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## Annual Report on the State of Inuit Culture and Society



**Inuit Social and Cultural  
Self-determination**

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*Cover photo by Clare Kines*

*Qaapik Attagutsiak of Arctic Bay tends to her qulliq in her qammaq.*

## Executive Summary

Nunavut Tunngavik Inc.'s (NTI) 2014/15 *Annual Report on the State of Inuit Culture and Society* focuses on Article 32 of the *Nunavut Land Claims Agreement* (hereafter *Nunavut Agreement*). Article 32 creates treaty and public law obligations for the Government of Nunavut (GN) and the Government of Canada to provide Inuit with the opportunity to participate in the development of social and cultural policies and in the design of social and cultural programs and services. The creation of a public government through Article 4 of the *Nunavut Agreement* was part of the compromise Inuit made in order to settle land claims and secure a degree of self-determination over our affairs. Article 32 is important because it is the legal mechanism recognizing the right of Inuit to self-determine in relation to the development of social and cultural policies and programs. It is among the most significant features of the *Nunavut Agreement* from the perspective of NTI and Regional Inuit Associations (RIAs) because our participation as Inuit representative organizations is needed to shape effective social and cultural policies and programs that can help our people prosper. The governance of Nunavut cannot be separated from the full and effective implementation of Article 32.

This report describes the wider social and historical context in Canada for Article 32 to set the scene for the implementation challenges we face today. It situates Article 32 within the larger framework of Indigenous human rights and the role the GN and Government of Canada can play in helping eliminate these disparities by working with Inuit. This report examines setbacks as well as positive moments that have characterized efforts to implement Article 32. Through consideration of these experiences, this report argues that guidelines are needed for implementation of Article 32 to ensure that there is a shared understanding about roles and responsibilities when it comes to implementing Article 32, as well as a system in place to monitor progress and share resources.

Article 32 creates a mandate and a requirement for close and effective collaboration between the NTI, GN, and Government of Canada in the development of social and cultural policies and in the design of social and cultural programs and services. Policies, programs, and services that are developed in partnership with Inuit are more likely to have positive and constructive effects on Nunavut's majority Inuit population. The value of a partnership-based approach to policy and program development has become self-evident in other jurisdictions with significant Indigenous populations. The examples detailed in this report show that there are significant social and economic costs of poor policy-making and that these costs can dwarf investments in good faith consultation or public engagement. Article 32 provides a broad framework for ensuring that social and cultural programs and services are representative of Nunavut's majority Inuit population. It is critical that this broad framework be fully respected and creatively used.



Photo by KivIA

Pangnirtung artist Andrew Qappik instructs Tiffany May Nakoolak from Coral Harbour during the Kivalliq Inuit Association's art camp.





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### Introduction

Article 32 of the *Nunavut Agreement* is intended to ensure a high level of direct Inuit participation in the development of social and cultural policies and the design of social and cultural programs and services within Nunavut. Article 4 of the *Nunavut Agreement* set a road map for the creation of the Government of Nunavut (GN) and Article 32 provided Nunavut Inuit assurance that, within a wider public government model, Inuit would have the opportunity to exercise enhanced self-determination in relation to social and cultural policy, programs, and services.

Article 32 states the following:

Without limiting any rights of Inuit or any obligations of Government, outside of the Agreement, Inuit have the right as set out in this Article to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area.<sup>1</sup>

In the past, NTI's *Annual Report on the State of Inuit Culture and Society* has focused on policy areas that fall within this broad social and cultural category. These reports have concentrated on policy areas, including justice, Inuit language, education, health, and research, but have not focused on Article 32 specifically and have stressed the importance of using Article 32 to facilitate partnerships and closer working relationships between Inuit and government while acknowledging the shortcomings of this statutory obligation.

The *Nunavut Agreement* was an important step forward in Canada's relationship with Inuit; but in some ways, basic challenges persist that stem from an approach to Arctic policy-making that does not include direct, focused Inuit input. The Government of Canada treated Inuit as wards of the state, especially during the years prior to and after World War II, when Canada intensified efforts to colonize the Arctic. By the mid-1960s, most Inuit families had settled into communities where attempts were being made to organize Inuit life according to Western ideas about family, work, community, and social relations.<sup>2</sup> John Amagoalik, who served as the chief commissioner of

the Nunavut Implementation Commission among other roles, describes this time period as follows:

Going back to the isolated Arctic, it was around the early sixties that we started to discover that we had become powerless in our own homeland. We had become non-citizens in our own country. Our human rights were ignored and violated. Things like game laws were directly imposed on us. We never had any prior discussion about game regulations or quotas or anything like that. Canada had already signed the Migratory Birds Convention Act, so there were international laws that the government was committed to and had to enforce...It was becoming obvious that through the introduction of game laws, and through the introduction of the justice system and the education system, we had basically lost control of our lives. We found out that we were powerless.<sup>3</sup>

From the very beginning of land claims negotiations, the Tunngavik Federation of Nunavut (TFN) insisted that a *Nunavut Agreement* embrace and give expression to enhanced and substantial Inuit self-determination. Inuit negotiated from the premise that the *Nunavut Agreement* should enable us to sustain our culture and wildlife-based economy and bring our traditional values to bear in a modern, democratic state.<sup>4</sup> Article 32 is the legal mechanism providing Inuit with the opportunity for self-determination in relation to social and cultural issues in a way that works within a broader public government model. It obligates the GN and the Government of Canada to partner in good faith with Inuit to craft social and cultural policies and programs that reflect the priorities and serve the interests of Nunavut's majority Inuit population.

Part 1 of the 2014/15 *Annual Report on the State of Inuit Culture and Society* describes the wider social and historical context that makes Article 32 necessary. It provides a brief overview of implementation challenges, and discusses how this article fits with best practices for policy-making in other jurisdictions, as well as with national and international norms for consulting with Indigenous communities.



*Photo by QIA*

*Arnakallak Inuqtaqau lights a qulliq during a course at the Pirurvik Centre in Iqaluit.*

## Part 1

It is necessary to set the context for the implementation challenges surrounding Article 32. These challenges are rooted in the historical legacy of Inuit–government relations and have gained a human rights dimension in the last decade. The persisting social and cultural challenges that many Nunavut Inuit face today make resolving these long-standing challenges all the more urgent.

Inuit–government relations in Canada have largely been defined by power imbalances that favour government. These power imbalances are reflected in policies and programs that have served to advance Canada’s interests through the colonization of Indigenous Peoples and lands. These policies and programs were rooted in racially discriminatory attitudes and beliefs about Inuit and other Indigenous Peoples as inferior and disposable. As a consequence, Inuit were marginalized to a spectator position for the majority of their dealings with government while social and cultural policies and programs were developed and imposed on communities without Inuit input.

The Government of Canada’s imposition of residential schooling on Inuit and other Indigenous populations is perhaps the starkest example of this power imbalance at play. The period of residential schooling in the North illustrates how recent is the marginalization of Inuit from decisions that were made about our basic welfare. It is a reminder that we have a long way to go toward healing and that the Government of Canada’s heavy-handed approach to policy-making has left deep wounds on our society that are only now being acknowledged.

In June 2015, the Canadian Truth and Reconciliation Commission (TRC) released the executive summary to its forthcoming full report documenting the experiences of Indigenous children attending Canadian residential schools. The work of the TRC and the TRC Inuit Sub-Commission helped focus national and international attention on the legacy of residential schooling in Canada, validating what Inuit and other Indigenous Peoples have said for decades.<sup>5</sup> The TRC characterizes the 120-year period of residential schooling in Canada as cultural genocide.<sup>6</sup> Between 1867 and 2000, 3,201 deaths of Indigenous students at residential schools were registered.<sup>7</sup>

The TRC describes how the per capita impact of residential schools was highest in the North because of the region’s majority Inuit population. It notes how large numbers of Inuit children began attending residential schools during the 1950s and how some were sent to schools thousands of kilometres from their homes and went years without seeing their families; in other cases parents moved off the land into sedentary communities in order to be closer to their children.<sup>8</sup> These experiences are relatively recent, and there are many residential school survivors living in the North today who continue to feel the intergenerational impacts of these events.<sup>9</sup>

This period in which government force was used to dominate Inuit culture and society and render many families powerless forms part of the backdrop for the social and cultural challenges that too many of our people experience today. These challenges include poverty and its attendant obstacles: crowded housing, elevated crime rates, lower educational attainment, lower health determinants, food insecurity, and stress.



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Far too many of our people experience the turmoil of physical and sexual violence and its associated trauma. The fact that Inuit die by suicide at a rate more than 13 times higher than other Canadians speaks to the cumulative physical and psychological stress that many Inuit face. These social and cultural challenges are intertwined and complex, requiring complex solutions that can only be developed and implemented through a partnership between Inuit and government.

Given this context, Article 32 is an important tool for Nunavut Inuit to exercise self-determination by working as equal partners with government in the development of social and cultural policies and programs. This is necessary in order to identify and implement solutions that work for our people. Unfortunately, the opportunity that Article 32 provides for cooperation and partnership among NTI, the GN, and the Government of Canada is routinely underutilized and, in some circumstances, ignored altogether. This must change.

### **Inuit employment in government and Article 32**

Article 4 of the *Nunavut Agreement* set a road map for the creation of the Nunavut territory and government through the 1993 *Nunavut Act*. The GN is a product of the *Nunavut Agreement* and negotiations between Inuit and the Government of Canada, yet it is also a public government and at any given time, its policy agenda may not necessarily reflect the goals and priorities of designated Inuit organizations (DIOs), mandated to advocate for the rights of Inuit. Inuit are the majority ethnic group in Nunavut representing 85 per cent of the population. Nineteen of the 22 Members of the Legislative Assembly (MLAs) are Inuit.<sup>10</sup> However, only 50 per cent of government positions are held by Inuit. This disparity is sharpest in senior and middle management positions; only 18 per cent and 23 per cent of these positions, respectively, are held by Inuit.<sup>11</sup>

Low Inuit employment in government was foreseen by TFN as an obstacle to ensuring that Inuit goals and priorities were reflected in the work of government. Most Nunavut Inuit lacked secondary or post-secondary education when Nunavut separated from the Northwest Territories (NWT) on April 1, 1999 and did not possess the formal qualifications needed to fill

many government positions. Negotiators planned for this challenge in part through Article 23 (Inuit Employment within Government) of the *Nunavut Agreement*, which obligates the GN to take initiatives to increase Inuit participation in government employment to a representative level.<sup>12</sup> The *Nunavut Agreement* also ensures that Inuit have representation on Nunavut's institutions of public government (IPGs) that make up the territory's land and resource management system. These IPGs include the Nunavut Impact Review Board (NIRB), Nunavut Planning Commission, Nunavut Surface Rights Tribunal, Nunavut Water Board, and Nunavut Wildlife Management Board. The Regional Inuit Associations (RIAs) and Nunavut Tunngavik Inc. (NTI) are responsible for appointing a representative to serve alongside members appointed by the GN and Government of Canada.

The *Nunavut Agreement* is less precise about the role Inuit should play in shaping social and cultural programs and policies. Article 32 of the *Nunavut Agreement* sets out the following obligations for the GN and Government of Canada:

- (a) providing Inuit with an opportunity to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, in the Nunavut Settlement Area; and
- (b) endeavouring to reflect Inuit goals and objectives where it puts in place such social and cultural policies, programs and services in the Nunavut Settlement Area.<sup>13</sup>

Article 32 provides for the creation of the Nunavut Social Development Council (NSDC) as a non-profit DIO in order to promote these principles and objectives on behalf of Inuit. The role of NSDC was to "assist Inuit to define and promote their social and cultural development goals and objectives" and to "encourage Government to design and implement social and cultural development policies and programs appropriate to Inuit."<sup>14</sup> The NSDC, established in 1996, was dissolved by NTI's Board of Directors in 2002 and replaced with NTI's Department of Social and Cultural Development.

Article 32 lacks the detail of the *Nunavut Agreement* articles that establish IPGs with respect to Inuit participation. IPGs place Inuit representatives on an equal footing with the GN and Government of Canada members. By contrast, Article 32 obligates the GN and Government of Canada to provide Inuit with an opportunity to participate in developing social and cultural policies and designing social and cultural programs. It does not define what participation means.

Social and cultural fields are interpreted by NTI to include, but not be limited to, education, health, housing, research, language, social assistance, hunter support, adoption, family law, administration of justice, and others of a similar nature. Participation means being directly and actively involved with the GN and Government of Canada in all aspects and at all phases of policy development, as well as in the design of programs and services, including their method of delivery. Participation requires greater involvement than consultation, even as the meaning of that latter term has grown with respect to Indigenous–government relations as a result of Supreme Court of Canada decisions.

Lacking specific implementation guidelines, the language used in Article 32 has been selectively interpreted by government, leading to inconsistent opportunities for Inuit to fully participate in the development and design of social and cultural policy.

These challenges were noted in the past. The *Second Independent Five Year Review of Implementation of the Nunavut Land Claims Agreement* describes how the lack of an agreed-upon standard for what qualifies as participation creates confusion and that this makes it difficult to assess whether the objectives of the article are being met.<sup>15</sup> Short of an amendment to the *Nunavut Agreement* (a possibility that should never be lightly discounted), it is necessary to establish a common understanding that can guide Inuit and government working relationships. The following sections describe how national and international norms and policies should guide efforts to clarify these issues.

### **Article 32 and the benefits of community engagement and empowerment**

It is possible to identify the basic characteristics of good policy-making in North American Indigenous communities. The Harvard Project on American Indian Economic Development (Harvard Project) aims to understand the conditions under which sustained, self-determined social and economic development is achieved among American Indian and Alaska Native nations.<sup>16</sup> To that end, the Harvard Project has undertaken hundreds of research studies and advisory projects in American Indian and Alaska Native tribal communities. The political contexts differ significantly between American Indian and Alaska Native tribal nations and Nunavut. However, these communities often face the same uphill battles when it comes to self-determination over public policy, as well as the same social and economic challenges.

The Harvard Project seeks to identify public policy success stories from tribal communities that can help inform development in others. Tribal communities that have demonstrated success in social and economic development share a basic characteristic: when Native nations make their own decisions about which development approaches to take, they consistently outperform external decision-makers on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision.<sup>17</sup> Termed the Nation-Building Approach, this assertion of decision-making power, coupled with effective governing institutions and strategic decision-making, has generally been a recipe for successful social and economic development in tribal communities. In the Nation-Building Approach, non-Indigenous governments move from a decision-making role in Native affairs to an advisory and resource role.<sup>18</sup> The founders of the Harvard Project observe that one of the most difficult things for non-Indigenous governments to do is relinquish control over Native nations despite this control being the core problem in the standard approach to development.<sup>19</sup> The standard approach to development is characterized by the development agenda being set from the outside with Indigenous culture being viewed as an obstacle to development.





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The evidence is substantial that Indigenous self-determination is a critical component in the effort by American Indian and Alaska Native communities to improve their social and economic conditions.<sup>20</sup> Stephen Cornell, one of the founders of the Harvard Project, observes that Indigenous communities' efforts to overcome poverty in the United States, Australia, New Zealand, and Canada are crippled when governments refuse to come to grips with Indigenous demands for self-determination.<sup>21</sup>

Another way to think about this paradigm shift is the practice of Indigenous community engagement. Community engagement has become a buzzword within extractive industries, academic research, and public health initiatives. In the last two decades, these sectors have grown to recognize the benefits of partnering with Indigenous communities in order to let local concerns and priorities drive the process. Indigenous communities have fought to initiate the shift away from a paternalistic approach to a more inclusive and empowering one. For example, the Raglan Mine, operating in Nunavik, recently celebrated 20 years of community engagement, crediting its success to the impact and benefit agreement (the first of its kind at the time) that structures Raglan's socioeconomic responsibilities to the region.<sup>22</sup> Public health researchers now recognize that partnering with Inuit communities and organizations on suicide research and prevention initiatives yields positive outcomes.<sup>23</sup> Government-driven tobacco cessation efforts have focused on engaging Indigenous youth.<sup>24</sup>

The Harvard Project's findings are relevant to Nunavut and Article 32. Inuit self-determination is limited when the GN and Government of Canada fail to include Inuit as equal partners in the development of social and cultural policies or in the design of social and cultural programs and services. The effectiveness of government policy is hindered when Inuit are not included in this process at significant social and economic cost to government and society. Article 32 is a key avenue available to Inuit to ensure that our concerns and priorities are reflected in the policies and programs that we rely on. This avenue needs to be open in order to ensure that we are collectively making progress on the varied challenges facing our people.

### Article 32 and the UN Declaration on the Rights of Indigenous Peoples

In November 2010, Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but qualified this endorsement by characterizing the document as aspirational.<sup>25</sup> The UNDRIP contains 46 articles that recognize the wide range of basic human rights and fundamental freedoms of Indigenous Peoples, such as the right to unrestricted self-determination and inalienable and collective land and resource rights.<sup>26</sup> It provides a framework of action aimed at the full protection and implementation of the rights of Indigenous Peoples, including our right to participate in decision-making.<sup>27</sup>

While the UNDRIP has an important role to play in helping safeguard the rights of Indigenous Canadians, the United Nations Special Rapporteur on the Rights of Indigenous Peoples characterized the relationship between the federal government and Indigenous Peoples as "strained," with persistent gaps between Indigenous and non-Indigenous Canadians in health care, housing, education, welfare, and social services.<sup>28</sup>

The UNDRIP contains a number of provisions affirming that Indigenous Peoples have the right to free, prior, and informed consent (FPIC), which refers to the right of Indigenous Peoples to give or withhold their free, prior, and informed consent to proposed measures that will affect them. Article 3 of the UNDRIP states the following:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>29</sup>

Non-Indigenous peoples' rights to self-determination are enshrined in Article 1 of the UN Covenants of Civil and Political Rights and on Economic, Social and Cultural Rights.<sup>30</sup> One of the ways Indigenous Peoples can exercise our right to self-determination is through FPIC.<sup>31</sup> Article 19 of the UNDRIP states the following:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.<sup>32</sup>





Photo by KitlA

From left: Jean Kaniak of Cambridge Bay, Kate Inuktalik of Ulukhaktok, Connie Kapolak of Cambridge Bay and Mary Kudlak of Ulukhaktok participated in a Copper Inuit Sewing Revitalization Project sponsored by the Kitikmeot Inuit Association.

The concept of FPIC is relatively new in international law and jurisprudence. Canada and other states that have endorsed the UNDRIP have a duty to obtain Indigenous Peoples' FPIC prior to adopting and implementing policies and programs that may affect them. The duty of countries to consult derives from Indigenous Peoples' right to self-determination, affirmed by Article 3 of the UNDRIP and Article 1 of the International Human Rights Covenants.<sup>33</sup> The duty of states to obtain Indigenous Peoples' FPIC thus entitles Indigenous Peoples to effectively determine the outcome of decision-making that affects them and is not merely a right to be involved in such processes.<sup>34</sup> It means that as self-determining Indigenous Peoples, we have the general right as recognized and affirmed by the international community to say no to policies or programs that may affect our communities. The Government of Canada vigorously opposes FPIC for providing Indigenous Peoples with an open-ended veto on development, while failing to acknowledge that UNDRIP recognizes the interrelationship of FPIC with other important democratic values.

The UN Office of the High Commissioner for Human Rights defines FPIC as follows:

- *Free* implies that there is no coercion, intimidation or manipulation.
- *Prior* means that consent is to be sought by the State sufficiently in advance of any authorization or commencement of activities and respect is shown to the time requirements of indigenous consultation/consensus processes.
- *Informed* implies that information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project

or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail. This process may include the option of withholding consent.<sup>35</sup>

Along with the UNDRIP, FPIC establishes minimum standards for the survival, dignity, and well-being of Inuit and other Indigenous Peoples even as agreed-upon procedures for the application of these principles are still evolving. FPIC is the mechanism through which Inuit and other Indigenous Peoples can exercise our right to self-determination, which, in some circumstances, means the right to say yes or no to the proposed development of our lands or to policies and programs that affect our cultures and societies.

Some of these rights are built in to the *Nunavut Agreement* as public law rights, especially about issues related to land and resource management. For example, Article 12 of the *Nunavut Agreement* establishes NIRB to screen proposed development projects. Four of NIRB's members are nominated by DIOs, ensuring that Inuit make up half the board's membership. In May 2015, following a lengthy environmental assessment process, NIRB recommended to the Government of Canada that AREVA Resources Canada's proposed Kiggavik uranium mine should not proceed with development citing the lack of a clear start date or development schedule that "adversely affected the weight and confidence which it could give to the assessments of future ecosystem and socioeconomic effects."<sup>36</sup>



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Under Article 12, the Minister of the Department of Aboriginal Affairs and Northern Development may accept or reject this recommendation, with rejection hinging on a project being in the national or regional interest. In this case, the report would then be referred back to NIRB in order to consider terms and conditions that should be attached to any project approval.<sup>37</sup>

Although far from perfect, this process and those of other IPGs ensure Inuit have a defined and influential role to play in decision-making about proposed land and resource development projects. Such is not the case when it comes to social and cultural policy in Nunavut. There are discrepancies in the way government has handled social and cultural policy and internationally recognized human rights norms that provide Inuit and other Indigenous Peoples with a framework through which to exercise self-determination. FPIC needs to be part of future conversations about the implementation of Article 32.

### Article 32 and the Crown's duty to consult

At the federal level, the Supreme Court of Canada recognizes a constitutional obligation to consult and accommodate Inuit and other Indigenous Peoples when our Indigenous and other treaty rights stand to be affected by a proposed Crown decision.<sup>38</sup> This adds another dimension to the interpretation of terms such as consultation and participation by government.

The Supreme Court of Canada affirmed in the *Haida* (2004) and *Mikisew Cree* (2005) decisions that the Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or treaty rights, stemming from the honour of the Crown and the Crown's unique relationship with Indigenous Peoples.<sup>39</sup> This unique relationship is reflected in Section 35 of the *Constitution Act*, 1982, which "recognized and affirmed" the "existing aboriginal and treaty rights of the aboriginal peoples of Canada."<sup>40</sup>

The Crown's obligations to consult that were affirmed by the Supreme Court apply to the *Nunavut Agreement* because it is a modern-day treaty protected by the Constitution. Article 2.7.1(a) of the *Nunavut Agreement* ceded Inuit Aboriginal claims, rights, title, and interests to lands and waters in Canada in exchange for the

rights contained in the *Nunavut Agreement* and a cash settlement.<sup>41</sup> However, the right to consultation and accommodation is not a right in or to lands or waters but rather a right to a proper decision-making process that is fair and takes Section 35 of the *Constitution Act* into account.<sup>42</sup>

It should also be emphasized that the exchange of rights in the *Nunavut Agreement* addressed only rights of ownership and management of lands and resources. Non-territorial rights, such as rights in relation to self-government, language, and other non-territorial matters, were not part of the exchange. Inuit have a constitutional inherent right to self-government. Through Article 4 of the *Nunavut Agreement*, Inuit obtained the commitment to a Nunavut territory and public government, through which Inuit have chosen to exercise these rights.

Inuit consultation rights, therefore, flow from those rights specifically outlined in the *Nunavut Agreement*, including Article 12 and Article 32, in addition to other asserted rights that are not dealt with in the *Nunavut Agreement*, such as the rights to consultation and accommodation affirmed by the Supreme Court of Canada and the UNDRIP.



Photo by NTI

*Nunavut Sivuniksavut* representatives, Adam Akpik (left) and Melissa Irwin, presented during the NTI annual general meeting in Iqaluit in 2015.

In March 2011, the Department of Aboriginal Affairs and Northern Development published *Aboriginal Consultation and Accommodation* guidelines, intended to clarify the federal approach to consultation and accommodation with First Nations, Métis, and Inuit communities. The guidelines are intended to provide “practical advice and guidance to federal departments and agencies” in determining when the duty to consult may arise and how it may be fulfilled “as described by the Supreme Court of Canada in the *Haida* (2004), *Taku River* (2004) and *Mikisew Cree* (2005) decisions.”<sup>43</sup> The guidelines are intended to foster an approach to consultation and accommodation that accomplish the following:

- acknowledges and respects the Crown’s unique relationships with Aboriginal peoples;
- promotes reconciliation of Aboriginal and other societal interests;
- integrates consultation into government day-to-day activities, e.g. environmental and regulatory processes;
- reconciles the need for consistency in fulfilling the Crown’s duty to consult with the desired flexibility, responsibility and accountability of departments and agencies in determining how best to do so; and
- fosters better relations between the federal government and Aboriginal peoples, provinces, territories, industry and the public.<sup>44</sup>

These goals are admirable on paper, but the guidelines stop short of affirming Indigenous Peoples’ right to withhold consent from the Government of Canada. This can be seen in the guidelines’ clearly stated opposition to FPIC. The document states that the Government of Canada endorses some of the principles put forward by the UNDRIP such as equality, partnership, good faith, and mutual respect, but that it rejects others, particularly FPIC “when interpreted as a veto.”<sup>45</sup> The Government of Canada echoed this position in a statement responding to the September 2014 World Conference on Indigenous Peoples Outcome Document. Paragraph 20 of the Outcome Document states the following:

We recognize commitments made by States, with regard to the United Nations Declaration on the Rights of Indigenous Peoples, to 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.<sup>46</sup>

The Government of Canada issued a statement responding to this paragraph as follows:

Canada does not interpret FPIC as providing indigenous peoples with a veto. Domestically, Canada consults with Aboriginal communities and organizations on matters that may impact their interests or rights. This is important for good governance, sound policy development and decision-making. Canada has strong consultation processes in place, and our courts have reinforced the need for such processes as a matter of law. Agreeing to paragraph 20 would negate this important aspect of Canadian law and policy.<sup>47</sup>

In May 2015, Conservative Members of Parliament (MPs) voted down a private member’s bill (Bill C-641) put before the House of Commons by Nunavut MP Romeo Saganash that sought to bring Canada’s laws into alignment with the UNDRIP.<sup>48</sup> Conservative opposition turned on FPIC, which Mark Strahl, the parliamentary secretary to the Minister of Aboriginal Affairs and Northern Development, warned would replace Canada’s duty to consult with a duty to seek free, prior, and informed consent.<sup>49</sup> Romeo Saganash spoke against this stance in his House debate remarks:

In opposing Bill C-641, the federal government claims it is upholding core values and principles, and defending Canada’s Constitution in the interests of all Canadians. It also insists that it is devoted to safeguarding aboriginal rights. Such claims do not withstand careful scrutiny.

In reality, the government wilfully ignores the rule of law. This includes crucial rulings of the Supreme Court of Canada, which affirms indigenous peoples’ right to give or withhold consent.

The government appears to view the declaration as a threat to the government’s ongoing colonial domination. However, as underlined by a former special rapporteur on the rights indigenous peoples, “...no country has ever been diminished by supporting an international human rights instrument.”<sup>50</sup>





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NTI supports this statement and shares the MP's concerns. FPIC derives from the right to self-determination and this necessarily includes the right to give or withhold consent on proposed projects or policies that affect Inuit and other Indigenous communities. Consultation and accommodation processes that do not respect consent, but tout the goals of reconciliation and partnership-building with Aboriginal Peoples, ring hollow. Inuit cannot meaningfully self-determine the social and cultural development of our society if consultation is a symbolic exercise.

It is encouraging that Prime Minister Justin Trudeau and his government have stated its intent to reverse course by fully implementing the UNDRIP. With regards to FPIC, Indigenous and Northern Affairs Minister Carolyn Bennett stated that her department is "committed to sitting down early [with Indigenous Peoples], at the earliest possible moment, on every single thing that will affect indigenous people in Canada."<sup>51</sup> Furthermore, Prime Minister Trudeau promised full federal action on implementing the TRC's 94 calls to action. Number 92 calls on Canada's corporate sector to adopt the UNDRIP as a reconciliation framework and to commit to obtaining the FPIC of Indigenous Peoples before proceeding with development projects. Number 10 highlights the need for federal Aboriginal education legislation developed with the full participation and informed consent of Indigenous Peoples. It is hoped that these encouraging gestures are part of a paradigm shift in the way that Canada relates to Inuit and other Indigenous Canadians.

The GN and the Government of Canada have a duty to consult and that duty should respect the right of Inuit and other Indigenous Peoples to give or withhold consent, including with regard to social and cultural issues. Those rights of consultation and accommodation, flowing from constitutional principles, are likely to evolve with future court decisions. Critical to understanding the *Nunavut Agreement*, however, is the realization that general rights of Inuit to consultation and accommodation may supplement the rights of Inuit under Article 32, but they do not displace or constrain them. The GN and the Government of Canada's responsibilities under Article 32 are greater than those flowing from constitutional or common-law principles.

Part 2 of this report places these issues in the context of GN policies by describing cases that illustrate the need for a shared interpretation of Article 32, as well as a path toward implementation.

### Part 2

Part 2 of this report considers the challenges and successes of implementing Article 32. It does so by considering three policies that illustrate variance in the way government has interpreted its statutory obligations under this article. This section aims to contrast the significant social and economic costs of heavy-handed policy-making from which Inuit input was largely excluded. It argues that, despite agreements being in place between the NTI and GN that seek to facilitate collaboration, new, mutually developed and acceptable Article 32 guidelines are needed to put these commitments into action. It commits NTI to working with government to develop guidelines that facilitate collaboration, as well as information and resource sharing, arguing that doing so will help set the foundation for a thriving Nunavut.

### GN and NTI cooperation agreements

Since 1999, NTI and GN have signed three cooperation agreements that identify shared policy priorities and state commitments to work together and share information and resources. These agreements include the *Clyde River Protocol*, *Iqqanaijaqatigiit*, and *Aajiiqatigiinni*. These agreements were intended to help structure the relationship between NTI and the GN, given the government's obligations to Inuit under the *Nunavut Agreement*. Despite their good intentions, these cooperation agreements have not provided clear guidance on Article 32.

In November 1999 NTI and the GN signed the *Clyde River Protocol*, an agreement governing working relations between the two bodies. The protocol affirms that Nunavut and the GN were created to serve as the vehicle through which Inuit aspirations for self-determination could be met. The document states "the Inuit of Nunavut assert an aboriginal right to self-government which may be expressed in Nunavut through a public government model."<sup>52</sup> It goes on to affirm NTI's role in territorial affairs as "the primary Inuit organization with the mandate to speak for the Inuit of Nunavut with respect to the rights and benefits of Inuit under the *Nunavut Agreement*."<sup>53</sup>

The *Clyde River Protocol* is remarkable because it reflects the sense of possibility and aspirations for collaboration and solidarity that characterized NTI and the GN's early relationship. It lays out goals intended to structure working relations that are cooperative, constructive, transparent, and conducive to cultivating public confidence in the new government. The *Clyde River Protocol* was followed by *Iqqanaijaqatigiit* (the GN and NTI working together) in 2004.<sup>54</sup> *Iqqanaijaqatigiit* gives commitments to information sharing between the two entities, states the intention to identify and collaborate on policy areas of mutual interest, and establishes a general plan for leaders to meet and track progress on different files.

NTI and the GN signed *Aajiqatigiinni* in 2011, renewing this partnership. This third agreement strikes a different tone than the previous two by stressing the mutual benefits of meaningful partnership and collaboration. It acknowledges that the working relationship

between NTI and the GN was strained in the past and that "a positive working relationship will produce the best environment to ensure Inuit culture, language, and societal values form the foundation of all that we do."<sup>55</sup>

*Aajiqatigiinni* identifies Article 32 as a policy priority area stating that "NTI and the GN will work toward a common understanding on how to meaningfully implement Article 32 obligations."<sup>56</sup> This statement reflects the shared sense of uncertainty around this statutory obligation more than a decade after Nunavut was created. The following examples illustrate how this uncertainty has played out in the development of social and cultural policies and programs in Nunavut. The first example focuses on the *Education Act*, the second looks at the federal Nutrition North program, and the third examines Nunavut's Poverty Roundtable public engagement process. Lessons learned from these examples make a case for developing comprehensive guidelines that Inuit organizations and public servants can rely on in order to implement Article 32.



Photo by NTI

Baker Lake representative Jean Simailak served as the Kivalliq Inuit Association's women's representative during NTI's annual general meeting in Iqaluit in 2015.



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### The Education Act and Article 32

The relationship between NTI and the GN was severely strained over the 2008 *Education Act*.<sup>57</sup> The consultation process between NTI and the GN, leading up to the *Education Act*, was a far cry from the aspirations set out in the *Clyde River Protocol* or *Iqqanaijaqatigiit*. This case illustrates a worst-case scenario for Inuit because consultation was virtually non-existent. It describes how the GN's choice to carry out policy-making in this fashion has potentially come at significant social and cultural costs that may not be borne out for some time. The *Education Act* is a helpful case study for understanding the contributions Inuit have sought to make in the area of social and cultural policy and the potential that collaboration between Inuit and government continues to hold for our society.

First introduced as Bill 1 in 1999, the *Education Act* was intended to be the GN's marquee piece of legislation. Inuit at last exercised a certain degree of self-determination over institutions that were historically responsible for suppressing Inuit culture and values. People had high expectations that Nunavut would help create a paradigm shift by elevating Inuit culture and language. This sense of optimism is reflected in responses to the 1999 NWT Labour Force Survey (Expectations for Nunavut) in which 77 per cent of Inuit respondents believed the new territory would improve the teaching of the Inuit language; 71 per cent believed the new territory would lead to improvements for the Inuit language generally; and 69 per cent believed education programs would improve.<sup>58</sup>

However, Bill 1 weakened many of the positive attributes of the NT *Education Act* it was intended to replace, removing provisions for local control, cultural programs, teaching by elders, and the provision for Aboriginal schools.<sup>59</sup> A working group was formed by NTI, RIAs, and the GN's Department of Education created to try to remedy the weaknesses of Bill 1, but it was unsuccessful. The working group submitted 84 policy recommendations developed over the course of a year to the GN, only to have 60 of them rejected, including provisions related to Inuit control of schools, Inuit language of instruction, Inuit school boards with authority over budgets and teacher hiring, and Inuit curriculum.<sup>60</sup> Bill 1 was defeated.



Photo by NTI

Joanasie Karpik of Pangnirtung was selected as the elder's representative by the Qikiqtani Inuit Association at NTI's annual general meeting.

In 2006, the *Education Act* steering committee was established to draft Bill 21, a new Education Bill. The committee consisted of Inuit representatives, government, and community education authorities. The committee recorded two records of decision intended to set the premise for Bill 21: (1) decentralize decision-making and hiring and firing authority away from the Minister of Education by reinstating boards of education and (2) make the Inuit language the language of instruction in Nunavut schools.<sup>61</sup> This resulted in the committee being disbanded by the Minister of Education, marginalizing Inuit and community education authorities from the legislation-drafting process. The GN proceeded to draft Bill 21 in private and solicited Inuit input through the amendments process after it reached second reading in the Legislative Assembly.<sup>62</sup>

In 2007, NTI reminded the GN of its Article 32 legal obligation to consult meaningfully with NTI on social and cultural policy issues.<sup>63</sup> NTI proceeded to propose 77 recommended amendments to Bill 21, 72 of which were not incorporated in the final legislation. Concerns identified by NTI remained part of the legislation, including the bill's promise of incorporating Inuit values into schooling without providing supporting



details about how this would be enforced, the timeline for implementing Inuit language of instruction, and support for students with disabilities.

Perhaps the largest point of contention was NTI's recommendation that district education authorities be granted the same powers as local school boards in other Canadian jurisdictions, including employment of teachers and principals, determination of the school curriculum, school program plans, and expulsion of students. Instead, authority over these areas remains concentrated in the office of the Minister of Education. This is not the case for the Commission scolaire francophone du Nunavut (CSFN). The CSFN successfully gained authority over the employment of teachers and principals, curriculum, school program plans, expulsion of students, and maintained the divisional board that was established in 2004.<sup>64</sup>

The RIAs all publicly opposed Bill 21. Despite this fierce opposition, representing more than 80 per cent of the government's constituency, Nunavut MLAs passed Bill 21 into law as the *Education Act* in September 2008.

### **Bill 21 and the untapped potential of Article 32**

Setting aside the lack of consultation on the *Education Act*, it is surprising that the GN ignored most of NTI's recommended amendments to Bill 21. The recommended amendments sought to provide substance and structure to areas of the bill that require elaboration in order to be enforceable. Other recommendations, such as those dealing with Inuit language and culture, simply reflect consistent calls made by Inuit communities during the last five decades for dedicated support in this area.

The unique role of NTI and the RIAs as rights-holding and advocacy organizations representing more than 80 per cent of Nunavut's constituency could have been leveraged as an opportunity to ensure that Bill 21 reflected Inuit values and expectations. Indeed, few governments have the benefit of a relatively well-resourced third party willing to lend support through consultation, policy analysis, research, and public outreach. The GN could also have benefited from NTI's perspective during the drafting of Bill 21 because during the creation of the legislation in 2008, Inuit made up only 15 per cent of the Department of Education's senior management and 23 per cent of middle management positions.<sup>65</sup>

The GN breached the *Nunavut Agreement* by failing to implement its Article 32 obligation to provide Inuit with an opportunity to participate in the development of Bill 21. NTI and RIAs were not directly or actively involved with the GN at any phase of policy development and were given the opportunity to provide input on the legislation only after it reached the Legislative Assembly for consideration. As one critic put it, Inuit were spectators throughout this process.<sup>66</sup> The GN's decision to divest Inuit communities of the right to local control over schooling also means that the *Education Act* contravenes Article 14 of the UNDRIP which affirms the right of Inuit and other Indigenous populations to establish and control educational systems and institutions.<sup>67</sup> It also makes Nunavut the only jurisdiction in Canada without local school boards.

The Auditor General of Canada audited the *Education Act* in 2013 and found shortcomings in several areas.<sup>68</sup> Several of the Auditor General's recommendations, such as creating training opportunities for educators working with students with disabilities, echo those made by NTI's amendments in 2008. The GN established a special committee to review the *Education Act* in response to the Auditor General's report, tasked with gathering public feedback about the legislation to make policy recommendations to the Legislative Assembly in the fall of 2015.<sup>69</sup> Policy recommendations were submitted by NTI to this special committee in October 2014, many of which echo those made in 2008.<sup>70</sup> These recommendations reflect consistent messages from Inuit over the last 50 years about our expectations for education.

All of this has come at a considerable social and economic cost to NTI, RIAs, the GN, Nunavut Inuit, and other Nunavummiut. Considerable investments of time and resources in these processes were made by NTI, believing that Article 32 accorded a special constitutional status on partnership.<sup>71</sup> The public dollars that must be spent to improve the *Education Act*, the failure to provide students and communities with basic rights and opportunities taken for granted in other Canadian jurisdictions, and the erosion of public confidence in government are costs the entire Nunavut society must bear. Meanwhile, gaps in post-secondary completion rates between Canadian Inuit and Canadians as a whole have only widened since 2008.<sup>72</sup>

Many of these costs could likely have been avoided if Article 32 had been implemented, reflecting the spirit and intent of the *Nunavut Agreement* and the vision of strength through collaboration outlined in the *Clyde River Protocol* and *Iqanaijaqatigiit*. The *Education Act* may still be evolving, but it is, nevertheless, a case study in heavy-handed policy-making by government that is disturbingly familiar to Northerners. It is a mistake the GN cannot afford to repeat.

### Nutrition North and Article 32

Nutrition North Canada (NNC) is a federal program that was launched by the Department of Aboriginal Affairs and Northern Development in April 2011 to improve access to perishable healthy foods in Northern communities. It replaced the Food Mail program administered by Indian and Northern Affairs Canada, which paid for part of the cost of shipping nutritious perishable food and other essential items by air to Northern communities. The basic difference between these two policies is that NNC subsidizes retailers and the Food Mail program subsidized transportation costs.



Photo by NTI

Nunavut Sivuniksavut representatives Adam Akpik (centre) and Melissa Irwin (right) presented NTI President Cathy Towtongie with a drum to commemorate the 30th anniversary of Nunavut Sivuniksavut.

The recipe of high poverty, low educational attainment, and low employment combined with soaring food costs contribute to 62.2 per cent of children in Nunavut living in food insecure households.<sup>73</sup> Children who live in food insecure households are at higher risk of being overweight and obese due to poor diet and nutrition. More than a quarter of Inuit children in Nunavut are obese and more than one in three are overweight.<sup>74</sup>

NNC was imposed on Nunavut Inuit and other Nunavummiut without consulting NTI despite the Government of Canada's treaty and public law obligations under Article 32 to provide Inuit with the opportunity to participate in the development of social and cultural programs and services, including their method of delivery. By doing so, the Department of Aboriginal Affairs and Northern Development also neglected the federal government's common-law constitutional duty to consult with Inuit as well as its own guiding principles for consulting with Indigenous Peoples.<sup>75</sup>

NTI has been vocal about the need for NNC to be transparent and accountable to Inuit, pointing out that Inuit were not afforded the opportunity to participate in the redesign of the program.<sup>76</sup> Nunavut consumers were not engaged despite being the primary intended beneficiaries of the program.<sup>77</sup> There is general consensus that despite being the second largest social program delivered in Nunavut after income support, NNC has not had its intended effect of significantly reducing the cost of food for Nunavummiut. The United Nations Special Rapporteur on the right to food criticized NNC for lacking adequate monitoring to ensure that the subsidy is being passed on to consumers. He also voiced concern that "it was designed and implemented without an inclusive and transparent process providing the Northern communities with an opportunity to exercise their right to free, active and meaningful participation."<sup>78</sup>

The Auditor General carried out a performance audit of NNC in 2014 and determined that the government had not verified whether the program's annual \$53.9 million subsidy allocation is passed on to consumers by Northern retailers.<sup>79</sup> Nunavut is by far the largest user of the NNC program, accounting for roughly \$30.8 million of this subsidy allocation.<sup>80</sup> The Auditor General further determined that the government had



Photo by QIA

*Pittaaluk Joanasie performed during the 40th anniversary celebrations of the Qikiqtani Inuit Association. She attends Tumikuluik Saipaaqivik Daycare, Iqaluit's Inuktitut language daycare.*

not required retailers to share information to verify whether the program is working. This means that retailers have been left to decide how they wish to use this generous subsidy with no measures in place to hold them accountable. The Auditor General concluded that “Aboriginal Affairs and Northern Development Canada has not managed the Program to meet its objectives of making healthy foods more accessible to residents of isolated northern communities.”<sup>81</sup>

As with Bill 21, the hasty development of policy without consultation has come at a significant cost to Nunavummiut. Because of the program’s failure, NTI, the GN, and other stakeholders are burdened with investing significant resources to address gaps in NNC that could have been avoided if the federal government had followed its own consultation guidelines and taken its treaty and public law obligations under Article 32 seriously. Nunavummiut and other Canadian taxpayers have funded a program that was set up to fail. Meanwhile, too many Inuit continue to suffer the burdens of hunger and poor diet and nutrition, magnified by high food costs.<sup>82</sup>

The failure of NNC further eroded public confidence in the Government of Canada,<sup>83</sup> even sparking a series of protests in many communities against high food costs.<sup>84</sup> The government’s decision to impose NNC on Nunavummiut without partnering with NTI or gathering public input harkens back to what should be considered a bygone era in policy-making. This era was characterized by the Government of Canada’s lack of consultation with Inuit and the imposition of ill-conceived policies and large-scale development projects.

The treaty and public law obligations put in place by Article 32 are intended to create a paradigm shift in the traditional role Inuit have played in policy-making. The next section provides an example of how Article 32 can be a tool for achieving this goal.

### **The Poverty Roundtable and Article 32**

The GN first identified poverty reduction as a priority in its 2009–2013 *Tamapta Action Plan*. *Tamapta* committed the GN to engage Inuit organizations and other partners in the development of poverty-reduction programs and policies, as well as the development of a poverty-reduction strategy.<sup>85</sup> More than 50 per cent of Nunavummiut drew on some form of social assistance the year *Tamapta* was published.<sup>86</sup> Nunavummiut also have the second lowest median total family income in the country despite shouldering the country’s highest living costs.<sup>87</sup> Other proxy indicators of poverty in the territory include low life expectancy, low household food security, and most of its citizens living in public housing.<sup>88</sup>

The GN followed up on this commitment by creating the Nunavut Anti-Poverty Secretariat in 2010 to spearhead a public engagement process culminating in a poverty-reduction strategy for Nunavut. NTI agreed to partner with the GN to achieve this goal. This partnership forms the basis for the Nunavut Roundtable on Poverty Reduction. Although its work had already commenced at the time, the working relationship between NTI and the GN was formalized through a memorandum of understanding (MOU) signed by the two parties in October 2012.<sup>89</sup> The MOU premises collaboration on Article 32 and its attendant statutory obligations. Guided by an understanding of the value





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of implementing Article 32, the MOU was a positive counterpoint to the Bill 21 process. Although far from complete, the anti-poverty work is an example of what NTI and the GN can accomplish through a collaborative relationship characterized by mutual respect.

Public engagement differs from consultation in that public engagement strives for maximum inclusivity through the incorporation of views and values in the decision-making process. In consultation, avenues may be created through which stakeholders are able to provide input, but citizens ultimately play a limited role in shaping policy.<sup>90</sup> The decision to pursue public engagement was deliberate because according to Ed McKenna, a former member of the Nunavut Poverty Reduction Secretariat, a poverty-reduction strategy needed to be shaped by dialogue.<sup>91</sup> Given the complexity of the challenge, it was necessary for solutions to arise from conversations between a variety of stakeholders rather than through the more limiting process of gathering testimony.



Photo by NTI

James Takkirq of Gjoa Haven served as the Kitikmeot Inuit Association's youth representative during NTI's annual general meeting in Iqaluit in 2015.

NTI and the GN embarked on a public engagement process in 2010, first facilitating community dialogue sessions in each of Nunavut's 25 communities. This was followed by regional roundtable discussions in Rankin Inlet, Cambridge Bay, Pond Inlet, and Iqaluit in 2011. These roundtable discussions were intended to distill community feedback into possible options for action. The public engagement process culminated in a three-day poverty summit in November 2011 with 45 representatives from 22 of Nunavut's communities. Participants produced and ratified Nunavut's *Makimaniq Plan*. The strategy establishes a shared approach to poverty reduction that includes Inuit organizations, government, non-governmental organizations, businesses, and citizens who have faced the challenges of poverty.<sup>92</sup>

*Makimaniq* focuses on six themes that frame the Nunavut approach to poverty-reduction: collaboration and community participation; healing and well-being; education and skills development; food security; housing and income support; and community and economic development.<sup>93</sup> *Makimaniq* articulates a vision for Nunavut communities that includes strengthened local economies, strengthened support for healing and well-being, increased food security, and increased access to housing, as well as a more supportive income assistance system.<sup>94</sup>

This public engagement process and the *Makimaniq Plan* have been praised by Canada Without Poverty for laying a solid foundation for poverty-reduction measures in the territory.<sup>95</sup> The Public Policy Forum of Ottawa, a non-partisan, non-governmental organization that facilitates cross-sectoral dialogue on strengthening good government, has also applauded the Nunavut Roundtable on Poverty Reduction's cross-sector approach to poverty reduction.<sup>96</sup> Some poverty summit participants publicly praised the Nunavut Roundtable on Poverty Reduction for meaningfully involving elders in the planning process.<sup>97</sup>

Perhaps most notably, *Makimaniq* commits the Nunavut Roundtable on Poverty Reduction to exploring legislation that mandates collaboration between Inuit and government on the development of policies and programs to reduce poverty, ensure reporting on progress toward its goals, and renew the plan periodically. The Nunavut Legislative Assembly passed the *Collaboration for Poverty Reduction Act* in May 2013.

This legislation requires the GN to work collaboratively with NTI, Inuit organizations, other governments, non-governmental organizations, and businesses on the Nunavut Roundtable for Poverty Reduction to implement *Makimaniq* and develop a five-year poverty-reduction action plan. The act also established a poverty-reduction fund intended to foster collaboration on the implementation of the plan and to support community-driven initiatives.

### Article 32 implementation guidelines

The work of the Nunavut Roundtable on Poverty Reduction has just begun and the long-term impacts of the *Makimaniq Plan* and *Collaboration for Poverty Reduction Act* remain to be seen. However, it is clear that the cross-sectoral approach of the Nunavut Roundtable on Poverty Reduction has set a new precedent for social and cultural policy development in Nunavut that capitalizes on NTI's and the GN's respective resources and expertise. This is consistent with the intent of Article 32 to be creative and dynamic as well as adequately inclusive of Inuit rights and interests.

This example contrasts with Bill 21 and the NNC. In the view of Ed McKenna, the varied track record for Article 32 implementation is partially due to a lack of clear guidance. In McKenna's words:

We need to develop a policy on – call it consultation if you like, it doesn't matter what the name is – it's basically a policy on engagement that gives some guidance to public servants on what their obligations are under the claim and how best to go about implementing them.<sup>98</sup>

In McKenna's experience, public servants have generally been left to their own devices in determining how to implement Article 32 in a swiftly moving political environment that requires expediency.<sup>99</sup> This has contributed to consultation processes that lack the kind of public support and buy-in reflected in the *Makimaniq Plan* and fall short of the greater role bound up in the more ambitious concept of participation.

A similar observation was made in the five-year review of the *Nunavut Agreement* published in 2006. The review notes that there is no clear and consistent format regarding how NTI, the GN, and the Government of Canada are expected to achieve the objectives of Article 32.<sup>100</sup> The ambiguity about what consultation



Photo by Kataisee Attagutsiak

Qaapik Attagutsiak cleans a sealskin in her tent at Victor Bay, 15 kms outside Arctic Bay.

means on any given policy issue exacerbates this challenge. The report observes that the sheer number of social and cultural files that demand attention at any given time requires a system of ongoing monitoring and evaluation. Not having such a system in place contributes to confusion about roles and responsibilities on different files. This contributes to a political atmosphere in which NTI and RIAs must invest considerable time and resources lobbying government to ensure that Inuit interests are reflected in social and cultural policies, programs, and services.

Concrete and effective guidelines are needed to foster a deliberate participation and consultation process that has collaboration and informed territorial and federal decision-making as its aims. This is a starting point for more meaningful collaboration between Inuit and government to foster full participation. Consultation conducted in a meaningful, good-faith manner built upon transparency and the exchange of information can promote enhanced communication that emphasizes trust, respect, and shared responsibility. Article 32 implementation guidelines are necessary to ensure that government operates effectively and that future territorial and federal action is achievable, comprehensive, lasting, and reflective of Inuit input.



NTI recognizes the need for guidelines on implementing Article 32 for those who make policies at all levels, from law-makers to program managers. NTI is committed to working in partnership with the GN and the Government of Canada to draft them. These guidelines should foster a shared understanding of how social and cultural policies and programs are defined, clarify the stage at which participation and consultation is expected during policy development and how it is to be carried out, and develop a plan for monitoring and evaluating progress. The guidelines should formalize a process whereby Inuit are directly and actively involved with the GN and Government of Canada in all aspects and phases of policy development and in the design of programs and services, including their method of delivery.

Such participation must acknowledge that policy priority and development and the allocation of public spending cannot be severed. Guidelines for implementing Article 32 should also focus on delegating the economic costs associated with implementation. There are significant economic costs associated with implementing Article 32, including the costs of public engagement and the costs associated with scoping out and researching the impacts of proposed policies, programs, and services. When the GN or the Government of Canada fail to meet their Article 32 obligations, many of these costs are passed on to NTI and RIAs.

Finally, Article 32 implementation guidelines should strive to reflect international human rights norms, including Inuit rights to self-determination and FPIC. They should aim to capitalize on the expertise and resources that NTI and the RIAs have to contribute to the development and design of social and cultural policies, programs, and services and give NTI and the RIAs time to participate meaningfully in any given policy file. Article 32 implementation guidelines should respect, incorporate, and build on the authority of NTI and the RIAs to assess and contribute, at all key stages, to better social and cultural policies, programs, and services on behalf of Nunavut's majority Inuit population.

## Conclusions

Article 32 of the *Nunavut Agreement* is a key legal mechanism through which Inuit have a right to exercise enhanced self-determination in relation to social and cultural policies and programs. It remains an undervalued and underutilized opportunity for cooperation and partnership among Inuit, the GN, and the Government of Canada partly because of an interpretative approach to Article 32 that is minimalist, unconvincing, unsustainable, and at odds with the general sweep of both domestic Canadian and international norms and standards in relation to the rights and roles of Indigenous Peoples. Article 32 has been implemented inconsistently, or not all, at significant social and economic cost to Nunavut Inuit. The urgent social and cultural challenges many Nunavummiut face demand a new approach to policy-making based on meaningful collaboration between Inuit and government and an agreed-upon interpretation of the Inuit rights of participation under Article 32.

Despite some cooperative agreements put in place between NTI and the GN that identify shared policy priorities and outline general guidelines for collaboration and information sharing, there remains no agreed-upon strategy or plan for implementing Article 32. The lack of clarity on this issue has hindered the relationship between Inuit and the GN and the Government of Canada. Establishing shared expectations for the way in which government will meet its Article 32 obligations to Inuit is critical for implementation.

Guidelines for implementing Article 32 are needed to ensure that the GN and the Government of Canada honour their obligations under the *Nunavut Agreement* to partner with Inuit on the development of social and cultural policies and in the design of social and cultural programs and services. Implementation guidelines would define social and cultural issues as well as the meaning of participation, establish protocols for resource and information sharing, and set agreed-upon expectations for the way NTI, the GN, and the Government of Canada will work together to monitor and evaluate progress.





Photo by KitlA

From left: Kate Inuktalik, Louisa Aitaok, Jason Akoluk, Jenn Angohiatok, Mary Kudlak and Trisha Ogina participated in the Copper Inuit Sewing Revitalization Project sponsored by the Kitikmeot Inuit Association.

Article 32 implementation guidelines are a necessary building block for ensuring that government operates effectively and that future territorial and federal action is achievable, comprehensive, lasting, and reflective of Inuit priorities. NTI will take the lead on convening the RIAs and public servants in order to develop Article 32 guidelines in 2016. NTI envisions these guidelines to be an important tool Inuit and public servants can rely on to implement Article 32.

This work is necessary to achieve the vision set out by the *Nunavut Agreement* for a public government that allows for Inuit self-determination over key policy areas including social and cultural policies and programs. Doing so will support the development of more effective policies, programs, and services for Inuit. This work is also necessary in order to help bring the GN and the Government of Canada into compliance with international Indigenous rights to self-determination, including the UNDRIP. Article 32 implementation guidelines should strive to enable enhanced Inuit self-determination in relation to social and cultural matters, including the right to FPIC. These guidelines will also give direction to the Government of Canada as it seeks to fulfill its supplementary common-law constitutional duty to consult with Inuit by implementing the *Aboriginal Consultation and Accommodation* guidelines.

Canada is slowly coming to terms with the legacy of colonialism and paternalism that has characterized Indigenous–government relations and the way this legacy continues to impact Indigenous communities. In the last five years, the TRC has documented the Government of Canada’s efforts to inflict cultural genocide on Inuit and other Indigenous Peoples. The United Nations has documented the persistent human rights problems faced by Indigenous Canadians, and MPs have sought to bring Canada’s legal framework into alignment with the UNDRIP. Indigenous Canadians have moved these and other issues to the forefront of the national policy agenda and brought these issues into international focus through grassroots civil rights movements, including the Idle No More movement and the Feeding My Family protest movement in Nunavut.

It is long past time for Inuit and government to partner and work in collaboration to address these and other social and cultural issues that undermine the health and well-being of our people. Implementing Article 32 is an essential part of redefining Inuit–government relations to reflect Inuit aspirations for self-determination over social and cultural issues. Doing so is a precursor to a more prosperous Nunavut and a more equitable Canada.



## Notes

<sup>1</sup> *Nunavut Land Claims Agreement*, S.C., ch. 32, s. 1.1 (1993).

<sup>2</sup> Frank James Tester and Peter Kulchyski, *Tammarniit (Mistakes): Inuit Relocation in the Eastern Arctic 1939-63* (Vancouver, BC: UBC Press, 1994), 3.

<sup>3</sup> John Amagoalik, *Changing the Face of Canada*, ed. Louis McComber (Iqaluit, NU: Nunavut Arctic College, 2007), 39.

<sup>4</sup> Alastair Campbell, Terry Fenge, and Udloriak Hanson, "Implementing the 1993 Nunavut Land Claims Agreement," *Arctic Review on Law and Politics* 2, no.1 (2011): 32.

<sup>5</sup> Thomas King, "No Justice for Canada's First Peoples," *The New York Times* (New York, NY), June 11, 2015, accessed June 13, 2015, [http://www.nytimes.com/2015/06/12/opinion/thomas-king-no-justice-for-canadas-first-peoples.html?\\_r=0](http://www.nytimes.com/2015/06/12/opinion/thomas-king-no-justice-for-canadas-first-peoples.html?_r=0).

<sup>6</sup> Truth and Reconciliation Commission of Canada, *Honouring the Truth: Reconciling for the Future*, 1, accessed June 13, 2015, [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec\\_Summary\\_2015\\_05\\_31\\_web\\_o.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf).

<sup>7</sup> *Ibid.*, 93.

<sup>8</sup> *Ibid.*, 70.

<sup>9</sup> *Ibid.*

<sup>10</sup> Government of Nunavut, Nunavut Bureau of Statistics, "Nunavut Population Estimates by Inuit and Non-Inuit, Region and Community, 2006 to 2014" (December 5, 2014), accessed April 19, 2015, <http://www.stats.gov.nu.ca/en/Population%20estimate.aspx>.

<sup>11</sup> Government of Nunavut, Department of Finance, *Toward a Representative Public Service: Statistics as of September 30th, 2014* (Iqaluit, NU: September 2014), accessed April 19, 2015, [http://gov.nu.ca/sites/default/files/september\\_2014\\_trps\\_report\\_final\\_-\\_eng.pdf](http://gov.nu.ca/sites/default/files/september_2014_trps_report_final_-_eng.pdf).

<sup>12</sup> *Nunavut Land Claims Agreement*, S.C., ch. 23, s. 2.1 (1993).

<sup>13</sup> *Nunavut Land Claims Agreement*, S.C., ch. 32, s. 1.1 (1993).

<sup>14</sup> *Nunavut Land Claims Agreement*, S.C., ch. 32, s. 3.1 (1993).

<sup>15</sup> PriceWaterhouseCoopers, *Second Independent Five Year Review of Implementation of the Nunavut Land Claims Agreement: Final Report* (May 11, 2006), 185.

<sup>16</sup> The Harvard Project on American Indian Economic Development website; accessed June 14, 2015, <http://hpaied.org/about/overview>.

<sup>17</sup> *Ibid.*

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