

# **The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government**

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## **Part I - Policy Framework**

### **The Inherent Right of Self-Government is a Section 35 Right**

The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*. It recognizes, as well, that the inherent right may find expression in treaties, and in the context of the Crown's relationship with treaty First Nations. 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.

The Government acknowledges that the inherent right of self-government may be enforceable through the courts and that there are different views about the nature, scope and content of the inherent right. However, litigation over the inherent right would be lengthy, costly and would tend to foster conflict. In any case, the courts are likely to provide general guidance to the parties involved, leaving it to them to work out detailed arrangements.

For these reasons, the Government is convinced that litigation should be a last resort. Negotiations among governments and Aboriginal peoples are clearly preferable as the most practical and effective way to implement the inherent right of self-government.

### **Within the Canadian Constitutional Framework**

Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the Canadian Constitution. Aboriginal jurisdictions and authorities should, therefore, work in harmony with jurisdictions that are exercised by other governments. It is in the interest of both Aboriginal and non-Aboriginal governments to develop co-operative arrangements that will ensure the harmonious relationship of laws which is indispensable to the proper functioning of the federation.

In light of the wide array of Aboriginal jurisdictions or authorities that may be the subject of negotiations, provincial governments are necessary parties to negotiations and agreements where subject matters being negotiated normally fall within provincial jurisdiction or may have impacts beyond the Aboriginal group or Aboriginal lands in question. Territorial governments should be party to any negotiations and related agreements on implementing self-government north of the sixtieth parallel.

The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society.

### **Canadian Charter of Rights and Freedoms**

The Government is committed to the principle that the *Canadian Charter of Rights and Freedoms* should bind all governments in Canada, so that Aboriginal peoples and non-Aboriginal Canadians alike may continue to enjoy equally the rights and freedoms guaranteed by the Charter. Self-government agreements, including treaties, will, therefore, have to provide that the *Canadian Charter of Rights and Freedoms* applies to Aboriginal governments and institutions in relation to all matters within their respective jurisdictions and authorities.

The Charter itself already contains a provision (section 25) directing that it must be interpreted in a manner that respects Aboriginal and treaty rights, which would include, under the federal approach, the inherent right. The Charter is thus designed to ensure a sensitive balance between individual rights and freedoms, and the unique values and traditions of Aboriginal peoples in Canada.

## **Different Circumstances**

Given the vastly different circumstances of Aboriginal peoples throughout Canada, implementation of the inherent right cannot be uniform across the country or result in a "one-size-fits-all" form of self-government. The Government proposes to negotiate self-government arrangements that are tailored to meet the unique needs of Aboriginal groups and are responsive to their particular political, economic, legal, historical, cultural and social circumstances.

## **Scope of Negotiations**

Under the federal approach, the central objective of negotiations will be to reach agreements on self-government as opposed to legal definitions of the inherent right. The Government realizes that Aboriginal governments and institutions will require the jurisdiction or authority to act in a number of areas in order to give practical effect to the inherent right of self-government. Broadly stated, the Government views the scope of Aboriginal jurisdiction or authority as likely extending to matters that are internal to the group, integral to its distinct Aboriginal culture, and essential to its operation as a government or institution. Under this approach, the range of matters that the federal government would see as subjects for negotiation could include all, some, or parts of the following:

- establishment of governing structures, internal constitutions, elections, leadership selection processes
- membership
- marriage
- adoption and child welfare
- Aboriginal language, culture and religion
- education
- health
- social services
- administration/enforcement of Aboriginal laws, including the establishment of Aboriginal courts or tribunals and the creation of offences of the type normally created by local or regional governments for contravention of their laws
- policing

- property rights, including succession and estates
- land management, including: zoning; service fees; land tenure and access; and expropriation of Aboriginal land by Aboriginal governments for their own public purposes
- natural resources management
- agriculture
- hunting, fishing and trapping on Aboriginal lands
- taxation in respect of direct taxes and property taxes of members
- transfer and management of monies and group assets
- management of public works and infrastructure
- housing
- local transportation
- licensing, regulation and operation of businesses located on Aboriginal lands

In some of these areas, detailed arrangements will be required to ensure harmonization of laws, while in others, a more general recognition of Aboriginal jurisdiction or authority may be sufficient.

There are a number of other areas that may go beyond matters that are integral to Aboriginal culture or that are strictly internal to an Aboriginal group. To the extent that the federal government has jurisdiction in these areas, it is prepared to negotiate some measure of Aboriginal jurisdiction or authority. In these areas, laws and regulations tend to have impacts that go beyond individual communities. Therefore, primary law-making authority would remain with the federal or provincial governments, as the case may be, and their laws would prevail in the event of a conflict with Aboriginal laws. Subject matters in this category would include:

- divorce
- labour/training
- administration of justice issues, including matters related to the administration and enforcement of laws of other jurisdictions which might include certain criminal laws
- penitentiaries and parole
- environmental protection, assessment and pollution prevention
- fisheries co-management
- migratory birds co-management
- gaming
- emergency preparedness

There are a number of subject matters where there are no compelling reasons for Aboriginal governments or institutions to exercise law-making authority. These subject matters cannot be characterized as either integral to Aboriginal cultures, or internal to Aboriginal groups. They can be grouped under two headings: (i) powers related to Canadian sovereignty, defence and external relations; and (ii) other national interest powers. In these areas, it is essential that the federal government retain its law-making authority. Subject matters in this category would include:

- i. Powers Related to Canadian Sovereignty, Defence and External Relations
  - international/diplomatic relations and foreign policy

- national defence and security
  - security of national borders
  - international treaty-making
  - immigration, naturalization and aliens
  - international trade, including tariffs and import/export controls
- ii. Other National Interest Powers
- management and regulation of the national economy, including:
    - regulation of the national business framework, fiscal and monetary policy
    - a central bank and the banking system
    - bankruptcy and insolvency
    - trade and competition policy
    - intellectual property
    - incorporation of federal corporations
    - currency
  - maintenance of national law and order and substantive criminal law, including:
    - offences and penalties under the Criminal Code and other criminal laws
    - emergencies and the "peace, order and good government" power
  - protection of the health and safety of all Canadians
  - federal undertakings and other powers, including:
    - broadcasting and telecommunications
    - aeronautics
    - navigation and shipping
    - maintenance of national transportation systems
    - postal service
    - census and statistics

While law-making power in these areas will not be the subject of negotiations, the Government is prepared to consider administrative arrangements where it might be feasible and appropriate.

## **Mechanisms for Implementation**

The Government anticipates that agreements on self-government will be given effect through a variety of mechanisms including treaties, legislation, contracts and non-binding memoranda of understanding.

### **Treaties**

The Government of Canada is prepared, where the other parties agree, to constitutionally protect rights set out in negotiated self-government agreements as treaty rights within the meaning of section 35 of the *Constitution Act, 1982*. Implementation of the inherent right in this fashion would be a continuation of the historic relationship between Aboriginal peoples and the Crown. Self-government rights could be protected under section 35:

- in new treaties;
- as part of comprehensive land claim agreements; or
- as additions to existing treaties.

Treaties create mutually binding obligations and commitments which are constitutionally protected. Recognizing the solemn and enduring nature of treaty rights, the Government believes that the primary criterion for determining whether or not a matter should receive constitutional protection is whether it is a fundamental element of self-government that should bind future generations. Under this approach, suitable matters for constitutional protection would include:

- a listing of jurisdictions or authorities by subject matter and related arrangements;
- the relationship of Aboriginal laws to federal and provincial laws;
- the geographic area within which the Aboriginal government or institution will exercise its jurisdiction or authority, and the people to be affected thereby; and
- matters relating to the accountability of the Aboriginal government to its members, in order to establish its legitimacy and the legitimacy of its laws within the Constitution of Canada.

It follows from this approach that matters in agreements of a technical or temporary nature would not be appropriate matters for constitutional protection as treaty rights. Arrangements that must be adaptable to changing circumstances, such as program and service delivery arrangements, and funding arrangements, would therefore not be appropriate subjects for constitutional protection as treaty rights.

## **Legislation, Contracts and Memoranda of Understanding**

Self-government arrangements will not be implemented exclusively through treaties. Other mechanisms that will play a role in this process include legislation, contracts and non-binding memoranda of understanding. Legislation can be used in the following ways:

- to ratify and give effect to agreements, including treaties;
- to implement particular provisions of agreements, including treaties; and
- to act as a stand-alone mechanism when the parties concerned wish to implement self-government arrangements, but not through a treaty.

Legally enforceable contracts can be used for setting out detailed, technical or time-limited agreements respecting the implementation of self-government arrangements. Finally, memoranda of understanding, which are not legally enforceable, may also be used to set out political commitments on self-government.

## **Existing Treaties**

Existing treaties are fundamental to the special relationship between Treaty First Nations and the Crown. The Government does not propose to re-open, change or displace existing treaties through implementation of the inherent right and the negotiation of self-government agreements. For Treaty First Nations that so desire, the Government is prepared, consistent with this policy

approach, to negotiate agreements on self-government which build on the relationship already established by their treaties.

## **Existing Land Claim Agreements**

The Government does not propose to re-open the provisions of existing land claim agreements as part of any process to implement the inherent right of self-government. Existing land claim agreements, such as the *James Bay and Northern Quebec Agreement*, the *Northeastern Quebec Agreement*, the *Inuvialuit Final Agreement*, the *Nunavut Land Claims Agreement*, the *Gwich'in Comprehensive Land Claim Agreement*, the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*, the *Champagne and Aishihik First Nations Final Agreement*, the *Vuntut Gwitchin First Nation Final Agreement*, the *First Nation of Nacho Nyak Dun Final Agreement* or the *Teslin Tlingit Council Final Agreement*, will continue to operate according to existing terms.

Within this policy framework, the federal government would be prepared to negotiate self-government agreements with those Aboriginal groups who have settled their land claims, but do not already have self-government arrangements.

## **Existing Self-Government Agreements**

As a general principle, existing self-government agreements will continue to operate according to their existing terms. If requested by the Aboriginal groups concerned, and with the full participation of the province or territory concerned, the federal government would be prepared to explore issues related to constitutional protection of aspects of the self-government arrangements set out in the *Sechelt Indian Band Self-Government Act* in British Columbia, the *Cree-Naskapi (of Quebec) Act*, and the *Yukon First Nations Self-Government Act*. Any changes or amendments to existing arrangements, however, would only be made with the full agreement of all parties concerned.

## **Application of Laws**

As a right which is exercised within the framework of the Canadian Constitution, the inherent right will not lead to the automatic exclusion of federal and provincial laws, many of which will continue to apply to Aboriginal peoples or will co-exist alongside validly enacted Aboriginal laws.

To minimize the possibility of conflicts between Aboriginal laws and federal or provincial laws, the Government believes that all agreements, including treaties, should establish rules of priority by which such conflicts can be resolved. The Government takes the position that negotiated rules of priority may provide for the paramountcy of Aboriginal laws, but may not deviate from the basic principle that those federal and provincial laws of overriding national or provincial importance will prevail over conflicting Aboriginal laws. Prior to the conclusion of self-government agreements, federal and provincial laws would continue to apply to the extent that they do currently.

## **Transition**

It will be important to ensure a smooth transition from current arrangements to implementation of the inherent right through negotiated agreements. All agreements, including treaties, should therefore include appropriate transition measures to ensure that implementation of self-government does not create legal uncertainty.

The Government appreciates that certain Aboriginal groups may not wish to exercise a full range of jurisdiction or authority immediately, in which case the current legislative regime will continue to apply until self-government agreements have been negotiated. Alternatively, some groups may want to structure their self-government agreements so that some jurisdictions or authorities can be taken up immediately and others exercised in a phased manner, in accordance with the group's needs, capacities and preferred timetable. In this case, the current legislative regime will continue to apply in relation to those jurisdictions or authorities that have not yet been taken up pursuant to a negotiated agreement.

## **Jurisdiction or Authority Over Non-Members**

Negotiations with Aboriginal groups residing on a land base must address the rights and interests of non-members residing on Aboriginal lands. Agreements should indicate clearly if Aboriginal jurisdiction or authority will be exercised over non-members. Where the exercise of Aboriginal jurisdiction or authority over non-members is contemplated, agreements must provide for the establishment of mechanisms through which non-members may have input into decisions that will affect their rights and interests, and must provide for rights of redress.

## **Fiduciary Obligations**

The Crown has a unique, historic, fiduciary relationship with Aboriginal peoples in Canada. While the Government's recognition of an inherent right of self-government does not imply the end of this historic relationship, Aboriginal self-government may change the nature of this relationship.

As Aboriginal governments and institutions exercise jurisdiction or authority and assume control over decision-making that affects their communities, they will also assume greater responsibilities for the exercise of those powers. As a result, Crown responsibilities will lessen. In this sense, the historic relationship between Aboriginal peoples and the Crown will not disappear, but rather, will evolve as a natural consequence both of Aboriginal peoples' changing role in shaping their own lives and communities, and of the Crown's diminished control and authority in relation to them.

In circumstances where Aboriginal groups wish the Crown to have certain ongoing obligations, self-government jurisdiction or authority will, correspondingly, be limited. In such cases, continuing Crown obligations should be clearly defined. There is no justifiable basis for the Government to retain fiduciary obligations in relation to subject matters over which it has



relinquished its control and over which an Aboriginal government or institution has, correspondingly, assumed control.

## **Accountability**

Aboriginal governments and institutions should be fully accountable to their members or clients for all decisions made and actions taken in the exercise of their jurisdiction or authority. Mechanisms to ensure political and financial accountability should be comparable to those in place for other governments and institutions of similar size, although they need not be identical in all respects.

Mechanisms to ensure political accountability must be developed and ratified by the Aboriginal group concerned, and set out in an internal constitution so that they are transparent to all members, and to others who deal with the Aboriginal governments or institutions. In determining the specific accountability measures required, consideration will need to be given to the particular functions of Aboriginal governments and institutions, such as the exercise of jurisdiction, the delivery of programs and services, and/or the administration and enforcement of regulations.

Aboriginal governments exercising law-making authority must establish:

- clear and open processes of law-making;
- transparent processes for proclaiming a law in effect;
- procedures for the notification and publication of laws; and
- procedures for the appeal of laws or other decisions.

Aboriginal institutions exercising authorities must:

- ensure that the decision-making processes central to the core functions of those institutions are open and transparent;
- ensure that information on administrative policies and standards is readily obtainable by clients; and
- establish procedures, where appropriate, for administrative review, including appeal mechanisms.

Mechanisms to ensure administrative and financial accountability to members and to clients must also be established, and should be no less stringent than those existing for other governments and institutions of comparable size. Such mechanisms should respect the principles of transparency, disclosure and redress.

Financial records and statements should comply with generally accepted accounting principles for governments and institutions of comparable size. In addition, public accounts must be prepared and made available, and provision must be made for annual public audits of expenditures.

Aboriginal governments and institutions must also be accountable to Parliament for funding provided by the federal government as a result of self-government agreements. Specifically, financing agreements must provide for a mechanism enabling Parliament to assess the extent to which public funds have contributed to the objectives for which they were voted.

Aboriginal governments and institutions must develop rules with respect to conflict of interest for both elected and appointed officials. In particular, conflict-of-interest rules must ensure that services that provide an opportunity for financial gain operate at arm's length from elected and appointed officials.

## **Financial Arrangements**

The Government's position is that financing self-government is a shared responsibility among federal, provincial and territorial governments, and Aboriginal governments and institutions. Specific financing arrangements will be negotiated among governments and the Aboriginal groups concerned.

The Government will normally require that an agreement on cost-sharing between the federal government and the relevant provincial or territorial government be secured prior to the commencement of substantive negotiations. (In some cases, cost-sharing arrangements are already in place.) In negotiating new financial arrangements and cost-sharing agreements, the federal government maintains the position that it has primary but not exclusive responsibility for on-reserve Indians and the Inuit, while the provinces have primary but not exclusive responsibility for other Aboriginal peoples.

All participants in self-government negotiations must recognize that self-government arrangements will have to be affordable and consistent with the overall social and economic policies and priorities of governments, while at the same time taking into account the specific needs of Aboriginal peoples. In this regard, the fiscal and budgetary capacity of the federal, provincial, territorial and Aboriginal governments or institutions will be a primary determinant of the financing of self-government.

Specific financial arrangements for the financing of Aboriginal governments and institutions should take into account, among other factors:

- the shared objective of ensuring the comparability of basic public services for Aboriginal peoples to those available to other Canadians in the vicinity (comparability does not mean that programs, services or funding must be identical in all cases);
- the need for reasonably stable, predictable and flexible funding arrangements for Aboriginal governments and institutions;
- existing levels of support provided by governments;
- the jurisdictions, authorities, programs and services to be assumed by Aboriginal governments or institutions;
- the Aboriginal group's ability to raise own-source revenues, and other resources available to it; and

- the efficiency and cost-effectiveness of the proposed arrangements, including issues related to the size, location and accessibility of the group/groups.

In addition, financial arrangements should be consistent with principles of sound public administration.

In this climate of scarce resources it will be particularly important for governments to work together to harmonize funding and program and service delivery arrangements, thereby ensuring the most efficient and effective use of those resources. The Government believes that, wherever feasible, Aboriginal governments and institutions should develop their own sources of revenue in order to reduce reliance, over time, on transfers from other governments.

## **Access to Programs**

Aboriginal groups and individuals covered by self-government arrangements will continue to be eligible for programs that the federal government may establish from time to time. However, where a comparable jurisdiction, authority or program has been assumed by an Aboriginal group pursuant to an agreement or a treaty, individuals of that Aboriginal group would not ordinarily be eligible for similar federal programs.

Where legal status as an Indian, recognition as an Inuk or Labrador Innu, or residency on reserve is a condition of entitlement to federal programs, the federal government is not prepared, as the result of self-government agreements, to expand entitlement to such programs to off-reserve Status Indians, Non-Status Indians or Métis groups.

## **Implementation Plans**

The Government will require a separate implementation plan for all self-government agreements, including treaties, to be approved in conjunction with Final Agreements. Implementation plans must identify the activities, timeframes and resources that have been agreed upon to give effect to the agreements or treaties. Issues related to affordability, efficiency, capital requirements, duplication of services, feasibility and capacity will have to be addressed.

The Government of Canada recognizes that there will be new costs associated with the transition from the existing regime to implementation of new self-government arrangements. There will not be, however, a separate source of funding for implementation and transition costs. All federal costs associated with the implementation of self-government agreements will have to be accommodated within existing federal expenditures.

In addition, self-government agreements, including treaties, will not include any program enrichment. Any decisions by the federal government regarding program enrichment would have to be made within the context of that program and by the department concerned, not as a consequence of self-government agreements. Once self-government arrangements are in place, however, Aboriginal governments will be free to redirect and redistribute monies into those areas they deem appropriate, subject to maintaining whatever statutory requirements and minimal standards of program and service delivery that have been agreed upon.

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## **Part II: Various Approaches to Self-Government**

The Government recognizes that Indian, Inuit and Métis peoples have different needs, circumstances and aspirations, and want to exercise their inherent right in different ways. Some want their own governments on their land base; some want to work within wider public government structures; and some want institutional arrangements. The Government is prepared to support various approaches, taking into account differing needs and circumstances, and to be flexible on the specific arrangements which may be negotiated.

### **First Nations**

Many First Nations have expressed a strong desire to control their own affairs and communities, and deliver programs and services better tailored to their own values and cultures. They want to replace the outdated provisions of the *Indian Act* with a modern partnership which preserves their special historic relationship with the federal government. Those First Nations which have entered into treaties with the Crown want to ensure that implementation of the inherent right will be consistent with the relationship established by their treaties. All First Nations want other governments to recognize their legitimacy and authority.

The Government of Canada is prepared to work with First Nations and other governments to address these aspirations. It is also prepared to work with Treaty First Nations to ensure that negotiated self-government agreements build on their treaties and the existing treaty relationship. The Government believes that its approach to implementing the inherent right will allow First Nations and governments to establish mutually satisfactory negotiation processes leading to agreements that will recognize the jurisdiction and authority of First Nations' governments. Finally, where the parties to negotiations agree, the Government is prepared to protect rights contained in self-government agreements as constitutionally protected rights under section 35 of the *Constitution Act, 1982*.

The Government recognizes that not all members of a First Nation live on the group's land base. The application of First Nation laws and the delivery of First Nation services to members who reside off the land base of the First Nation may be addressed in agreements with the provinces concerned. However, any such extra-territorial application of laws or receipt of services would be at the option of non-resident members and would have to take into account issues of feasibility and affordability.

### **Inuit Communities**

Inuit groups in various parts of Canada have expressed a desire to address their self-government aspirations within the context of larger public government arrangements, even though they have, or will receive, their own separate land base as part of a comprehensive land claim settlement. The creation of the new territory of Nunavut is one example of such an arrangement on a large scale. The Government is prepared to work with Inuit groups and other governments to arrive at

effective agreements, and is willing to consider a variety of public government approaches. It is also prepared, where all parties agree, to use existing negotiations processes to the greatest extent possible. Public government arrangements will, of course, have to take into account the rights and interests of all people in the area covered by such arrangements.

The Government is also prepared to constitutionally protect rights negotiated in public government arrangements as section 35 rights where appropriate and if the parties to the negotiations agree. Such negotiations would necessarily include the provincial or territorial government in order to ensure harmonious intergovernmental relationships.

Self-government arrangements in a public government context do not preclude consideration of other arrangements at some future date, provided that all parties concerned are in agreement.

## **Métis and Indian Groups off a Land Base**

Métis and Indian groups living off a land base have long professed their desire for a self-government process that will enable them to fulfil their aspirations to control and influence the important decisions that affect their lives. The Government is prepared to enter into negotiations with provinces and Métis and Indian groups residing off a land base which live south of the sixtieth parallel. The Government is also prepared, with provincial agreement, to protect rights in agreements as constitutionally-protected section 35 treaty rights. Negotiation processes may be initiated by the Aboriginal groups themselves and will be tailored to reflect their particular circumstances and objectives.

The Government of Canada recognizes the need for flexibility in developing self-government arrangements. As such, negotiations may consider a variety of approaches to self-government off a land base including:

- forms of public government;
- devolution of programs and services;
- the development of institutions providing services; and
- arrangements in those subject matters where it is feasible to exercise authority in the absence of a land base.

Many Métis groups have expressed the view that enumeration is an essential building block for self-government. The Government agrees and is prepared to cost share with provinces the enumeration of Métis and the identification of Indian people living off a land base who may be covered by self-government arrangements. This information will provide valuable input for the implementation of self-government for Métis and non-land based Indian groups.

The Government of Canada is prepared to discuss the provision of land, but only if it is deemed necessary and complementary to the management of a federal program or service that is transferred to a Métis or non-land based Indian group.

## **Métis with a Land Base**

The Alberta Métis Settlements have also expressed interest in pursuing self-government as it applies to their specific circumstances. Consequently, the federal government, with the participation of the Government of Alberta, is also prepared to negotiate self-government arrangements with Métis people residing on Alberta Métis Settlements, which reflect their unique circumstances. Should lands be provided by other provinces to Métis people under similar regimes, the federal government would be prepared to negotiate similar arrangements, with the participation of the province in question.

Where the parties to negotiations agree, the Government is prepared to protect rights contained in self-government agreements with the Métis as constitutionally protected rights under section 35 of the *Constitution Act, 1982*.

As in the case of First Nation members residing off their land base, the application of Métis laws and delivery of Métis services to members who reside off the Métis land base may be addressed in negotiations with the provinces concerned. Any such extra-territorial application of laws or receipt of services would be at the option of non-resident members and would have to take into account issues of feasibility and affordability.

## **Self-Government in the Western Northwest Territories (NWT)**

Aboriginal groups in the western NWT have a unique opportunity to develop self-government arrangements that are not readily available south of the sixtieth parallel. In the western NWT, the Government would prefer that the inherent right find expression primarily, although not exclusively, through public government. The Government believes that this approach is the best way to address the distinctive features of this region including: the demographic profile of the territory; the fact that many communities are mixed and that settlement lands under land claim settlements do not, in most cases, include the communities; and, finally, the decision to divide the Northwest Territories. Given these circumstances, and considering inefficiencies that may arise due to duplication of programs and services in mixed communities, the creation of completely separate Aboriginal governments in the western NWT may not be practical or efficient.

In the federal government's view, the self-government aspirations of Aboriginal peoples in the NWT can be addressed by providing specific guarantees within public government institutions. The creation of Aboriginal institutions to exercise certain authorities may also be a useful approach.

Issues related to overall territorial governance structures and related arrangements in the western NWT after division should be dealt with in other processes.

## **Self-Government in the Yukon**

There are four First Nation self-government agreements which were brought into force by legislation in 1995 and processes are in place to continue negotiating with the remaining First Nations in the Yukon. The federal government's participation in these negotiations will be guided by the inherent right policy and existing commitments.

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## **Part III: Process Issues**

### **Mandate for Negotiations Within the Federal Government**

Within the federal government, the Minister of Indian Affairs and Northern Development has a mandate to enter into negotiations with First Nations, the Inuit, and Métis groups north of the sixtieth parallel. The Federal Interlocutor for Métis and Non-Status Indians has a mandate to enter into negotiations with Métis south of the sixtieth parallel and Indian people who reside off a land base. In addition, Ministers of other federal government departments have mandates to enter into sectoral negotiations in their respective areas of responsibility. Self-government proposals from Indian, Inuit and Métis groups should be directed accordingly.

A Federal Steering Committee will co-ordinate implementation of the inherent right within the federal government and maintain an overview of all self-government activities across the federal government. The Committee will ensure the participation in negotiations, as required, of all federal departments and agencies. In addition, the Committee will monitor the progress of all self-government negotiations.

### **Establishment of Negotiation Processes**

The Government does not believe that a single process model or approach can be developed that would meet the needs, circumstances and aspirations of all Aboriginal peoples across Canada. Accordingly, the Government is prepared to enter into negotiations with duly mandated representatives of Aboriginal groups and the provinces concerned, in order to establish mutually acceptable processes at the local, regional, treaty or provincial level. The size of the group and workable economies of scale will be significant considerations in determining what may be practical to negotiate.

It is the Government's view that tripartite processes are the most practical, effective and efficient way of negotiating workable and harmonious intergovernmental arrangements. Double-bilateral processes may be employed in certain circumstances if the parties so agree. The Government is also prepared to proceed with sectoral approaches if the parties concerned are in agreement.

It is only in very exceptional circumstances -- were a province to refuse, for example, to come to a tripartite table -- that the federal government would be prepared to consider exclusively bilateral negotiations. However, there are legal risks in proceeding without provincial involvement and agreement. Because of these risks, any self-government negotiations without provincial participation would be strictly limited to matters within exclusive federal jurisdiction and would not result in section 35 treaty rights. Negotiations with Métis and non-land based Aboriginal people will invariably have to be conducted on a tripartite basis.

### **Relationship to Other Processes**

The federal government would be prepared, where the other parties agree, to deal with implementation of the inherent right in combination with other processes, particularly the negotiation of comprehensive land claim settlements. The Government is also prepared to enter into negotiation processes building on the relationship already established through existing treaties. Finally, wherever feasible and appropriate, existing tripartite fora will be used to facilitate the negotiation process. Examples of existing tripartite fora include the British Columbia treaty negotiation process and the Indian Commission of Ontario.

With respect to these processes and existing self-government negotiations (i.e. the tripartite processes for the Métis and non-land based Indian people, and the former Community-Based Self-Government negotiations) the policy approach outlined in this document will guide the federal government's participation.

## **Representation**

It is essential that the individuals negotiating on behalf of Aboriginal peoples be duly mandated by the group they are representing, and that support be maintained throughout the negotiation process. The Government believes that the onus to resolve any disputes regarding representation within or among Aboriginal groups should rest with the Aboriginal groups concerned.

## **Role of Municipalities and Third Parties**

Recognizing the importance of conducting negotiations in a spirit of openness and co-operation, the Government is committed to providing municipalities and third parties with meaningful opportunities to have input into negotiation processes that may directly affect their interests. To this end, the Government will work with provinces, territories and Aboriginal groups to develop appropriate consultation mechanisms for municipalities and third parties that may be directly affected by self-government negotiations and agreements.

## **Approval of Negotiated Agreements**

Within the federal government, Cabinet approval will be sought for Agreements-in-Principle and Final Agreements, and Parliamentary approval sought for self-government treaties and any implementing legislation that may be required.

The Government will require evidence that negotiated agreements have been ratified by the Aboriginal group concerned in a way that demonstrates clearly the group's consent. While the specific ratification mechanism can be negotiated, it will have to ensure that all members have an opportunity to participate, that they have all relevant information available, and that the procedures for ratification are transparent and recognized as binding. The ratification mechanism will also have to comply with legal requirements respecting the transfer of assets.

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## **Glossary of Terms**



As used throughout this document:

**"Aboriginal Government"** means the governing body of a land-based Aboriginal group which may have jurisdiction and may exercise authority on Aboriginal lands.

**"Aboriginal Institution"** means an institution serving Aboriginal people which may exercise authority with respect to an Aboriginal group.

**"Aboriginal Lands"** means lands that:

- are reserved lands within the meaning of the *Indian Act*;
- are land claim settlement lands over which Aboriginal governments may exercise jurisdiction;
- are Métis Settlement areas, as defined in section 1(p) of the *Métis Settlements Act*, S.A. 1990, c. M-14.3, and any other lands that may be provided by the provinces and which are subject to similar regimes;
- are held by, or on behalf of, an Aboriginal group under conditions where they would constitute "lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*;
- any other land by agreement of the Aboriginal group, Canada and, where affected, the relevant province or territory.

**"Aboriginal peoples"** includes the Indian, Inuit and Métis peoples of Canada.

**"Agreement"** means a negotiated agreement dealing with any aspect of self-government as provided for under this approach.

**"Agreement-in-Principle (AIP)"** means an agreement preliminary to the Final Agreement and which will address, in some degree of detail, the full range of issues to be covered by the Final Agreement.

**"Authority"** means any authority, other than a law-making authority, such as the authority to deliver or administer programs or services, or to enforce the laws of other governments.

**"Final Agreement"** means the final version based on the AIP.

**"Jurisdiction"** means law-making authority.

**"Treaty"** in the context of the implementation of self-government, means a negotiated agreement among the federal and provincial or territorial governments and an Aboriginal group that includes those matters that are intended to be constitutionally protected as treaty rights under section 35 of the *Constitution Act, 1982*.