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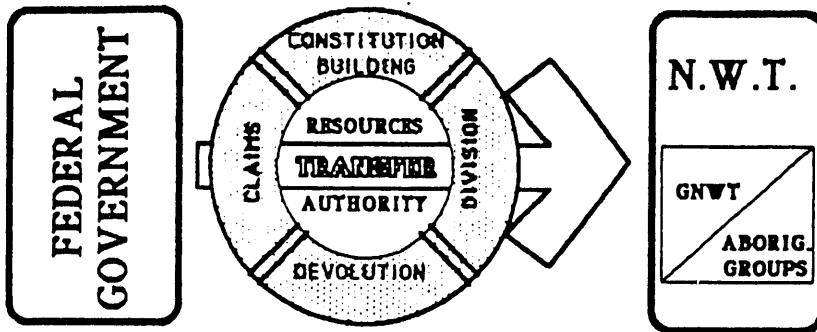
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JUN 16 1986

A SESSIONAL PAPER:

POLITICAL AND CONSTITUTIONAL  
DEVELOPMENT IN THE  
NORTHWEST TERRITORIES  
(Revised)



Prepared for the Eighth Session (June 1986)  
of the  
Tenth Legislative Assembly  
of the Northwest Territories

June 10, 1986

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## FOREWORD

The mandate of the Government of the Northwest Territories in political and constitutional development is to provide for the development of systems and structures of public administration accountable to the Legislative Assembly and responsive to the needs and aspirations of all N.W.T. residents.

The Constitution Act, 1871 gives Parliament sole authority for providing for the "administration, peace, order and good government" of the territories which are not provinces. Parliament also has sole authority for legislating a new constitution for the N.W.T., short of provincehood. (The Constitutional Act, 1982 requires provincial agreement where new provinces are created.)

In spite of these constitutional requirements, the GNWT, the Constitutional Alliance and aboriginal organizations have the responsibility for recommending constitutional change to the Parliament of Canada so that the people of the NWT have an opportunity to develop their forms of government in ways that meet the unique challenges of this region. These organizations are linked together in pursuit of constitutional change through comprehensive aboriginal claims, devolution, and division of the N.W.T.

## EXECUTIVE SUMMARY

While the Government of the Northwest Territories is striving to enable the residents of the Northwest Territories to exert the fullest degree of control over decisions which affect their lives, it must do so in a manner which will protect and, where possible, enhance the rights of aboriginal people. As the legitimate government of all NWT residents, the GNWT must ensure that political and constitutional reform is as much a public process as practically possible.

The three specific processes of political and constitutional development are division, devolution, and settlement of claims. These issues are interrelated at various levels and their attainment will require a co-ordinated, well thought-out approach.

## Division

Since agreement on a boundary is the sticking point in the division process, the GNWT should try to facilitate the reaching of an agreement and the attendant process of ratification. Specifically, it should hold a follow-up meeting to the Northern Leaders Conference and suggest the Legislative Assembly handle a ratification vote. It should set up a Division Secretariat reporting to the Government Leader to advise the Executive Council on matters pertaining to division of the NWT. If the boundary is ratified, a Division Commission should be established by the federal government to draw up a process and timetable for division and oversee division of the GNWT. Until new constitutions are drafted by the constitutional forums, are ratified publicly and are enacted, the GNWT would remain the legitimate territorial government.

## Claims

If the recommendation of the Coolican Task Force to expand the scope of claims negotiations to include aboriginal self-government is adopted, the GNWT should have equal status with other parties at the claims table during negotiations of such matters. In deciding what should be on the table for negotiation, a framework agreement should be reached by all parties. This agreement would outline what would be on the table for negotiation at the claims talks and the GNWT should have equal status in its development.

## Devolution

Devolution must only proceed in a manner which does not prejudice the negotiation of claims settlements or division of the NWT. A Memorandum of Understanding has been signed with the Dene/Metis outlining a process to determine the degree of involvement of aboriginal organizations in devolution. A similar MOU should be signed with Inuit organizations. Another possibility for sorting out devolution/claims conflicts is through a "second table" approach at which the GNWT and claimant groups would discuss claims matters away from the main negotiations. This is a process that could also involve non-claimant interest groups.

### Political and Constitutional Development

There is now in place in the N.W.T. a delicately balanced mechanism for constitutional and political development, the Constitutional Alliance, made up of the Nunavut and Western Constitutional Forums. Both forums are well along the way to developing new forms of government and this work should be encouraged and facilitated where possible by the GNWT.

Those who are working on new constitutions for new territories should be kept informed of developments in devolution, claims and constitutional development. At the same time, the executive should be kept abreast of the work of the forums. To this end, the Executive Council's Committee on Political and Constitutional Development should meet regularly with the NCF and WCF to maintain a communications link between the Alliance and the Executive Council.

## GNWT POLITICAL AND CONSTITUTIONAL OBJECTIVES

It is a basic requirement of the political and constitutional process that N.W.T. residents have opportunities to participate in government and influence public decisions at the community, regional, territorial and national level equal to those enjoyed by other Canadians. Specific objectives are as follows:

- 1) To recognize and respect aboriginal rights in comprehensive claims settlements and in the Canadian Constitution.
- 2) To work toward an acceptable resolution respecting the issues of division, devolution and constitutional development.
- 3) To respond to the unique communities of interest that exist within the N.W.T. by creating public policy and styles of public administration that reflect those communities of interest while maintaining a harmonious balance between them.

## PRINCIPLES

1. Political and constitutional development must be advanced in ways that will protect aboriginal rights and enhance the cultures and lifestyles of the aboriginal people of the N.W.T.
2. In the design of public structures, consideration shall be given to allow variations to reflect differing interests, priorities and customary methods of decision making.
3. Processes of political and constitutional reform shall be open to allow individuals and organizations to make known their interests and concerns.
4. All parties (the federal and Northwest Territorial governments and the aboriginal organizations COPE, TFN, Dene Nation, and NWT Metis Association) must have input into formal discussions where powers are being sought by the Government of the Northwest Territories which directly affect aboriginal rights or where aboriginal people are seeking to have aboriginal rights incorporated into public institutions.
5. Comprehensive claims, the transfer of powers, constitutional development and division of the Northwest Territories are all integral parts of the process of political and constitutional reform in the N.W.T. and must proceed in a co-ordinated way. (Please refer to diagrams 1 and 2.)
6. The Legislative Assembly has the authority and responsibility to represent the interests of all N.W.T. residents in forming and, through the Executive Council, implementing public policy.

7. Public governments in the N.W.T. must retain authority over fiscal and economic policy in order to maintain efficiency in provision of public services and to ensure equality of opportunity and distribution of benefits to N.W.T. residents.
8. Until such time as the Parliament of Canada amends or repeals the Northwest Territories Act to establish duly constituted new territories, the Government of the Northwest Territories shall remain the sole legitimate government of the Northwest Territories.



## CURRENT POLITICAL AND CONSTITUTIONAL ISSUES

The structures and processes of political and constitutional reform in the N.W.T. are being shaped by the need to meet three specific objectives:

- (1) settlement of aboriginal claims,
- (2) division of the N.W.T.,
- (3) transfer of provincial-type powers to the GNWT.

Political and constitutional reform will not be complete until all three objectives have been met. The task is complex and requires delicate co-ordination to ensure that processes are complementary when needed and separate and unencumbered when that is beneficial. (See diagrams 1 and 2)

## DIVISION

The need to resolve the boundary issue is pivotal to progress on dividing the territories. The importance of a boundary agreement is heightened because if it is not resolved other political and constitution initiatives may be jeopardized.

### Considerations

To date, the Constitutional Alliance process has been unsuccessful in reaching a boundary agreement. Without progress, federal funding may soon be at risk. The important outstanding issue is in which territory the Inuvialuit communities will be situated after division.

The May 9, 1986 initialling of a claims overlap agreement between the Inuit and Dene/Metis was a major step, not only in the resolution of comprehensive claims in the N.W.T., but also for the resolution of the boundary issue.

Once a boundary agreement is reached, other decisions must be made, including:

- Public ratification - (Will a public affirmation of a desire to divide given a boundary agreement be necessary, or will only a public ratification of a boundary agreement be needed?)
- The establishment of a timetable and any conditions by the federal government for the division of the N.W.T.
- Process and structures used to divide the government of the N.W.T.
- Process and timetable for ratifying new constitutions for Nunavut and a government of the western N.W.T.

## Strategy

The GNWT continues to support division and is committed to facilitating the resolution of the boundary issue. To that end, a follow-up meeting to the Northern Leaders Conference of April 24-25 should take place at which the GNWT should promote agreement on a boundary proposal which can be recommended to the Constitutional Alliance.

If the Constitutional Alliance members agree to the boundary proposal put forward by the northern leaders or are able to reach one of their own, the way would be cleared for public ratification. The Legislative Assembly should conduct the ratification vote on behalf of the Constitutional Alliance.

Once a boundary proposal is agreed upon, however, the GNWT should begin to plan for implementation with the establishment of a Division Secretariat. This secretariat, reporting to the Government Leader, could have the mandate of advising the Executive Council of potential impacts of government decisions on division and the development of new constitutions as well as preparing for the division of the N.W.T.

Then, if division and a boundary proposal are publicly ratified, a federally established Division Commission should be appointed. This commission would be made up of representatives of all parties involved. It could be charged with the task of drawing up an implementation timetable and overseeing in a timely and equitable manner the division of the governmental infrastructure. It could also ensure that neither division nor the development of new constitutions would be prejudiced by any transfer of powers from the federal government to the GNWT during the intervening period.

Constitutional development through the constitutional forums could have been ongoing throughout the entire process and, once new constitutions are drafted by the Western and Nunavut Forums, they could be placed before the citizens of the new territories for discussion and ratification. These constitutions would then have to be presented to and accepted by the federal government before their enactment by Parliament.

The division of the GNWT into eastern and western components would take place according to the timetable established by the Division Commission. Until the new constitutions are proclaimed by Parliament, however, the GNWT would remain the only government of the Northwest Territories.

## COMPREHENSIVE ABORIGINAL CLAIMS

The Coolican Task Force Report advocates major changes to the federal claims policy. The most important change recommended is the expansion of the scope of claims and an opening of the process. However, the GNWT continues to advocate that changes to public government in the N.W.T. should be made through a public process.

### Considerations

While the GNWT is generally supportive of the report's recommendations for changes to the federal claims policy, there are concerns about the scope of negotiations. If a new policy broadens the scope of negotiations to include political and constitutional development issues, then the GNWT would want to be an independent and necessary party at the claims negotiations table in order to live up to its responsibilities as the government of all the residents of the N.W.T.

The situation in the NWT is unique and cannot readily be viewed in the same light as the circumstances in the provinces. Over the past few years, the aboriginal groups and the GNWT have looked for alternate ways to deal with the political rights of aboriginal people in the context of the political and constitutional development of the N.W.T. The N.W.T. Constitutional Alliance was created to make recommendations on a boundary and new forms of government with political guarantees for aboriginal people. If successful, the outcome of the Alliance process will be viewed by aboriginal people, in a practical sense, to be a type of "self-government" through which they can effectively participate in public institutions.

Regardless of any changes to federal policy, there is concern in some quarters that the claims process is too secretive. While the GNWT recognizes the need for confidentiality in matters under negotiation, a greater understanding of the process and issues under discussion is necessary to minimize the suspicion and resentment toward the process by those not directly involved. Non-claimants are also seeking more involvement in the process of settling claims.

### Strategy

In deciding what ought to be on the table for negotiation, a framework agreement should be entered into by governments and each claimant group. The GNWT should have status equal to the other parties in the development of these framework agreements.

If the scope of the federal claims policy is broadened to allow political and self-government matters to be negotiated at the claims table, the GNWT should have equal status with the other parties to the negotiations during discussion, negotiation and signing of agreements relating to such issues rather than remaining a member of the federal team.

At the same time, the forums of the Constitutional Alliance should be encouraged to continue their work on the development of new constitutions with whatever guarantees or protection they might contain for aboriginal rights.

In order to keep the public better informed on and involved in the claims process, the GNWT should continue its efforts toward a co-ordinated public information campaign designed to foster awareness of claims and their implications. The second table concept could also be investigated as a means of involving more directly parties interested in negotiations (such as the NWT Wildlife Federation) or discussing any number of claims topics, especially when joint management regimes are being contemplated.

## DEVOLUTION

Within the NWT, devolution means the transfer or delegation of provincial-type powers held by the federal government to the Government of the Northwest Territories. The governments of Canada and the Northwest Territories are pursuing devolution together in order to give N.W.T. residents more control over decisions affecting the north and to reduce much of the duplication that now exists between the two governments providing services in the N.W.T.

The purposes of linking devolution and land claims processes are to, first, involve aboriginal people directly in the design and the management of public institutions set up to protect rights gained through the claims process and, second, to implement agreements where possible prior to a final settlement to allow aboriginal people to gain experience in the functions carried out by these institutions, e.g. Land Use Planning Commission.

Powers and resources transferred through the devolution process will increase the total resources and powers which may ultimately be shared once a decision has been made to create two territories. If these processes are to proceed in harmony, the challenge facing the Legislative Assembly, the governments of the N.W.T. and Canada and the aboriginal organizations will be to stress the purposes held in common and to find ways to solve problems when they are different.

### Strategy

The GNWT's first priority in proceeding with devolution is to reach a consensus with northern leaders on an agenda for devolution and on ways devolution can proceed together with claims negotiations.

The primary means being proposed to identify whether subjects are to be negotiated either through the claims or devolution processes is through a Memorandum of Understanding to be worked out between the Government of the N.W.T. and the aboriginal organizations. The purpose of this Memorandum of Understanding is to determine whether a particular subject being sought by the GNWT involves an aboriginal right or not. If it is agreed that it does, further agreements are required to determine the type of participation the aboriginal organizations will have. The GNWT has reached an agreement with the Dene/Metis on the terms of a Memorandum of Understanding. No agreement has yet been reached with the Inuit.

One other method being used to link these processes is through a form known as the "second table". This table was initially set up to develop a system for land and water management within the Dene/Metis claim area. As noted in the section dealing with claims, this approach could also be used to deal with other matters currently on the land claims table.

#### Division

In response to a concern that powers and resources transferred to headquarters, i.e. Yellowknife, would make it more difficult to transfer the resources after division, the GNWT has agreed to establish a Division Office to act as a watchdog by advising the Executive Council of possible areas in which devolution of provincial-type powers can enhance readiness for division. The Office will also be expected to prepare the GNWT for division once it has been agreed to by the Government of Canada.

#### Constitutional Development

The primary need is for better communications between government and the two forums to ensure consistency between the devolution process and the development of separate constitutions for Nunavut and for a western N.W.T. government. To meet this need, the government should establish a liaison between the Executive Council and the Constitutional Alliance to improve the understanding and awareness of all parties on initiatives being taken through these forums.

## CONFLICT RESOLUTION

Each of the processes used to further political and constitutional development in the N.W.T. has been designed to accomplish specific objectives. While the objectives for each process are unique, all have a common theme, that is to give N.W.T. residents more control over matters affecting individuals, communities or the territories as a whole. If each objective is to be achieved without undermining others, it will be necessary to use a variety of problem solving methods.

### Considerations

Division, devolution and the development of constitutions for Nunavut and the western N.W.T. are public processes. As such, agreements reached by northern leaders must be acceptable to the majority of N.W.T. residents.

On the other hand, comprehensive claims and matters related to aboriginal self-government being discussed at the First Ministers' Conferences will be decided between the Government of Canada and the aboriginal people.

Expressed in another way, political and constitutional development is being pursued in the N.W.T. to establish and recognize rights and privileges to be held in common by all residents of the N.W.T. At the same time, aboriginal people of the N.W.T. are seeking recognition and protection of aboriginal rights.

In some ways, constitutional and political development and aboriginal claims related processes can be complementary. This is because aboriginal people can choose to negotiate rights either through processes established to recognize aboriginal rights, such as the First Ministers Conferences on Aboriginal Rights, or through public constitutional processes, such as the Constitutional Alliance. Furthermore, rights held in common by all N.W.T. residents often overlap with rights being sought by aboriginal people through the claims process. However, if aboriginal organizations choose to negotiate constitutional guarantees for rights gained through claims or at First Ministers' Conferences on Aboriginal Rights, it may be possible to avoid the need to establish separate systems of self-government such as those now being contemplated in the provinces.

A variety of agenda-setting and problem solving mechanisms have been used or proposed to avoid conflict and duplication. The most important of these are defined below:

Memorandum of Understanding on Devolution:

An agreement between the GNWT and aboriginal organizations on a process for determining whether and how specific provincial-type powers effect aboriginal rights. (Agreement with Dene/Metis, April 23, 1986)

Participation Agreement:

An agreement pursuant to the Memorandum of Understanding detailing the type and extent of participation which aboriginal groups will have in the negotiating of devolution matters with the federal government (refer to Dene/Metis/GNWT Memorandum of Understanding).

Framework Agreement (proposed):

An agreement between the Government of Canada and aboriginal organizations on specific subjects to be negotiated through the claims process.

Second Table (experimental):

A structure established for the purpose of recommending to the main claims table details of how aboriginal rights are to be protected within public management structures. Membership includes the Dene/Metis and the Governments of Canada and the Northwest Territories.

Strategy

The outcome of the work and effort devoted to accomplish political and constitutional development will inevitably be a compromise. If there is to be an acceptable compromise, the interests of all parties must be properly represented and, where there are competing interests, ways must be found to resolve conflicts. The GNWT strategy for political and constitutional reform follows.

Division of the NWT

The GNWT believes that further political and constitutional reform will be limited if the division issue is not resolved and that a boundary agreement is pivotal to its resolution.

As a first step, Executive Council has brought together northern leaders in order to achieve a common understanding of the objectives for political and constitutional reform and to seek ways to resolve problems when they arise. The GNWT is hoping to formalize an agreement on a process for dividing the N.W.T. by signing a Memorandum of Understanding with all aboriginal organizations.



In addition, Executive Council has approved in principle the establishment of a Division Office to provide advice on possible impacts of government decisions on dividing the N.W.T. and to begin preparations for dividing the territorial government. If agreement can be reached on a boundary, a Division Commission could be set up by the federal government to establish a division timetable and oversee the process. Aboriginal organizations would participate on the commission along with the GNWT.

Executive Council has also revised the mandate of its Committee on Political and Constitutional Development to improve co-ordination and consistency of advice on political and constitutional issues at the executive level.

Further, the Executive Council recommends to the Legislative Assembly:

- 1) that a target date be set for a boundary agreement, and
- 2) that the Legislative Assembly consider options for conducting a public ratification of a boundary agreement.

#### Settlement of Land Claims

The GNWT continues to support aboriginal people in their quest for a satisfactory resolution of outstanding claims and recognition of aboriginal rights. The GNWT also supports the main thrust of the Coolican Task Force recommendations respecting co-ordination with other political and constitutional initiatives. Specifically, the GNWT recommended to the INAC minister in respect of the Task Force report that:

- Framework agreements should be developed with the Inuit and with the Dene/Metis outlining what topics are to be on the table for negotiation at claims talks. The "sorting" of issues to be dealt with at the claims table and in public processes should be done through such agreements.
- If the scope of negotiations respecting political development is broadened, the GNWT should be afforded equal status during the negotiation of framework agreements and subsequent negotiations on these matters.

- Claims settlements should not bind future northern governments to the status quo respecting the division of powers between those governments and Ottawa.
- Subjects traditionally within the jurisdiction of public government should not be negotiated, at the claims table unless they are included in a framework agreement. Framework agreements would outline which topics are to be on the table for negotiation.
- Governments and aboriginal groups in the NWT should continue to develop a co-ordinated public relations and information strategy.
- The "second table" concept currently being experimented with in the Dene/Metis claim should be provided for in any new claims policy.

#### Devolution

The GNWT continues to believe that devolution is important and can be accomplished without prejudicing other political and constitutional objectives.

A Memorandum of Understanding has been signed with the Dene/Metis. Under the Memorandum of Understanding, where it has been determined that a subject for devolution involves an aboriginal right being negotiated through the claims process, the GNWT is further committed to signing "participation agreements" which determine the type and extent of involvement of aboriginal organizations in devolution negotiations.

#### Constitutional and Political Development

While activities related to devolution, a boundary agreement and land claims are progressing, the GNWT believes it is important that work also continue toward the development of new constitutions for future governments of the western N.W.T. and Nunavut. It is important, however, that a communication link be established between the Constitutional Alliance and the Government to ensure that members of the forums are informed of progress being made in devolution, land claims and in constitutional development. Therefore, the GNWT recommends that:

3. the Executive Council's Committee and Political Development Committee maintain a liaison with the Constitutional Alliance by meeting with members of the NCF and the WCF on a regular basis to share information on matters of mutual interest. (See diagram 3.)

# CONSTITUTION BUILDING: PROCESS

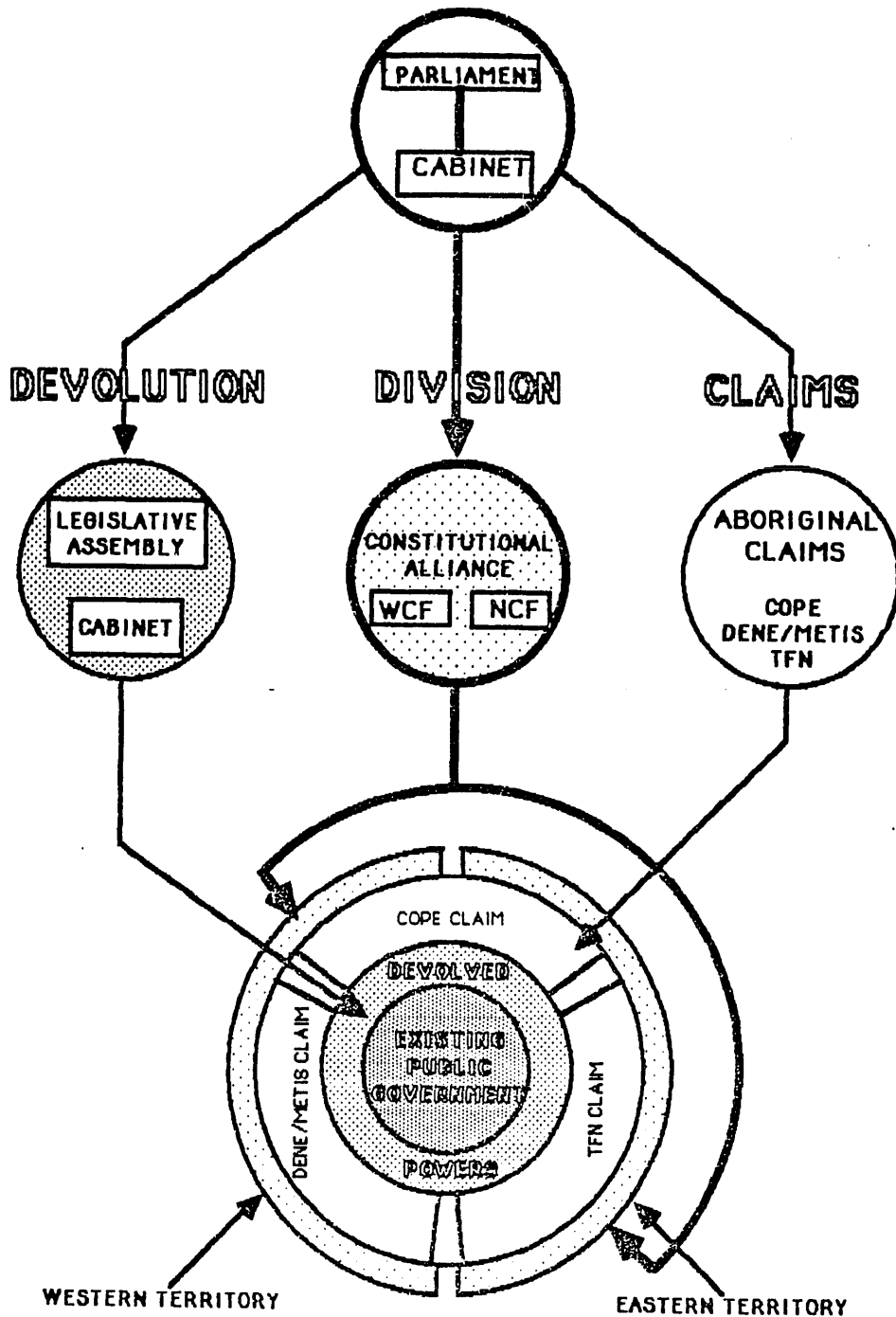
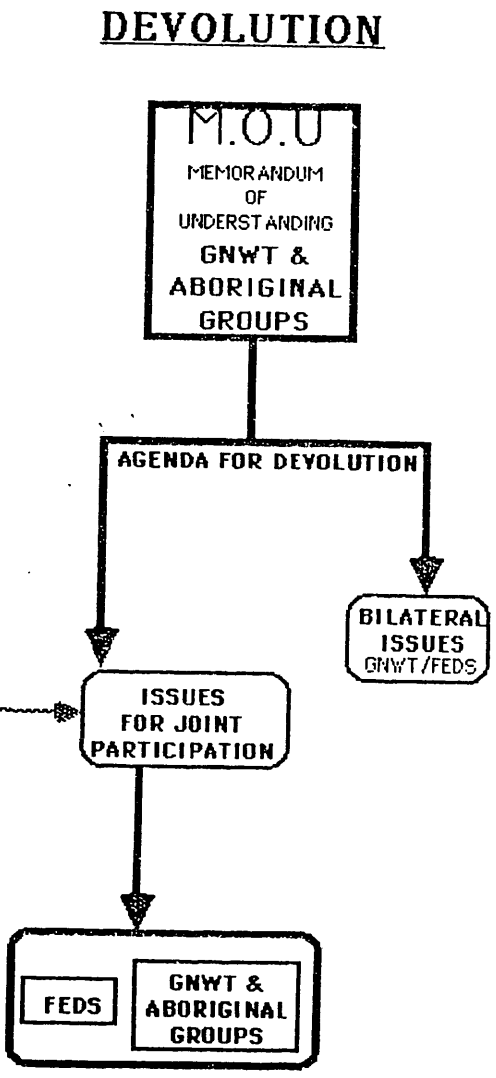
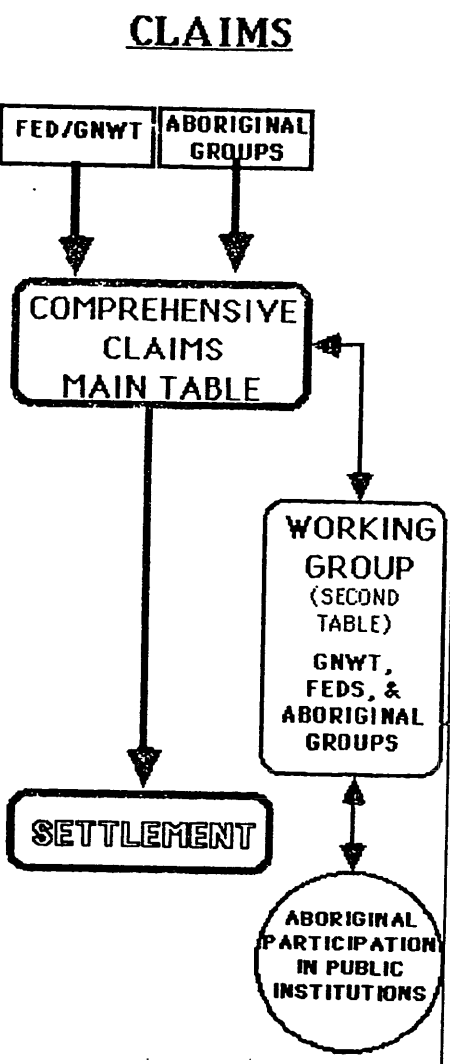
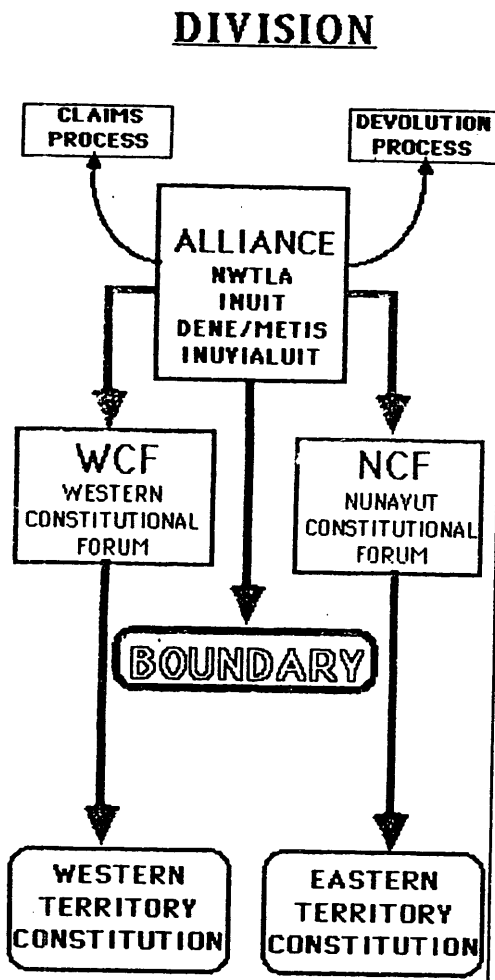
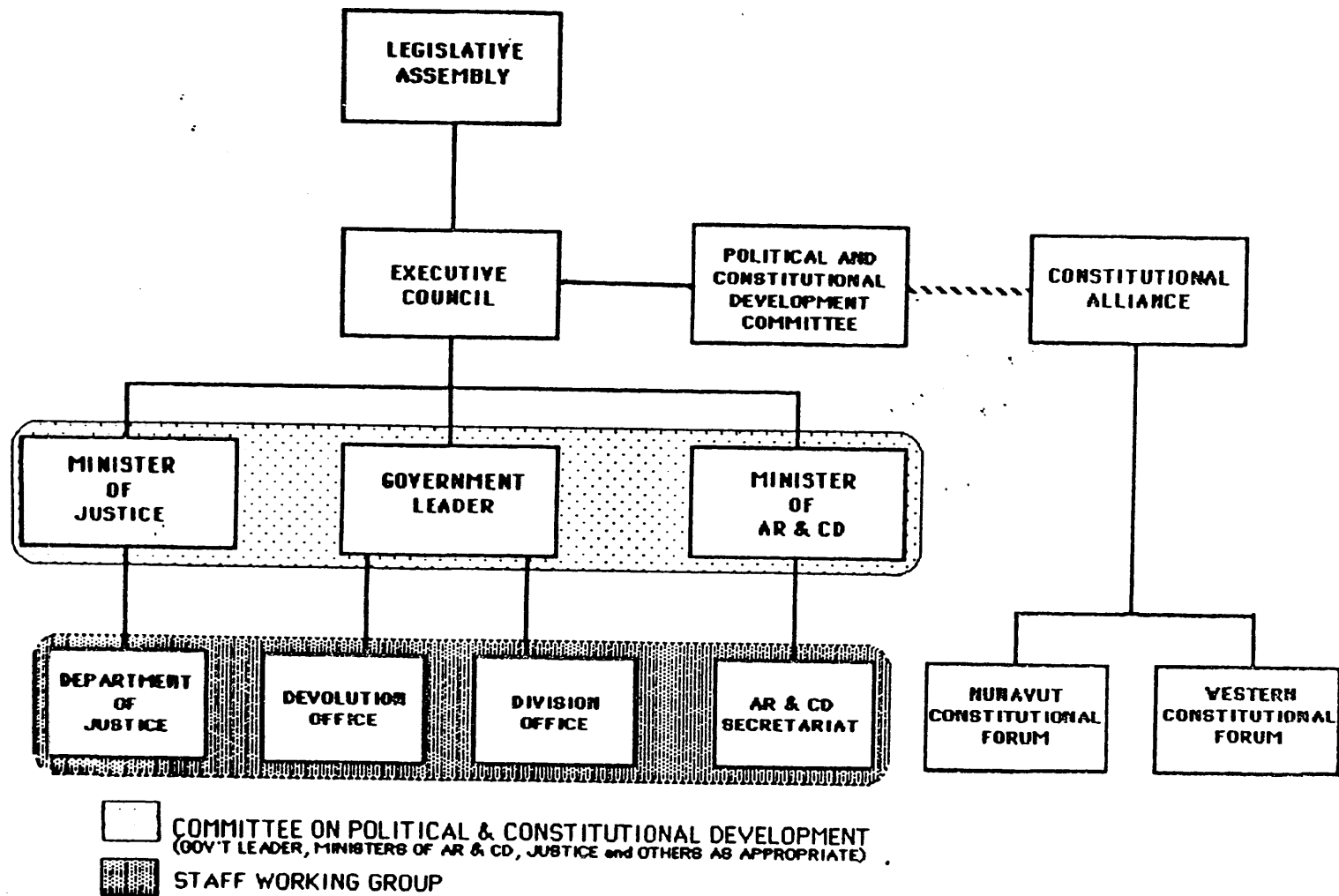


Diagram 2





A SESSIONAL PAPER: POLITICAL AND CONSTITUTIONAL  
DEVELOPMENT IN THE NORTHWEST  
TERRITORIES (Revised)

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ქვეყნის

კანონმდებლობის

მინისტრის

(საქართველოს)

დამატებული 8-ე ბილიტის დამატება (ნა 1986-7)

საქართველოს რესპუბლიკის  
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ნა 10, 1986

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- 2) ለመሥሪያ ስራ ስርዓቶች ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።
- 3) ለሥራ ስርዓት ስለሚደረግ ስራ ስርዓቶች ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።

ክፍል 2

1. ስርዓቶችን ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።
2. ለመሥሪያ ስራ ስርዓቶች ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።
3. ለሥራ ስርዓት ስለሚደረግ ስራ ስርዓቶች ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።
4. ለሥራ ስርዓት ስለሚደረግ ስራ ስርዓቶች ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።
5. ለሥራ ስርዓት ስለሚደረግ ስራ ስርዓቶች ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።
6. ለሥራ ስርዓት ስለሚደረግ ስራ ስርዓቶች ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።
7. ለሥራ ስርዓት ስለሚደረግ ስራ ስርዓቶች ለማጠናቀቅ ለማድረግ መሥሪያዎች ስርዓቶችን ለማጠናቀቅ ይጠበቃል።



















