates, and implementation planning to ensure it is done in a good way.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jozef'.

Jozef Carnogursky
President

Attachment (1)

cc. NWT MLAs

Principles and Actions for Implementing the UN Declaration in the Northwest Territories Nihtat Gwich'in Recommendations

Introduction

The 19th Assembly has identified implementing the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) as one of its legislative priorities.¹ First adopted by the General Assembly in 2007, the UN Declaration on the Rights of Indigenous Peoples was the culmination of decades of struggle by Indigenous peoples for recognition of their unique place within the global community, and of their inherent rights as peoples.

The UN Declaration does not create new rights. The UN Declaration describes rights already recognized in Canada's Constitution and Charter of Rights, and in international human rights law. The UN Declaration emphasizes specific elements necessary for Indigenous peoples to live in dignity and pursue self-determined development in a context where many laws and actions of governments in Canada have failed to uphold to the rights of Indigenous peoples.

Action to implement the UN Declaration is widely recognized as necessary and overdue. Both the Truth and Reconciliation Commission of Canada and the Final Report on the Missing and Murdered Indigenous Women and Girls Inquiry call on governments to implement the UN Declaration as a necessary step toward reconciliation and improving the social, political, and material conditions of Indigenous peoples, as well as the relationship between Indigenous peoples and governments.² The Calls to Action and Calls for Justice in those reports provide specific actions that governments can take to fulfill UN Declaration implementation. In addition, other reports and analyses have been produced by Indigenous and human rights organizations providing advice on specific actions governments can take to implement the UN Declaration.³

Across Canada, a political consensus has developed on respect for Indigenous rights and reconciliation as a basis for repairing the relationship between governments and Indigenous peoples, and taking essential steps to improve the life conditions and opportunities of Indigenous peoples. The Province of British Columbia unanimously passed a law to implement the UN Declaration⁴ that was co-developed with Indigenous organizations.⁵ Similarly, the Government of Canada has committed to working with Indigenous peoples to bring forward federal legislation to implement the UN Declaration in the first year of its current mandate.⁶

Action is needed in the NWT to repair strained relationships with Indigenous governments, where outdated policies and legislation are prolonging negotiations over land and governance rights. Delays in reaching agreements have significant negative economic, political, and social implications for the NWT. Implementing the UN Declaration will provide a path forward, and a renewed basis for cooperation between the GNWT and Indigenous Governments to build a sustainable economic future for the Territory, and to advance social wellness and development in all of our communities.

Purpose

This paper provides principles and actions that the Nihtat Gwich'in recommend the GNWT should adopt as a basis for implementing the UN Declaration in the Northwest Territories. The paper draws on experiences elsewhere, to provide examples of proven methods, and to document resources accessible to GNWT and Indigenous governments describing lessons learned, and actions and efforts required for success. Recommended actions and principles are proposed to enable the UN Declaration to be implemented through a process and approach that builds trust, collaboration and the basis for shared success between the GNWT and Indigenous governments.

Principles

1. Implementing the UN Declaration in the NWT requires specific legislation, a solid implementation plan, and a renewed policy approach.
2. Specific UN Declaration legislation (with provisions for an implementation plan) should be co-developed by Indigenous Governments and the GNWT through a process established for that purpose.
3. The process of developing UN Declaration legislation should be guided by principles of consensus decision making, relationship building, and reconciliation. The GNWT has experience with such processes, having co-developed several important pieces of legislation with Indigenous Governments during the 17th and 18th Assemblies, including the *Wildlife Act*, *Mineral Resources Act*, and the *Protected Areas Act*.
4. Co-developed UN Declaration legislation and an implementation plan should be drafted within the first year of the 19th Assembly, and made subject to annual NWT Legislative Assembly and Indigenous Government review processes.

Actions

The GNWT can build on a number of successes in legislation and policy which demonstrate decisions that are aligned with the provisions of the UN Declaration. Equally, the GNWT has many opportunities to learn from conflicts where are arising from policies that do not meet the standards set out in the UN Declaration. The table below provides examples of both:

UN Declaration Article	Positive GNWT Precedents	Areas of Conflict
Article 3 Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status	Recognizing the right to self-determination and its partial expression through participating in	Current GNWT negotiation mandates are often pursued through provisions that limit the scope of Indigenous

<p>and freely pursue their economic, social and cultural development.</p>	<p>rights-based land and governance negotiations.</p>	<p>jurisdictions and undermine Indigenous governance. Expanded roles for the GNWT should be sought through federal-provincial agreements, and not at the expense of Indigenous Governments in their agreements.⁷</p>
<p>Article 4 Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.</p>	<p>The GNWT has committed to resource revenue sharing with Indigenous Governments.</p>	<p>The GNWT does not appear to recognize the economic value of concluding self-government agreements. GNWT mandates to not currently reflect the UN Declaration, which put the GNWT at odds with Canada and Indigenous parties. This delays completion of agreements that would result in direct federal funding for self government. The GNWT needs to accelerate Indigenous self- government agreements, and to accelerate rather than delay the realization of Indigenous jurisdictions and the additional federal support that will flow for program and services in our communities.</p>
<p>Article 5 Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.</p>	<p>The GNWT is an innovator in shared decision-making arrangements with Indigenous Governments in natural resource management, including in land use planning and wildlife management.</p>	<p>Current negotiation mandates do not give sufficient scope to the recognition of the inherent right of self-government in areas such as education, child services, housing, health, and justice. The unilateral imposition of Core Principles and Objectives through self-government agreements is in contravention to Article 5. Inter-governmental agreements and negotiated program standards are far more likely to achieve mutual benefits for Indigenous</p>

		Governments, the GNWT and Northerners than centrally-imposed objectives.
<p>Article 18 Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.</p>	<p>Respecting the authorities and decisions of Indigenous governments with respect to Modern Treaties.</p>	<p>CPOs The unilateral imposition of Core Principles and Objectives through self-government agreements, instead of negotiating program standards, is in direct contravention of Article 18.</p>
<p>Article 19 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.</p>	<p>The GNWT is a leader in co-drafting legislation and regulation, and has pioneered important shared-decision making and co-management mechanisms within resource management legislation.</p>	<p>Many territorial laws and regulations remain colonial in both letter and form, and serve as constant sources of conflict. BC's legislation provides for action plans to prioritize the reform of outdated laws, regulations and policies as required. Further, where existing laws provide for discretionary decisions affecting Indigenous peoples, the BC legislation provides authority for the statutory decision-maker to enter into shared decision-making frameworks with Indigenous governments to ensure free, prior, and informed consent (FPIC). The GNWT should adopt similar approaches in its own UN Declaration legislation.</p>

Why Co-Development and Ongoing Monitoring is Essential

The UN Declaration should be implemented through legislation. This will ensure that a “whole of government approach” is legally mandated and required. Anything less would leave implementation open to discretion and inconsistent application across government operations. Based on past experience, a legislative co-development process could proceed quickly, consisting of intensive co-development activities based on:

- Participation of Indigenous governments and GNWT through a purpose-built forum for the discussions;
- Dedicated staff from both Indigenous governments and the GNWT focused primarily on the task for a short period of time to ensure its timely completion;
- Shared expertise to advise the parties on Constitutional and legal questions specific to the NWT context;
- Building on existing similar legislation in Canada.

Implementation Plan and Commitments

Following or concurrently with the development of legislation, a implementation plan would assist Indigenous Governments and NWT legislators to inform and understand the broad framework for how the legislation will be implemented, including key Ministerial commitments to guide priority activities and reforms required within GNWT departments. The plan would include goals and actions to enable meaningful progress toward finalizing rights based agreements essential to NWT economic prosperity.

The implementation plan should include:

- Three priorities for each GNWT department, and plans and timelines for implementing the priorities, along with commitments from NWT Indigenous Governments with respect to responsive or supportive actions required to facilitate priority implementation;
- A process for implementation monitoring and reporting; and,
- A mechanism for revisiting implementation plans and processes to assess progress and review proposed changes as required.

Legislative Proposal: Broad Outline

There is no need for the Assembly to develop a unique approach. Both Canada and British Columbia have prepared effective legislation for implementing the UN Declaration that can be used as legislative models and adapted to the circumstances of the NWT.

The previous federal legislation (Bill C-262)⁸ was passed by the House of Commons in 2018, but did not complete Senate review in time to become law prior to the recent federal election. British Columbia's "Declaration on the Rights of Indigenous People's Act"—introduced as Bill 41, and passed in 2019—builds on the framework set out in the federal legislation.

Fundamentally, C-262 and the BC legislation share many of the same key features. They both affirm the application of the UN Declaration in federal and provincial law. They also require the governments to "in consultation and cooperation with Indigenous peoples" to "take all measures necessary" to ensure that their laws are consistent with the UN Declaration. These broad commitments are grounded in a recognition that specific steps will be required, and to that the legislation requires that the governments must, through consultation and cooperation, prepare and implement action plans to "achieve the objectives of the Declaration", and to provide annual reports to the legislature on the implementation of the action plan by specific dates.

Significantly, the BC legislation also includes an additional innovation (s. 7 decision-making agreements) that provide opportunities for a Minister, acting on the authority of a Cabinet directive, to negotiate and conclude agreements with Indigenous governments to give effect to shared decision-making or consent arrangements on matters that are within the scope of that Minister's statutory decision-making responsibilities. This enables practical, results-oriented solutions to be negotiated and implemented within existing regulatory frameworks while the longer-term work of legislative reform is done.

The GNWT has already established a significant track record of working with Indigenous Governments to co-develop legislation. This fact, together with the consensus-based system of our Assembly and the deep connections between legislators and communities, provides the Northwest Territories with a unique opportunity to bring forward UN Declaration legislation that reflects the Northern context and sets a new bar for effective reconciliation.

Translating the provisions of the UN Declaration into Canadian law will require careful consideration by Indigenous peoples and the territorial government. Bringing forward UN Declaration legislation will establish a framework towards accomplishing that goal, and establish a new baseline against which progress towards reconciliation within the Northwest Territories can be measured.

We note that the introduction and passage of Bill 41 was warmly welcomed by BC's business community, where economic opportunities have sometimes been frustrated: collateral damage in the jurisdictional conflicts between public and Indigenous governments. Industry leaders in BC are now expressing hope that the framework for shared decision-making and obtaining the consent of Indigenous peoples introduced in the legislation will create greater certainty, opportunity and prosperity. The same circumstances exist here in the NWT – not only to create greater certainty for resource development, but to realize the significant new investments in governance and social programs that the federal government is making in self-governing Indigenous communities.

Footnotes and Resources

¹ Legislative Assembly of the Northwest Territories, "Priorities of the 19th Assembly", Tabled Document TD 1-19 (1) Tabled October 25, 2019 as accessed December 12, 2019 at https://www.assembly.gov.nt.ca/sites/default/files/td_1-191.pdf

² Truth and Reconciliation Commission of Canada, Calls to Action (2015), as accessed December 10, 2019 at http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf; MMIWG Inquiry Final Report: Reclaiming Power and Place (2018), as accessed December 10, 2019 at <https://www.mmiwg-ffada.ca/final-report/>.

³ UBCIC, "How the United Nations Declaration on the Rights of Indigenous Peoples can be implemented in BC law, policy and practices", November 27, 2018 as accessed December 12, 2019 at https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/undrip_legislation_factsheet2.pdf; Assembly of First Nations "Implementing the UN Declaration on the Rights of Indigenous Peoples" (2018), as accessed December 10, 2019 at <http://www.afn.ca/wp-content/uploads/2018/02/17-11-27-Implementing-the-UN-Declaration-EN.pdf>; United Nations Department of Economic and Social Affairs, 2019 "State of the World's Indigenous Peoples, 4th Volume: Implementing the Un Declaration on the Rights of Indigenous Peoples as accessed December 10, 2019 at <https://social.un.org/unpfii/sowip-vol4-web.pdf>

⁴ Province of British Columbia, Bill 41-2019 Declaration on the Rights of Indigenous Peoples Act. As accessed December 10, 2019 at <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/first-reading/gov41-1>

⁵ Government of British Columbia, "B.C Declaration on the Rights of Indigenous Peoples Act", as accessed December 10, 2019 at https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/undrip_legislation_factsheet2.pdf

⁶ For commitments during its 2015-2019 mandate, see <https://www.aadnc-aandc.gc.ca/eng/1309374407406/1309374458958>; for its most current information about its Recognition and Implementation of Indigenous Rights framework see <https://www.rcaanc-cirnac.gc.ca/eng/1536350959665/1539959903708>; for specific guidance to its officials when working with Indigenous peoples see its "10 Principles" framework here: <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>, which were also adopted by the Government of British Columbia, as described here: <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/about-the-ten-principles>.

⁷ GNWT aboriginal Land Claims Policy, 11.51. Revised March 6, 1998. Clause 5. As accessed at: <https://www.eia.gov.nt.ca/sites/eia/files/content/11.51-aboriginal-land-claims.pdf>

⁸ Bill C-262: As Passed by the House of Commons, May 30, 2018. <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-262/third-reading>