



Understanding Aboriginal and Treaty Rights in the Northwest Territories: An Introduction

Whether you and your grandparents were born here, or whether you came from somewhere else, you know the two main things that make the Northwest Territories special are the people and the spectacular landscapes. Those whose ancestry here stretches back thousands of years – Aboriginal people – have always governed themselves in a way that reflects their unique history and relationship to the land. The 17th Legislative Assembly believes it's in everyone's interests to work more closely together, so we can build on the strengths of all Northerners.

"Respect, Recognition and Responsibility" – You'll be hearing those three words a lot in the coming months. They are the guiding principles for the GNWT's commitment to engage with Aboriginal governments, which Premier McLeod publicly announced in the Legislative Assembly on June 8, 2012. By engage, we mean build and maintain government-to-government relationships that are based on mutual respect, recognition of Aboriginal and treaty rights, and shared responsibilities. Both the GNWT and Aboriginal governments have essential roles to play and services to deliver to people throughout our vast territory. Because we all share so many interests and depend on one another, it makes sense for the GNWT and Aboriginal governments to cooperate as strong partners.

Learning About One Another

The first step toward working effectively together is to understand why Aboriginal people in the NWT – the Dene, Métis and Inuvialuit – have special rights. The GNWT believes it's important for all territorial residents to understand what Aboriginal and treaty rights are, where they come from, and who in the NWT has these rights. By broadening our understanding of the history of the NWT's indigenous peoples, we gain a better appreciation for the rich diversity of cultures and traditions, as well as a clearer understanding of why Aboriginal governments exist and how their roles and responsibilities relate to the GNWT today.

So the GNWT, through its Department of Aboriginal Affairs and Intergovernmental Relations (DAAIR), invites you to read on. This document is meant to be a starting point towards deepening our understanding of one another – a basic overview of how the special status of the Dene, Métis and Inuvialuit came to be recognized by Canada and the GNWT, and protected in the Canadian Constitution.

What are Aboriginal Rights?

Aboriginal peoples were living in North America for thousands of years before the first contact with Europeans. This is where Aboriginal rights come from. Aboriginal rights are an ever-evolving area, but they include (at least) an Aboriginal people's right to use and live in their traditional territory for traditional purposes. Hunting, fishing and gathering traditional foods and medicines are examples of Aboriginal rights that relate to land and resources.

Before the arrival of Europeans, Aboriginal peoples also governed their own communities. This is where the Aboriginal right of self-government comes from, which is often referred to as *the inherent right of self-government*. Aboriginal peoples, the federal government and the GNWT recognize self-government to be an existing Aboriginal right. Here's how the federal government describes it:

Federal Inherent Right Policy

"Recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources."

Source:

The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government, available online at <http://www.aadnc-aandc.gc.ca/eng/1100100031843>

What are Treaty Rights?

In many parts of Canada, Aboriginal rights are expressed in written treaties. A treaty is a formal agreement signed between governments and Aboriginal peoples. Some examples of older treaties are the historic "numbered" treaties that were signed in the late 1800s and early 1900s, including Treaty 8 and Treaty 11, which cover parts of the NWT.

Treaty No. 8: The first of the northern treaties covered an area of 324,900 square miles and represents the most geographically extensive treaty activity undertaken. It comprises what is now the northern half of Alberta, the northeast quarter of British Columbia, the northwest corner of Saskatchewan, and the area south of Hay River and Great Slave Lake in the Northwest Territories.

Source:

Treaty Guide to Treaty No. 8 (1899), available online at <http://www.aadnc-aandc.gc.ca/eng/1100100028805>

Treaty No. 11: The last of the numbered treaties covers most of the Mackenzie District. The land in the area was deemed unsuitable for agriculture, so the federal government was reluctant to conclude treaties. Immediately following the discovery of oil at Fort Norman in 1920, however, the government moved to begin treaty negotiations.

Source:

Treaty Guide to Treaty No. 11 (1921), available online at <http://www.aadnc-aandc.gc.ca/eng/1100100028908>

There has been disagreement between the federal government and the Dene over the basic nature of the historic treaties. The Dene interpretation of Treaties 8 and 11 is based on the testimony of elders rather than upon the written texts. The Dene viewed the treaties as agreements of "peace and friendship".

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The federal government has viewed the treaties as agreements that gave up Aboriginal rights or title in exchange for the benefits and promises made in the treaties.

There are also modern agreements and modern treaties in the NWT today that are sometimes called *comprehensive agreements*. Some are still being negotiated between Aboriginal peoples, the federal government and the GNWT.

To date, four modern treaties have been concluded and are being implemented. They are:

1. The Western Arctic Claim: The Inuvialuit Final Agreement
2. Gwich'in Comprehensive Land Claim Agreement
3. Sahtu Dene and Métis Comprehensive Land Claim Agreement
4. Tłıchǫ Agreement

All of the historic treaties, modern treaties and Aboriginal rights mentioned above are protected by Canada's Constitution. The Constitution guides how the country will be governed. Here's what the *Constitution Act, 1982* says about Aboriginal and treaty rights:

Section 35 of the *Constitution Act, 1982*:

- (1) The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the Aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

What are Aboriginal Governments?

We know that Aboriginal peoples in the NWT governed themselves long before Europeans arrived. Today, new forms of Aboriginal governments are being established under modern agreements. These are known as *self-government agreements*. They can also be protected by the Canadian Constitution as modern treaties. These Aboriginal governments have, or will have, their own roles and responsibilities and are governments in their own right. They also come in several different forms – some serve only their own Aboriginal people, while others deliver programs and services to all residents. Some cover a whole region of the NWT, while others cover just a single community. These self-government agreements are signed by the Aboriginal group, the GNWT and the federal government. Each level of government has obligations to fulfill that are described in the agreement.

Why Should Aboriginal Governments and the GNWT Work Together?

The GNWT recognizes that it is important to have productive and effective relationships with Aboriginal governments that are built on mutual respect and trust. Aboriginal governments and the GNWT share many areas of authority that are described in self-government agreements. These complementary roles and responsibilities mean that Aboriginal governments and the GNWT will always need to work closely together. Because the GNWT has obligations under land, resources, and self-government agreements, this relationship will be lasting and will evolve over time.

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This is particularly important as land, resources and self-government agreements are implemented and Aboriginal governments apply their own laws to their citizens. Cooperation will be essential. Programs and services are more effectively delivered if there is coordination and strong alliances between governments.

Aboriginal governments and the GNWT also need to work together because of the kind of communities that exist in the NWT. Most of our communities have a mixture of Aboriginal peoples and non-Aboriginal people living together, and we have very few *Indian Act* reserves. This means Aboriginal and non-Aboriginal residents live side-by-side, rather than separate from one another. This is one of the things that makes the NWT a special place in Canada.

Who does the GNWT Represent?

In a word – everyone. The GNWT is an inclusive public government that represents and speaks on behalf of all residents of the NWT. As the GNWT engages with Aboriginal governments, it will continue to advocate for territory-wide interests.

The GNWT believes that recognizing and respecting the special rights of Aboriginal peoples in the NWT is fully compatible with the individual rights and freedoms that all territorial residents share.

The NWT is an excellent example of what all people can accomplish when we focus on what brings us together. We should be proud of the diversity of our territory and people, and our unique history.

What Happens Next?

So now you have a basic understanding of Aboriginal and treaty rights in the NWT. In the months ahead, you'll have a chance to expand your knowledge further as the GNWT provides more detailed information about the treaty-making process in the NWT, both past and present.

We invite you to explore the Department of Aboriginal Affairs and Intergovernmental Relations' website at www.daair.gov.nt.ca, which contains many useful and informative documents and links about Aboriginal and treaty rights in the NWT.

Understanding more about each other will help explain 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.**



Understanding Aboriginal and Treaty Rights in the Northwest Territories:

Chapter 2: Early Treaty-making in the NWT

The first chapter in this series, *Understanding Aboriginal and Treaty Rights in the NWT: An Introduction*, touched briefly on Aboriginal and treaty rights in the NWT. This chapter looks at the first contact between Aboriginal peoples and Europeans. The events relating to this initial contact ultimately shaped early treaty-making in the NWT.

Early Contact

When European explorers set foot in North America they claimed the land for the European colonial powers they represented. This amounted to European countries asserting sovereignty over North America. But, in practice, their power was built up over time by settlement, trade, warfare, and diplomacy. Diplomacy in these days included entering into treaties with the indigenous Aboriginal peoples of what would become Canada. Some of the early treaty documents aimed for “peace and friendship” and refer to Aboriginal peoples as “allies” rather than “subjects”, which suggests that these treaties could be interpreted as nation-to-nation agreements.

The Royal Proclamation

After Great Britain defeated France for control of North America, the British understood the importance of maintaining peace and good relations with Aboriginal peoples. That meant setting out rules about land use and Aboriginal rights. The Royal Proclamation of 1763 is the most important statement of British policy towards Aboriginal peoples in North America. The Royal Proclamation called for friendly relations with Aboriginal peoples and noted that “great frauds and abuses” had occurred in land dealings. The Royal Proclamation also said that only the Crown could legally buy Aboriginal land and any sale had to be made at a “public meeting or assembly of the said Indians to be held for that purpose.”

Who is “the Crown”?

The Queen is the formal head of the government in Canada. For this reason, the government is often called “the Crown”. For the same reason, agreements with the government are called agreements with “Her Majesty”.

The Royal Proclamation set out certain guiding principles for dealings between the Crown and Aboriginal peoples. As a result, it provided a foundation for future treaty talks.

The Royal Proclamation of 1763 is important for establishing that:

- Aboriginal peoples had an interest in certain land;
- this interest belonged to the “tribe” or “nation”, not to individuals;
- only the Crown could buy or accept Aboriginal land;
- the Crown was required to obtain land from Aboriginal peoples by agreement;
- any unsold or un-surrendered Aboriginal land was reserved for the exclusive use of Aboriginal peoples; and
- the Aboriginal peoples were under the protection of the Crown.

Most early treaties were simple land sales, but some cases also included hunting and fishing rights. Annual treaty payments first appeared in a treaty in 1818 and after that became the norm.

The Rupert’s Land and North-Western Territory Transfer

So where does the NWT fit in? A few years after the Royal Proclamation was signed, Europeans began exploring northern waterways to expand the fur trade. Trading posts were set up and Aboriginal peoples began trading furs.

Much of the NWT and western Canada was known then as “Rupert’s Land and the North-Western Territory.” In 1670, the King of England had granted control over this area to the Hudson’s Bay Company. When Canada was established as a country in 1867, its boundaries did not include this region. After Confederation, the government of Canada made it clear it wanted the territory. Great Britain transferred Rupert’s Land and the North-Western Territory to Canada in 1870. One of the terms of the deal was: “Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government...”

Treaty 8 and Treaty 11

Before the beginning of modern land claim negotiations, two treaties – Treaty 8 and Treaty 11 – were signed within the present NWT. At that time, several major development projects were on the horizon: the Yukon gold rush of 1898 and the discovery of oil at Norman Wells in 1920.

The negotiations for Treaty 8 were conducted in the summer of 1899 with the “Cree, Beaver, Chipewyan, and other Indians inhabiting the district...” and the Treaty was signed at Lesser Slave Lake in northern Alberta on June 21, 1899. An “adhesion” to the Treaty was also signed in 1900 in Fort Resolution, NWT. Treaty 11 was signed by the Crown and representatives of “the Slave, Dogrib, Loucheux, Hare, and other Indians...” in 1921. An adhesion to Treaty 11 was also signed in Fort Liard in 1922.

Some Métis joined Treaty 8 and Treaty 11 and so became “Treaty Indians”. However, most Métis were given “scrip” instead of treaty rights. Scrip was a government certificate that could be exchanged for land or money. In 1929 there were discussions in Aklavik about bringing some of the Inuvialuit under Treaty 11, but the Inuvialuit rejected this proposal.

The Text of the Treaties

The written texts of Treaty 8 and Treaty 11 are similar to those of other numbered treaties in western Canada. The main features, according to the texts, are:

- to establish “peace and goodwill” between the Dene and the Crown’s other subjects;
- the Dene are stated as giving up their rights to their land to the Crown;
- the Crown guaranteed the right to hunt, trap and fish throughout the Treaty area, subject to regulation, except in those areas taken up for settlement, mining, timber cutting, etc.;
- reserves were to be set aside on the formula of one square mile (2.6 square kilometres) per family of five;
- a cash payment following signing;
- annual Treaty payments;
- the Crown was to pay the salaries of teachers to instruct the Dene;
- agricultural assistance and equipment was to be provided; and
- the Dene promised to act as “good and loyal subjects of Her Majesty”, to obey the law, and to maintain peace with other subjects of the Crown.

Disagreement Over the Meaning of Treaty 8 and Treaty 11

There was one problem with writing down the terms of these treaties: Dene is an oral culture. The Dene understanding of the treaties comes from the testimony of elders. They understood the treaties as agreements of “peace and friendship” that did not give up Aboriginal rights and lands. However, the federal government understood the treaties as giving up certain undefined Aboriginal rights and title, in exchange for benefits and other promises made in the treaties.

The disagreement came to a head in 1973 during the Paulette case. The Dene registered a formal notice of claim to some Crown lands as a way of challenging the treaties in court. In the Supreme Court of the NWT, Justice Morrow found that, “...there [is] a sufficient doubt on the facts that Aboriginal title was extinguished...” Although the Supreme Court of Canada did not rule on this specific point, this case called into question the ability to rely on the written text of the treaties.

A Change in Direction

When the first main period in treaty-making in Canada ended in 1930 with the final numbered treaty, attempts to address Aboriginal rights and title in Canada stopped for about 40 years. Then in 1973, a Nisga'a chief claimed Aboriginal title to traditional lands in north-western British Columbia – a region without previous treaties. While he lost in court on a technicality, the Calder case led the federal government to announce in 1973 a new way to negotiate Aboriginal land claims: the federal Comprehensive Land Claims Policy.

When the Government of Canada began negotiating comprehensive land claim agreements in the NWT in the 1970s, the Paulette case and Dene opposition to the federal interpretation of Treaty 8 and Treaty 11 likely played a role. However, the federal decision was also based on the fact that some of Canada's treaty obligations under Treaty 8 and Treaty 11 were not fulfilled. The announcement of the federal Comprehensive Land Claims Policy marks the beginning of "modern" Aboriginal rights negotiating processes in the NWT, and it will be the starting point for the next chapter in this series.



Understanding Aboriginal and Treaty Rights in the Northwest Territories:

Chapter 3: Treaty-making Today

In chapter two of this series, we examined early treaty-making in the NWT. This focused on the time period from first contact between European explorers and Aboriginal people to the signing of Treaty 8 and Treaty 11 in the NWT. We learned that the Dene and the federal government (Canada) have different understandings of what was agreed to when Treaty 8 and Treaty 11 were signed. As a result, there is uncertainty as to whether these “historic” or “numbered” treaties fully addressed Aboriginal rights in the NWT.

In this chapter, we will examine “modern” treaty-making in the NWT, from the mid-1970s to the present. The negotiation of these modern treaties covers every region of the NWT, and includes all the Aboriginal peoples of the NWT: the Dene, Métis and Inuvialuit.

The Guiding Policies

Aboriginal peoples and government (the GNWT and Canada) have two options to address the uncertainty respecting Treaty 8 and Treaty 11: they can go to court and ask the court to make a judgement on what the treaty provided for, or they can negotiate an agreement that everyone can rely upon.

Seeking resolution through the courts is expensive and time-consuming. It also might not guarantee a final result, as the courts could direct government and the Aboriginal group back to the negotiating table to find a solution. As a result, the negotiation process has been the preferred method of addressing the uncertainty respecting Treaty 8 and Treaty 11. It is also the approach taken to settle the outstanding Aboriginal rights of groups who were not part of the numbered treaties, such as the Inuvialuit and Inuit of the eastern Arctic.

When government and an Aboriginal group sit down to negotiate to provide clarity and certainty regarding Aboriginal or treaty rights, they usually negotiate one of two types of agreement:

1. Specific Claims
2. Comprehensive Land Claims

Specific claims are claims made by First Nations against the federal government relating to the administration of land and other Indian assets, or the non-fulfillment of promises made by government under the historic treaties. These are also called “Treaty Land Entitlement” agreements, or TLEs.

Treaty-making Today

In recognition of the number of claims being made against Canada by First Nations, the federal government created the Office of Native Claims in 1973 to try and address both specific and comprehensive claims. The slow progress of negotiated settlements led Canada to develop a policy on specific claims and guidelines for the assessment of claims known as the Specific Claims Policy: <http://www.aadnc-aandc.gc.ca/eng/1100100030501/1100100030506>.

Specific Claims:

The federal Specific Claims Policy sets out the scope for TLE negotiations. TLEs provide for fulfilling the terms in the written version of Treaty 8 or Treaty 11, and typically include:

- The creation of reserves within the meaning of the *Indian Act*;
- Confirmation of the application of the *Indian Act*;
- Confirmation of a right to harvest renewable resources;
- Confirmation of the tax treatment (of federal taxes) on reserve (an exemption of some kind); and
- A financial component (cash compensation).

In the NWT, First Nations can choose to pursue specific claims to fulfill the promises made to them under the text of Treaty 8 and Treaty 11. To date, only one Treaty Land Entitlement settlement agreement has been completed in the NWT: the Salt River First Nation Treaty Settlement Agreement (signed in 2002), which led to the creation of the Salt River First Nation Indian Reserve in and around Fort Smith. There is one other reserve in the NWT, the Hay River Reserve (established in 1974), which is home to the Kátłodeeche First Nation. This is a reserve under the *Indian Act*, but it is not accompanied by a completed Treaty Land Entitlement agreement.

Comprehensive land claims are negotiated to provide certainty and clarity regarding an Aboriginal group's asserted rights to land and natural resources. These negotiations are guided by the federal government's Comprehensive Land Claims Policy, which was first created in 1973, and has been amended several times since then: <http://www.aadnc-aandc.gc.ca/eng/1100100030577/1100100030578>.

These negotiations can result in modern treaties that provide certainty and clarity surrounding the Aboriginal group's rights to natural resources (e.g. harvesting rights) and their ownership of land. Comprehensive land claim agreements also provide for the participation of the Aboriginal group in renewable resource management and the land, water, and environmental protection regulatory regimes.

Comprehensive Land Claims:

The federal Comprehensive Land Claims Policy sets out the scope for land claim negotiations. The policy framework provides for:

- the selection of settlement lands outside of communities;
- settlement lands to be different than Reserve lands and thus outside of the *Indian Act*;
- a financial component (including some subsurface lands);
- a right to participate in institutions of public government that regulate land, water, the environment, and renewable resources throughout the entire agreement area;
- a confirmation that, with the exception of defining who an Indian is, the *Indian Act* does not apply; and
- rights to harvesting and renewable resources.

In the 1970s, the federal government extended the opportunity to Dene, Métis, and Inuvialuit of the NWT to negotiate comprehensive land claim agreements. This decision was influenced by the *Calder* and *Paulette* court cases and the desire to conclude agreements that met the interests of government and Aboriginal peoples.

Comprehensive land claims may be better suited to the circumstances and interests of the NWT's Aboriginal peoples. Compared to specific claims, the Aboriginal group typically owns a larger amount of land (as collectively-owned and protected "settlement land") outside of communities and has the right to participate in resource management regimes that apply throughout their settlement area.

Comprehensive land claims also maintain the existing "open" nature of NWT communities, where local governments are typically public governments that represent and serve all residents of the community. This contrasts with a specific claim and the creation of an *Indian Act* Reserve, which, by definition, is for the use and benefit of Band members only.

Comprehensive Land Claim Negotiations in the NWT

The first modern comprehensive land claim negotiation process in the NWT involved Canada and the Inuvialuit and started in the mid-1970s. This negotiation process also resulted in the first modern comprehensive land claim in the NWT, the *Inuvialuit Final Agreement* in 1984.

In 1976 and 1977, the federal government agreed to negotiate comprehensive land claim agreements with the Dene and Métis of the NWT. When the federal government indicated that there would only be one claim for both groups, formal negotiation of the joint Dene/Métis comprehensive land claim began in 1981 and included all Dene and Métis groups in the NWT. The goal was to negotiate a single settlement of their outstanding rights to land and resources. An Agreement-in-Principle (AIP) was reached in 1988. However, the process broke down in 1990 just before ratification of the Final Agreement by the Dene/Métis.

Soon after the breakdown of the Dene/Métis process, the federal government agreed to negotiate regional comprehensive land claims with the Dene and Métis. This is known as the "regionalization" of land claims in the NWT. The *Gwich'in Comprehensive Land Claim Agreement* (1992) and *Sahtu Dene and Métis Comprehensive Land Claim Agreement* (1993) were signed soon after. These agreements both included the Métis of the regions, and reflected a regionalization of the draft Dene/Métis Final Agreement.

Recognition of the Inherent Right of Self-government

In 1982, Canada “repatriated” its constitution from the United Kingdom. The new *Constitution Act, 1982* included Section 35, which recognized and affirmed existing Aboriginal and treaty rights for the Aboriginal peoples of Canada. Section 35 also explicitly stated that Indian (First Nation), Inuit, and Métis were all included within the term “Aboriginal people” found in the Constitution.

Section 35 of the Constitution Act, 1982:

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Between 1982 and 1986, a series of special constitutional conferences was also held for the purpose of discussing Aboriginal constitutional matters. The Aboriginal right of self-government was the most prominent subject in these discussions. Although there was a great deal of support for the idea of self-government as a constitutionally protected Aboriginal right, there was not sufficient agreement to reach a constitutional agreement on the right of self-government for the Aboriginal peoples of Canada.

The recognition of self-government was discussed again at the failed 1987 Meech Lake and 1992 Charlottetown constitutional accords. The Charlottetown Accord would actually have recognized self-government as a constitutionally protected Aboriginal right. Throughout the Charlottetown Accord discussions, as in earlier constitutional conferences, the GNWT supported a constitutional amendment that would have entrenched Aboriginal self-government into the Constitution. However, the Charlottetown Accord dealt with many issues besides self-government and, in the end, it was rejected in a national referendum.

In 1994, the Government of Canada proposed that instead of amending the Constitution to explicitly recognize the inherent right of self-government, it would negotiate self-government agreements on the understanding that the inherent right of self-government is an existing right already recognized in Section 35 of the *Constitution Act, 1982*. In this way, the federal government acknowledged and recognized that Aboriginal peoples of Canada have an inherent right of self-government.

Treaty-making Today

In 1995, the federal government released its policy guide “Aboriginal Self-government – The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-government”, often referred to as the “Inherent Right Policy”: <http://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844>. This policy stated that:

“...the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and resources.”

The Inherent Right Policy

The federal Inherent Right Policy sets out the scope for self-government negotiations. It acknowledges that the inherent right of self-government is an existing Aboriginal right under Section 35 of the *Constitution Act, 1982*. The framework provides for:

- A list of issues for negotiation (e.g. establishment of governing structures, adoption, child welfare, social services, culture, etc.);
- The Charter of Rights and Freedoms to be binding on all governments;
- A list of law-making powers that will remain under the exclusive domain of the federal government; and
- A special mention of the NWT, where the inherent right of self-government can be implemented through public government.

Prior to the Constitutional discussions that eventually resulted in the 1995 Inherent Right Policy, the federal government was not prepared to acknowledge self-government as an Aboriginal or treaty right under Section 35 of the *Constitution Act, 1982*. The federal government recognized some ways for Aboriginal peoples to exercise self-governance, but these were only under federal legislation and any arrangements could not be constitutionally-protected. As a result, comprehensive land claim agreements negotiated prior to 1995 did not address self-government, other than through commitments to negotiate self-government under separate agreements.

Since 1995 and the recognition of self-government as an inherent right, comprehensive land claim agreements could include self-government and law-making powers for Aboriginal governments over internal matters such as culture, education, and social programs for their citizens. This was the case in 2003, when Canada, the GNWT, and the Tłıchǵ signed the *Tłıchǵ Agreement*, the NWT’s first combined land, resources, and self-government agreement. In addition to addressing land and resource rights, this agreement established the Tłıchǵ Government and its law-making powers.

Conclusion: The GNWT's Evolving Role

The GNWT's role in Aboriginal rights negotiations has evolved over the last 30 years. During *Inuvialuit Final Agreement* negotiations, the GNWT was part of the federal negotiating team and only participated in discussions on subject matters that it had some responsibility for, such as renewable resources. While the *Inuvialuit Final Agreement* is a bilateral agreement between the Inuvialuit and Government of Canada, the GNWT and Yukon also signed the Agreement on behalf of Canada.

A similar approach was taken in the negotiation of the Dene/Métis comprehensive land claim, and in the regional land claim negotiations that followed. While the GNWT was represented by its own Chief Negotiator, it was still part of the federal negotiating team. This was also the approach during negotiation of the *Nunavut Land Claims Agreement*. However, Nunavut land claim implementation negotiations were trilateral, with the GNWT becoming an independent party to the Implementation Plan for that agreement.

In 1998, the GNWT released its Aboriginal Land Claims Policy, its first and only formal policy dealing with Aboriginal rights negotiations: [http://www.gov.nt.ca/publications/policies/executive/Aboriginal_Land_Claims_\(11.51\).pdf](http://www.gov.nt.ca/publications/policies/executive/Aboriginal_Land_Claims_(11.51).pdf). This policy states that the GNWT will represent the NWT's public interest in Aboriginal land claim negotiations.

With the release of the federal Inherent Right Policy and the prospect of self-government negotiations, the GNWT recognized that it needed to be an independent party to self-government negotiations. With Tłıchq negotiations including self-government, these negotiations became trilateral and the resulting *Tłıchq Agreement* is between the Tłıchq, Canada and the GNWT. The GNWT continues to represent the interests of all residents of the NWT as an independent party to Aboriginal rights negotiations.

In the next chapter in this series, we will explore the land, resources, and self-government negotiations that are currently underway in the NWT.



Understanding Aboriginal and Treaty Rights in the Northwest Territories:

Chapter 4: Aboriginal Rights Negotiations

INTRODUCTION

This chapter will look at the Aboriginal rights negotiations currently underway in the NWT. It will describe who is negotiating, what they are negotiating, and the current stage of the negotiating process.

Chapter 3 of this series also identified that, prior to 1995 and the release of the federal Inherent Right Policy, comprehensive land claims negotiated in the NWT did not include self-government. At that time, self-government was not recognized as an Aboriginal right under section 35 of the *Constitution Act*, 1982. However, comprehensive

claims negotiated in the NWT prior to 1995 did include commitments for separate self-government negotiations.

It should be noted that two NWT Aboriginal groups will not be featured in this chapter because they have completed their negotiations: the Tłıchǫ and the Salt River First Nation. As we examined in the previous chapter, the Salt River First Nation signed the *Salt River First Nation Treaty Settlement Agreement* in 2002, a Treaty Land Entitlement under the federal Specific Claims Policy. The Tłıchǫ signed a land, resources and self-government agreement (the *Tłıchǫ Agreement*) in 2003, the first combined land, resources and self-government agreement in the NWT.

Negotiations:

Generally speaking, there are three different kinds of negotiations happening in the NWT today:

1. **Land and Resources Agreements** (often called “land claims”), under the federal Comprehensive Land Claims Policy.
 - a. Can be negotiated at the regional or community level.
 - b. Called “transboundary negotiations” when the Aboriginal group who is negotiating their land and resource rights in the NWT does not live in the NWT.
2. **Self-Government Agreements**, under the federal Inherent Right Policy.
 - a. Can be negotiated at the regional or community level.
3. Combined **Land, Resources and Self-Government Agreements**, under both the Comprehensive Land Claims Policy and Inherent Right Policy.
 - a. Can be negotiated at the regional or community level.
 - b. Negotiated all at once, or in separate “phases”.

Typical Stages of Negotiations:

1. **Exploratory Discussions:** To identify if there is sufficient interest and common ground to begin negotiations. Exploratory discussions lead to negotiations that result in a Framework Agreement or Process and Schedule Agreement.
2. **Framework Agreement/Process and Schedule Agreement:** Sets out the subject matters for negotiation and describes how negotiations will proceed.
3. **Agreement-in-Principle:** A detailed document, addressing most matters described in the Framework Agreement. Forms the basis for the Final Agreement. Agreements-in-Principle are approved and signed by the parties to the negotiations.
4. **Final Agreement:** Addresses all the matters described in the Framework Agreement. Creates a legally binding agreement, which is typically a treaty under the meaning of section 35 of the *Constitution Act*, 1982. Final Agreements are ratified by the parties to the negotiations. Ratification normally includes a vote by the members of the Aboriginal party and the enactment of settlement legislation by Canada and the GNWT. Prior to ratifying a Final Agreement the parties normally complete an Implementation Plan and financial arrangements that describe how the Final Agreement will be implemented.

The following sections of this chapter provide a summary of each of the negotiations that are underway in the NWT today. The parties to negotiations often agree in the Framework Agreement to hold the positions of the parties in confidence while negotiations are underway. In order to respect these commitments, the details regarding what is being negotiated are not included in this chapter unless they are described in publically available documents like Framework Agreements or Agreements-in-Principle. Additional up-to-date information on the status of negotiations can always be found on the website of the Department of Aboriginal Affairs and Intergovernmental Relations, at http://www.daaair.gov.nt.ca/_live/pages/wpPages/home.aspx

Inuvialuit

Who is Negotiating:

- The Inuvialuit (represented by the Inuvialuit Regional Corporation), the GNWT, and Canada are negotiating a **regional self-government** agreement.
- The home communities of the Inuvialuit are: Paulatuk, Aklavik, Sachs Harbour, Ulukhaktok, Inuvik, and Tuktoyaktuk. The Inuvialuit Settlement Region is the northernmost region of the NWT: <http://www.daair.gov.nt.ca/i/map/mapinuvialuitprivatelands.jpg>.
- Inuvik and Aklavik are also Gwich'in home communities.

What they are Negotiating:

- In 1984, the Inuvialuit completed a regional comprehensive land claim agreement: *The Western Arctic Claim: The Inuvialuit Final Agreement*. This agreement includes rights in relation to land and resources, provides for the regulation of land, water and environment, and contains a financial component.
- The Inuvialuit started self-government negotiations jointly with the Gwich'in. In 1996, the Inuvialuit and the Gwich'in (represented by the Gwich'in Tribal Council) signed the *Beaufort/Delta Self-Government Negotiations Process and Schedule Agreement* to jointly negotiate self-government with the GNWT and Canada. This led to the completion of a self-government Agreement-in-Principle in 2003 (the *Gwich'in and Inuvialuit Self-Government Agreement-in-Principle for the Beaufort-Delta Region*).
- In 2005, during Final Agreement negotiations, the Gwich'in stated that they no longer considered the Agreement-in-Principle as being the basis to conclude a Final Agreement, and they disengaged from self-government negotiations with Inuvialuit, Canada and the GNWT.

- The Inuvialuit, Canada, and the GNWT chose to continue negotiating self-government and, in 2007, the three parties signed the *Inuvialuit Self-Government Negotiations Process and Schedule Agreement*.

Status of Negotiations:

- At this time, the three parties are working towards concluding a self-government Agreement-in-Principle.

Other Information:

- The Inuvialuit did not sign a Historic (Numbered) Treaty.
- The *Western Arctic Claim: The Inuvialuit Final Agreement* was the first comprehensive land claim signed in the NWT (in 1984).
- Overview of Negotiations: http://www.daair.gov.nt.ca/_live/pages/wpPages/Inuvialuit.aspx
- *The Western Arctic Claim: The Inuvialuit Final Agreement*: http://www.collectionscanada.gc.ca/webarchives/20061209051753/http://www.ainc-inac.gc.ca/pr/agr/inu/wesar_e.html
- *Gwich'in and Inuvialuit Self-Government Agreement-in-Principle for the Beaufort-Delta Region*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/beauf_1100100032132_eng.pdf
- *Inuvialuit Self-Government Negotiations Process and Schedule Agreement*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-NWT/STAGING/texte-text/ntr_pubs_isgnp_1330723051893_eng.pdf

Gwich'in

Who is Negotiating:

- The Gwich'in (represented by the Gwich'in Tribal Council), the GNWT, and Canada are negotiating a **regional self-government** agreement.
- The indigenous Métis of the Gwich'in region are beneficiaries of the *Gwich'in Comprehensive Land Claim Agreement*.
- The home communities of the Gwich'in are Inuvik, Aklavik, Fort McPherson and Tsiigehtchic. The Gwich'in Settlement Area is situated in the northwestern part of the Northwest Territories: <http://www.daair.gov.nt.ca/i/map/mapgwichinland.jpg>
- Inuvik and Aklavik are also Inuvialuit home communities.

What they are Negotiating:

- In 1992, the Gwich'in completed a regional comprehensive land claim agreement that addressed their rights relating to land and resources: the *Gwich'in Comprehensive Land Claim Agreement*. This agreement included a commitment to negotiate self-government in the future, and have it "exercised as close to the community level as is reasonably possible".
- The Gwich'in began negotiating self-government jointly with the Inuvialuit. This led to the completion of a self-government Agreement-in-Principle in 2003 (the *Gwich'in and Inuvialuit Self-Government Agreement-in-Principle for the Beaufort-Delta Region*).
- In 2005, during Final Agreement negotiations, the Gwich'in stated that they no longer considered the Agreement-in-Principle as being the basis to conclude a Final Agreement, and they disengaged from self-government negotiations with Inuvialuit, Canada and the GNWT.

- The Gwich'in, Canada, and the GNWT chose to continue negotiating self-government, and in 2007, the three parties signed the *Gwich'in Self-Government Negotiations Process and Schedule Agreement*.

Status of Negotiations:

- At this time, the three parties are working towards concluding a self-government Agreement-in-Principle.

Other Information:

- The Gwich'in are signatories to Treaty 11, and were part of the Dene/Métis comprehensive land claim negotiations, which broke down in 1990.
- Overview of Negotiations: http://www.daair.gov.nt.ca/_live/pages/wpPages/Gwichin.aspx
- *Gwich'in Comprehensive Land Claim Agreement*: http://www.collectionscanada.gc.ca/webarchives/20071115152303/http://www.ainc-inac.gc.ca/pr/agr/gwich/gwic/index_e.html
- *Gwich'in and Inuvialuit Self-Government Agreement-in-Principle for the Beaufort-Delta Region*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/beauf_1100100032132_eng.pdf
- *Gwich'in Self-Government Negotiations Process and Schedule Agreement*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-NWT/STAGING/texte-text/ntr_pubs_gsgn_1330723429328_eng.pdf

Sahtu

Who is Negotiating:

- The communities of the Sahtu region are each negotiating **community-based self-government** (rather than at the regional level).
- The indigenous Métis of the Sahtu region are beneficiaries of the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* (and are participants in each of the community-based self-government negotiations).
- The Sahtu communities are: Délı̨ne, Colville Lake, Fort Good Hope, Norman Wells, and Tulita: http://www.daair.gov.nt.ca/i/map/map_sahtu_settlement_area.jpg.

What they are Negotiating:

- In 1993, the Sahtu completed a regional comprehensive land claim agreement that addressed their rights relating to land and resources: the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*.
- This agreement included a commitment to negotiate self-government in the future. It also stated that self-government could be “exercised as close to the community level as is reasonably possible”, which set the stage for community-based self-government negotiations throughout the region.

Other Information:

- The Sahtu are signatories to Treaty 11, and were part of the Dene/Métis comprehensive land claim negotiations, which broke down in 1990.
- *Sahtu Dene and Métis Comprehensive Land Claim Agreement*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/sahmet_1100100031148_eng.pdf

Délı̨ne

Who is Negotiating:

- The Sahtu Dene and Métis of Délı̨ne, represented by the Délı̨ne Land Corporation and the Délı̨ne Dene Band, are negotiating a community-based self-government agreement with the GNWT and Canada.

Status of Negotiations:

- On September 12, 2012, negotiators for the parties completed a draft of the entire Délı̨ne Final Self-Government Agreement.
- At this time, the parties are reviewing the draft Final Agreement and are preparing to begin the ratification process where the parties will consider whether to approve and ratify the Final Agreement.

Other Information:

- In 1998, the Délı̨ne Land Corporation, the Délı̨ne Dene Band, the GNWT, and Canada completed a Process and Schedule Agreement.
- In 2003, the parties completed the *Délı̨ne Self-Government Agreement-in-Principle for the Sahtu and Dene and Métis of Délı̨ne*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/aip_1100100032125_eng.pdf
- This Agreement-in-Principle proposed the creation of an inclusive (or partnership) Aboriginal government (a government that serves and represents all residents and includes guaranteed Aboriginal representation) for the Délı̨ne District, to replace the Charter Community of Délı̨ne and the Délı̨ne Dene Band.
- Délı̨ne is the only community located in the Délı̨ne District of the Sahtu region.
- Negotiations overview: http://www.daair.gov.nt.ca/_live/pages/wpPages/Deline.aspx

Sahtu

Colville Lake

Who is Negotiating:

- The Sahtu Dene and Métis of Colville Lake (the Delá Got'ine of Colville Lake), represented by the Behdzi Ahda First Nation Band and the Ayoni Keh Land Corporation, are at the early stages of negotiating a community-based self-government agreement with the GNWT and Canada.

Status of Negotiations:

- At this time, the parties are working towards concluding a Process and Schedule Agreement to guide the community-based self-government negotiations.

Other Information:

- Colville Lake is located in the K'ahsho Got'ine District of the Sahtu region, which also includes the community of Fort Good Hope.
- Negotiations overview: http://www.daaair.gov.nt.ca/_live/pages/wpPages/ColvilleLake.aspx

Fort Good Hope

Who is Negotiating:

- The Sahtu Dene and Métis of Fort Good Hope (the K'ahsho Got'ine of Fort Good Hope), represented by the Fort Good Hope Dene Band, the Yamoga Lands Corporation, and the Fort Good Hope Métis Nation Local #54 Land Corporation, are at the early stages of negotiating a community-based self-government agreement with the GNWT and Canada.

Status of Negotiations:

- At this time, the parties are working towards concluding a Process and Schedule Agreement to guide the community-based self-government negotiations.

Other Information:

- Fort Good Hope is located in the K'ahsho Got'ine District of the Sahtu region, which also includes the community of Colville Lake.
- Negotiations overview: http://www.daaair.gov.nt.ca/_live/pages/wpPages/Fort_Good_Hope.aspx

Sahtu

Norman Wells

Who is Negotiating:

- The Sahtu Dene and Métis of Norman Wells, represented by the Norman Wells Land Corporation, are negotiating a community-based self-government agreement with the GNWT and Canada.

Status of Negotiations:

- At this time, the parties are working towards concluding a community-based self-government Agreement-in-Principle.

Other Information:

- In 2007, the Norman Wells Land Corporation, the GNWT, and Canada completed the *Norman Wells Land Corporation Self-Government Framework Agreement*: http://www.daaair.gov.nt.ca/_live/documents/content/Norman_Wells_Framework_Agreement.pdf
- Norman Wells is located in the Tulita District of the Sahtu region, which also includes the community of Tulita.
- Negotiations overview: http://www.daaair.gov.nt.ca/_live/pages/wpPages/NormanWells.aspx

Tulita

Who is Negotiating:

- The Sahtu Dene and Métis of Tulita, represented by the Tulita Yamoria Community Secretariat, are negotiating a community-based self-government agreement with the GNWT and Canada.

Status of Negotiations:

- At this time, the parties are working towards concluding a community-based self-government Agreement-in-Principle.

Other Information:

- In 2005, the Tulita Yamoria Community Secretariat, the GNWT, and Canada completed the *Tulita Yamoria Community Secretariat Self-Government Framework Agreement*: http://www.daaair.gov.nt.ca/_live/documents/content/Tulita_Framework_Agreement.pdf
- Tulita is located in the Tulita District of the Sahtu region, which also includes the community of Norman Wells.
- Negotiations overview: http://www.daaair.gov.nt.ca/_live/pages/wpPages/Tulita.aspx

Dehcho

Who is Negotiating:

- The Dehcho First Nations are negotiating a land, resources and self-government agreement, often referred to as the Dehcho Process negotiations.
- The Member Communities of the Dehcho First Nations are:
 - Deh Gah Got'ie Dene Council (Fort Providence)
 - Fort Providence Métis Nation (Fort Providence)
 - Ka'a'gee Tu First Nation (Kakisa)
 - Sambaa K'e Dene Band (Trout Lake)
 - Liidlíi Kue First Nation (Fort Simpson)
 - Fort Simpson Métis Nation (Fort Simpson)
 - Jean Marie River First Nation (Jean Marie River)
 - Nahanni Butte Dene Band (Nahanni Butte)
 - West Point First Nation (Hay River)
 - Kátł'odeeche First Nation (Hay River Reserve)*
 - Pehdzeh Ki First Nation (Wrigley)*
- The indigenous Métis of the Dehcho region are part of the Dehcho First Nations, and are participating in the Dehcho Process negotiations.
- The Acho Dene Koe First Nation (with the Fort Liard Metis Local #67) was formerly part of the Dehcho Process negotiations. However, in 2008, they separated from the Dehcho Process negotiations and the Dehcho First Nations to pursue their own community-based land, resources and self-government negotiations process.

* The Kátł'odeeche First Nation (Hay River Reserve) and Pehdzeh Ki First Nation (Wrigley) have each been exploring the possibility of pursuing their own separate negotiating processes.

What they are Negotiating:

- The Dehcho First Nations are negotiating a land, resources and self-government agreement.

- In 2001, the Dehcho First Nations, GNWT, and Canada completed the *Deh Cho First Nations Framework Agreement*.
- Also in 2001, the three parties completed the *Dehcho First Nations Interim Measures Agreement* that would protect the interests of the Dehcho First Nations in order to advance negotiations. This Interim Measures Agreement also called for the negotiation of a Dehcho Land Use Plan.
- The Dehcho First Nations and Canada also completed an *Interim Resource Development Agreement* in 2003.

Status of Negotiations:

- At this time, the parties are working towards concluding a land, resources and self-government Agreement-in-Principle and an interim Dehcho Land Use Plan.

Other Information:

- The Dehcho First Nations are signatories to Treaty 8 and Treaty 11, and were part of the Dene/Métis comprehensive land claim negotiations, which broke down in 1990.
- Overview of negotiations: http://www.daair.gov.nt.ca/_live/pages/wpPages/Dehcho.aspx
- *Deh Cho First Nations Framework Agreement*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/dcf_1100100032119_eng.pdf
- *Dehcho First Nations Interim Measures Agreement*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/dci_1100100032115_eng.pdf
- *Dehcho First Nations Interim Resource Development Agreement*: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-NWT/STAGING/texte-text/ntr_pubs_dird_1330724324385_eng.pdf

Acho Dene Koe First Nation

Who is Negotiating:

- The Acho Dene Koe First Nation is negotiating a **land, resources and self-government** agreement at the community level.
- The indigenous Métis of the Fort Liard area (Fort Liard Metis Local #67) are participating in the negotiations.
- These negotiations are using a “phased” approach. Phase 1 (which is being negotiated right now) will lead to an AIP and Final Agreement focusing on land and resource matters. Ten years after the Phase 1 Final Agreement, Phase 2 negotiations can begin, which will lead to an AIP and Final Agreement focusing on self-government matters.

What they are Negotiating:

- The Acho Dene Koe First Nation was formerly part of the Dehcho First Nations regional organization. However, in 2008, they separated from the Dehcho Process negotiations and the Dehcho First Nations to pursue their own community-based land, resources and self-government negotiations process.
- In 2008, the Acho Dene Koe First Nation, GNWT, and Canada completed *The Acho Dene Koe First Nation Framework Agreement*.

Status of Negotiations:

- At this time, the parties are working towards concluding a Phase 1 Agreement-in-Principle.

Other Information:

- The Acho Dene Koe First Nation is signatory to Treaty 11, and was part of the Dene/Métis comprehensive land claim negotiations, which broke down in 1990.
- Overview of negotiations: http://www.daair.gov.nt.ca/_live/pages/wpPages/AchoDeneKoe.aspx
- *The Acho Dene Koe First Nation Framework Agreement*: http://www.daair.gov.nt.ca/_live/documents/content/ADKFrameworkAgreement-signed.pdf

Akaiitcho Dene First Nations

Who is Negotiating:

- The Akaiitcho Territory Dene First Nations (represented by the NWT Treaty 8 Tribal Corporation) is negotiating a **land, resources and self-government** agreement at the regional level. This is sometimes referred to as the Akaiitcho Process negotiations.
- The NWT Treaty 8 Tribal Corporation represents four Akaiitcho Dene First Nations:
 - Yellowknives Dene First Nation (Dettah)
 - Yellowknives Dene First Nation (N'dilo)
 - Łutselk'e Dene First Nation (Łutselk'e)
 - Deninu Kue First Nation (Fort Resolution)
- The indigenous Métis of the region are not part of the Akaiitcho Process negotiations, and are pursuing a separate negotiations process.

What they are Negotiating:

- In 2000, the Akaiitcho Territory Dene First Nations (as represented by the NWT Treaty 8 Tribal Corporation), the GNWT, and Canada completed the *Akaiitcho Territory Dene First Nations Framework Agreement*.
- In 2003, the parties completed the *Akaiitcho Interim Measures Agreement* that would protect the interests of the Akaiitcho Dene First Nations in order to advance negotiations.

Status of Negotiations:

- At this time, the parties are working towards concluding a land, resources and self-government Agreement-in-Principle.

Other Information:

- The Akaiitcho Dene First Nations are signatory to Treaty 8, and were part of the Dene/Métis comprehensive land claim negotiations, which broke down in 1990.
- Overview of negotiations: http://www.daaair.gov.nt.ca/_live/pages/wpPages/Akaiitcho.aspx
- *Akaiitcho Territory Dene First Nations Framework Agreement*: http://www.daaair.gov.nt.ca/_live/documents/content/ADFN_Framework_Agreement.pdf
- *Akaiitcho Interim Measures Agreement*: http://www.daaair.gov.nt.ca/_live/documents/content/Akaiitcho_IMA.pdf

Northwest Territory Métis Nation

Who is Negotiating:

- The Northwest Territory Métis Nation is negotiating a **land and resources** agreement at the regional level.
- The Northwest Territory Métis Nation represents the indigenous Métis of the south slave region, and is organized into three Métis Councils:
 - Fort Resolution Métis Council
 - Fort Smith Métis Council
 - Hay River Métis Government Council
- These negotiations are using a “phased” approach. The current negotiations will lead to an Agreement-in-Principle focusing on land and resource matters. Once the land and resources Agreement-in-Principle is complete, final agreement negotiations will begin, including negotiations on how to approach and address self-government for Northwest Territory Métis Nation.

What they are Negotiating:

- In 1996, the South Slave Métis Tribal Council (now the Northwest Territory Métis Nation), the GNWT, and Canada completed the *South Slave Métis Framework Agreement*. This document described the first phase of negotiations focusing on land and resources.
- In 2002, the parties completed the *South Slave Métis Tribal Council Interim Measures Agreement* that would protect the interests of the Northwest Territory Métis Nation in order to advance negotiations.

Status of Negotiations:

- At this time, the parties are working towards concluding a land and resources Agreement-in-Principle.

Other Information:

- The Métis of the South Slave region have been involved in negotiations since the Dene/Métis comprehensive land claim negotiations. After the Dene/Métis comprehensive land claim broke down in 1990, the Akaitcho Dene First Nations initially decided to pursue a Treaty Land Entitlement Agreement, which the Métis of the region could not participate in. At that time, Canada and the GNWT agreed to enter into negotiations with the indigenous Métis of the South Slave.
- Overview of negotiations: http://www.daaair.gov.nt.ca/_live/pages/wpPages/NorthwestTerritoryMetisNation.aspx
- *South Slave Métis Framework Agreement*: http://www.daaair.gov.nt.ca/_live/documents/content/NWTMN_Framework_Agreement.pdf
- *South Slave Métis Tribal Council Interim Measures Agreement*: http://www.daaair.gov.nt.ca/_live/documents/content/NWTMN_IMA.pdf

Transboundary Negotiations:

Transboundary negotiations involve an Aboriginal group whose home communities are outside the NWT, but whose asserted traditional territory includes some of the NWT. These negotiations are intended to clarify and provide certainty regarding the Aboriginal group's Aboriginal or treaty rights in the NWT. Transboundary negotiations are normally tripartite, including the Aboriginal group, Canada, and the GNWT. Transboundary negotiations often focus on the Aboriginal groups' harvesting rights in the NWT.

Current transboundary negotiations in the NWT include:

- Manitoba Denesuline (court monitored negotiations, which arose from litigation initiated by the Manitoba Denesuline, intended to conclude a Final Agreement)
- Saskatchewan (Athabasca) Denesuline (court monitored negotiations, which arose from litigation initiated by the Saskatchewan [Athabasca] Denesuline, intended to conclude a Final Agreement)
- First Nation of Nacho Nyak Dun (Yukon) (exploratory discussions)

CONCLUSION

Completing land, resources and self-government negotiations is in the interests of all residents of the NWT. For Aboriginal people, these agreements recognize and protect their rights. These agreements also clarify and provide certainty surrounding Aboriginal and treaty rights, which benefits all residents of the NWT. Land and resources agreements clarify and provide certainty concerning who owns the land, whose rights and interests need to be considered when activities could impact the land or wildlife, and the rules for obtaining approval for developing or using land. Self-government agreements enhance self-determination by recognizing Aboriginal peoples' authority to design and deliver programs and services for their citizens in their communities. This sets the foundation for lasting government-to-government relations.

Negotiating and concluding these agreements is no easy task. Final Agreements are often intended to be treaties that the parties can rely on for many years. As a result, amending these agreements is a very formal and significant process. While many agreements cover the same range of subjects, the unique priorities and circumstances in each region or community means that a 'one size fits all' approach does not work. As a result, considerable time and attention go into negotiating Aboriginal rights agreements, and the negotiations often take many years to complete.

In the conclusion of this series, we will explore the results of these efforts – Aboriginal peoples, the GNWT, and Canada working together to fully implement land, resources, and self-government agreements and to build and maintain positive relationships founded on respect, recognition, and responsibility.



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.