



Understanding Aboriginal and Treaty Rights in the Northwest Territories: Conclusion: Implementing Agreements and the Future of the NWT

In the previous chapter of *Understanding Aboriginal and Treaty Rights in the NWT*, we examined the Aboriginal rights negotiations that are happening in the NWT today. There are many ongoing negotiations in the NWT; some deal with rights to land and resources, some deal with the inherent right of self-government, and others are a combination of both within a single negotiating process. Five sets of negotiations have been successfully concluded in the NWT, resulting in five final agreements.

Completed Aboriginal Rights Agreements in the NWT Today:

- *The Western Arctic Claim: The Inuvialuit Final Agreement* (1984) – land and resources agreement.
- *Gwich'in Comprehensive Land Claim Agreement* (1992) – land and resources agreement.
- *Sahtu Dene and Métis Comprehensive Land Claim Agreement* (1993) – land and resources agreement.
- *Salt River First Nation Treaty Settlement Agreement* (2002) – treaty land entitlement agreement.
- *Tłı̨chǫ Agreement* (2003) – land, resources, and self-government agreement.

This final chapter of the series will examine what happens when a final agreement is reached and the implementation phase begins. Implementation is probably the most important phase of the Aboriginal rights process, as this is when the commitments and responsibilities described in a final agreement become concrete actions. The implementation of a final agreement involves the parties to the agreement (typically the GNWT, the federal government, and the Aboriginal party to the negotiations) working both independently and collaboratively to ensure that all of the “one time” obligations under a final agreement are fulfilled and that all of the ongoing obligations continue to be met. This process ensures that the commitments made in an agreement become a reality on the ground. As we examined in chapters two and three of this series, successful and meaningful implementation of Aboriginal rights agreements is important in order to ensure that modern agreements create certainty that a final agreement can be relied upon and will stand the test of time.

Implementing Aboriginal Rights Agreements

Once a final agreement has been fully drafted at the negotiating table, it is sent for formal approval by each of the parties. This is referred to as “ratification”. All parties need to be sure that the Aboriginal group’s members support the agreement: this is why an agreement is voted on by the Aboriginal group’s members first. If members support or “ratify” the agreement, it will then be sent to the Cabinets of the GNWT and Canada for approval. If the final agreement is ratified by all three parties, it is then signed, becomes final, and is ready to be implemented on a date agreed to by the parties (the “effective date”).

The implementation planning process actually begins before the agreement becomes final. Typically, after an Agreement-in-Principle (AIP) is signed, the parties will form a separate (apart from the main negotiating table) Implementation Working Group. The main responsibility of the Implementation Working Group is to develop an Implementation Plan.

The Implementation Plan is an important component of the Aboriginal rights negotiating process. It identifies each place that the final agreement contains a specific commitment by any one – or all – of the parties to “do something”. It also describes the specific steps that are needed to fulfill the obligation, as well as the timeframes for completing each step. This ensures that when the final agreement is fully negotiated and sent for ratification, all the parties agree on how the final agreement will be implemented, starting on the effective date.

The Implementation Plan is a negotiated document, meaning that all parties work together to identify the obligations in the text of the final agreement, as well as the activities and timeframes that go along with fulfilling those obligations. Although Implementation Plans are approved by all the parties, they are not legally binding documents like the final agreement, which is the official statement of the legal obligations on each party. Implementation Plans have a set term, typically 10 years, after which they are re-negotiated so they remain up-to-date.

Implementation Plans – A Sample

The *Gwich'in Comprehensive Land Claim Agreement* includes the following clause:

12.8.1 (a) A Renewable Resources Board shall be established to be the main instrument of wildlife management in the settlement area. The Board shall act in the public interest.

This clause was translated into the following “activities” in the initial Gwich'in Implementation Plan:

- (1) The Federal Departments of Fisheries and Oceans and Environment and the GNWT Department of Renewable Resources would each appoint a Board member and an alternate member (for a total of three Board members and three alternates). The Implementation Plan also noted that this would be completed within 90 days of settlement legislation being passed;
- (2) The Gwich'in would also appoint three Board members and three alternates, within 90 days of settlement legislation being passed; and
- (3) If these nominations were not completed, Canada's Governor in Council and the GNWT's Executive Council could jointly complete the Board's membership, 90 days after settlement legislation was passed.

This obligation was successfully completed (along with several other related obligations), leading to the establishment of the Gwich'in Renewable Resources Board (<http://www.grrb.nt.ca/>).

Please note that copies of NWT final agreements and accompanying Implementation Plans, including the *Gwich'in Comprehensive Land Claim Agreement* and the latest version of the Gwich'in Implementation Plan, can be found on the DAAIR website at <http://www.daair.gov.nt.ca/>

Implementing Land and Resources Agreements vs. Self-Government Agreements

There are many similarities between implementing land and resources agreements and implementing self-government agreements. Both types of agreements create obligations on the parties that must be fulfilled, and both types of agreements are accompanied by Implementation Plans. The main difference is that self-government agreements create new governance arrangements and law-making powers and, as a result, they can be more complicated to implement.

Implementing Land and Resources Agreements:

Land and resources agreements fall into one of two categories: specific claims or comprehensive claims. The focus of the comprehensive claim negotiation and implementation process is to clarify rights of ownership and use of land and resources, and to address related rights and matters, such as environmental management, economic development, hunting, fishing, and trapping. These types of agreements also include financial payments and, in the NWT, they also provide for the sharing of resource revenues that governments may generate in the Mackenzie valley. When these kinds of agreements are implemented, new public governance institutions or boards may be established to oversee responsibilities such as the management of renewable resources. Implementing comprehensive claims also requires activities like surveying and transferring of land and setting up Aboriginal organizations and trusts to hold and manage the Aboriginal land and financial payments that are transferred through the final agreement.

Specific claims, such as Treaty Land Entitlement (TLE) agreements (e.g. the *Salt River First Nation Treaty Settlement Agreement*) are claims made by First Nations against the federal government relating to a particular grievance, such as the administration of land, or the non-fulfillment of promises made by government under a historic treaty. TLEs are primarily agreements between Canada and a First Nation. Under TLEs, the GNWT has a significantly diminished role: it may assist Canada in completing the agreement and, if a specific agreement is in place, the GNWT may continue to deliver some local programs and services.

Implementing Self-Government Agreements:

One of the most important goals of the self-government negotiation and implementation process is to create Aboriginal governments that have the capacity to fully and successfully implement their agreements. With self-government, the new governing structures of the Aboriginal government must be created and ready to go on the effective date, and elections must be held to choose the leadership of the new government. The implementation of self-government agreements will also require a number of laws that the new government will pass on the effective date of the agreement, such as laws dealing with internal management and financial administration. These initial laws ensure the new government can operate smoothly after the effective date. If the Aboriginal government is planning on passing any additional laws and delivering social programs and services (e.g. income support or kindergarten to grade 12 education), these laws must also be written, and program and service delivery infrastructure and staff must be ready to take on the new responsibilities.

It goes without saying that this is a complicated endeavour for all the parties to the agreement. As a result, while this could happen on the effective date, Aboriginal governments may choose to focus on developing a new relationship with the GNWT and Canada and building their capacity before passing laws and delivering social programs and services.

Roles of the GNWT, Canada, and the Aboriginal Government

It is important to note that self-government agreements are the foundation of a new relationship between the territorial, federal, and Aboriginal governments. They are not about severing ties between these governments. For example, the GNWT and Aboriginal governments will need to work collaboratively and they may seek partnerships to make governance and program and service delivery more effective and efficient. This could include entering into joint program and service delivery arrangements, but these arrangements must be flexible and tailored to specific circumstances at the time of implementation.

It is also important to note that even as self-government agreements are fully implemented, a territorial government representing all residents will continue to exist. In some subject matters, the GNWT will continue to be the only government providing certain programs and services to NWT residents. These subject matters are not part of self-government agreements, and instead remain the responsibility of the territorial government (e.g. the public health care system, territorial highways).

As a party to self-government agreements in the NWT, Canada's responsibilities also do not end with the ratification of a self-government agreement. Like the other parties, Canada will play a role in the implementation of self-government agreements in the NWT. This will include an important role in supporting the capacity-building and financing of Aboriginal governments.

Looking to the Future

The negotiation and successful implementation of Aboriginal rights agreements in the NWT will respect and recognize the rights of Aboriginal peoples and realize their self-government aspirations. The GNWT believes that the negotiation and implementation of Aboriginal rights agreements in the NWT will result in an effective and efficient system of government, where territorial residents successfully govern their own affairs and contribute to a strong and independent north built on partnerships.

These agreements also set the foundation for a new relationship between Aboriginal governments, Canada, and the GNWT. In particular, the success of self-government in the NWT will depend on establishing effective and robust intergovernmental relations. The complementary and often concurrent roles and responsibilities of governments in the NWT means that Aboriginal governments, the GNWT, and Canada must continue to work together to build the best possible future for the people of the territory.

Successfully negotiating and implementing Aboriginal rights agreements in the NWT is in the interest of all territorial residents. Land and resources agreements clarify who owns the land and what Aboriginal rights and interests need to be considered when activities could impact these rights. Self-government agreements enhance self-determination by recognizing Aboriginal peoples' authority to design and deliver programs and services for their citizens in their communities. All this will be done in harmony with the continuing individual rights that all Canadians share.

Through a shared commitment of working together in partnership, the negotiation and implementation of modern land, resources, and self-government agreements will recognize and protect Aboriginal rights without creating unnecessary divisions between Aboriginal and non-Aboriginal people. This is the history and the spirit of our territory, one that promises a unified, sustainable, and prosperous Northwest Territories for all residents.

Conclusion:

We hope that the *Understanding Aboriginal and Treaty Rights in the Northwest Territories* series has helped expand your knowledge of Aboriginal rights and the treaty-making process in the NWT, both past and present. We also hope this series has demonstrated the importance of strong relationships between the GNWT and Aboriginal governments, and why the GNWT works to build and maintain productive and effective government-to-government relations based on those three important words: **Respect, Recognition and Responsibility.**

For more information, including informative documents and links about Aboriginal and treaty rights in the NWT, we invite you to explore the Department of Aboriginal Affairs and Intergovernmental Relations' website at www.daair.gov.nt.ca.