Special Committee on
Reconciliation and Indigenous Affairs

Committee Report 27-19(2)
March 30, 2022

Interim Report: What We Heard about the United Nations Declaration on the Rights of Indigenous Peoples and Negotiating Agreements

19th Northwest Territories Legislative Assembly

Chair: Ms. Lesa Semmler

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March 30, 2022

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Special Committee on Reconciliation and Indigenous Affairs is pleased to provide its *Interim Report: What We Heard about the United Nations Declaration on the Rights of Indigenous Peoples and Negotiating Agreements* and commends it to the House.

Ms. Lesa Semmler
Chair, Special Committee on
Reconciliation and Indigenous Affairs

SPECIAL COMMITTEE ON RECONCILIATION AND INDIGENOUS AFFAIRS

INTERIM REPORT: WHAT WE HEARD ABOUT THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND NEGOTIATING AGREEMENTS

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EXECUTIVE SUMMARY

On October 29, 2020, the Legislative Assembly unanimously passed Motion 21-19(2) to establish a Special Committee on Reconciliation and Indigenous Affairs (Committee). The Assembly tasked the Special Committee to seek and encourage discussion and recommendations on opportunities and challenges in meeting the Assembly's priorities.[1]

The Special Committee began work on December 4, 2020, and has since held fifteen hearings. Throughout 2021, Committee heard from legal experts, scholars, researchers, Indigenous governments and nations, and the Government of the Northwest Territories (GNWT).

Five public presentations by experts and scholars are available on the Legislative Assembly's YouTube channel (refer to Appendix 1). Committee received ten in-camera hearings, including eight from Indigenous governments and organizations, and two from the GNWT.

We are not identifying individual voices in this Interim Report unless explicitly advised that we can share the information publicly. We respect the confidentiality requirements of ongoing negotiations and the confidentiality commitments of the Indigenous governments and nations.

The report is organized into four chapters summarizing what we have heard so far. Chapter one arranges the information received from experts and scholars and provides an overview of discussions around the implementation of the Declaration. Chapter two summarizes what we heard about existing key challenges in applying the Declaration in the NWT, and Chapter three encapsulates the key challenges in concluding agreements in the NWT. The final Chapter lists areas for potential future recommendations by the Special Committee.

[1] Motion to establish a Special Committee on Reconciliation and Indigenous Affairs. (TD 21-19(2), October 29, 2020).

What We Have Heard about the Declaration

Themes that emerged when Committee listened to experts, scholars and Indigenous governments and organizations reflected many discussions taking place in the Canadian context. These discussions included observing the Declaration as a minimum standard for human rights and as a tool for self-determination. The Declaration was acknowledged as designed to be a global benchmark, while some suggested that it was not intended to be a specific legal instrument to be directly implemented as law.

Discussions about the Declaration

Committee heard implementing the Declaration's Articles should not be seen as the end goal but rather be the beginning of the effort.

We heard that challenges arise when aligning the Declaration, an international human rights document, with domestic law. Adopting the Declaration in domestic legislation has been criticized as too vague and noncommittal. It has been described as misleading in that it would make promises that cannot be kept, thereby taking the risk of repeating the cycle of broken promises, particularly promises broken by governments.

Committee heard fundamental disagreement on whether the Declaration is legally binding. It has been pointed out that it is an aspirational document designed to be a global benchmark for Indigenous rights but is not considered law and, therefore, not legally binding.

Others noted that viewing the Declaration as aspirational ignores its intent: to guide action. We learned that customary international law applies directly unless expressly stated otherwise. Human rights treaties must be implemented through domestic legislation either implicitly or explicitly.

We heard that in the NWT, the Declaration might serve different purposes for different nations:

- For those that pursue self-government agreements, the Declaration may serve as a replacement for the GNWT's Core Principles and Objectives.
- Treaty holders may use the Declaration to identify and fill gaps in implementation. Committee heard that modern treaty implementation and self-governance agreements are at a critical point in the NWT, and processes to secure funding will require rethinking to ensure the treaties and the Declaration are fulfilled.

- On the other hand, we heard that the Declaration may distract Modern Treaty holders from continuing treaty implementation and may impede further progress on a path that has seen considerable investment in the past.
- For those without land agreements, the Declaration would allow land rights and self-determination. Nations without land agreements expressed the desire to develop own mechanisms and processes to move land agreements forward.
- Committee heard that openness is needed toward more progressive and contemporary co-management approaches that include renewable and non-renewable resources. The NWT's co-management institutions have developed from arrangements under modern treaties and may not be a workable model for areas without land agreements or reserve lands.

Challenges in Declaration Implementation

- **International human rights obligations and domestic law:** We heard concerns about the fundamental compatibility of the basic principles of the Declaration with the existing jurisprudence in Canada. Different views exist on the future approach to address the complexity of Section 35(1) of the *Constitution Act, 1982*. We also the existing jurisprudence in Canada. Different views exist on the future approach to address the complexity of Section 35(1) of the *Constitution Act, 1982*. We also
- **Options for Implementation:** We heard that implementation may be more manageable if the Declaration was broken down into applicable Sections. This process would avoid ambiguity, better allow incremental allocation of resources and would put meaning behind each Section with specific mechanisms.
- **Implementation by Law:** Scholars have cautioned that confusion could arise if a divergent variety of implementation laws are developed in regions and across the country. Should all provinces, territories, and municipalities develop laws in addition to federal law that makes commitments to the rights of Indigenous people, the question would be how to ensure that the process is harmonious. This would likely be more applicable to the Territories than to some of the provinces.
- **Co-developing legislation:** Committee heard that co-developing legislation is the realization of reconciliation. However, how to arrive at the result of co-development is not entirely clear. For some, past examples of co-development of legislation in the NWT were not sufficiently inclusive and in compliance with the Declaration principles. Others regarded the process used to develop both laws as examples of consent implementation and government collaboration.
- **Legislation and Consent:** We heard that the core question of the Canadian debate on consultation is whether, or possibly to what extent, consent would need to be achieved before developing legislation to implement the Declaration requiring consent.

- **Consent and Self-determination:** Consent has been accepted as a key principle of the Declaration, intended to enable Indigenous self-determination. In discussions about consent, we heard that the principle of free, prior and informed consent (FPIC) can be perceived as a vehicle to advance long-term relationships and allow for the coexistence of a plurality of legal orders. Committee was told not to underestimate the role of FPIC in establishing a different and positive relationship between Indigenous peoples and non-Indigenous segments of society.
- **Consent and Consult:** Disagreements exist on the achievability of FPIC in relation to rights under the Canadian *Constitution Act, 1982*. And while FPIC is the tool intended to make self-determination happen, tension exists between efforts of defining the terms and interpretations of the broader goal of Indigenous participation and protection of rights.
- **Operationalizing Consent:** We also heard of how consent could be operationalized through Declaration legislation. Examples of operationalization include creating leadership tables, secretariats, and joint cabinet-Indigenous committees. Other examples include processes outside of Declaration legislation such as modern treaties, the regulatory regime and assessment processes, Indigenous-led assertion and enforcement, or through the courts.
- **Contentious Articles:** Committee heard that several Declaration Articles might be contentious in their relationship to the Canadian *Constitution Act, 1982*. We heard that Articles 26, 32, and 46 have been particularly contentious.
- **Monitoring of implementation:** There are no independent bodies to monitor how governments will perform in implementing and applying the Declaration. It has been said that this will lead to interpretation gaps in implementation.
- **Regional and inherited approaches**: We have heard that some fear that the Declaration may interfere with existing agreements; others pointed out that the Declaration will help realize inherent rights and reconciliation. To understand the situation of Indigenous nations in the NWT, we were told to look at the historic treaties, the extinguishment of rights and modern land agreements.

  We heard that existing representative bodies may not align with current views of authority and self-determination, and existing agreements may not fulfil views of land rights and self-government.

Challenges in Negotiations

- **The slow pace of negotiations** due to the increasing complexity of agreements, frequent leadership changes, the desire for legal "certainty" and to be comprehensive, and the increasing size of negotiation teams.

- **Negotiation mandates:** Indigenous nations perceive themselves as being stuck in a negotiation structure inherited from the past, with little room to move forward or break out of. The GNWT was described as having been inflexible in the past. All NWT witnesses agreed that governments need to get away from fixed and predetermined principles at the negotiation table, be more flexible and not change the Core Principles and Objectives unilaterally.[2]
- **Competing interests:** Overlap in land use combined with the absence of land agreements, we heard, created an untenable and undesirable situation.
- **Finding a way forward**: Despite, at times, the critical language describing the past and current experiences of negotiations in the NWT, we were inspired by the positive and forward-looking tone used by all witnesses.

We heard a deep sincerity in seeking and finding solutions to challenges of the status quo. The diversity among NWT Indigenous governments and nations was noted as an opportunity to build on what has proven to already work in the NWT. Examples included existing collaborative models of governance and legislative co-development. an opportunity to build on what has proven to already work in the NWT. Examples included existing collaborative models of governance and legislative co-development.

[2] *NWT Core Principles and Objectives*. Executive and Indigenous Affairs, Government of the Northwest Territories. June 4, 2009.

SPECIAL COMMITTEE ON RECONCILIATION AND INDIGENOUS AFFAIRS

WHAT WE HEARD ABOUT THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND NEGOTIATING AGREEMENTS

INTRODUCTION

In October 2019, the 19th Legislative Assembly of the Northwest Territories (NWT) made it a priority to implement the United Nations Declaration on the Rights of Indigenous Peoples (Declaration), and to settle and implement treaty, land, resources, and self-government agreements.[3,4]

In February 2020, the Government of the Northwest Territories (GNWT) included within its Mandate to implement the Declaration within the constitutional framework of Canada to advance reconciliation, and to settle and implement treaty, land, resources, and self-government agreements.[5]

On October 29, 2020, the Legislative Assembly unanimously passed Motion 21-19(2) to establish a Special Committee on Reconciliation and Indigenous Affairs (Committee). The Assembly tasked the Special Committee to seek and encourage discussion and recommendations on opportunities and challenges in meeting the Assembly's priorities.[6]

The Special Committee began work on December 04, 2020, and has since held fifteen hearings. Throughout 2021, Committee heard from legal experts, scholars, researchers, Indigenous governments and nations, and the GNWT.

Five public presentations by experts and scholars are available on the Legislative Assembly's YouTube channel (refer to Appendix 1).

Committee received ten in-camera hearings, eight from Indigenous governments and organizations and two from the GNWT. We are not identifying individual voices in this Interim Report unless explicitly advised that we can share the information publicly. We

[3] *Priorities of the 19th Legislative Assembly*. (TD 1-19(1), October 25, 2019).
[4] United Nations General Assembly (UNGA), 61/295. United Nations Declaration on the Rights of Indigenous Peoples. October 2, 2007.
[5] 2019-2023 Mandate of the GNWT. (TD 12-19(2), February 7, 2020).
[6] Motion to establish a Special Committee on Reconciliation and Indigenous Affairs. (TD 21-19(2), October 29, 2020).

respect the confidentiality requirements of ongoing negotiations and the confidentiality commitments of the Indigenous governments and nations. This Interim Report organizes the information we received into themes, following the challenges and opportunities as explained by leadership and specialists.

The work of this Special Committee is not complete. We continue hearing from Indigenous governments and nations, other governments and experts and will prepare a final report before the last sitting of this Assembly.

Given the amount of information Committee has received, we decided to provide the public with an Interim Report. We are sharing what we have heard on the different views and challenges as they were described to us. Committee wishes to thank all those who participated.

Special Committee Mandate

The 19th Legislative Assembly passed Motion 21-19(2) to create the Special Committee on Reconciliation and Indigenous Affairs. The Terms of Reference[7] detail the Committee's tasks and include the following:

- The purpose of the Special Committee is "to seek and encourage discussions and recommendations on opportunities and challenges in relation to Aboriginal Rights negotiations and reconciliation with a view to advancing the priorities of the 19th Legislative Assembly, including the resolution of these negotiations and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples".
- The Special Committee "shall report to the House and may provide advice to the Minister responsible for Executive and Indigenous Affairs on facilitating the timely resolution of outstanding issues in Aboriginal Rights negotiations; advancing reconciliation with the NWT's Indigenous Peoples".
- The Special Committee may provide advice on any matter related to Aboriginal Rights negotiations and reconciliation.

What We Have Heard

Themes that emerged when Committee listened to experts, scholars and Indigenous governments and organizations reflected many discussions taking place in the Canadian context. These discussions included observing the Declaration as a minimum standard for human rights and as a tool for self-determination. The Declaration was acknowledged

[7] Terms of Reference Special Committee on Reconciliation and Indigenous Affairs. (TD 211-19(2), October 29, 2020).

as designed to be a global benchmark, and some suggested that it was not intended to be a specific legal instrument to be directly implemented as law.

Discussions centred around the purpose of the Declaration, its consistency with domestic law, implementation of the Declaration in general, how to action the Declaration in policy, that operationalizing consent is critical and that the NWT has been applying principles of the Declaration for decades.

We learned about analogies such as *braiding*, *embroidering*, and *mending,* describing how the Declaration could be realized to arrive at government-to-government relationships by including Indigenous self-determination and legal orders.

We learned that conflicts appear around the following areas:

- **International human rights obligations and domestic law:** We heard about ongoing discussions amongst experts about the fundamental compatibility of the basic principles of the Declaration with the existing jurisprudence in Canada. Different views exist on the future approach to address the complexity of Section 35(1) of the *Constitution Act, 1982*. We also heard about confusion amongst Indigenous rights holders about this Section in relation to rights under other laws.

- **Consent and its conceptual linkage to self-determination:** Consent has been accepted as a key principle of the Declaration, intended to enable Indigenous self-determination. We heard that the conceptual linkage between self-determination and consent is not to be underestimated.

  Disagreements exist on the achievability of free, prior and informed consent (FPIC) in relation to rights under the Canadian *Constitution Act, 1982*. And while FPIC is the tool intended to make self-determination happen, tension exists between efforts of defining the terms, and interpretations of the broader goal of Indigenous participation and protection of rights.

  We heard about divergences in the interpretation of Declaration Articles 32 and 46. All voices agreed, however, on the need to develop processes and find the best way to move forward in achieving a common understanding of consent in practice.

- **Regional and inherited approaches**: We have heard that some fear that the Declaration may interfere with existing agreements; others pointed out that the Declaration will help realize inherent rights and reconciliation. To understand the

situation of Indigenous nations in the NWT, we were told to look at the historic treaties, the extinguishment of rights and modern land agreements.

We heard that existing representative bodies may not align with current views of authority and self-determination, and existing agreements may not fulfil views of land rights and self-government.

We heard that the Declaration might serve different purposes for different nations in the NWT:

- For those who pursue self-government agreements, the Declaration may serve as a replacement of the GNWT's Core Principles and Objectives.
- Those who have treaties may use the Declaration to identify and fill gaps in implementation. Committee heard that modern treaty implementation and self-governance agreements are at a critical point in the NWT, and processes to secure funding will require rethinking to ensure the treaties and the Declaration are fulfilled.
- For those without land agreements, the Declaration would allow land rights and self-determination. Nations without land agreements expressed the desire to develop own mechanisms and processes to move land agreements forward.
- Committee heard that openness is needed toward more progressive and contemporary co-management approaches that are inclusive of renewable and non-renewable resources. The NWT's co-management institutions have developed from arrangements under modern treaties and may not be a workable model for areas without land agreements or reserve lands.

- **Negotiation mandates**: Indigenous nations perceive themselves as being stuck in a negotiation structure inherited from the past, with little room to move forward or break out of. The GNWT was described as having been inflexible in the past. All NWT witnesses agreed that governments need to get away from fixed and predetermined principles at the negotiation table, be more flexible and not change the *Core Principles and Objectives* unilaterally.[8]

- **Finding a way forward**: Despite the at times critical language describing the past and current experiences of negotiations in the NWT, we were inspired by the positive and forward-looking tone used by all witnesses.

[8] *NWT Core Principles and Objectives*. Executive and Indigenous Affairs, Government of the Northwest Territories. June 4, 2009.

> We heard a deep sincerity in seeking and finding solutions to challenges of the status quo. The diversity among NWT Indigenous governments and nations was noted as an opportunity to build on what has proven to already work in the NWT. Examples included existing collaborative models of governance and legislative co-development. The GNWT now works with Indigenous governments and nations at three different forums to enable dialogue with all groups.

Following this introduction, the report is organized into four chapters summarizing what we have heard so far. Chapter one arranges the information received from experts and scholars and provides an overview of discussions around the implementation of the Declaration. Chapter two summarizes what we heard about existing key challenges in applying the Declaration in the NWT, and Chapter three encapsulates the key challenges in concluding agreements in the NWT. The final Chapter lists areas for potential future recommendations by the Special Committee.

THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Committee was told to view the Declaration in the context of the origins of international law and not to discuss the Declaration in isolation. Dr. King explained that

> "[…] often when we have these conversations about the Declaration, they happen in a vacuum as if the Declaration was this sort of gift from states to Indigenous people, but international law emerged with this very racist *Doctrine of Discovery*, that allowed competing Empires, Spain and Portugal at the time, and then England and France, to legally claim lands that were occupied by Indigenous people, and place those Indigenous people under the tutelage of the Pope, with of course the exception of any Christians."

We learned that the *Doctrine of Discovery* was the first international law:

> "[…] in 1493-1494, the very first piece of international law, the piece of international law that all international law rests upon, was this doctrine that permitted the colonization of the Western hemisphere."

In terms of discussing abstract concepts such as sovereignty, we are cautioned to understand the historical context, which is that

> "Canada claimed that its sovereignty comes from this *Doctrine of Discovery*, that its sovereignty is established on the racist myth that Indigenous people have no governance, no law, no culture, and therefore were suitable for Christianization and [to have] their lands stolen. And that piece of context is […] important because [of] where we are today, talking about the Declaration of the Rights of Indigenous Peoples and the turn away from those racist doctrines has been a five hundred year-long struggle." (*Dr. Hayden King, Presentation to Committee, April 23, 2021)*

We also learned that in the years before 2006, it was decided by the drafters not to pursue another *Indigenous and Tribal Peoples Convention.* Instead, the decision was to draft a declaration because, in international legal terms, a declaration is a more aspirational document and therefore easier for states to work towards over time.

In 2007, and after 20 years of work by the Working Group on Indigenous Populations, the United Nations adopted the Declaration on the Rights of Indigenous Peoples. The Declaration consists of seventy-four distinct paragraphs, twenty-four preambular statements and forty-six Articles. The Declaration:

- Focuses on culture revitalization and self-determination to direct impacts in different sectors such as education and health care (17 Articles);

- Promotes non-discrimination in state law and policy making (12 Articles);
- Promotes Indigenous participation in decisions that affect lives, within communities and among state governments (10 Articles);
- Promotes “free, prior and informed consent"; and
- Encourage states to offer redress to Indigenous peoples for assimilation politics and to make amends for the loss of subsistence and development (6 Articles).

We heard agreement that the Declaration is a positive instrument for the protection of Indigenous rights internationally, that it sets minimum standards and can be understood as a gauging tool on how governments are meeting human rights standards. Scholar Dr. Gunn pointed out that the UN Declaration is "monumental because it is the only human rights instrument created with the participation of the rights holders themselves".[9]

In everything Committee heard, the prevailing common understanding was that the Declaration is fundamentally about Indigenous self-determination and agency. As the Declaration puts forward, self-determination relates to laws and traditions. It includes the right to:

- Determine political status freely (Article 3),
- Autonomy or self-government relating to internal and local affairs (Article 4),
- Strengthen distinct political, legal, economic, social and cultural institutions (Article 5),
- Participate in decision-making through representatives chosen in accordance with own procedures, including decision-making institutions (Article 18),
- Maintain and develop political, economic, and social systems or institutions to engage freely in traditional and other economic activities (Article 20), and
- Determine priorities, and be involved in developing health, housing, and other economic and social programmes, and as far as possible to administer the programs through own institutions (Article 23).

Implementing the Declaration

Committee heard implementing the Declaration’s Articles should not be seen as the end goal, but rather be the beginning of the effort. We heard that challenges arise when the Declaration, being an international human rights document, is to be aligned with domestic law.

[9] Indigenous Bar Association. 2011. *Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples. An Introductory Handbook*. University of Manitoba, Faculty of Law.

Committee heard about many options to implement the Declaration. The mechanisms a government can choose from include legislation, expanding the interpretation of Section 35 of the *Constitution Act, 1982*, litigation, negotiation, a national action plan, declaring it a guidance document, and Indigenous governments' implementation.

We learned that much of the implementation debate is about whether to use the law to ensure the application of the Declaration principles. We heard many challenges about how the Declaration could be legislated and, at the same time, allow for the NWT's diversity to continue without being forceful or overly prescriptive.

Scholars have described national legislation as a preliminary step toward implementing Canada's obligations under the Declaration.

> "Implementation legislation is an opportunity to embody the model of cooperation and partnership called for in the UN declaration by establishing processes where the federal, provincial and territorial governments can work collaboratively with Indigenous peoples".[10]

Canada has since legislated the implementation of the Declaration, and the discussion is now about how the country's jurisdictions would move forward. The approach taken in British Columbia, where one law was created to align all provincial law with the Declaration, was said to be advantageous because it would be more coherent than the approach of case-by-case litigation.[11]

Efforts to Implement the Declaration in Canada

In 2007, the Government of Canada (Canada) had initially voted against the Declaration's adoption. Nearly ten years later, in 2016, Canada endorsed the Declaration. In 2016, 2019, and 2021 legislative approaches occurred in Canada.

In 2016, a private member's bill made Canada one of the first common law jurisdictions to propose a legislative approach to implementing the Declaration. Presented by an Indigenous member of Parliament, Romeo Saganash, Bill C-262 intended to:

- Clarify that the Declaration applies to Canada;
- Require Canada to ensure that all federal laws are consistent with the Declaration;
- Require the federal Government to report annually on Canada's compliance with the Declaration; and

[10] Lightfoot, Sheryl. 2020. *Unfinished Business: Implementation of the UN Declaration on the Rights of Indigenous Peoples in Canada*. Essay no.3. Montreal: Institute for Research on Public Policy.
[11] Ibid. p.6.

- Clarify that the act does not diminish or extinguish any rights recognized in Section 35(1) of the *Constitution Act, 1982*.[12]

The bill was under consideration by the Senate when the House of Commons dissolved in the summer 2019.

In 2019, British Columbia created the legal obligation for the provincial Government to:

- Develop an Action Plan on the Declaration implementation with consultation and the collaboration of Indigenous peoples;
- Take "all measures necessary to ensure the laws of British Columbia are consistent with the Declaration";
- Report on Declaration implementation with Indigenous consultation; and
- Empower Indigenous governing bodies with decision-making authority.

The province published its second annual report on implementation progress made during 2020-2021, which listed activities related to particular Articles of the Declaration.[13]

I**n 2021**, *Canada's United Nations Declaration on the Rights of Indigenous Peoples Act* was described as "a roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration based on lasting reconciliation, healing, and cooperative relations", clarifies that it does not diminish or extinguish any rights recognized and affirmed in Section 35(1) of the *Constitution Act, 1982*, and obligates the federal government to:

- Ensure all laws in Canada are consistent with the Declaration;
- Develop and implement a national action plan with consultation and collaboration with Indigenous peoples (within three years);
- Report annually to Parliament on the implementation of the national action plan and the measures taken to ensure consistency of Canadian laws with the UN Declaration.[14]

[12] Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*, 1st Sess, 42nd Parl., 2016.
[13] Government of British Columbia. 2021. *Declaration on the Rights of Indigenous Peoples Act 2020/2021 Annual Report*.
[14] Government of Canada. *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act* – The Declaration explained. Website accessed March 18, 2022.

Opportunities and Challenges

Committee heard that the views on how the Declaration would realize rights existing under the Canadian Constitution are diverging. Adopting the Declaration in domestic legislation has been criticized as too vague and noncommittal. It has been described as misleading in that it would make promises that cannot be kept, thereby taking the risk of repeating the cycle of broken promises, particularly promises broken by governments.

We heard that in Canada, reconciliation flows from the constitutionally protected rights of Aboriginal peoples, which is inextricably tied to the honour of the Crown. With the creation of new laws to implement the Declaration and use it as the foundation for work on reconciliation, we may make promises we cannot keep. *(Tom Isaac, Presentation to Committee, April 8, 2022)*

Relating International with Domestic Law

Committee heard fundamental disagreement on whether the Declaration is legally binding or not. It has been pointed out that it is an aspirational document that is designed to be a global benchmark for Indigenous rights but is not considered law, and therefore, not legally binding.

> "UNDRIP was designed to be a global benchmark, not a specific legal instrument to be directly implemented as law." (*Tom Isaac, Presentation to Committee, April 8, 2021*)

Others noted that viewing it as aspirational ignores the intent of the Declaration to guide action. We heard the Declaration is about human rights, and therefore, we cannot use the word “aspirational” for a rights-based discussion or something that is internationally recognized as human rights, such as the Declaration. Viewing it as aspirational would ignore the intent of the Declaration to guide action.

We learned that customary international law applies directly unless expressly stated otherwise. Human rights treaties must be implemented through domestic legislation either implicitly or explicitly,

> "Where the rights contained in [the] UN Declaration express rules of customary international law, these protections are binding on Canada and are directly enforceable in courts even without any legislation implementing the UN Declaration" *(Dr. Brenda Gunn, Presentation to Committee, May 17, 2021)*

Table 1: Opportunities and Challenges as Heard from Experts and Scholars	
The Challenges	***The Opportunities***
Understanding the Declaration in the context of international human rights law. Understanding the legal character of United Nations General Assembly resolutions – many lawyers and judges do not understand the relevance of international law domestically.	Bringing together Canadian, international, and Indigenous law.
Jurisdictional confusion in regions and across the country (federal, territorial, municipal laws?) Ongoing debates around consultation versus consent. Potential competition or conflict with specific rights negotiated within modern treaties. Diverging views on the relationship between several Articles and Section 35 of the Constitution Act, 1982 (art. 26, 32). The current approach of litigation takes decades to resolve and leads to more litigation because the decisions tend to be narrowly focused on specific issues.	Recognizing that Indigenous peoples are Canada's partners in confederation, and that this is a benefit, not a burden (moving beyond viewing Indigenous peoples as "problems" to contend with; "issues" to be resolved, and "risks" to be managed). The treatment of each Article in implementation may provide a solution to avoid endless litigation. Moving beyond the "us and them mentality". Recognizing Indigenous peoples are founding partners and decision makers (not stakeholders) over lands, territories, and resources.
Difficulties in moving beyond the dichotomy of civil and political rights versus economic, social and cultural rights. Process for aligning laws (new and old) is not clear. Difficulties operationalizing Indigenous rights due to a lack of awareness about rights, such as: o The general public may have limited awareness or be misinformed. o Government employees may need training and clear direction from Ministers, and Deputy Ministers. Difficulties in identifying practical steps for implementation, such as: o Absence of community voices in the process (also in drafting legislation). o Ensuring that Indigenous women are involved in the process.	Considering a legislative framework. Achieving reconciliation by shifting/renewing the relationship including treaties and the treaty relationship. Using the Declaration as framework for reconciliation. Addressing gendered aspects of colonialism. Include perspectives and issues of women and girls.
No independent monitoring bodies (will lead to interpretation gap on implementation). A very slow pace of implementation to date.	

Yet, others pointed out that aspirational documents serve the purpose of setting direction. The fact that a destination may not be reached in a certain time would not delegitimize the importance of heading in the proposed direction. Instead, it was argued that the document would guide future decision-making and create a view for making transformational change.

> "Aspirational documents may articulate aims and objectives that are not immediately and unequivocally achievable today, but they serve an essential purpose in helping to guide future decision-making and provide a lens through which to begin making transformational change.
>
> The fact that a destination cannot be immediately reached—or may never be entirely reached—does not delegitimize the importance of being on the right path and headed in the right direction." *(Nuri Frame, Presentation to Committee, April 14, 2021)*

Committee heard that the Declaration does more than just inform statutory interpretation. It could be seen as a universal international human rights instrument applying to Canadian law.

The United Nations adopted the Declaration on the Rights of Indigenous Peoples to preserve the rights that "constitute the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world." (Article 43). It was expected that existing laws, policies, and programs would need to be redesigned.

Built upon other human rights treaties, the Declaration is explicitly drawing on Indigenous peoples' own legal traditions, customs, and institutions. All rights apply equally to men and women (Article 44), and nothing in the Declaration may be used to diminish the current or future rights of Indigenous peoples (Article 45).

Taking a specific approach in the application of the Declaration was mentioned as an opportunity to avoid broken promises. Speaking to issues by point, looking at what would be considered program areas, and implementing by Article focusing on specific Sections of authority could be a way forward.

As part of reconciliation, we heard, there should not be ambiguity, as we have gotten enough wrong in the past. If legislation was chosen as the mechanism, then the goal would need to be to look for some form of legislative response that would not make promises that cannot be kept, that would be respectful of Indigenous nations, that could be implemented and put resources in place. *(Tom Isaac, Presentation to Committee, April 8, 2021)*

Making promises that cannot be kept was felt to possibly be happening in British Columbia (BC). The province was the first to create legislation to implement the Declaration. However, the lack of processes to align new and old laws and the slow pace of implementation were said to possibly have the result of BC not being able to keep its promises. (*Hayden King, Presentation to Committee, April 23, 2021*)

Interpreting the Language of Articles 26, 32, 46

We heard that three Articles of the Declaration have been particularly contentious, and these are Articles 26, 32, and 46.

Diverging Views on Article 26

Article 26 is about rights to lands, territories, and resources. Committee heard that the Declaration Article might be contentious in its relationship to the Canadian *Constitution Act, 1982*. For example, we heard that Article 26(1) of the Declaration would not take into account different interests, legislative regimes, or protections that apply to lands, territories, and resources. The terms “lands”, “territories”, and “resources” are all terms that are not defined in the Declaration. Lands that are "traditionally owned", "occupied", or "otherwise used or acquired" means almost all lands in Canada.[15]

From research, we learn that this underlying tension and uncertainty in Article 26(1) stemmed from the generalization of the text during negotiations, based on the

> "difference in views held by Indigenous peoples and many States on the extent to which the Declaration should recognize Indigenous peoples' claims to a strong interest in their traditional lands, territories, and resources now in third-party control, possession, and ownership".[16]

Interpreting the Language of Article 32

Committee heard that Article 32 has been contentious and a hold-up for state governments, and Canada in particular, in implementing the Declaration in the past. Article 32 declares that states shall consult and cooperate in good faith with Indigenous peoples to obtain free and informed consent (FPIC) prior to the approval of any project affecting lands, territories, or resources. Article 32(2) declares that

[15] “Indigenous peoples have the right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” *United Nations Declaration on the Rights of Indigenous Peoples*, Article 26(1).

[16] Charters, Claire. 2018*. Indigenous Peoples’ Rights to Lands, Territories, and Resources in the UNDRIP*. The UN Declaration on the Rights of Indigenous Peoples. A Commentary. Edited by Jessie Hohmann, Marc Weller. P.414.

> "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

Article 32 is important because it is not only interpreted in the sense of consultation but as a process to achieve self-determination. It aims at guaranteeing effective participation in decisions, which conceives that the outcomes of consultation can mean a change to projects or a government's initial plan.

Challenges in interpreting the language of Article 32 need to be considered in this context. It was stressed that the conceptual linkage between self-determination and consent is not to be underestimated. We heard that governments are expected to use free, prior and informed consent as fundamental principles of the Declaration and to support Indigenous self-determination.

One challenge is the absence of a universally accepted definition of free, prior and informed consent (FPIC). Committee heard that despite a general acceptance of the principle, it is difficult to define its terms, such as what would constitute ensuring that someone is sufficiently informed.

Another challenge is the focus on a “flexible” approach guaranteeing the participation of Indigenous people in decisions. In 2014, the Forest Stewardship Council announced a requirement for members to adhere to the principles of FPIC. In 2018, the Council defined FPIC as the right to participation and to "give, modify, withhold or withdraw consent".[17]

We heard that the vision of shared decision-making should guide the process that would consider the well-being of all the parties.

The Declaration is not the only international document referring to FPIC. The principles are adopted in several international policy documents and guidelines, and in particular in relation to resources and knowledge. FPIC is inserted in the implementation of Article 8 of the *United Nations Convention on Biological Diversity*.[18] Here, FPIC is contained in the code of ethical conduct to respect cultural and intellectual Indigenous heritage in relation

[17] Forest Stewardship Council. 2018. *Implementing free, prior, and informed consent (FPIC): A Forest Stewardship Council Discussion Paper.*
[18] United Nations. 1992. *Convention on Biological Diversity*.

to biological diversity.[19] FPIC is also required in relation to accessing traditional knowledge held by Indigenous and local communities.[20]

Challenges Interpreting Article 46

Committee heard that Article 46 has been contentious from an Indigenous perspective. This Article was not included in the 2006 draft Declaration. States lobbied for its inclusion in 2007, when 144 countries adopted the Declaration, but Canada, New Zealand, Australia and the United States of America voted against adoption by the United Nations.

Article 46 is about autonomy, territorial integrity and sovereignty and is said to have been the most controversial Article during the drafting of the Declaration.[21] It declares that

> "Nothing in the Declaration may be interpreted as implying for any State, people, group of persons any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States" (Article 46).

This Article has been called the safeguard clause. It is important because it has been perceived by Indigenous people as a backdoor for States to remove themselves from their commitment to the preceding 45 Articles of the Declaration. Article 46 has been interpreted to mean that it will allow the States to push back against the Declaration if Indigenous people attempt to activate or operationalize any of the Declaration Articles, and if a State would view that action as negatively affecting the political unity or the territorial integrity or political unity (however defined), This leaves interpretive powers with the States, which is not surprising because the United Nations represents the interests of states and their sovereignty. However, from an Indigenous critical perspective, it has been interpreted as leaving too much wiggle room for States to find their way out of the Declaration. (*Dr. Hayden King, Presentation to Committee, April 23, 2021)*

[19] *The Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity*. 2011. The word "Tkarihwaié:ri" is a Mohawk term meaning "the proper way".The term was provided by the Elders of the Mohawk Community of Kahnawake.

[20] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. 2011. Article 7.

[21] Martin Scheinin and Mattias Ahren. 2018. *Relationship to Human Rights, and Related International Instruments*. The UN Declaration on the Rights of Indigenous Peoples. A Commentary. Edited by Jessie Hohmann, Marc Weller. Pp.63-86.

Determining Language in New Legislation

Scholars have noted that the lack of clarity would lead to endless litigation and not necessarily to more clarity or even move closer to realizing the Declaration.

Committee was cautioned that creating one piece of enabling legislation that requires all territorial legislation to align with the Declaration will not clarify how it will look in detail if all laws need to be changed to align all 74 distinct paragraphs of the Declaration. Looking at the enabling federal legislation and the BC Act, both still require the step to implement the Articles in the specific jurisdiction.

We heard that implementation might be more manageable if the Declaration was broken down into applicable Sections. This process would avoid ambiguity and better allow incremental allocation of resources. One could focus, for example, on clean water and education or other specifics.

It was suggested to consider describing the Declaration as a guiding document and then put meaning behind each Section with specific mechanisms. For example, litigation can be expected under Article 26 as it is already a challenging Article in terms of interpretation. Particular treatment of each Article may provide a solution to avoid endless litigation. *(Tom Isaac, Presentation to Committee, April 8, 2021)*

Scholars have cautioned of confusion in regions and across the country if a divergent variety of implementation laws are developed. Should all provinces, territories, and municipalities develop laws in addition to federal law that makes commitments to the rights of Indigenous people, the question would be how to ensure that the process is harmonious. This would likely be more applicable to the Territories than to some of the provinces. *(Dr. Hayden King, Presentation to Committee, April 23, 2021)*

Relationship to Section 35

Section 35 of the *Constitution Act, 1982,* recognizes "existing Aboriginal and treaty rights" and with it the unique rights of First Nations, Inuit and Métis peoples in Canada.[22]

Committee heard that Canada is regarded as a leader in the world when it comes to Indigenous peoples. Canada was described as the leading protector of Indigenous rights internationally and standing alone, having a system to prevent unilateral state action against Indigenous peoples. It was pointed out that all Canadian laws must comply with

[22] *Constitution Act, 1982 (being Schedule B to the Canada Act 1982 (UK) 1982, c. 11, s. 35(1))*

constitutional laws. Section 35(1) creates the advantage that treaty rights are protected. *(Tom Isaac, Presentation to Committee, April 8, 2021)*

Section 35 of the Constitution established that Aboriginal treaty rights can no longer be extinguished by federal or provincial Governments. The Constitution recognizes "existing" Aboriginal and treaty rights only. Literature on the Constitution tells us that interpretations by the Supreme Court have concluded that rights extinguished before 1982 would not be recognized; "For example, a court may find that Aboriginal title to land would be extinguished where an Aboriginal nation entered into a treaty, surrendering land in exchange for benefits".[23]

In presentations to Committee, scholars spoke to discussions about the compatibility of the basic principles of the Declaration with the existing jurisprudence in Canada. Different views exist on the future approach to address the complexity of Section 35(1) of the *Constitution Act, 1982*.

Scholars pointed out that critics are concerned the Declaration may be subsumed under Section 35. Section 35 is not seen by all as the golden standard of Indigenous law in Canada; it is interpreted as being very narrow and limited to hunting, trapping, fishing rights, and consultation in areas where Indigenous people are affected. There is a risk that should the Declaration become subsumed under the existing interpretation of Section 35 rights, it would effectively be hollowed out. *(Dr. Hayden King, Presentation to Committee, April 23, 2021)*.

Scholars explain that the distinction between rights protected under Section 35(1) and the Declaration is that the rights recognized in the Declaration are "defined according to Indigenous peoples' own laws, as a fundamental aspect of self-determination of peoples".[24]

As Dr. Nichols stated, the Declaration as a tool could help us see what has been taking place in Canada for the last 250 years. Implementation, therefore, should be seen as an opportunity to "reconsider the fundamental presuppositions about the relationship between Indigenous peoples and the Canadian constitution." *(Dr. Joshua Nichols, Presentation to Committee, May 14, 2021).*

[23] *Aboriginal Law Handbook*. 5th Edition. 2018. Ed. By Lorraine Land and Matt McPherson. Toronto. Olthuis Kleer Townshend LLP. P.22.

[24] Gunn, Brenda. 2019. Beyond Van der Peet: Bringing Together International, Indigenous and Constitutional Law. In: *Braiding Legal Orders-Implementing the United Nations Declaration on the Rights of Indigenous Peoples*. Ed. By John Borrows et al. Waterloo. Centre for International Governance Innovation. P. 140.

The Duty to Consult and Consent

We heard that the core question of the Canadian debate on consultation is whether, or possibly to what extent, consent would need to be achieved before developing legislation to implement the Declaration requiring consent. In New Zealand, we heard, working groups were formed to develop reason and rationale before starting with legislation development.

Canada's Supreme Court recognized principles in relation to Section 35, such as the duty to consult. The duty to consult as we know it today was recognized many years after the constitutional amendment that led to Section 35. The duty to consult is owed to Aboriginal peoples of Canada.

Referred to as the duty to consult's trilogy of decisions, the Supreme Court created the fundamental notion of the duty to consult.[25] These decisions established that the Crown has a duty to consult Indigenous peoples "when it intends to act in a manner that may adversely affect potential or established Aboriginal or treaty rights".[26]

The Canadian Bar Association describes the tension between the duty to consult requirement and FPIC in land conflicts as simmering "somewhere in the gulf between settler society's concept of consultation (Section 35) and the expectation of First Nations (FPIC)" and notes that "FPIC addresses this key grievance held by First Nations".[27]

We heard that the way Section 35(1) has been interpreted does not give clarity about who to speak to, what timelines need to be kept, or what type of agreement would be acceptable.

Some noted that FPIC may not be fully achievable as they perceive that it entails more than is required under Section 35, *Constitution Act, 1982*. We heard that it may in some circumstances, go as far as giving exception to proven Aboriginal title where consent is required. *(Tom Isaac, Presentation to Committee, April 8, 2021)*

[25] In 2004 and 2005, the Supreme Court released a trilogy of decisions consisting of *Haida Nation v. British Columbia (Minister of Forests) 2004 SCC 73, 3 SCR 511 [2004] (Haida Nation); Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), 2004 SCC 74, [2004] 3 SCR 550 [Taku River];* and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005 SCC 69, [2005] 3 SCR 388 [Mikisew Cree]. These three cases established certain procedural protections for Aboriginal and treaty rights, and they clarified the basis for the Crown's duty to consult and outlined a general framework for its implementation.*

[26] Isabelle Brideau. 2019. *The Duty to Consult Indigenous People Background Paper*. Library of Parliament Publication No. 2019-17-E.

[27] The Canadian Bar Association. *Walking Together: Indigenous ADR in Land and Resource Disputes*. Ottawa. Pp.4-5

Others pointed out that FPIC is only one part of the Declaration but gets all the attention; and described FPIC as very achievable and close to what is already practiced on the ground. *(Nuri Frame, Presentation to Committee, April 14, 2021)*

Dr. King discussed using consent in Canada based on observations of recent court decisions and consent-like mechanisms in current federal policy. For example, consent appeared for the first time in federal legislation in 2019 in the *National Energy Regulatory Act*, which applies to reserve lands. Dr. King argues that consent is not as unachievable as some fear.

Consent is described as the best practice in the relationship between the Crown and Indigenous people on title lands. It is also observed in policy, notably two recent federal Rights, Recognition and Self-Determination Tables.

We heard examples of Indigenous people in Canada having unilaterally asserted their own versions of consent and enforced them in some cases. Examples provided include the Kitigan Zibi Moose Moratorium, the Neskantaga First Nation Development Protocol, the Saugeen Ojibway Nation FPIC Model and the Tsilhqot'in Mushroom Permitting.

We also heard of how consent could be operationalized through Declaration legislation. Examples of operationalization include creating leadership tables, secretariats, joint cabinet-Indigenous committees. Other examples include processes outside of Declaration legislation such as modern treaties, the regulatory regime and assessment processes, Indigenous-led assertion and enforcement, or through the courts.

We heard that the duty to consult is triggered through impact and environmental assessment processes and that the duty to consent could also be triggered through the same.

Dr. King described consent as a concept that can unlock many challenges in the relationship between Indigenous and non-Indigenous people. *(Dr. Hayden King, Presentation to Committee, April 23, 2021)*

Framework for Reconciliation

The Truth and Reconciliation Commission of Canada (TRC) defines reconciliation as the ongoing process of "establishing and maintaining respectful relationships" that "also requires the revitalization of Indigenous law and legal traditions".[28] The Commission

[28] *Honouring the Truth, Reconciling for the Future*. Summary of the Final Report of the Truth and Reconciliation Commission of Canada. 2015. Page 16.

called upon all levels of Government and corporations to adopt and implement the Declaration as a framework for reconciliation.

Committee heard from scholars that the Declaration is the framework for reconciliation because it does the following things that are at the core of reconciliation. The Declaration:

- Affirms in the preamble that Indigenous peoples are equal to all other people;
- Expresses the concern that Indigenous Peoples have suffered in Canada, and if reconciliation is wanted, then this requires participation and full involvement by Indigenous Governments;
- Convinces that the recognition of the rights of Indigenous peoples will enhance harmonious and cooperative relations between states and Indigenous people;
- Proclaims the Declaration as a standard of achievement to be pursued in a spirit of partnership and mutual respect.

Committee heard that if we want to reconcile with Indigenous governments, we will have to do this on a legal rights basis. A key concern would be not to see the existing standards to be watered down. *(Dr. Brenda Gunn, Presentation to Committee, May 17, 2021)*

We learned about analogies such as *braiding*, *embroidering*, and *mending,* describing how the Declaration could be realized to arrive at a government-to-government relationship by including Indigenous self-determination and legal orders.[29]

In the words of Dr. Nichols, the Declaration offers a path to reconciliation:

> "The real path to reconciliation-that is the one that is not circular-is the one that leads to a *nation-to-nation* relationship. This is more than a change in language, it is a change in the legal-political paradigm from rights to jurisdiction, and this is precisely where UNDRIP implementation can offer a real way forward." *(Dr. Joshua Nichols, Presentation to Committee, May 14, 2021)*

The Canadian Government has recognized Section 35 rights as a means to advance reconciliation within the larger context of the Crown's obligation toward the Indigenous peoples of Canada. The “honour of the Crown” is a principle that has been explained as the Crown's obligation to fulfil its obligations to Indigenous peoples. With the goal of reconciliation, the Crown is required to consult Indigenous groups, accommodate interests, and act in good faith in its dealings with Indigenous peoples.[30]

[29] See for detailed discussions: *Braiding Legal Orders. Implementing the United Nations Declaration on the Rights of Indigenous Peoples*. 2019. Ed. By John Borrows (et al). Centre for International Governance Innovation.
[30] Brideau, Isabelle. 2019. *The Duty to Consult Indigenous Peoples*. Library of Parliament Publication No. 2019-17-E.

The Manitoba government passed the *Path to Reconciliation Act* in 2016.[31] This legislation sets out the Government's commitment to advancing reconciliation, guided by the TRC's Calls to Action and the principles set out in the Declaration. In the same year, Bill C-262 was proposed to provide the legislative framework for a national reconciliation in Canada.

British Columbia understands the *Declaration on the Rights of Indigenous Peoples Act* as the province's framework for reconciliation as called for by the TRC's Calls to Action.[32]

The Government of Canada passed the *United Nations Declaration on the Rights of Indigenous Peoples Act* (June 2021) in response to the Truth and Reconciliation Commission Call to Action 43 to implement the Declaration as the framework for reconciliation. It is also a response to the National Inquiry into Missing and Murdered Indigenous Women and Girls' Call for Justice.

Holding Government Accountable for Relationships with Indigenous Peoples

Scholars have called for an independent monitoring agency to track the implementation of the Declaration by governments. In the past, the Royal Commission on Aboriginal Peoples and the TRC have called for an independent body that would hold governments accountable for their commitment to implementing the Declaration and relationship with Indigenous peoples.

We heard about other existing mechanisms to hold governments accountable, such as Ombuds and Auditor Generals.

We heard there is no agreement on which TRC Calls to Action have been implemented. In its *2021 Status Update on Reconciliation*, the Yellowhead Institute found that three TRC Calls to Action were completed in addition to the eight completed between 2015 and 2019.[33] Despite the noted slow progress, the researchers explain they decided to continue the annual tracking of Canada's implementation of the TRC's Calls to Action.

The *Canadian Reconciliation Barometer* project measures the level of reconciliation in Canada using thirteen indicators.[34] The indicators and repeated large-scale public polling

[31] Manitoba *Path to Reconciliation Act*, 2016.
[32] British Columbia: Building relationships with Indigenous peoples – Declaration on the Rights of Indigenous Peoples Act. Webpage accessed February 8, 2022.
[33] Eva Jewell. 2021. *Calls to Action Accountability: A 2020 Status Update on Reconciliation*. Ryerson University.
[34] Canadian Reconciliation Barometer. 2022. *The Canadian Reconciliation Barometer 2021 Report*. Winnipeg: University of Manitoba.

allow the researchers to track reconciliation progress in Canada's provinces. In doing so, the project contributes to TRC's Call to Action 65.

The Canadian Reconciliation Barometer asks Indigenous and non-Indigenous people to provide answers on all thirteen indicators. The most recent Barometer report, for example, tells us that on average, 56 percent of non-Indigenous and 78 percent of Indigenous respondents agreed they have a good understanding of Indigenous Peoples' experiences, past and present. On average, 34 percent of non-Indigenous and 67 percent of Indigenous respondents agreed they are interested in and support Indigenous causes and communities.

The latest report also tells us that, on average, 36 percent of non-Indigenous and 26 percent of Indigenous respondents agreed that Indigenous nations are in a nation-to-nation relationship with Canada, with the rights and resources to achieve their goals.
Scholars have called for an independent monitoring agency. Dr. Hayden King referenced the four points suggested by Dr. Lightfoot for Declaration implementation in domestic law, which includes an independent monitoring body:

1. Introducing Federal Enabling Legislation
2. Co-Creation of National Indigenous Action Plans
3. Develop protocols of consent-based decision-making
4. Independent Monitoring Body

(Dr. Hayden King, Presentation to Committee, April 23, 2021).

Canada introduced enabling legislation in 2021. The *United Nations Declaration on the Rights of Indigenous Peoples Act* commits the Government of Canada in Section 7 to prepare and publish annual reports.[35] The report is meant to inform on the progress of the action plan, prepared and implemented in consultation and cooperation with Indigenous peoples. This is in line with Article 38 of the Declaration, which calls on states to collaborate with Indigenous peoples on appropriate measures to achieve the goals set out in the Declaration.

In terms of monitoring the implementation of the Act, Section 6 requires the action plan to" include measures related to monitoring the implementation of the plan and reviewing and amending the plan" (ss.6(3)). Canada's enabling legislation requires reporting, and while requiring Indigenous collaboration on the action plan and measures development, it will leave it to Government to self-report.

[35] Justice Canada. *United Nations Declaration on the Rights of Indigenous Peoples Act*. S.C. 2021, c.14.

Both new laws on the implementation of the Declaration in BC and nationally do not require an independent body to monitor the application of the Declaration's Articles. The British Columbia legislation equally includes a reporting requirement tasked to the Government.

Asking the implementing Government to develop and adjust the measures on which to report has been criticized as allowing selective endorsement and maintaining the status quo in terms of policy, law and institutional structures. Scholar Sheryl Lightfoot observed that countries included commitments, qualifications, and exclusions related to Indigenous rights taken from the wording of international Indigenous rights norms. They already aligned with the legal and institutional status quo, "making further implementation efforts unnecessary".[36]

We have learned from scholars that working together is required if we want to move beyond a colonial relationship and toward a nation-to-nation relationship. (*Dr. Brenda Gunn, Presentation to Committee, May 17, 2021*)

The GNWT and the Declaration

We heard from the GNWT that the Declaration is already partly implemented in the NWT, particularly the model of consent. We heard that the concepts of several Declaration Articles are already part of modern treaties and self-government agreements in the NWT. Co-development of legislation was practiced in two instances (*Wildlife Act, Mineral Resources Act*). GNWT policies supporting reconciliation include official languages, geographical and community names, heritage services, archives, traditional knowledge, Métis health benefits and negotiated contracts.

GNWT Mandate

The current GNWT mandate includes the commitment to implement the Declaration.[37] In terms of FPIC for developments on the land, we heard that the GNWT has several means to obtain consent before proceeding with approvals for development. These means include:

[36] Sheryl Lightfoot. 2012. Selective endorsement without intent to implement: indigenous rights and the Anglosphere. In: *The International Journal of Human Rights*, vol 16(1):100-122; see also Sheryl Lightfoot. 2016. *Global Indigenous Politics: A Subtle Revolution*. New York: Routledge.

[37] United Nations Declaration of the Rights of Indigenous Peoples, in the Mandate of the GNWT. Also see *Mandate of the Government of the Northwest Territories (2019-2023)*, p.9.

- The GNWT's approach to consultation with Aboriginal Governments and organizations;[38]
- Co-management boards established under the Inuvialuit Final Agreement;[39]
- Land Use Planning processes established in the Gwich'in, Sahtu and Tłı̨chǫ Land Claim Agreements;
- The regulatory processes established under the *Mackenzie Valley Resource Management Act*;
- Interim Measure Agreements signed with the Akaitcho Dene First Nations, Dehcho First Nations, Manitoba Dënesuliné and the Northwest Territory Metis Nation.

GNWT Relationships

We heard from the GNWT that it strengthens relationships with Indigenous governments by working with three forums: the *Intergovernmental Council* (2014); holding regular meetings with the *NWT Council of Leaders* (2021), and the *Modern Treaty and Self-Government Partners Forum*.

The Intergovernmental Council on Land and Resource Management **(IGC)** was created through the *Devolution Agreement* (2014), when authority over land, water and resources was transferred from the federal Government to the NWT. The IGC's purpose is to promote the development of a management system for lands and resources and to work together coordinating management practices and sharing capacity.[40,41]

The members of the IGC, a group of leaders from nine Indigenous Governments and the GNWT, unanimously adopted a *Legislative Development Protocol* to guide future collaborative work on NWT land and resource legislation.[42]

Two NWT Indigenous groups did not sign the *Devolution Agreement* and are therefore not a member of the *Intergovernmental Council*. They are members of the *NWT Council of Leaders*.

The Northwest Territories Council of Leaders **(NWTCOL)** was created by thirteen Indigenous Governments and the GNWT to strengthen collaboration related to shared

[38] Government of the Northwest Territories. 2007. *The Government of the Northwest Territories' approach to consultation with Aboriginal Governments and organizations*. Aboriginal Affairs and Intergovernmental Relations.
[39] Inuvialuit Regional Corporation. *The Co-management System as established in the Inuvialuit Final Agreement*.
[40] *Northwest Territories Lands and Resources Devolution Agreement*
[41] Intergovernmental Council of the Northwest Territories.
[42] IGC Legislative Development Protocol (2020)

social, economic, and cultural issues within the NWT. The *Northwest Territories Council of Leaders* Memorandum of Understanding was signed by leadership on June 11, 2021, for a four-year term.

The *NWTCOL* created a working group to consider plans for the implementation of the Declaration, announced at the second forum held in November 2021. At the forum, Leaders discussed NWT-wide issues, including

> "advancing work on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples through an officials' working group identified as a priority of the *Northwest Territories Council of Leaders*".[43]

Other working groups created by the *NWTCOL* include a working group on housing and one on the GNWT procurement review.

The Modern Treaty and Self-Government Partners Forum consists of the GNWT and five Indigenous governments with modern treaty and self-government agreements. The Forum provides a venue for leadership discussion on issues common or specific to settled land claims and self-government agreements in the NWT.

The Leaders held their third meeting in November 2021 and discussed a range of issues, including:

> "Moving forward on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the NWT through the working group established under the NWT Council of Leaders, especially Article 37 that states treaties and agreements must be respected, recognized, observed, and enforced".[44]

The GNWT has eight formal Memoranda of Understanding (MOUs) with Indigenous Governments that relate to intergovernmental cooperation and coordination. Bilateral meetings are held annually between Indigenous Governments and the Premier and Ministers on topics of mutual concern.

GNWT Activities

In this Assembly, the Premier as Minister for the Department is responsible for providing leadership in inter-governmental relations and the negotiation and implementation of land, resources and self-government agreements that address Aboriginal rights in the NWT. The Department also leads the GNWT mandate commitments to implement the

[43] *Northwest Territories Council of Leaders hold Second Forum*. Yellowknife, November 18 and 19, 2021.
[44] *Modern Treaty and Self-Government Partners Forum Joint Communique*. Yellowknife, November 16, 2021.

Declaration to advance reconciliation in the NWT and settle and implement Treaty, land and resources, and self-government agreements.[45]

Committee heard from the GNWT that approximately 130 programs and policies are implementing the Declaration already. The Department of Executive and Indigenous Affairs monitors which programs and initiatives address which Article of the Declaration. Article 32, for example, is implemented by eighteen programs and policies in six different departments.

[45] GNWT Mandate Letter, Minister of Executive and Indigenous Affairs, September 16, 2020.

KEY CHALLENGES IN APPLYING THE DECLARATION IN THE NWT

The North is unique in Canada. The Yukon is different as it has one umbrella agreement, eleven of its fourteen First Nations have self-government agreements. The agreements have been said to be significant because they mean that the First Nations no longer fall under the jurisdiction of the *Indian Act*.[46] In Nunavut, the birthright organization Nunavut Tunngavik Incorporated, representing about 85 percent of the population, repeatedly renews agreements with Nunavut's public Government to work together on implementing the Nunavut Agreement and identified priorities.

The NWT is home to members of First Nations, Inuit and Métis peoples, ten regional Indigenous governments and nine community Indigenous governments. The NWT is home to two First Nation reserves.
Currently, the Territorial Government is involved in four land, resources, and self-government agreements, seven self-government agreements, and three transboundary negotiations.[47]

Committee heard that the NWT is much more diverse than other jurisdictions and is unique even compared to the rest of the Canadian North. The NWT was described as a region of many political spaces and realities.

We heard about confusion amongst Indigenous rightsholders about Section 35 in relation to rights under other laws. The federal Crown has jurisdiction and responsibility for "Indians" under Section 91(2) of the Constitution. In Section 35(1), the Constitution recognizes existing aboriginal and Treaty rights and recognizes that the aboriginal peoples of Canada include the "Indian, Inuit and Métis" peoples of Canada.

We heard that the relationship between GNWT and reserves seems unclear. The relationship between reserves and non-reserve nations, we are told, is also not clear.

Resolving long-standing issues with one law

Committee heard that the GNWT should pass a law to implement the Declaration, review and enact laws that achieve the Declaration, enable social and economic wellness, and secure and allocate resources to support social and economic wellness throughout the NWT. It was argued that the Declaration provides a basic toolkit for resolving long-

[46] Slowey, Gabrielle. 2021. *Indigenous Self-Government in Yukon: Looking for Ways to Pass the Torch*. IRPP Insight 37. Montreal: Institute for Research on Public Policy.
[47] Executive and Indigenous Affairs, Government of the Northwest Territories, *Current Negotiations*. Website accessed March 23, 2022. Parties to transboundary claims are the Athabasca Dënesuliné (Saskatchewan), Ghotelnene K'odtineh Dene (formerly Manitoba Dënesuliné), First Nation of Nacho Nyak Dun (Yukon).

standing issues between the GNWT and Indigenous governments, and building a stronger, more inclusive, and more prosperous North.

Others noted the concern that one cannot impose the Declaration as this would not be self-determination. Implementation of the Declaration, therefore, could look differently between governments and nations, and one law created by one Government would not fulfill the Declaration's requirement.

We heard that the GNWT should establish one law as the legal basis and the direction for applying the Declaration. This would clarify what needs to be done and enable discussion on how to do it. Further, this one law would need to apply to all government departments and agencies, making sure that all have the same direction. It should enable shared decision-making and enable delegation between GNWT and Indigenous Governments in areas of shared responsibility. And to ensure accountability, the law would need to include a monitoring mechanism.

We heard from the GNWT that key challenges in relation to the Declaration are:

- Reconciling different Indigenous Governments' priorities;
- Reconciling different views on scope and speed of implementation: some Indigenous Governments want to focus efforts on getting legislation passed during this Assembly; others prefer to take more time and work with their communities;
- Uneven participation among Indigenous Governments.

Co-developing legislation

Committee heard that co-developing legislation is the realization of reconciliation. However, how to arrive at the result of co-development is not entirely clear.

The *Mineral Resources Act* and the *Wildlife Act* were mentioned as examples of co-drafting legislation in the NWT. Others have questioned the process of how these laws were created and felt that it was not sufficiently inclusive and would not comply with the Declaration principles. Others regarded the process used to develop both laws as examples of consent implementation and government collaboration.

Table 2: Milestones of Declaration Implementation and the NWT[48]	
1996	The Royal Commission of Aboriginal Peoples recommends that the "federal government put in place a neutral and transparent process for identifying Aboriginal groups entitled to exercise the right of self-determination as nations"
2007	Canada votes against adoption of the United Nations Declaration on the Rights of Indigenous Peoples, taking the position that the provisions of the Declaration are overly broad and fundamentally incompatible with the country's legal regime.
2008	On February 19, the 16th NWT Legislative Assembly tables a motion on adopting the Declaration. Then Member for Nahendeh, Mr. Kevin A. Menicoche, brings forward a Motion urging the GNWT to support the Declaration, and to tell the Government of Canada to continue working with the United Nations. Before passing, the Motion is amended from calling it an "international legal instrument" to "this declaration is now an aspirational document".
2010	On November 12, Canada endorses the Declaration as an "aspirational" and "non-legally binding" document.
2015	The Truth and Reconciliation Commission of Canada issues 94 Calls to Action, including sixteen calls for the implementation of the United Nations Declaration domestically. Call to Action 43 requests "federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation".
2016	On May 10, Canada endorses the Declaration "without qualification." As part of this endorsement, Canada commits to adopting and implementing the Declaration in accordance with the Constitution of Canada. Canada Bill C-262, proposed by an Indigenous member of Parliament Romeo Saganash, is not passed by the Senate.
2019	In October, the 19th Legislative Assembly of the NWT makes implementing the Declaration a priority for the term of the Assembly. In November, British Columbia passes the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), requiring the provincial Government to consult and cooperate with Indigenous peoples in the province and "take all measures necessary to ensure" BC laws are consistent with the Declaration, and report on progress.
2020	In February, the GNWT includes the implementation of the Declaration in its 2019-2023 Mandate. In October, the NWT Legislative Assembly establishes a Special Committee to encourage discussions and recommendations in relation to Aboriginal Rights negotiations and reconciliation, and implementation of the Declaration. The Special Committee is mandated to report to the Legislative Assembly before the end of the 19th legislative period.
2021	In June, the Government of Canada passes the *United Nations Declaration on the Rights of Indigenous Peoples Act*, requiring the federal Government, in consultation and cooperation with Indigenous peoples, to "take all measures necessary to ensure the laws of Canada are consistent with the Declaration," prepare an action plan, and report on progress annually.

[48] *Report of the Royal Commission on Aboriginal Peoples* (RCAP) 184; 2007 Canada's vote on UNDRIP mentioned in: *General Assembly Adopts Declaration on Rights of Indigenous Peoples*. UN Press Release, General Assembly 10612, September 13, 2007; NWT Legislative Assembly Motion 4-16(2) Feb 19th, 2008); 2010 Canada endorses UNDRIP; 2015 *TRC Calls to Action*; 2019 BC DRIPA; Government of Canada: *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act*.

The Intergovernmental Council's *Legislative Development Protocol,* established in 2020, guides future collaborative work on NWT land and resource legislation between the GNWT and the nine IGC member nations.[49] The Protocol describes the process of collaborative development of draft legislation as requiring technical working groups and decision-making by consensus.

We heard from the GNWT that currently, six legislative initiatives are underway under the *Legislative Development Protocol*. The GNWT shared with Committee that it is working on engaging with the working group and the *Northwest Territories Council of Leaders* on a Memorandum of Understanding (MOU) to guide the collaborative development of legislation.

At the same time, a GNWT internal working group is discussing actions the GNWT can take to support the implementation.

Questions remain on the scope and comprehensiveness of collaborative legislative development. We heard the question raised of whether all of the Territories' legislation should be co-developed and whether this would be possible for a government to fulfil.

Operationalizing Consent in the NWT

Committee heard that understanding how we operationalize consent is essential. For example, matters related to education and land use require much front-up consent, far in advance of initiatives or projects being started.

Five specific references to free, prior and informed consent in the Declaration mention when FPIC may be required: in projects affecting Indigenous peoples' lands, territories and other resources (Articles 19 and 32), instances of relocation, and storage of hazardous materials (Articles 10 and 29).

The requirements for free, prior and informed consent (FPIC) in the Declaration can be understood as operationalizing the right to self-determination by considering the particular historical, cultural and social situation of Indigenous peoples. The Declaration describes FPIC primarily as a government responsibility to carry out a process that ensures consent is received before the beginning of the action at issue, based on free decision, and after the information has been received and reviewed.

[49] Intergovernmental Council on Land and Resource Management: *Legislative Development Protocol*. Yellowknife 2020.

FPIC has been given particular relevance to lands and resources. Parties involved often include the private sector as third parties, and many corporations and corporate associations have adopted FPIC requirements worldwide.

Committee was told not to underestimate the role of FPIC in establishing a different and positive relationship between Indigenous peoples and non-Indigenous segments of society while replacing an adversarial one.

We heard that the element of:

- “Free consent” sets out that the Indigenous community has provided consent through a voluntary process, free from coercion, intimidation, and manipulation. Preventing communities from receiving legal advice or other advisors would be considered not 'free'.
- “Prior consent” means that consent is provided prior to any major decision to approve a project, financing, construction, development, and government authorization.
- “Informed consent” provides that all relevant information is disclosed to the Indigenous community in clear language, so it is understandable. Informed also means that the Indigenous community has the capacity and time to review the information.

From NWT Indigenous Governments and organizations, we heard that implementation of FPIC will result in meaningful consultation and building relationships, promote the full and effective participation of Indigenous communities in the planning and development of projects, integrate culture, identity, and knowledge into projects, and enrich both, Indigenous peoples and projects.

We also heard that FPIC is seen to potentially strengthen incentives for project proponents in the natural resource sector to partner with Indigenous groups in project development. Consequently, this would result in increased opportunities and potential incentives for Indigenous equity ownership.

We heard that we should include FPIC principles in the development of social and economic programs also, as many also impact the cultures and traditions of Indigenous peoples. It is the participation in decision-making that is the important element.

Ignoring FPIC, we were told, would risk not receiving regulatory approvals from the Government and facing opposition from Indigenous communities.

FPIC is Not New in the NWT

Committee heard that FPIC is not new and is a right given in the Proclamation of 1763. It is included in international treaties, first as consent, then as mutual consent, now as FPIC.

It was noted that the principle of FPIC implies a decision-making right to either permit, agree to a modified version, or withhold consent to a project or activity.

We heard that the process of negotiation and seeking consent is inherent to treaty-making. It is not only suitable for the recognition of rights but also for establishing mechanisms to apply these rights.

We heard that the duty to consult is inconsistent with consent in FPIC. We learned that FPIC is to be understood as containing obligatory and contextualized consent:

- Obligatory consent applies when states are prohibited from undertaking a specific action in the absence of consent by Indigenous nations.
- Contextualized consent applies when states must engage Indigenous nations to obtain consent before undertaking an action.

We heard that the GNWT had built consent into some of its processes, namely the *Mineral Resources Act*, the requirement for Impact and Benefit Agreements, the *Protected Areas Act*, the IGC Legislative Protocol, and requirements for archaeological consent that are included in land claims agreements.

It was requested that the practice of obtaining consent must be expanded and built into land claims and self-government agreements.

Recommendations Received on FPIC

Committee heard different views on what FPIC means within the constitutional framework and lens. Committee also heard recommendations regarding the application of FPIC, including the following as shown in Table 3.

Table 3: Recommendations on How to Apply FPIC in the NWT
❖ See FPIC not as a departure from the duty to consult but as in line with it. The principle is about developing processes in line with reconciliation. ❖ Give Article 19 of the Declaration a checkmark because the NWT is already ahead of it. ❖ Work with the representative institutions as identified by the Indigenous groups. ❖ Think of FPIC as a path we are already on and that we should stay the course and remain on the path. ❖ Make FPIC comprehensive; consent is not new, and GNWT needs to include consent in all activities, including legislation. ❖ Include FPIC in self-government agreements; one cannot speak about consultation or consent without mentioning FPIC. ❖ See FPIC as a tool to remedy the defect that is created by colonialism.

Different Agreements and a Divisive Environment

Article 37 promotes and strengthens the rights of Indigenous peoples and treaties. Committee heard that Article 37 of the Declaration was discussed amongst the various existing tables and forums of NWT Indigenous Governments and leadership.

Treaties

Some treaty holders mentioned that even though many are looking at Canada's North when speaking about implementing the Declaration, there seems to be no recognition for the NWT that implementing the Declaration has been taking place for a while. On the other hand, we heard that the Declaration may distract Modern Treaty holders from continuing treaty implementation and may impede further progress on a path that has seen considerable investment in the past.

We heard that modern treaties are key to the Declaration, and to reconciliation. Committee heard that one could not discuss the Declaration in the NWT without speaking to Modern Treaties. Many of the concepts in Article 26 are included in the modern treaties. In fact, the Declaration, when developed, was seen by many as the tool to implement existing treaties.

Modern treaties started in Canada with the James Bay and Northern Quebec Agreement in 1975. The Inuvialuit Land Rights Settlement Agreement in Principle followed in 1978, and formal negotiation of the Dene/Métis claim began in 1981. The 1990s saw the

Gwich'in Comprehensive Land Claim Agreement (1992) and the Sahtu Dene and Métis Comprehensive Land Claim Agreement (1993) signed.

The 1999 division of the NWT marked the beginning of a decade of recognition of Indigenous rights. The Tłı̨chǫ Agreement was signed in 2003, the UN Declaration was adopted by the United Nations in 2007, and the NWT Legislative Assembly agreed to the UN Declaration in principle in 2008.

From certain groups with treaties, we heard that constitutional protection overrides everything else. We heard that when we speak to the hierarchy of the existing law, the Declaration could be used to mend a gap but not to implement land agreements. We heard that the Declaration is a human rights standard and that the standard for negotiating agreements in the NWT is to sit at the table and negotiate. Using the Declaration for agreements would undermine government authority and the law.

From the GNWT, we heard that Implementation Committees exist for each of the five modern treaty holders. The Committees are a constitutionally protected requirement and mandated to discuss matters of importance or concern related to the treaty. Treaty Implementation Committees have members from all parties and may decide to create various side tables to advance issues of interest as agreed to by the parties.

Land Agreements

Committee grappled with whether the GNWT may use the Declaration to provide rights to navigate outside of the land claim process or use it to conclude land agreements. We heard from groups with concluded agreements that the Declaration can be used as a vehicle for settling land agreements, and others have said that it can be used to open already existing agreements.

We also heard that the Declaration is not meant to be used as a vehicle to implement land agreements. The existing agreements fall under Section 35 and we can refer to a large number of cases that establish the relationship, which is entrenched in the Constitution.

Outstanding Agreements

We heard from those without land agreements that they agree with the TRC's statement that the Declaration provides "the necessary principles, norms, and standards for reconciliation to flourish in twenty-first-century Canada".[50]

Articles relating to land and resources and providing consent for co-management regimes, such as Articles 18, 19, 26, and 32, were mentioned as important to those without land agreements. Past and ongoing interference with the traditional way of life under Article 28 was described as providing the right to seek redress from GNWT and Canada.

We heard that the most important Declaration Articles address those rights that are felt to be not provided to regions without agreements. These include Article 21(1), which speaks to the underrepresentation of Indigenous persons experienced in the NWT workforce, and Article 24, which addresses the challenges in accessing social and health services without experiencing discrimination.

Committee heard from certain groups without agreements that issues arise around the level of control over communities. To agree to “open” communities was described as fatal to the survival of communities as distinctive Dene communities. Declaration Articles 3, 4, 5, 8, 18, 20, 23, and 33 were referred to as those most important to self-determination, and the GNWT’s position in favour of “open” communities is perceived to breach these Articles.

The GNWT explained to Committee that because of the nature of the NWT’s open communities, there could be a variety of interests among residents living together. The GNWT said it does its best to help reconcile different interests.

Committee heard from Indigenous nations that resource management is an issue due to challenges in modernizing the existing resource management regimes. Indigenous nations want to see the role of the Minister modified from a final decision maker to a collaborative decision-maker on renewable and non-renewable resource management. It was explained that it was the perception that Canada was indicating more flexibility on this point than the GNWT. The Indigenous nations recommend that the GNWT be more open to a consent-based co-management model that would replace the conceptually flawed framework of the *Mackenzie Valley Resource Management Act* (*MVRMA*).[51]

[50] Truth and Reconciliation Commission of Canada. 2015. *What we have learned: principles of truth and reconciliation*. p.125

[51] *Mackenzie Valley Resource Management Act* (MVRMA) (S.C. 1998, c. 25).

Declaration Articles 18, 19, 26, and 32 were referred to as relating to Indigenous Governments providing their consent for co-management regimes that relate to land and resources.

The GNWT explained that the model proposed for Environmental Assessment in the Dene/Métis agreement has unique features, including thresholds, built to consider the public interest. Committee heard that having a single integrated system of lands and resource management would be a benefit, as it would be unclear how a system would look like that is not integrated into the other parts of the NWT.

Reserve Lands

First Nations with federal reserve lands told us they hope that the Declaration will lead to meaningful fulfillment of the TRC's Calls to Action. First Nations with reserve lands said they wish to see Calls to Action 43 and 44 realized through the federal *UNDRIP Act* and GNWT implementation of the Declaration. We heard that the Declaration is more than an "aspirational" document and must be implemented in Canada to ensure protection for Indigenous rights. Declaration Articles 2, 3, 29.1, 32(2), and 37 are the most important Sections for those First Nations on reserve lands we heard from.

We learned that Indigenous nations with reserve lands find they are forced to navigate complex landscapes of legislation and regulation filled with overlaps and gaps. Indigenous nations with federal reserve lands feel their lands are not afforded the same protections as the lands of other First Nations in the NWT, cannot access funding due to jurisdictional issues and are not consulted adequately.

One of the desired goals from Declaration implementation by the GNWT is the protection from trespassing and illegal hunting and the alignment of conservation and wildlife legislation. Reserve lands, we learned, lack the tools for wildlife co-management that nations with completed land agreements in the NWT can access. In addition, wildlife policy regimes have been noted as being part of the colonial relationship between the federal government and Indigenous nations. The principle of joint management of parks resources, for example, was included in the *National Parks Act* of December 2000. The federal *Species at Risk Act* was passed in 2003. Collaborations on the NWT *Wildlife Act* began in 1999. Decision-making authority under Wildlife and Species at Risk legislation excludes those without co-management boards, meaning it also excludes First Nations with reserve lands.

We heard that aligning GNWT law with the UN Declaration must include conservation and wildlife legislation granting the same protections over lands as other Indigenous and non-Indigenous communities in the Northwest Territories.

First Nations with reserve lands often feel caught in the middle in jurisdictional disputes between the GNWT and the federal Government over programs and services. We heard frustration on barriers to access funding, described as resulting from the devolution of authorities from the federal government to the GNWT and leading the First Nation to have to negotiate funding of essential services on reserve lands such as water and sewer infrastructure, and being denied funding by both levels of Government.

We heard that Article 32 and other FPIC principles are an opportunity for building government-to-government trust and moving beyond seeing consultation as a hurdle. Committee heard that First Nations with reserve lands are concerned that not all NWT Indigenous nations affected by transboundary claims or agreements are included in consultations.

Diversity in Self-Determination

We heard that the Declaration could serve different purposes:

- For those who pursue self-government agreements, the Declaration may serve as a replacement for the GNWT's Core Principles and Objectives.
- Those who have Treaties may use the Declaration to identify and fill treaty implementation gaps.
- First Nations with reserve lands may find the reserve lands protected, barriers to access government funding removed, and see the GNWT's consultation improve.
- To those without land agreements, the Declaration would allow land rights and help achieve the realization of rights where they are felt to be missing.

We learned about analogies such as *braiding*, *embroidering*, and *mending* in descriptions of how the Declaration would work with existing legal frameworks. At the international level, the implementation of the Declaration has been described by scholars with the image of *braiding* Indigenous law into existing international and domestic laws.

The view that the Declaration does not override the law in Canada conceptualizes the Declaration as something that is being woven into existing laws. The braiding analogy is considered relevant to many Indigenous traditions in Canada. In reference to Métis sashes and braiding of sweetgrass, braiding is considered to indicate the strength of the

one object made up of many fibres and separate strands. Imagined here is the braiding of the strands of constitutional, international, and Indigenous law.[52]

We heard in our discussions that in the NWT, the focus is on regional and local distinctiveness because of the immense differences in legal and political circumstances. Declaration implementation was mentioned as possibly applying phased and focused laws complementing the "embroidered" landscape of existing laws and treaties to accommodate the diverse and complex regional situations and needs.

In the modern treaty context, we were asked to think of the Declaration as the traditional netting needle used to repair holes in fishnets. The Declaration describes the standards to which the net must be woven as a whole and how the different strands must be strengthened. Some strands are described as being netted by governments, others by the Indigenous governments.

The Fishnet Analogy describes the Declaration's standards as the whole of the net woven together. The net analogy is used to understand the Declaration as a vehicle to find and fix gaps. Understanding that the Declaration sets minimum standards for those rights, it can be used to understand if there are 'holes in the net' or gaps in the implementation. The analogy of embroidery was mentioned to explain how the Declaration can add and complete filling the spaces where standards are not met, and a particular approach is required locally.

Diversity, and the acknowledgment of it, were stressed in all discussions. It was noted that even at the tables where Indigenous governments and nations meet, there exist diverse views because of the different places each group finds itself in.

Some noted that the Declaration could not solve the diversity with one legal regime but noted that the way forward has already begun with creating the different NWT forums. It is at these tables or forums where relationships can be created. The various tables were described as opportunities for the NWT to move forward because each forum addresses the diversity in the process and stage a group is at in the move toward self-determination.

[52] Fitzgerald, Oonagh and Risa Schwartz. 2017. Introduction. In: *UNDRIP Implementation. Braiding International, Domestic and Indigenous Laws*. Special Report of the Centre for International Governance Innovation. Edited by Brenda L. Gunn et al. Waterloo. P.3. (The authors explain that the analogy of braiding laws emerged from early discussions with John Borrows, Brenda Gunn and Joshua Nichols)

KEY CHALLENGES IN CONCLUDING AGREEMENTS

Committee heard from the GNWT, Indigenous governments and nations with self-government and land agreements, agreements in principle, no agreements, and reserve lands.

We heard that issues at negotiation tables include land quantum and cash compensation, program and service delivery models, integrated land, water and resource regulation, and overlapping claims and land selection.

We heard about several challenges in concluding agreements, including that it takes increasingly longer to conclude agreements and that the relationships between existing and new agreements have become increasingly complex. The role of negotiations teams and approaches was mentioned as contributing to the challenges, as well as difficulties in aligning federal and territorial negotiation policies.

GNWT Negotiations of Agreements

From the GNWT, we heard that many of NWT's ongoing negotiations have their roots in the Dene / Métis negotiations that began earlier in Canada's Comprehensive Land Claim processes. Table 4 shows the key dates of the claims process.

Table 4: Dene / Métis Negotiations and Negotiated Agreements in the NWT	
1976 and 1977	The federal government agrees to negotiate comprehensive land claim agreements with the Dene and Métis of the NWT.
1981	Formal negotiations began when the federal government indicated there would only be one claim. The goal was to negotiate a single settlement of Dene and Métis outstanding rights to land and resources.
1988	An Agreement-in-Principle (AIP) is reached.
1990	The process broke down before ratification of the Final Agreement by the Dene/Métis.
Negotiated Agreements in the NWT	
1984	Inuvialuit Final Agreement is signed
1992	The *Gwich'in Comprehensive Land Claim Agreement* is signed.
1993	The *Sahtu Dene and Métis Comprehensive Land Claim Agreement* is signed.
2002	Salt River First Nation signs Treaty Settlement Agreement.
2003	The *Tłı̨chǫ Agreement* was the first combined land claim and self-government agreement in the NWT. It came into effect on August 4, 2005.
2014	Devolution of Lands and Resources to the NWT.
2015	Délı̨nę Final Self-Government Agreement was signed.

Committee learned that there are four types of negotiations, four stages of negotiation, and implementation:

- Lands and resources agreements, often referred to as land claims, in the NWT address matters related to the ownership and use of lands and resources. Subject matters include economic measures, financial components, heritage resources, harvesting rights, land and water regulations, access to land, identification of settlement lands, protected areas, renewable resource management, subsurface resources.
- Self-government agreements set out the jurisdiction and law-making abilities of Indigenous governments in the NWT. Areas of lawmaking as reflected in existing GNWT mandates can include culture and language, traditional medicine, social housing, child and family services, guardianship and trusteeship, adoption, education, direct taxation of citizens, wills and estates, management of settlement lands, income support, justice.
- GNWT negotiations follow the stages of submission of a claim, acceptance of a claim, exploratory discussions on the claim, framework agreement, agreement in principle, final agreement, implementation.
- The GNWT uses the Main Table and may set up separate tables to which components for negotiation are directed, such as a side table on lands, a working group on fiscal matters or taxation, a legal technical committee or an implementation working group.
- The GNWT has a comprehensive set of negotiation mandates providing background and instructions for negotiators on the interests of the public government. Mandates are Cabinet-approved confidential documents that establish broad goals of negotiations.

The purpose of Interim Measure Agreements (IMA) is explained in the agreements, where it reads that "interim measures are necessary […] in order to advance negotiations".[53] Interim Measures Agreements exist with NWT Indigenous nations were signed in 2001 (Akaitcho Territory IMA), 2003 (NWT Métis Nation IMA), and 2004 (Dehcho IMA). An Interim Measures Agreement was signed with the Manitoba Dëne Sųłiné to negotiate land and harvesting rights.[54]

[53] *The Deh Cho First Nations Interim Measures Agreement among the Deh Cho First Nations and the Government of Canada and the Government of the Northwest Territories*. *Interim Measures Agreement among the Akaitcho Territory Dene First Nations, her Majesty the Queen in Right of Canada, and the Government of the Northwest Territories.*

[54] *Interim Measures Agreement between the Sayisi Dene First Nation and the Northlands Dene First Nation and her Majesty the Queen in Right of Canada and the Government of the Northwest Territories.*

Table 5: GNWT Negotiations of Land Claim and Self-government Agreements[55]	
Type of negotiation	
Land and Resources agreements	Are often called "land claims". They describe specific Aboriginal and treaty rights in relation to land and resources.
Self-government agreements	Are intended to implement the Aboriginal party's inherent right to self-government. As such, self-government agreements describe the structure of each Aboriginal government at the community and regional levels, and the powers and responsibilities of the self-government.
Combines Land, Resources and Self-Government agreements	Combine land claim and self-government into a single agreement, which describe specific Aboriginal and treaty rights in relation to land, resources and self-government. In addition to bringing clarity to Aboriginal ownership of land and resources, these agreements define the jurisdictions, authorities and responsibilities of Aboriginal governments.
Transboundary agreements	Are agreements between the GNWT, Canada and an Aboriginal party from another province or territory whose traditional territory includes some of the NWT. These negotiations generally focus on the Aboriginal party's harvesting rights in the NWT.
Stages of negotiation	
Exploratory discussions	Identify if there is sufficient interest and common ground to begin negotiations. Exploratory discussions lead to negotiations that result in a Framework Agreement or a Process and Schedule Agreement.
Framework agreement / process and schedule agreement	Sets out the subject matter for negotiation and describes how negotiations will proceed.
Agreement-in-Principle	A detailed document addressing most matters described in the Framework Agreement. It forms the basis for the Final Agreement. Agreements-in-Principle are approved and signed by the parties to the negotiations.
Final Agreement	Addresses all the matters described in the Framework Agreement and creates a legally binding agreement, which is typically a treaty under the meaning of Section 35 of the Constitution Act,1982. The Final Agreement includes an Implementation Plan and financial arrangements that describe how the Final Agreement will be implemented. Final Agreements are ratified by the parties to the negotiations. Ratification normally includes a vote by the members of the Aboriginal party and the enactment of settlement legislation by Canada and the GNWT prior to ratifying a Final Agreement.
Implementation	
	Once negotiations are complete, the parties continue to work together to implement the agreement.

[55] Executive and Indigenous Affairs, Government of the Northwest Territories. *Concluding and Implementing Land Claim and Self-Government Agreements*. Website accessed March 24, 2022.

The Time it Takes to Conclude Agreements

Time is the most visible indicator of existing challenges in concluding agreements. And, very noticeably, things have been taking a long time in the NWT. In 2017, we read that

> "Many of the people with whom I spoke expressed pessimism about the potential for the timely and reasonable resolution of outstanding claims in the area. Concerns were expressed that the slow pace of progress to date on these issues may lead to further division among the numerous Aboriginal groups having interests in the Southeast NWT".[56]

Committee heard many comments on the pace of negotiations to reach land agreements.

The Dehcho Dene, we were told, have been negotiating for several generations. The Treaty of 1921 recognized the Dehcho Dene's inherent political rights and powers. The Dehcho First Nations Agreement in Principle is in its 41st version as of January 2017, with seven out of 50 chapters not yet included in the draft.[57]

We heard First Nations have been negotiating the implementation of treaties for over 20 years. It was noted that Article 37 of the Declaration would mean that governments must honour Treaty promises in a timely manner and provide the necessary funding to implement Treaty promises without subjecting First Nations to a twenty-year negotiations process.

We heard several reasons contributing to the slow pace of negotiations, including the frequency of leadership changes among all parties, the increasing complexity of agreements, the desire for certainty and to negotiate everything at once, and the increasing size of negotiation teams.

The Frequency in Leadership Change

The frequency of leadership change in Indigenous Governments, the GNWT and the Government of Canada adds to the time it takes to conclude agreements. As agreements take longer to be concluded due to complexity, continuous leadership change often means that parties take new directions or need a restart on specific subjects—for example, the Dehcho Dene are negotiating the 41st draft of an Agreement-in-Principle.

[56] Tom Isaac. 2017. *A Path to Reconciliation*. Report of the Minister's Special Representative regarding Aboriginal Claims and Negotiations in the Southeast Northwest Territories. Submitted to the Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, and the Honourable Robert McLeod, Premier of the Northwest Territories. March 3, 2017.

[57] *Dehcho First Nations Agreement in Principle*. Rolling Draft Version #41. January 3, 2017.

The Increasing Complexity of Agreements

The length and complexity of agreements are increasing. As modern treaties become longer agreements, Sections become more complex, and details more sophisticated, it takes longer to come to an agreement. We heard that this problem might be resolved by creating less technical modern treaties, or prioritizing a modular approach to negotiation, or more resources.

The Desire for Certainty and to Negotiate Everything at Once

We heard that there is a continued desire for certainty and that extinguishment clauses like those found in numbered treaties are part of modern treaties. Some presenters expressed the desire to remove language related to achieving legal “certainty” on the parts of Canada or the NWT in the agreements and re-open settled agreements.

It was noted that at the negotiation tables, Government refuses to discuss any issues that are included in completed land agreements. This is seen as an impediment to any progress in the implementation of land agreements and in self-government processes.

Canada has been criticized for its goal when negotiating treaties to ensure that Indigenous groups can only exercise treaty rights and not pre-existing rights.[58] This position has been said to be like asking for the extinguishment of the Aboriginal party's rights in return for agreements. While the language may have become more nuanced in some treaties over the past twenty years, such as "modified rights" or "non-assertion," it has been said to be extinguishment in disguise by those who demand a full-fledged recognition approach to Aboriginal rights.

Recent court cases have found that "the existence of a modern treaty did not extinguish the underlying relationship between the Crown and Aboriginal groups, including the honour of the Crown and the duty to consult and accommodate".[59]

The Increasing Size of Negotiation Teams

We heard that negotiation teams continue to increase in size. This affects the time it takes to negotiate and the efficiency in decision-making. We heard that because the

[58] John Helis. 2019. Achieving Certainty in Treaties with Indigenous Peoples: Small Steps Towards Adopting Elements of Recognition. *Constitutional Forum* Vol.28(2):1-12.
[59] Lorraine Land and Matt McPherson. 2018. *Aboriginal Law Handbook. 5th Edition*. Toronto, Thomson Reuters. P.92.

negotiations are inherently political, the Premier and the Indigenous Leaders should be directing the negotiations.

GNWT Negotiation Teams and Approach

Current GNWT negotiators are guided by Cabinet-approved mandates. *The NWT Core Principles and Objectives* (CPOs) are meant to ensure that social programs and services have the same fundamental characteristics throughout the NWT, delivered by the GNWT or by Indigenous Self-governments. The *Aboriginal Land Claims Policy* sets out GNWT's participation in land claims negotiations. The *Intergovernmental Relations Policy* commits the GNWT to protect and advance the interests of the people of the NWT by fostering intergovernmental relations.

GNWT Negotiation Approach

Committee heard much frustration regarding the GNWT approach to negotiations. We heard that the GNWT poses the most roadblocks among the governments at the negotiation tables. The most critical parts were described to be around clarifications, flexibility, lack of decision-making at negotiation tables, and where self-government begins.

The GNWT approach to negotiations was described as pedantic, where the review of principles is discussed rather than moving forward in the drafting process. We heard suggestions to use an approach where qualifications are known in advance to make the drafting process more efficient. Using this approach, each party would hold the pen on certain Sections to allow the team to work on different Sections at different times in the negotiations process.

Committee heard that the GNWT had shown little effort towards evolving its view on agreements since former Dene/Métis negotiations and the signing of the Tłı̨chǫ Agreement.

Indigenous groups feel boxed in by the GNWT approach. Despite sometimes being near the end goal, we heard that the GNWT would not move on some issues. The options are to move away from the table or agree to something that is not satisfactory and considered illegitimate.

GNWT Negotiation Teams

The conduct of the GNWT negotiation team was said to have caused real barriers that impeded the claims negotiation progress and to have remained in a 1980's worldview on

the relationship between Government and Indigenous peoples. GNWT chief negotiators were described as spokespersons with little leeway to negotiate fundamental issues at negotiation tables.

We heard that the GNWT Negotiations team has been relatively inexperienced in negotiations on governance agreements. It was perceived as unfair to place them in this position. The inexperience also means that the team cannot make decisions at the negotiations table. It was felt that having a senior official to reach out to would have been appropriate.

It was also pointed out that there is nothing wrong with having inexperienced people if they are given support. With coaching and training opportunities available to them, the young team may be an asset for the NWT.

Principles and Standards

Committee heard that the GNWT appears to use co-development approaches and government-to-government language and practices but that this approach is not visible in negotiations.

We heard that the GNWT's Core Principles and Objectives (CPOs) are a "back door" to undermine Indigenous law-making authority. It was explained that colonial policy by another name is still colonial policy.

We were told that Indigenous parties would prefer to negotiate standards into the agreement based on the Declaration and the specific needs of the community. We heard that Canada would be willing to negotiate standards into the agreement, but the GNWT would insist on CPOs. The Indigenous nations felt forced by the GNWT to have to choose between having integrity in law-making authority and negotiating authority over areas important to the nation.

Committee learned that some have refused to negotiate subjects under CPOs because it would undermine the Declaration's principles.

Challenges Related to Agreements

Committee heard that several challenges are created by the existing diversity of agreements, treaties, reserve lands and lack of land agreements. The treaties are different and recognize different sets of rights for members. Land agreements and self-government agreements also differ.

We heard that part of the challenge for communities is to figure out the relationship to historic treaties, the *Indian Act*, Section 35, modern treaties, land agreements, self-government agreements and a nation's rights under each. This complex landscape was described as divisive and having created an uneven situation among the Indigenous nations in the NWT.

From the GNWT, we heard that a challenge is balancing comparability amongst agreements with unique circumstances and aspirations of different regions and communities. Another challenge is the negotiation of lands and resource management systems.

The relationship between Land Agreements and Self-government Agreements

We heard that flexibility and timeliness are needed to implement self-government agreements, which may require adjusting land agreements. There has been a tendency not to view modern treaties as a way to go forward. Committee heard that there is a need to get away from the sense of treaties as completion and move towards a flexible way of negotiating.

We are told that we need to get away from fixed and predetermined principles at the negotiation table, and that Government should be more flexible rather than insisting on principles and just negotiating those. We heard of the need to shift to a model of treaty-making that is sensitive to the needs of the treaty nation.

Competing Interests in Areas without Land Agreements

Committee heard that tensions have been building between nations. Overlap in land use combined with the absence of land agreements, we heard, created an untenable and undesirable situation.

It was noted that cash, land quantum and sub-surface resources are finite resources.

The Need to Enable the Fiscal Elements Attached to Treaties and Agreements

Indigenous nations noted that fiscal elements are part of agreements and are needed to complete the process but, at the same time, are challenging to complete. We heard from several nations that there are problems with the draw-down of funds.

Committee heard from the GNWT that Government offers on “quantum” are usually bundled in three elements of a final land and resources agreement:

1. The amount of settlement land, with surface title only, or surface and subsurface title.
2. The amount of cash – the financial component of the agreement.
3. The percentage of resource royalties from Crown land in the Mackenzie Valley that will go to the Aboriginal party.

Committee heard that it is difficult to make comparisons between the different choices Indigenous nations make at different times. Financial components may replace other negotiables such as surface, subsurface or other, and different choices may have been made at different times with different resulting advantages.

Aligning Negotiation Policies

Committee heard that the situation of how to align federal and territorial government policies is unclear. Parties to negotiations of land agreements include the Government of Canada. We heard that the reporting on implementing existing agreements is the federal Government's role. The NWT has a land claims policy. We heard the question being asked of whether it would require other policies to enable access to federal funding for the purpose of self-government for Indigenous organizations.

POTENTIAL AREAS FOR FUTURE RECOMMENDATIONS

Committee understands reconciliation as ongoing and forward-looking at the same time. The Truth and Reconciliation Commission describes that reconciliation must inspire Aboriginal and non-Aboriginal peoples to transform Canadian society so that our children and grandchildren can live together in dignity, peace, and prosperity on these lands we now share.

In this spirit of reconciliation, the Special Committee may consider future recommendations in the following discussion areas.

Operationalizing consent

Committee heard different views on what FPIC means within the constitutional framework and lens. Operationalizing consent was stressed as the most important mechanism to realize reconciliation. Examples of activities that operationalize FPIC are Indigenous-led environmental assessment processes, community-led impact assessment and environmental review, and Indigenous mining policies.

We heard that the principle of consent should permeate all activities and not just be applied to land and resources. We also hear about Indigenous peoples having unilaterally asserted own versions of consent.

Transparency of the GNWT's Role

Transparency of the GNWT's role in land agreements and implementation has been identified as an area of further attention. Since the signing of the Devolution Agreement, the GNWT has taken on new roles, and at the same time, the federal government has expanded policies and legislation. Areas included here are the monitoring and implementation of land agreements, identifying capacity issues, and determining where deficits are carried by the GNWT.

The government-to-government relationship will be an ongoing process beyond the term of the 19th Assembly. Achieving reconciliation will include negotiation of agreements and self-government agreements and require a fair mandate to the negotiation team.

The role of the GNWT in measuring Declaration implementation was not discussed at length. In discussions, we heard that Ombuds are created for holding the Government accountable, and that auditor generals exist in provinces for the same purpose. The TRC

asked for an independent agency to hold the Government accountable for its commitment to implementing the Declaration.

The language used in government documents

Language used in policy and guidance documents is fundamental to setting the direction for the GNWT. Areas for future work could include changing the language in GNWT documents and communication to formulate intents of reconciliation and identifying partners and public and Indigenous governments.

Delegation between governments

Enabling delegation between GNWT and Indigenous Governments in areas of shared responsibility is an area critical to the future of the NWT. Examples Committee heard include enabling rights over specific areas such as Indigenous nations and governments adopting fire codes to assume authority over firefighting; Indigenous governments having the power to licence and certify language teachers in education legislation and collaborating with the public Government on schooling and educational structuring, while the Treaty gives authority for an independent education system.

Standards and principles

We heard that all parties should agree upon the standards and principles used by the GNWT, including performance standards and any standards related to land agreements. We heard that the GNWT needs to commit that the Core Principles are not changed unilaterally by the GNWT but through consensus.

We heard that the Declaration should replace the current GNWT Core Principles. It was noted that it takes two generations to get out of the Residential School mindset. Therefore, the representation of Indigenous peoples should be met in practice. It was stressed that we could not just talk about it.

Legislation as NWT Approach

Committee heard that considering the Declaration as the minimum standard allows for treating the Declaration as a starting point, not the destination. Any legislative response should not make promises that cannot be kept.

It was explained that for the Declaration to make the desired changes at the regional levels, the measures chosen to apply the Declaration's articles must be responsive to the intent. This would align with Article 42, stating that "As States have the principal responsibility for adopting legislative measures and public policies to implement the rights

recognized in the Declaration" (Article 42), they should adopt measures to achieve this aim, including through the implementation of recommendations.

Discussions on a legislative response to the Declaration could consider options ranging from a wholesome *braiding* and a phased *embroidering* of the Declaration into existing law.

We heard that a legislative approach would need to be a “made in the NWT” approach. Models could combine the approach taken by the Government of Canada and British Columbia, but exclude land agreements, implement legislation with protocols for consent-based decision-making, and consider creating a monitoring body.

Constitutional Approach

Committee heard about the potential competition or conflict of the Declaration with specific rights negotiated within modern treaties. We heard that confusion stemming from interpretations of Canada's constitutional framework is creating divergent views on the implementation of the Declaration.

We heard that an approach is needed to accommodate the rights of each Indigenous nation in the NWT in relation to the Canadian Constitution and consideration of the distinct circumstances of each nation's path to self-determination.

We heard that the Declaration as such may not be a tool for unity or bringing people together, but that its principles of collaboration and consensus are very important tools.

Committee heard that past approaches were top-down with delegation from the public Government to Indigenous Governments, and that it has become necessary to reassess the relationship between public and Indigenous governments. To do this, we heard, one would need to look at how the Declaration is informed by the Constitution, on the one hand, and by the governance models used in the NWT on the other.

We heard that it might not be helpful to create dichotomies between settled and unsettled claims areas or the way in which Government should design its approach to either. The recommendation was to have different tables to accommodate the NWT's diversity.

We heard that the existing NWT tables are good for an NWT-specific approach. The *Northwest Territories Council of Leaders*, the *Modern Treaty and Self-Government*

Partners Forum, and the existing *Inter-Governmental Council* are three separate places where exchange happens.[60,61,62]

We heard that the current forums and tables create relationships and enable the members to respect each other's unique positions.

We heard that we need a made-in-the-North constitutional arrangement amongst all nations in the NWT to redefine our relationship with each other.

[60] The *Northwest Territories Council of Leaders*, created in June 2020, held a second forum on 18-19 November 2021 in Yellowknife.
[61] *Modern Treaty and Self-Government Partners Forum*.
[62] Inter-Governmental Council of the Northwest Territories (IGC), created in 2014, is a feature of the Devolution Agreement with the purpose for public and Aboriginal governments to cooperate and collaborate on matters related to lands and resource management.

APPENDIX 1: Expert Witness Presentations

April 8, 2021 – Mr. Tom Isaac
Presenter:
Tom Isaac, Partner, Cassels Brock & Blackwell LLP
Presentation:
United Nations Declaration on the Rights of Indigenous Peoples.
Recording:
Tom Isaac NWT Legislative Assembly Recording of Presentation

April 14, 2021 – Mr. Nuri Frame
Presenter:
Nuri Frame, Partner, Pape Salter Teillet LLP
Presentation:
Advancing Reconciliation and Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the Northwest Territories.
Recording:
Nuri Frame NWT Legislative Assembly Recording of Presentation [starts at 22min]

April 23, 2021 – Dr. Hayden King
Presenter:
Dr. Hayden King, Assistant Professor and Advisor to the Dean of Arts on Indigenous Education, Ryerson University, Sociology, and Executive Director, Yellowhead Institute.
Presentation:
United Nations Declaration on the Rights of Indigenous People.
Recording:
Dr. Hayden King NWT Legislative Assembly Recording of Presentation

May 14, 2021 – Dr. Joshua Nichols
Presenter:
Dr. Joshua Nichols, Assistant Professor, McGill University, Faculty of Law
Presentation:
Presentation to the Special Committee on Reconciliation and Indigenous Affairs.
Recording:
Dr. Joshua Nichols NWT Legislative Assembly Recording of Presentation

May 18, 2021 – Dr. Brenda L. Gunn
Presenter:
Brenda L Gunn, Associate Professor, Robson Hall Faculty of Law, University of Manitoba; Research Fellow, Center for International Governance Innovation
Presentation:
Implementing the UN Declaration.
Recording:
Dr. Brenda Gunn NWT Legislative Assembly Recording of Presentation