Establishing an Indigenous Human Rights Commission and Tribunal

Inuit Tapiriit Kanatami and Métis National Council

August 2022

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INUIT TAPIRIIT KANATAMI

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About Inuit Tapiriit Kanatami

Inuit Tapiriit Kanatami (ITK) is the national representative organization for the 70,000 Inuit in Canada, the majority of whom live in Inuit Nunangat, the Inuit home land encompassing 51 communities across the Inuvialuit Settlement Region (Northwest Territories), Nunavut, Nunavik (Northern Québec), and Nunatsiavut (Northern Labrador). Inuit Nunangat makes up 40 percent of Canada's land area and 72 percent of its coastline. ITK represents the rights and interests of Inuit at the national level through a democratic governance structure that represents all Inuit regions. ITK advocates for policies, programs, and services to address the social, cultural, political, and environmental issues facing our people.

ITK's Board of Directors are as follows:

- Chair and CEO, Inuvialuit Regional Corporation
- President, Makivvik
- President, Nunavut Tunngavik Incorporated
- President, Nunatsiavut Government

In addition to voting members, the following non-voting Permanent Participant Representatives also sit on the Board:

- President, Inuit Circumpolar Council Canada
- President, Pauktuutit Inuit Women of Canada
- President, National Inuit Youth Council

Vision

Canadian Inuit are prospering through unity and self-determination.

Mission

Inuit Tapiriit Kanatami is the national voice for protecting and advancing the rights and interests of Inuit in Canada.

About Métis National Council

Since 1983, the Métis National Council has been the national and international voice of the Métis Nation within Canada. The MNC is comprised of and receives its mandate from its Governing Members- the democratically elected Métis Governments of Ontario, Saskatchewan, Alberta and British Columbia. Our Métis Governments, through their registries and democratically elected governance structures at the local, regional and provincial levels are mandated and authorized to represent Métis Nation citizens within their respective jurisdictions, including dealing with collectively held Métis rights, interests and outstanding claims against the Crown.

MNC's Board of Directors are as follows:

- President, Métis Nation of Ontario
- President, Métis Nation - Saskatchewan
- President, Métis Nation of Alberta
- President, Métis Nation British Columbia

In addition to voting members, the following non-voting Permanent Participant Representatives also sit on the Board:

- President, Les Femmes Michif Otipemisiwak

Mission

As the National and International voice of the Métis Nation, the MNC is responsible for enhancing and promoting the cultural, social, economic and political interests of the Métis Nation

Proposed Measure

An Indigenous rights commission and tribunal must be established in order to implement Article 2 of the *United Nations Declaration on the Rights of Indigenous Peoples* (*UN Declaration*), which reads as follows:

> ***Article 2***
> *Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.*

We propose that the following action be included in the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the Act) action plan in order to provide the mandate for the Government of Canada to co-develop with ITK, MNC and others enabling legislation that would establish an Indigenous rights commission and tribunal:

In order to ensure that Indigenous peoples' human rights are enforceable and that Indigenous peoples and individuals whose rights are violated have access to remedies, the federal government will, within two years of the tabling of this action plan, co-develop and introduce legislation establishing an Indigenous Rights Commission and Tribunal, providing for, inter alia:

- Commission and Tribunal established by enabling legislation, including a mandate to ensure the laws of Canada are construed and applied in a manner that complies with the *UN Declaration* unless it is expressly declared by an Act of Parliament that a law shall operate notwithstanding the Declaration.

- Enabling legislation shall establish the appointment of Commissioners and Adjudicators directly by the Métis Nation General Assembly, in addition to Commissioners and Adjudicators appointed by self-determined First Nations and Inuit procedures and by the Government of Canada.

- Enabling legislation shall empower Adjudicators to develop bylaws that regulate the Tribunal's own procedure. This will include bylaws to ensure accessibility for Indigenous peoples and individuals including through inclusive rules of evidence and Indigenous legal understandings, operation in accordance with the principles of natural justice, and operation that upholds *UN Declaration* Articles 8(2), 11(2), 13(2), 22(2), 27, 28 and 40.

- Enabling legislation shall empower the Tribunal to provide effective individual and systemic remedies, including mandating corrective action.

BACKGROUND

This paper identifies how an Indigenous human rights commission and tribunal should be established and constituted based on the tools and authorities available in the *United Nations Declaration on the Rights of Indigenous Peoples Act* as well as in Canadian law. It serves to inform continuing multilateral discussions and decision-making on the co-development of the *UN Declaration* action plan with the Government of Canada by providing the rationale for the establishment of such a body as well as a description of what its mandate, jurisdiction, and activities should be.

In essence, the model proposed is for the creation of a body which would have the powers, duties and functions of a National Human Rights Institution, as defined by the Paris Principles. This would include ensuring that the body would have: the composition and guarantees of independence and pluralism; the methods of operation; and, additional principles concerning the status of commissions with quasi-judicial competence consistent with the Paris Principles.

The model proposed is structured as a central Indigenous Rights Tribunal mandated to provide recourse and remedy for infringements of Indigenous rights. By adjudicating complaints and appeals of government decisions or actions taken under the authority of federal statutory provisions that have been aligned with the *UN Declaration* pursuant to section 5 of the Act, the tribunal would create a body of administrative Indigenous rights law with substantive consideration and application of the relevant articles in the *UN Declaration*.

The inclusion of section 6(2)(b) in the Act resulted from advocacy by Indigenous peoples based on long-held concerns that measures to recognize, uphold or implement our rights are often equivocal or unenforceable and that the rights affirmed in the *UN Declaration* would not be given substantive effect. These concerns were compounded by the structure of the former Bill C-262 and British Columbia's similarly-structured Bill 41 and, specifically, early experiences with implementation in British Columbia. Of particular concern was the level of discretion given to the responsible Minister over ultimate outcomes and the fact that the legislation avoided bringing the rights affirmed in the *UN Declaration* directly into domestic law in a substantive manner that would make them justiciable or enforceable.

Developing discretionary or programmatic responses to the implementation of the rights of Indigenous peoples, without providing for access to justice to redress violations of those rights will re-create a situation in Canada where the fundamental rights of Indigenous peoples are mere 'political rights', beyond any meaningful redress.

Given the level of Ministerial discretion written into the Act, it is crucial that Indigenous peoples move to establish a commission and tribunal independent of that discretion and with the ability to apply substantive elements of the rights affirmed in the *UN Declaration*

in its provision of recourse and remedy. An administrative tribunal established through enabling statutory provisions is pivotal for providing recourse and remedy outside of the Minister's discretion. Furthermore, section 5 of the Act provides a pathway to an "Indigenous rights" body of law that includes substantive consideration and application of the rights affirmed in the *UN Declaration*. An Indigenous human rights commission and tribunal is necessary in order to adjudicate issues, to clarify the meaning and scope of the standards articulated in the Declaration, and to direct the parties before it to carry out corrective action and provide individual or systemic remedies for infringements of law.

COMMISSION AND TRIBUNAL

The positions communicated in this paper are consistent with ITK's 2020 position paper, "Establishing an Indigenous Human Rights Commission through Federal *UN Declaration* Legislation,"[1] which itself builds off of a related 2017 position paper and discussion paper. The 2020 paper identifies three reasons for ITK's concern at the lack of an enforcement mechanism for Indigenous rights in implementation legislation: it should not be left to governments judge, monitor and report on their own conduct in fulfilling their human rights obligations; the interrelated and indivisible nature of rights requires an approach to implementation that is not politicized, piecemeal or ad hoc between jurisdictions; and approaching rights as "principles" is fundamentally discriminatory and would further contribute to the marginalization of Indigenous peoples. This is contrasted with Canada's statutory human rights regime in the *Canadian Human Rights Act*, which includes an independent tribunal to provide recourse for infringements.

The paper then sets out legislative elements for the establishment of an Indigenous Human Rights Commission as part of the implementation of the *UN Declaration,* including:

- **Funding:** activities are supported through adequate, sustainable and long-term financing;

- **Scope:** the Commission should be responsible for monitoring federal compliance with rights affirmed by the *UN Declaration* and oversee the promotion of those rights nationally. Pursuant to this mandate, the Commission should be empowered to conduct investigations of federal departments and institutions, and send discrimination-related complaints to the Canadian Human Rights Tribunal for further examination; and

- **UN Paris Principles:** the Commission should be established consistent with the UN Paris Principles, which provide international benchmarks for autonomy from

[1] https://www.itk.ca/wp-content/uploads/2020/06/ITK_Positon_Paper_Human_Rights_English_final.pdf

government, independence, adequate powers of investigations, resourcing, pluralism, and mandate and competence.

An independent entity whose mandate is limited to research, monitoring and recommendation making will be insufficient for advancing implementation of the *UN Declaration*. There is a spectrum of activities that bodies such as ombudspersons, auditors, commissions and investigators are empowered to investigate, assess, monitor and report. The product of their work is provided to the government, whether to the executive or the legislative branch, and the decision to act ultimately lies within the discretion of the government. These bodies do not have the authority to mandate or direct the government to take substantive corrective action. The ability of these bodies to provide recourse is typically limited to referral of investigation results or assessments to the legislature or Minister to feed into the political process, the publication of information that can result in an upswell of public awareness and pressure, and/or recommending actions for the government to take up.[2]

Courts treat tribunal findings by contrast with a sizable degree of deference and most appeals are reviewed on a standard of reasonableness, rather than correctness.[3] This serves in practice to insulate the more ambitious or progressive rulings of tribunals from strict judicial oversight and can often result in tribunals driving developments and evolution in the law. One example of this effect is the inclusion of gender identity as a protected characteristic under Canadian human rights law, which was an approach driven in several jurisdictions by tribunals, affirmed by courts, and then confirmed in legislation through statutory amendments that reflected the evolved state of the common law.

It is clear then that to provide recourse and remedy for the actions of the Government of Canada in a way that reaches past the discretion of the Minister, and with the ability to mandate that Canada take corrective action and/or provide a specific remedy for the infringement of Indigenous rights, the mechanism must include a tribunal component. It is also apparent that the Canadian Human Rights Tribunal will likely be unable to fulfill such a role, at least in its current incarnation and with its current statutory mandate.[4]

[2] See, for example, the Auditor General's 2016 report on its audit of the Correctional Service Canada's preparation of Indigenous offenders for release, along with the Correctional Service Canada's responses to the audit's recommendations: https://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_03_e_41832.html#hd2e

[3] See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[4] Although putting forward amendments to the *Canadian Human Rights Act* through the action plan to take on this mandate is an option.

MANDATE AND JURISDICTION

Given that section 6(2)(b) provides authority for mechanisms "with respect to the implementation of the Declaration" and the role of the Declaration itself in articulating Indigenous rights, it is intuitive that these rights would be taken from or defined in relation to the rights affirmed in the *UN Declaration*.

Since the Act does not directly legislate the substantive rights affirmed in the *UN Declaration* and it is unlikely that the Minister would directly import the *UN Declaration* through the action plan, it is difficult to see how these rights could be constructed other than by creating general procedural and substantive requirements that approximate elements of the *UN Declaration*. However, stronger and more direct authority has already been legislated in section 5 of the Act.

Section 6(2)(b) must be read in light of the preamble of the Act, which states, "Whereas the Government of Canada is committed to taking effective measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with Indigenous peoples, to achieve the objectives of the Declaration". This means that the scope of the Tribunal and the Commission should include legislative, policy and administrative measures to implement the Declaration.

Therefore, a recourse mechanism could enforce compliance with the Act, including section 5 and resolve disputes in the implementation and administration of laws that are subject to section 5 obligations by ensuring they are interpreted and applied in a manner that complies with the relevant articles of the *UN Declaration*. Since the purpose and function of those obligations are to render the law consistent with relevant articles of the *UN Declaration*, it is difficult to see how policies, decisions, interpretations or government actions taken under the authority of those sections that are inconsistent with or fall below the relevant articles could be sustained as statutorily compliant.

Consistent with section 6(2)(b), the Tribunal would also have competence to provide remedy for acts of discretionary authority, policies or administrative actions which are inconsistent with the Declaration. This would provide a scope and mandate for the Tribunal to ensure that effective implementation of the Declaration is sufficiently broad in scope to capture violations of indigenous rights not captured through legislative reform or the National Action Plan alone.

In terms of its operations, a statute may be amended to incorporate a consent-based process in order to be consistent with the free, prior and informed consent element of an article. The tribunal could be called upon to adjudicate the actions or decisions of the Government of Canada taken pursuant to that process to determine compliance with the free, prior and informed consent requirements as written into the statute. To do so, the tribunal would need to interpret the statutory provisions and the corresponding relevant article(s) of the *UN Declaration* in order to assess the compliance of the actions taken

pursuant to that statutory process, thereby bringing elements of the *UN Declaration* directly within the domestic legal process as a substantive legal standard. In this way, the role of the *UN Declaration* is transformed from its current function as an outside interpretive tool to constituting a substantive part of domestic law against which government action is measured for compliance. This would serve to create an "Indigenous rights" body of law that directly involves the rights affirmed in the *UN Declaration*.

It should also be noted that the Act does not contain direct accountability or enforcement measures to correspond to the obligations in section 5. Therefore, it could be argued that a recourse mechanism is a necessary measure to ensure consistency of laws pursuant to section 5, or that a focused application of the wide scope for oversight, accountability and recourse written into section 6(2)(b) is necessary to ensure the Government of Canada's compliance with its obligations in section 5.

STANDALONE COMMISSION AND TRIBUNAL

An Indigenous human rights commission and tribunal should be established as a standalone institution and should not be subsumed within the Canadian Human Rights Commission and Tribunal for the following reasons:

1. The Canadian Human Rights Commission and Tribunal are creations of the Canadian state and reflect concepts of rights and remedies distinct from Indigenous values, customs, laws and legal understandings. Consistent with the *UN Declaration*, effective recourse and remedy for violations of Indigenous rights should be structured in a nation-to-nation manner in order to have the structural and institutional capacity to appropriately apprehend the nature of Indigenous rights, the often systemic nature of violations, and remedies that effectively redress the resulting impacts.

2. Statutory human rights are focused on individual anti-discrimination within the greater Canadian social/political/legal system, the *UN Declaration* provides a fulsome picture of (primarily collective) rights that recognize and protect Indigenous social/political/legal systems as essential elements of our self-determination. The mandate, functions, jurisdiction, and activities required to provide recourse to Indigenous peoples and individuals whose rights have been violated would therefore be distinct from those of the Canadian Human Rights Commission, warranting alternative approaches and unique capacity needs in relation to the monitoring, enforcement, and promotion of Indigenous human rights. Canada's human rights statutes are instructive in showing the structure and the limitations of human rights law in Canada for the application and enforcement of Indigenous rights. Every jurisdiction in Canada has a human rights act that establishes a commission, a tribunal, and a substantive body of human rights law

for those entities to apply in their respective roles. This law is structured in the same manner across jurisdictions – it is primarily focused on individual anti-discrimination, based on certain protected characteristics. Every jurisdiction has a prohibition against discrimination based on Indigenous heritage or ethnicity, with institutions to investigate and adjudicate complaints. Despite this, major problems remain with the recognition and upholding of Indigenous human rights.

3. A standalone entity is needed to support the unique mandate and jurisdiction of an Indigenous human rights commission and tribunal. The mandate of the Canadian Human Rights Commission is narrowly focused on preventing specific types of discrimination experienced by all Canadians within areas of federal jurisdiction that are defined by the *Canadian Human Rights Act*. Activities required to monitor, enforce and promote Indigenous human rights may be significantly more complex, and may be contingent on implementation of section 5 of the Act. The concepts of 'discrimination' and the enumerated grounds identified in the *Canadian Human Rights Act* do not provide sufficiently broad scope to address all matters raised through implementation of the Declaration.

4. Implementation of the *UN Declaration* is complex subject matter, which is distinct from the subject matter typically considered at the Canadian Human Rights Commission (CHRC). Given the broad scope of the rights affirmed by the *UN Declaration*, the activities of the commission would therefore likely require commissioners to monitor disparate pieces of legislation, implementation of human rights treaties vis-à-vis Indigenous peoples, as well as treaty implementation. A commission would also receive complaints from individual Indigenous persons as well as representatives of Indigenous peoples and populations, requiring significant knowledge and expertise pertaining to areas of Indigenous cultures, governments, politics, and legal status. The CRHC is not equipped to navigate these complexities.

5. Significant capacity and expertise are required to effectively monitor, enforce and promote Indigenous human rights that a single commissioner and unit within the CHRC would likely be unable to provide. Indigenous human rights are an evolving body of law requiring the focus of a dedicated entity and staff. An approach that siloes Indigenous human rights within the CHRC would limit progress toward the implementation of our rights given the staff and capacity required to support the activities of a commission and tribunal.

6. With the current backlog of cases at the CHRC, any new cases would take time to resolve. A stand-alone Indigenous human rights commission and tribunal would

provide a separate avenue to resolve Indigenous rights issues associated with the *UN Declaration* in a timely manner while improving access to justice.

STRUCTURE AND OPERATIONS

Establishing a mechanism or mechanisms empowered to provide oversight, recourse and remedy for government action will require the passage of enabling legislation. This legislation is where the requirements for resources, appointments, tenure, autonomy, mandate, and scope would be set out. These could be designed through the legislative process in accordance with the UN Paris Principles. This statute would also set out the specific legal standards that the mechanism or mechanisms would apply. For greater autonomy, the legislation could provide the mechanism with the power to make regulations for its own operation and procedures.

The *British Columbia Treaty Commission Act* provides a useful precedent for many of the areas referenced above. This legislation establishes a commission consisting of representatives from three parties: the federal Crown, the BC provincial Crown, and a conglomerate of BC First Nations (the Summit). The statute contains several useful features setting out how the commission is operated:

- **Purpose, powers and duties:** Section 5 sets out the purpose of the commission, provides it with powers to carry out its purpose, and enumerates duties that the commission must carry out.
- **Appointments:** Section 7 and Section 8 establish processes for the appointment and removal of commissioners. Importantly, commissioners are not appointed solely by the BC government or the federal government, but each party appoints commissioners directly through their own processes, including the BC First Nations Summit. Each party appoints an equal number of commissioners, and a chief commissioner is jointly appointed by all three.
- **Resources:** Section 21 provides for the commission to submit a budget for each financial year for review and approval by the provincial Crown, federal Crown and the BC First Nations Summit.
- **Decision-making:** Section 14(2) states that decisions of the commission must be made with the consent of at least one commissioner appointed by each of the three parties.
- **Bylaws:** Section 20 empowers the commission to make bylaws consistent with the statute respecting the carrying out of the work of the commission, the management of its internal affairs and the duties of its officers and employees.

These precedents provide useful options for establishment of a recourse mechanism.[5] For example, a similar appointment structure could be established wherein the MNC, AFN, ITK and federal government each appoint commissioners or adjudicators through their own internal processes. Further, the mechanism could be empowered with a similar bylaw or regulatory making authority to set its process. These regulations could ensure that the mechanism is accessible to Indigenous peoples across Canada, upholds relevant procedural and substantive rights affirmed in the *UN Declaration*, respects Indigenous legal understandings and interpretations, sets workable evidentiary standards, and so on.

It should be noted that this analysis requires the passage of enabling legislation. This would take additional time after the June 2023 release of the action plan to pass and implement. This would also take additional political will. It may be prudent to conduct further research on the ability to establish mechanisms without the co-development and passage of a new statute. This may be accomplished through regulations made pursuant to the Act, which may require an amendment to the Act to include an explicit regulatory power for this purpose. Although this would likely result in a mechanism with less durability, scope and powers, and likely without the ability to mandate the federal government to take corrective actions, it may allow for more immediate monitoring and assessment capabilities.

OVERVIEW OF PROPOSED MODEL

The following model is presented as an option to construct a section 6(2)(b) recourse and remedy mechanism. Using the section 5 alignment obligations, the mechanism is designed to provide recourse and remedy in the operation of aligned laws and apply an Indigenous rights law guided by substantive application of the rights affirmed in the *UN Declaration*.

- **Establishment:** established through an enabling statute co-developed as part of the action plan.

- **Mandate:** the primary mandate will be to act as a central tribunal, adjudicating complaints and appeals of government actions and decisions taken pursuant to the sections of legislation that have been aligned with the *UN Declaration* per section 5. A secondary mandate may also be established to provide oversight and recourse for the operation of the Act and the action plan, including "consultation and cooperation" disputes, the section 5 process, and specific measures called for in the action plan. In addition, mandates for the Commission could include promotion of the Declaration within federal departments and institutions, to provinces and territories and to the Canadian public; research and publication of

[5] A similar mechanism has also been legislated provincially in the context of an adjudicative body in Alberta's *Métis Settlements Act*.

thematic reports on implementation of the Declaration; and participation in reporting and monitoring of initiatives related to the implementation of the Declaration.

- **Law:** as part of the alignment of a statute with the *UN Declaration*, an amendment will be made to include a right of appeal and a right of complaint to a central Indigenous Rights Tribunal. The Tribunal will hear appeals to the decisions of administrative decision-makers and complaints relating to government actions taken pursuant to provisions of legislation that have been aligned with the *UN Declaration* on the grounds that the decision or action cannot be sustained by the provisions due to inconsistency with the *UN Declaration* as considered or incorporated into the statute.
    - It may also be helpful and desirable to legislate the Tribunal's standard of review in the enabling provisions.

    - The Tribunal's scope of review would be made clearer through the enumeration of the articles considered as part of the alignment process for each statute. This could be done as an amendment to the statute itself as text or as a schedule, or it could be discussed in a "*UN Declaration* statement" released with the introduction of the amendments or of new laws.[6]

- **Appointments:** the Government of Canada and the national representatives of the Métis Nation, First Nations and Inuit will each appoint adjudicators to the Tribunal in accordance with their own internal processes. A Chief Adjudicator will be appointed with the agreement of all four parties.

- **Choice of procedure:** The right of appeal or complaint will not be required to be exhausted for Indigenous peoples and individuals to bring a claim grounded in section 35 of the *Constitution Act* for judicial review based on actions taken or decisions made pursuant to the aligned statute. While complainants will not be able to pursue the same complaint in multiple forums, they should be free to address complaints either to the Tribunal or to some other dispute resolution mechanism.

- **Procedure:** the enabling legislation will empower the Tribunal to develop regulations or bylaws that regulate its procedure. These regulations will include the following:

[6] This is analogous to the Charter statements required under Section 4(1) of the *Department of Justice Act*. Amending this Act to add the requirement for a *UN Declaration* statement was proposed by Romeo Saganash and others during the C-15 Parliamentary process.

- Hearings will be heard by a panel composed of the Chief Adjudicator and a tribunal member appointed by each of the four parties;
- The Tribunal will make it a priority to ensure that it is accessible to Indigenous peoples and individuals regardless of where they reside;
- The Tribunal will operate in accordance with the principles of natural justice;
- The Tribunal will incorporate, respect, and give deference to Indigenous understandings and corresponding legal concepts (see *Mitchell v. Peguis Indian Band*, [1990] 2 S.C.R. 85; *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29);
- The Tribunal will uphold the procedural and substantive rights contained in articles 8, 11(2), 13(2), 22, 27, 28, and 40 of the *UN Declaration*;
- The Tribunal will give equal weight to oral and other forms of non-standard Indigenous evidence; and
- The Tribunal may prescribe a role for Elders.

- **Remedies:** the Tribunal will be empowered through the enabling statute to provide individual and systemic remedies, including mandating that the Government of Canada take immediate action to correct an infringement.

- **Injunctions:** if an appeal or complaint has been filed with the Tribunal, a judge of a court of competent jurisdiction may grant a temporary injunction restraining any alleged contravening conduct.[7]

This model is designed to provide an accessible venue and an effective process for Indigenous peoples to appeal to for recourse and remedy when Indigenous rights are infringed pursuant to federal laws that carry a requirement of consistency with the *UN Declaration*. By applying a legal standard as described in the above sections, it aims to incorporate substantive consideration of the rights affirmed in the *UN Declaration* in its review of Canada's actions and decisions in a way that appropriately considers and gives effect to their individual and collective natures. It is designed to carry out this mandate through an administrative body in order to provide meaningful remedy and give rise to progressive legal developments that give effect to full understandings of Indigenous rights and self-determination outside of the constraints of current narrow jurisprudence.

It is important to note that the effectiveness of this model depends on a robust section 5 alignment process. Given that federal laws will come under its jurisdiction only after they have been rendered consistent with the *UN Declaration* pursuant to section 5, the Tribunal will initially have a small reach that will gradually grow with the alignment of more laws. It will take time and political will to pass statutory alignments as well as an enabling statute for the Tribunal. Moreover, the effectiveness of the Tribunal rests somewhat on

[7] See, for example, Section 33 of the *Yukon Human Rights Act*, RSY 2002, c.116

the ability of the section 5 process to deliver meaningful alignment. The ability of the Tribunal to conduct a thorough analysis of actions taken or decisions made pursuant to aligned statutory provisions by assessing them against the corresponding relevant articles of the *UN Declaration* would likely be made more difficult by vague statutory processes with broad, unclear commitments and decision points.

There are a few options available to address these challenges. The enabling provisions for the Tribunal could be contained within an existing legislation as amendments through the alignment process.[8] In addition, given the broad scope of section 6(2)(b), the Tribunal (and possibly a connected Commission-type structure) could be given a mandate to provide monitoring and oversight over the operation of the Act and its obligations, including section 5, as well as the mandate for recourse and remedy for aligned statutes as described above. In this way, the work of the Tribunal would shift in time from covering primarily Act-related processes at first to primarily covering appeals and complaints related to breaches of the aligned statutes as the Act is implemented and more federal laws become aligned. Finally, the broad, plural nature of section 6(2)(b) would also support the creation of mechanisms in the immediate term with tighter mandates and scopes focused specifically on individual measures or areas of concern in the action plan.

[8] See, for example, the creation of the Commissioner of Environment and Sustainable Development within the federal *Auditor General Act* (section 23).