



PRINCIPLES AND INTERESTS

*Guiding the GNWT at Aboriginal Rights Negotiations
with Indigenous Peoples*

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This document is without prejudice and cannot be relied upon for legal purposes.

1. Aboriginal Rights Agreements should support Indigenous people in the preservation and enhancement of their culture, language, and traditions.

Aboriginal Rights Agreements should provide Indigenous governments with appropriate tools to preserve and enhance their culture, language, and traditions.

2. Aboriginal Rights Agreements within the Constitutional Framework of Canada support the right to self-determination of Indigenous people consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

The principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) can be implemented by concluding Aboriginal Rights Agreements that are modern articulations of Aboriginal rights to lands, resources, and governance. The implementation of the UN Declaration through Aboriginal Rights Agreements ensures that rights are advanced within the constitutional framework of Canada.

3. The Canadian Charter of Rights and Freedoms should apply to Indigenous governments recognized in Aboriginal Rights Agreements.

The *Canadian Charter of Rights and Freedoms* should apply to all governments in Canada, including Indigenous self-governments, so that all Canadians enjoy the same protections of the fundamental rights and freedoms guaranteed by the Charter.

4. Aboriginal Rights Agreements should support Indigenous governments to build healthy, sustainable communities, where anyone can live, work, and invest.

The NWT has a history of Indigenous communities that are open to residency and investment from other Indigenous and non-Indigenous peoples. All residents in the NWT have historically been able to move from community to community and participate in the local life and economy of their chosen home community.

5. Aboriginal Rights Agreements should be clearly understood and implementable.

Aboriginal Rights Agreements should provide a common understanding by all parties, of Aboriginal rights and relationships among the parties, that will be understood into the future. Ambiguity in the text of agreements risks different interpretations and disputes among the parties when implementing the Agreement. The parties to an agreement should have confidence that commitments made can be kept. The GNWT has an interest in ensuring that commitments made in agreements can reasonably and sustainably be implemented.

6. The parties to the agreement should be able to rely on the agreement.

The GNWT has an interest in having clear language in the Aboriginal Rights Agreements that confirms the parties' ability to rely on the agreement without requiring the cede, release, and surrender provisions of the past. A robust review and amendment process is key to having agreements that are flexible and can be amended to evolve and incorporate new s.35 Aboriginal Rights and remain current with best practices as well as address issues with implementation.

7. Implementation of Aboriginal Rights Agreements should not adversely affect the level of programs and services provided by the Government of the Northwest Territories to residents of the Northwest Territories.

The integrated nature of some public government programs and services will require the parties to consider how to avoid dividing some territorial program and service delivery systems if doing so could result in diseconomies of scale and potential negative impacts on a consistent quality of services for all Northern residents. Negotiators will seek options for collaboration and implementation to ensure Indigenous governments can deliver programs and services, and public governments can continue to meet obligations to residents.

8. Consistent with the principle of democratic accountability, residents of the Northwest Territories should have the ability to participate in government decisions that directly affect them.

Democracy requires accountability. Resident should have the ability to participate in all levels of government which represents them and make decision that affect them.

The GNWT should take a flexible approach to self-government that recognizes that there is not a “one size fits all” governance model for all regions or communities. The application of Indigenous law to non-Indigenous people requires careful consideration to ensure the principle of democratic accountability is protected for all Northerners.

9. Aboriginal Rights Agreements should allow access to comparable programs and services and provide similar land and capital transfer opportunities.

Reasonable comparability in land quantum and capital transfer among Aboriginal Rights Agreements provides a measure of fairness for both Indigenous and public governments.

Having one region lacking in services, or another offering preferred services can create concerns over fair and reasonable access among residents. Care needs to be applied to promote equitable services for all residents across the NWT.

10. Aboriginal Rights Agreements should result in recognition and predictability with respect to the ownership, use of, and access to lands and resources in the Northwest Territories.

A shared understanding of land ownership and rights is required to allow for clarity in how land is managed and to provide investor confidence as resource development is considered.

11. Aboriginal Rights Agreements should clarify and confirm predictable processes for authorizing the use of natural resources in the Northwest Territories.

To the extent possible, land and resource management should be understandable and predictable.

Aboriginal Rights Agreements should result in clarity and predictability with respect to the ownership, use, access, management, and disposition of lands and resources.

12. A single integrated and co-ordinated system of resource management should apply throughout the Mackenzie Valley.

Having a single integrated system for the NWT, outside of the Inuvialuit Settlement Region, with the ability to address regional differences, provides a predictable process for land and resource management that reflect the unique needs of each region.

The components of an integrated and coordinated system work together and consider many factors to make good resource management decisions, regardless of ownership or jurisdiction. To the extent possible, institutions with guaranteed roles for Indigenous Peoples should be used to inform resource management decisions. These institutions must consider the public interest, Aboriginal Rights, and the special relationship of Indigenous peoples to lands and resources.

13. Ministerial accountability for lands and resources under the jurisdiction of territorial and federal ministers must remain.

Ministerial and democratic accountability for decisions made about public lands and resources is a constitutional requirement. Aboriginal Rights Agreements should also ensure that Indigenous Governments are democratically accountable to their citizens about Indigenous lands and resources. Collaboration between public and Indigenous governments on shared priorities and formal engagement processes and engagement on matters of interest to better inform decisions respecting lands and resources should be encouraged, but public governments must ultimately retain decision-making to ensure accountability.

14. Indigenous governments recognized in modern Aboriginal Rights Agreements will operate within the Canadian Constitutional Framework.

The Government of Canada and the GNWT have both recognized the inherent right of self-government as it exists under section 35 of the *Constitution Act, 1982*. Indigenous peoples in Canada have a right to govern themselves in relation to matters that are internal to their communities, integral to their distinctive cultures, traditions, languages, and institutions and with respect to their land and resources.

Indigenous government laws and authorities must work in harmony with federal and territorial laws.

The constitutional framework of Canada includes the unwritten principles of constitutionalism, democracy, the rule of law, protection of minorities, federalism, judicial independence, separation of powers among the executive, legislative and judicial branches, and parliamentary sovereignty.

15. The implementation of Aboriginal Rights Agreements in the Northwest Territories should promote the awareness and understanding of the rights and benefits in those agreements by all residents of the NWT.

The successful implementation of Aboriginal Rights Agreements is fundamentally important. Working towards a shared understanding and commitment from all parties will require Government to Government relationships and arrangements. Building awareness of the contents and obligations in the Aboriginal Rights Agreement within the GNWT is essential.

16. To ensure accountability and promote interest-based negotiations, the GNWT should be transparent with the subject specific interests guiding negotiators.

The parties to the negotiations, and the public, should have a clear understanding of the positions taken by the GNWT, and the interests behind them.