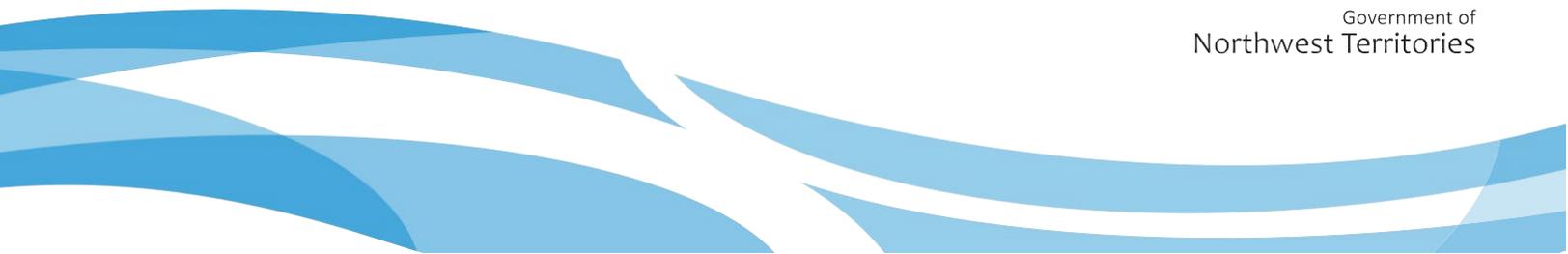




ABORIGINAL RIGHTS AGREEMENT NEGOTIATING MANDATES SUMMARY



Contents

- Introduction 1
- Interpretation..... 2
- Governance..... 3
 - Governance Framework Guiding Indigenous Government Negotiations in the Northwest Territories.... 3
 - Definition of Conflict of Laws 5
 - Constitutional Status, Certainty, Finality, Review and Amendment:..... 5
 - Dispute Resolution..... 6
 - System of Governance 6
 - System of Justice..... 7
 - Harmonization of Laws 10
 - Liability and Indemnification 10
 - Labour Standards and Industrial Relations..... 11
 - Economic Development 11
- Culture and Language..... 13
 - Culture 13
 - Language..... 13
 - Heritage Resources 14
 - Traditional Healing..... 14
- Social Envelope Jurisdictions / Programs and Services..... 16
 - Income Support 16
 - Intergovernmental Service Arrangement (ISA): 17
 - Social Housing:..... 18
 - Adoption 18
 - Child and Family Services 19
 - Guardianship and Trusteeship: 20
 - Marriage..... 21
 - Wills and Intestate Affairs: 21
- Education and Training..... 22
 - Early Learning and Child Care 22
 - [Junior] Kindergarten – Grade 12 (K-12) Education: 22
 - Post-Secondary Education 23
 - Adult Education..... 24
 - Training..... 24
 - Student Financial Assistance 24

Municipal Services.....	26
Municipal Services mandate	26
Gaming and Gambling.....	27
Liquor and Intoxicants.....	28
Transportation	28
Lands and Resources	29
Framework for Developing Table-Specific Negotiating Instruction for the Interim Withdrawal and Selection Commissioner’s Land:.....	29
Negotiations Framework Public Inclusive Partnership Indigenous Governments.....	30
Negotiating Instructions for Land and Resources	30
Negotiating Framework – Aboriginal Governments (Jurisdiction over Settlement Lands)	31
Framework for Developing Table specific Negotiating Instructions for the Identification and selection of Settlement Land at Comprehensive Land Claim Negotiations	31
The Gifting and Trading of Harvested Resources	32

Introduction

The **negotiations mandates** are key to informing the Government of Northwest Territories (GNWT) participation in the negotiations of Aboriginal Rights Agreement as they set out the interests guiding the negotiators in concluding agreements.

The GNWT is currently negotiating 17 Aboriginal Rights Agreements and has settled 5 agreements. All commitments made through negotiations of these Aboriginal Rights Agreements must be considered through the lens of how it can be fully implemented in all agreements. This means that the GNWT must consider how provisions in the Aboriginal Rights Agreement may affect all other Aboriginal Rights Agreements. The GNWT seeks to be flexible and open during negotiations and find solutions which reflect the interests and the vision of the Indigenous government, however much of the rationale as described in these negotiations mandate is rooted in the practical limitations of negotiating and implementing all Aboriginal Rights Agreements in the NWT.

The obligations on the GNWT as set out in an Aboriginal Rights Agreement needs to take into account the practical realities of implementing the Aboriginal Rights Agreement, the resource and capacity limitations of the GNWT, and the potential impacts it may have on the GNWT's ability to deliver programs and services. The GNWT does not currently transfer any self-government funding through the implementation of Aboriginal Rights Agreements. This is a responsibility of the Government of Canada (Canada). Separate Fiscal Agreements will set out the transfer of resources from the GNWT to Indigenous Governments in areas in which the GNWT is currently responsible for program and service delivery.

Interpretation

Some key terms are presented below to assist with the interpretation of this document:

Jurisdiction: means the power to make laws.

Aboriginal Rights Agreement and (Use of the term Aboriginal): Within the *Constitution Act 1982*, more specifically *section 25 and 35 of the Charter of Rights and Freedoms* the term Aboriginal is used to refer to the Indigenous Peoples of Canada. In specific instances in which the Constitutional Rights of Aboriginal Peoples are being discussed, such as to refer to an Aboriginal Rights Agreement, the term Aboriginal is used.

Exclusive Government: means the model of government which exclusively represents the citizens of an Indigenous collective.

Public/Inclusive Partnership Indigenous Government: means the government representing all the residents of a community, responsible for providing the services, products, and facilities necessary or desirable for the community operations; and the authorities/ responsibilities of a municipal nature as set out in other NWT legislation for community governments, as well as those of an Indigenous government.

Concurrent Jurisdiction: Under the concurrency of laws model, federal and territorial laws will continue to apply to Indigenous government citizens unless otherwise provided for by enactment of Indigenous government laws pursuant to the Aboriginal Rights Agreement. The conflict of laws provisions of the Aboriginal Rights Agreement will set out the paramountcy of laws of the Indigenous, territorial, and federal governments.

Governance

How the legislative authority of Indigenous Governments' operate in relation to the jurisdictions of other governments, including the Government of Canada and the Government of the Northwest Territories are a key feature of Aboriginal Rights Agreements. When negotiating provisions respecting governance, the GNWT is guided by a mandate document titled Governance Framework Guiding Negotiations in the NWT. Key features of that document including the interests that guide negotiators are described below.

Governance Framework Guiding Indigenous Government Negotiations in the Northwest Territories

- The GNWT's vision for self-government is based upon the recognition and implementation of the Inherent rights of Indigenous peoples in Canada, the GNWT's desired relationship with Indigenous governments, the expectations of the Federal government with respect to Indigenous governments throughout Canada and the commitment to continue to represent the interests of all territorial residents at Aboriginal Rights Agreement negotiations in the Northwest Territories.
- The GNWT's vision for self-government has also been developed based upon the key features of the federal Inherent Right Policy, the Constitution of Canada, and existing Aboriginal Rights Agreements in the Northwest Territories and elsewhere in Canada.
- GNWT recognizes that Indigenous peoples have an inherent right to self-government, this is recognized under Section 35 of the Constitution Act 1982. The overarching goal of Aboriginal Rights Agreements is to establish Indigenous governments that have the capacity to fully and successfully implement their agreements and exercise authority through their Jurisdictions.
- Based upon the federal Inherent Right Policy, the GNWT views the scope of the inherent right of self-government as extending to matters that are internal to the group, integral to its distinct Indigenous culture, and essential to its operation as a government or institution. Self-government is not a delegation of authority from the GNWT (or Canada) to Indigenous governments, it is the recognition of discrete law-making authorities.
- The limits to the scope of what can be negotiated in an Aboriginal Rights Agreement arise from the practical realities of reconciling s. 35 Aboriginal rights with the rights and interests of non-Indigenous residents, and the long-term interests of the Northwest Territories as a whole. The GNWT has an interest in ensuring that the implementation of Aboriginal Rights Agreements does not preclude the Northwest Territories from having an overall effective, workable, and affordable system of governance. Aboriginal Rights Agreements must also remain within the framework of the Canadian Constitution, including the *Charter of Rights and Freedoms*.
- The GNWT has an interest in establishing governance models which maintain the open characteristic of communities in the Northwest Territories, rather than creating exclusively Indigenous Governments on Indigenous owned land. However, the GNWT is open to discussing other governance models.

- Consistent with the principles of democratic accountability and the United Nations Declaration on Human Rights, everyone has the right to take part in the government which represents them. Therefore, if an Indigenous government is delivering programs and services to individuals not part of the Indigenous collective, those individuals must have the opportunity to influence the decision making regarding the delivery of those programs and services.
- The GNWT views certain roles and responsibilities being more appropriately held by the territorial government and has an interest in ensuring a strong territorial government that speaks for all territorial residents will continue to exist. The completion of Aboriginal Rights Agreements in the NWT does not absolve Canada of its constitutionally defined special relationship with, and obligations to, Indigenous Peoples.
- Aboriginal Rights Agreements in the NWT should be fair and comparable to one another. Each Indigenous government should have the flexibility to define its roles and responsibilities to reflect its unique circumstances and priorities. However, certain features that confirm territorial or federal interests are expected to be common in each Aboriginal Rights Agreement.
- In order to maintain an affordable and workable system of government in the Northwest Territories, there must be a degree of similarity in the roles and responsibilities of Indigenous governments and the roles of the GNWT.
- The role of the GNWT in the implementation of Aboriginal Rights Agreements will vary, depending on the subject matter. In some Jurisdictions, the GNWT will be the only government legislating and providing programs and services to all residents of the Northwest Territories. These limited Jurisdictions remain the responsibility of the GNWT often for practical reasons or the nature of the Jurisdiction means its most appropriately discharged at the territorial level.
- The GNWT has an interest in programs and services being reasonably comparable throughout the territories to maintain the ability of residents to move from one community to another. The GNWT does not monitor Indigenous government program and service delivery or ensure Indigenous governments comply with their own standards.
- To enable the successful implementation of Aboriginal Rights Agreements, the GNWT and Indigenous governments must work together.
- Governments in the Northwest Territories will have defined roles and will interact on a mutually respectful government to government basis, seeking out partnerships wherever desirable to best respond to their residents' goals and aspirations.

Definition of Conflict of Laws

An important aspect of Aboriginal Rights Agreements is to describe how laws of one government are expected to work when they conflict with those of another jurisdiction. GNWT negotiators are guided by a Definition of Conflict of Laws Mandate when developing these provisions.

- To date Aboriginal Rights Agreements in the NWT have been negotiated based on the ‘concurrency model’, which recognizes that Indigenous governments and the GNWT will have law-making authority over many of the same subject matters for the same individuals.
- The GNWT has an interest in ensuring that the roles and responsibilities of the governments are clear in advance of the enactment of Indigenous government laws. Identifying clearly defined roles and responsibilities of NWT governments should be achieved through mechanisms that harmonize and coordinate the legislative responsibilities of governments. This can require obligations on the governments to notify one another or even work together when enacting or amending legislation to implement the Aboriginal Rights Agreement. The GNWT also recognizes that it is in the interest of all governments in the Northwest Territories to engage in robust intergovernmental relations to build a workable governance system based on mutual respect and recognition of the legitimate roles and responsibilities.
- The roles and responsibilities of governments operating within a Concurrent Jurisdiction environment should be clear and should not rely solely upon the conflict or paramountcy provision to determine the governments’ roles and responsibilities.
- The GNWT has an interest in determining an appropriate definition of conflict to ensure as consistent an approach as possible to conflict with the laws of government in the NWT.

Constitutional Status, Certainty, Finality, Review and Amendment:

Indigenous governments may prefer to have arrangements for self-government as Aboriginal Rights Agreements or modern treaties recognized and affirmed under s.35 of the Constitution Act, 1982, or set out in intergovernmental agreements. The interest guiding GNWT negotiators are set out in a Constitutional Status, Certainty and Finality, Review and Amendment mandate.

- The GNWT has an interest in having language in the Aboriginal Rights Agreements that clearly articulates all parties’ ability to rely on the agreement. The GNWT does not require language that holds an Indigenous government must cede, release or surrender existing rights.
- In the context of lands and resources agreements, the parties must have certainty when it comes to the ownership and control of land and resource royalties.
- A robust review and amendment chapter in the Aboriginal Rights Agreement is key to having agreements that are flexible and can be amended to evolve and incorporate newly recognized or evolving s.35 Aboriginal Rights and remain current with best practices as well as address issues with implementation.

Dispute Resolution

Aboriginal Rights Agreements address how disputes related to the interpretation, application, or implementation of those agreements are to be resolved.

- The GNWT has an interest in having provisions in the agreement which clearly set out processes and mechanisms intended to assist the parties to an Aboriginal Rights Agreement in the resolution of disputes that may arise between or among the parties with respect to the interpretation, application, or implementation of the Aboriginal Rights Agreement. This process may also be used to address disputes arising under agreements that are related to an Aboriginal Rights Agreement.
- The GNWT has an interest in ensuring that dispute resolution processes are fair in that no one party has undue influence over the process, so disputes may be resolved in an unbiased and timely manner.

System of Governance

The GNWT has negotiated Aboriginal Rights Agreement recognizing that there is no single one size fits all model of government for Indigenous communities. For example, models of governance that have been negotiated to date include community based Indigenous governments that provide programs and services to all residents in a community, and regional governments that provide programs and services exclusively to Indigenous participants.

- The Aboriginal Rights Agreement ought to include details pertaining to subjects such as governing structures, including differentiating between Public/Inclusive partnership Government (that serve and represent all residents while providing for guaranteed Indigenous representation) and Exclusive Government, laying out electoral processes (including secret ballots and eligible voters), and the legal capacity and status of Indigenous governments.
- The GNWT prefers the creation of a single governing structure and administration in communities. This is because this model represents the best use of limited resources and is often the only efficient governance model for small communities, where limited resources should not be spent on additional governance and administration. This effectively means the GNWT has a preference for the Inclusive/Public partnership model of governance, but is willing to negotiate other models if that is the desire of the indigenous government.
- The GNWT recognizes that decision-making about certain matters must be solely controlled by Indigenous citizens.
- The open and public nature of communities in the Northwest Territories should be preserved. An open community is one where a person can move to, receive government programs, and participate in the government on matters that directly affect them.
- The structures and system of governance established by and for Indigenous governments exists within the Canadian legal and Constitutional framework.

- The GNWT has an interest in ensuring that if an Exclusive Government is delivering programs and services to non-members, those non-members must have an opportunity to influence the decision-making regarding the delivery of those programs and services.
- The GNWT has an interest in ensuring that the structures and systems of governance described in an Aboriginal Rights Agreement and in an Indigenous government's constitution ensures that the Indigenous governments are politically accountable to their constituents and operate in a manner consistent with fundamental democratic principles in Canada.
- The GNWT has an interest in ensuring that Indigenous government elections respect and reflect the basic democratic principles afforded to residents in Canada: fair, open, transparent, free, and secure electoral processes. At a minimum, the GNWT believes that the Aboriginal Rights Agreement must describe the Indigenous government's electoral processes as exhibiting the following features:
 - periodic elections, no more than five years apart, for all elected positions;
 - independence of process, including that elections will be overseen by an independent electoral officer(s) and that voting processes will protect the anonymity of voters (i.e. secret ballots);
 - recounts and appeals; and
 - impartiality and fairness.
- The GNWT has an interest in Aboriginal Rights Agreements promoting clarity in the relationships between the GNWT and Indigenous governments, particularly with respect to the extent of authority of Indigenous governments. Accordingly, the GNWT has an interest in ensuring that an Aboriginal Rights Agreement clearly describes the legal capacity and status of Indigenous governments.

System of Justice

The GNWT's interests in how Indigenous government laws are administered are set out in a *System of Justice* mandate that considers, among other things, how future Indigenous government laws are enforced, prosecuted, and considered by courts.

- The Administration of Justice chapter will set out the law-making authorities and Jurisdictions of Indigenous governments to establish a system of justice that will exist within the Canadian Constitutional framework to create, enforce, prosecute, or adjudicate a violation of Indigenous government law.
- The *Criminal Code (Canada)* and *Youth Criminal Justice Act (Act)* will continue to apply, and the GNWT and Canada will continue to administer corrections services to individuals found in contravention of territorial or federal laws.
- Within this framework, Indigenous government structures and systems of governance should be tailored to meet the unique needs of Indigenous groups and be responsive to their particular political, economic, legal, historical, cultural, and social circumstances.
- Subject matters include enforcement, sanctions, prosecution, courts, justice councils, alternative dispute resolution, alternative measures and extra-judicial measures, legal aid, and corrections services.

- An Indigenous government may choose to include courts in their Aboriginal Rights Agreement, but this is an optional feature and not a requirement under this mandate. An Indigenous government may choose to have a court, or a justice council, or provisions that allow for both.
- The Aboriginal Rights Agreement must provide that prosecutions are conducted in a manner consistent with the principle of prosecutorial independence and are consistent with standards applicable to the prosecution of similar types of offences in Canada.

Enforcement

- The enforcement of law in the NWT ought to be consistent and impartial and that strict measures of accountability are respected and maintained.
- The powers for the enforcement of Indigenous government law, as described in the Aboriginal Rights Agreement, shall not exceed those provided by territorial or federal laws for peace officers enforcing similar laws in the Northwest Territories.
- The application of territorial law, and federal law for the possession and use or regulation of firearms will continue to apply.

Prosecution

- The Aboriginal Rights Agreement should provide Indigenous governments with the sole Jurisdiction to prosecute violations of Indigenous government law, and appoint individuals authorized to prosecute violations of Indigenous government law.
- The Aboriginal Rights Agreement may provide Indigenous governments with the authority to establish a facility for pre-trial detention for an individual that has been accused of violating an Indigenous government law.
- In the prosecution of violations of Indigenous government law, the GNWT will not assume any liability and/or responsibility.
- Prosecutorial services must be conducted in a manner consistent with the principle of prosecutorial independence and be consistent with standards applicable to the prosecution of similar types of offences in Canada.
- The Aboriginal Rights Agreement may provide for the Indigenous government to establish, organize, maintain, administer, and regulate correction services, including the establishment of correctional facilities, healing centers, group homes, halfway houses, or other similar facilities as well as provision of probation services for individuals convicted with a violation of Indigenous government law.
- The establishment of correctional facilities must comply with generally recognized standards in Canada.
- The Jurisdiction over the establishment of corrections facilities does not include the transfer of GNWT corrections program resources or assets to Indigenous governments.

Courts

- The GNWT's authority to negotiate the establishment of an Indigenous government court is limited to a court that would be comparable to the Territorial Court, which is established pursuant to territorial statute/law as opposed to a Superior Court. The Government of Canada is the government which would

have the authority to establish a Superior Court, like the Supreme Court of the NWT.

- The GNWT's interest is to ensure that the enforcement of law within the NWT remains consistent and impartial. For this to occur, there would need to be strict measures of accountability. The jurisdiction of the Indigenous government judicial system would not include the jurisdiction to enforce territorial or federal laws.
- Given the separation of authority between Indigenous government courts and the NWT court system, there is a need to maintain the overall integrity of the NWT court system for the adjudication of territorial and federal laws.
- As the GNWT will not realize cost savings from the creation of an Indigenous government court, the GNWT cannot transfer any program assets or resources to Indigenous governments in this area.
- The GNWT is currently considering the potential for Landlord and Tenant dispute to be addressed as part of the Indigenous Court.

Justice Council

- A justice council may administer sanctions, alternative measures and extra-judicial measures, alternative dispute resolution services with respect to violations of the Indigenous government law.
- A justice council may hear and conduct appeals to persons who are directly affected by decisions of Indigenous governments and its institutions made under Indigenous government law.
- The justice council is not considered to be a judicial court. However, the justice council is expected to adhere to principles of judicial independence, impartiality and fairness and the continued application of the *Charter of Rights and Freedoms*.
- Members of the justice council are required to exercise independence when exercising jurisdiction as described in the Aboriginal Rights Agreement regarding appointment, functions, compensation, accountability, and financial management. Additionally, the administration of the justice council is to be effective, efficient, and affordable.

Sanctions

- The Aboriginal Rights Agreement may provide Indigenous governments with the Jurisdiction to use sanctions, including imprisonment, restitution, or fines, resulting from a violation of Indigenous Government law.
- Sanctions administered by the Indigenous Government must respect the *Charter of Rights and Freedoms* and must not exceed a term of imprisonment or fine as set out in *the Criminal Code* or in territorial law for summary conviction offenses.

Harmonization of Laws

The GNWT recognizes that the enactment of Indigenous government laws may alter the application of existing GNWT laws, programs, and services. The GNWT's *Harmonization of Laws* mandate provides direction to negotiators to develop mechanisms to encourage of harmonization of laws while respecting the autonomy of Indigenous government laws.

- The Aboriginal Rights Agreement ought to describe the tools and mechanisms intended to facilitate the coordination of legislative responsibilities between the GNWT and Indigenous governments.
- As Indigenous governments enact their laws and begin to deliver programs and services to their citizens, the governance environment in the NWT will be modified.
- The Aboriginal Rights Agreement must include provisions that obligate Indigenous governments to provide notice to the GNWT when contemplating the initial enactment or 'substantial' amendment of legislation, in areas where the GNWT delivers programs and services pursuant to territorial legislation. This notice is important to ensure the governments have sufficient time to prepare for the transfer of assets, resources, and information before the enactment of Indigenous government law.
- Because the GNWT is the public government for all citizens with operative legislation throughout the Northwest Territories, as well as the fact that the GNWT has established processes and procedures regarding the enactment of territorial legislation (i.e. Legislative Assembly processes), Aboriginal Rights Agreements cannot obligate the GNWT to provide notice to Indigenous governments when contemplating enacting or amending legislation.

Liability and Indemnification

Indigenous governments should have authority independent of the GNWT. This means that the GNWT should not be monitoring Indigenous government even where jurisdictions are concurrent. In order to ensure as much autonomy as possible, GNWT negotiators are instructed to address matters related to potential GNWT liability through a *Liability and Indemnification* mandate.

- This negotiating mandate explores some mechanisms intended to mitigate the GNWT's potential liabilities resulting from Indigenous Governments exercising their jurisdictions within a Concurrent Jurisdiction environment.
- When Indigenous governments begin to enact laws and deliver the associated programs and services to their citizens within their scope of authority, the GNWT will not be responsible for monitoring Indigenous governments for compliance with their Aboriginal Rights Agreements.
- The GNWT will seek to negotiate provisions within the terms of an Aboriginal Rights Agreement that limit the liability of the GNWT. Rights of indemnity may arise by operation of law and therefore need not be expressly set out in an Aboriginal Rights Agreement.

- This mandate looks at ways to prevent and/or lessen the potential liabilities that may arise from a “concurrency model”. The GNWT will not be responsible for ensuring that Indigenous governments are compliant with their agreements. Where the GNWT will find itself responsible is when the GNWT involves itself in the delivery of Indigenous government programs and services or where the GNWT retains some authority. The GNWT will try to negotiate Aboriginal Rights Agreements that limit the liability of the GNWT in these situations.

Labour Standards and Industrial Relations

Labour standards set out legislative requirements for employers in areas related to hours of work, minimum wage, time off, termination, etc. and help to protect workers. GNWT has an interest in ensuring that industrial and labour relations are governed by a territorial-wide legislative policy and framework so that labour standards are consistent for all residents, and economic development is accessible, predictable, and cohesive.

- The NWT should have a territorial-wide legislative and policy framework for industrial and labour relations.
- A territorial-wide legislative and policy framework is necessary, in part, to ensure a stable, predictable, and accessible territorial economic development climate.
- All NWT residents should have access to and be protected by federal or territorial labour standards schemes that meet minimum, uniform standards.
- Jurisdiction over industrial relations under territorial and federal legislation will be maintained by the GNWT.

Economic Development

Under Aboriginal Rights Agreements, Indigenous governments may choose to engage in economic development for their region or community. While there are no law-making authorities associated with this area, it is the interest of the GNWT that responsibilities for economic development remain cohesive and not fragmented so that economic opportunities may remain fair and comparable across regions.

- Economic development includes discretionary economic development policies, programs, and services. This area does not have associated law-making authorities.
- Economic development does not include taxation or business licensing, although these jurisdictions may indirectly impact economic development.
- The GNWT retains its primary responsibility to redistribute wealth across the various NWT regions, raise revenue for public purposes, establish territory wide economic and fiscal policies and utilize revenue for economic development. Dividing these responsibilities could result in severe economic disparity and unfair competition between regions.

- GNWT economic development programs and services are discretionary and, as a result, these programs and services will vary over time in response to evolving needs and available resources.
- For these reasons, the GNWT is not willing to enter into commitments in Aboriginal Rights Agreements for the transfer of economic development programs and services and associated resources.

Culture and Language

Culture and language are fundamental to Indigenous communities, and Indigenous governments may choose to create laws in this area for their citizens. This authority could be defined in the Aboriginal Rights Agreement or may be addressed through other law-making powers. Any laws related to culture and language developed pursuant to the Aboriginal Rights Agreement cannot interfere with other citizens' freedom to practice their cultures.

Culture

- The GNWT recognizes that Indigenous Governments should have the authority to enact laws in relation to culture and may utilize other powers and authorities set out in their Aboriginal Rights Agreement to preserve and promote their culture.
- All Aboriginal Rights Agreements contain general provisions whereby laws of general applicability, including the *Charter of Rights and Freedoms*, continue to apply. The Charter protects the right of Canadians to practice their distinct cultures.

Language

- The GNWT views the scope of the Indigenous government jurisdiction pursuant to the Aboriginal Rights Agreement to be the authority to enact laws that seek to preserve, develop, and promote language. This may include the establishment of legislation similar to the *Official Languages Act* of the Northwest Territories. GNWT is prepared to negotiate Indigenous government language jurisdiction which would be paramount to territorial legislation.
- GNWT recognizes that language is fundamental to the preservation and promotion of an Indigenous people's culture. The GNWT has an interest in ensuring that the official languages of the Northwest Territories continue to be acknowledged but recognizes that Indigenous governments are not bound by the *Official Languages Act* and may establish their own language standards in the discharge of official government operations.

Heritage Resources

The GNWT recognizes culture as a matter that is internal and integral to Indigenous peoples, their communities, and their distinct cultures. Heritage resources are inextricably linked with culture, and as a result, the GNWT is willing to negotiate law-making authority for an Indigenous government concerning ethnographic objects and archival records that it owns. Due to overlap in traditional territories amongst Indigenous peoples in the Northwest Territories, overall jurisdiction in Aboriginal Rights Agreements in this area is relatively limited. GNWT's interest is in ensuring that heritage resources such as museum objects are acquired and managed in a way that is respectful, integrated, and consistent and that archaeological sites and artifacts are protected.

- Heritage resources include archaeological artifacts, ethnographic objects and archival records and sites of archaeological, historical, or cultural significance, as well as burial sites (outside established cemeteries) and associated mortuary objects.
- The GNWT supports maintaining a consistent, integrated system throughout the Northwest Territories for managing heritage resources.
- The territorial system of management of heritage resources includes acquiring documenting and preserving museum objects and archival documents, administering an archaeological permitting system, participating in environmental impact reviews, and conferring official status to geographic place names.
- GNWT has an interest in ensuring that any potential threats to archaeological sites arising from land use activities are identified and mitigated consistently throughout the NWT through a single system of standards and procedures for archaeological permitting. The GNWT supports an integrated system for archaeological sites that protect and ensures meaningful involvement of Indigenous governments.

Traditional Healing

Traditional healing is an important component of overall health and part of the inherent right to self-government. It is distinct from the territory-wide health system, which falls within the jurisdictional authority of the GNWT. GNWT has an interest in maintaining a single integrated health care system and retains responsibilities for health set out in legislation for all residents of the NWT. Under Aboriginal Rights Agreements, Indigenous governments may choose to enact laws related to traditional healing, and can include the certification of traditional healers, development of traditional healing facilities and delivery of programs and services

- Indigenous government authority to enact laws around traditional healing refers to practices, approaches, knowledge, and beliefs that incorporate animal and mineral based treatments, spiritual therapies, manual techniques, and exercises, as used to treat and prevent illnesses or maintain well-being.

- This jurisdiction does not include aspects of health that are legislated and/or regulated by the GNWT. The territorial health system cannot be fragmented through the negotiation of Jurisdiction over health service in Aboriginal Rights Agreements. This is due to :
 - the need for a workable and affordable health system;
 - the necessity for universal and equal access;
 - the requirement for consistent services throughout a patient's lifetime;
 - the requirement for consistency of regulation of health care professionals, including the need to ensure mobility of health care professionals;
 - the need for territory-wide responses and planning;
 - the assurance of comparable standards throughout the NWT; and
 - the potential for the loss of economies of scale and administrative duplication resulting from the establishment of competing health systems.
- The GNWT is willing to commit to negotiating separate agreements relating to the management, administration and delivery of NWT health care programs and services; these negotiations shall reflect the principle of maintaining the overall integrity of the NWT health system.
- Indigenous governments may also assume responsibility over the delivery of the federal Non-Insured Health Benefits Program.

Social Envelope Jurisdictions / Programs and Services

Income Support

Income support is a Jurisdiction that can be included in an Aboriginal Rights Agreement which typically results in the development of programs and services that provide financial support to individuals and families in need. The GNWT has an interest in making sure all NWT residents who need to access income support programs can do so regardless of where in the NWT they live, as set out in *the Income Support* mandate. Income support programs developed under Aboriginal Rights Agreements should be comparable to services and programs offered across the Northwest Territories.

- The GNWT views the scope of this jurisdiction to be the authority to enact laws in regards to programs and services that provide financial support to individuals and families in need.
- The GNWT has an interest in ensuring that all NWT citizens have the ability to receive levels of income support that, at a minimum, enable individuals and families to meet their basic needs and do not negatively affect recipients' mobility rights.

Intergovernmental Service Arrangement (ISA):

As a mechanism to help facilitate the implementation of an Aboriginal Rights Agreement, intergovernmental services arrangements may be established in order to set out any such arrangements between governments with respect to the delivery of programs and services. The details or subject matters of intergovernmental services arrangements are not typically described in an Aboriginal Rights Agreement but are stand-alone arrangements. Intergovernmental services arrangements can be negotiated at the discretion of all parties. GNWT's interests in this area are that intergovernmental services arrangements are flexible and responsive to changing needs and circumstances. ISAs can play an important role in supporting the implementation of Aboriginal Rights Agreements as identified in the *Provisions in an SGA Respecting ISA Negotiations* mandate. GNWT also has a responsibility to make sure that residents in a community who are not beneficiaries of an Aboriginal Rights Agreement have access to comparable levels of services to those offered to beneficiaries by Indigenous governments.

- Intergovernmental service arrangements are arrangements between governments delivering programs and services, which may pertain to capacity building, the transitioning of programs or services, or joint program and service delivery.
- GNWT recognizes that Indigenous governments have a strong interest in building capacity and effectively transitioning to the implementation of their Aboriginal Rights Agreement.
- The GNWT interests regarding intergovernmental service arrangements and the determination of how and when the GNWT may enter into intergovernmental service arrangements is addressed in a separate document from the Aboriginal Rights Agreement, as it is fundamentally an implementation matter. Intergovernmental service arrangements should not be fixed in time, rather should be flexible and responsive to the requirements and needs of both the Indigenous government and the GNWT and should be reviewed and assessed from time to time.
- Having intergovernmental service arrangements described outside the Aboriginal Rights Agreement allows for intergovernmental service arrangements to be established as governments desire and circumstances dictate. An Aboriginal Rights Agreement may include text that would obligate the implementation committee to enter discussions related to intergovernmental service arrangements.
- As party to the Aboriginal Rights Agreement, Canada must participate in intergovernmental service arrangements discussions as it relates to the implementation of the Aboriginal Rights Agreement.

Social Housing:

The jurisdiction of social housing pertains to the authority enabling Indigenous governments to enact laws in the area of social housing, which refers to home ownership and rental programs that subsidize the purchase, construction, renovation, or rental of residential housing for persons in need of housing assistance. This law-making authority does not include the authority to regulate building and construction codes/standards. The GNWT has an interest in ensuring some comparability throughout the NWT with respect to social housing programs and services. The principles guiding the negotiators in this area are set out in the *Social Housing* mandate.

- The jurisdiction of social housing pertains to the Indigenous governments authority to enact laws in the area of social housing.
- This jurisdiction does not include the authority to regulate building/construction codes or standards.
- The GNWT has an interest in ensuring that social housing programs and services provided by all governments in the NWT are delivered based on the premise that access should be universal to all in need and allow for the mobility of residents.

Adoption

The GNWT recognizes that the Jurisdiction over adoption forms part of the inherent right to self-government. Within an Aboriginal Rights Agreement an Indigenous government can negotiate Jurisdiction in the area of adoption, which can be defined as the action of legally taking another person's child and bringing it up as one's own. The principles guiding the negotiators in the discussions pertaining to adoption are set out in the *Adoption* mandate.

- The jurisdiction over adoption includes Indigenous governments' jurisdiction in the area of Indigenous custom adoption, private adoption, stepparent adoption, and departmental adoption.
- Due to the vulnerable nature of children who are being or have been adopted, the GNWT has a number of interests with respect to adoptions in the NWT. Some of these interests include adoptions are in the best interest of the child, the consent of the parents as well as the person with lawful custody of the child is sought and confidentiality is protected.

Child and Family Services

Child and family services pertains to the authority of Indigenous governments to enact laws in the area of child and family services, which typically results in the development of programs and services that seek to promote and safeguard the best interests, and the protection and well-being of children and families. The development of legislation in this area is motivated by the following objectives: to protect children from abuse, neglect and harm or the threat of abuse, neglect or harm; to support families and caregivers in providing a safe environment for the protection of children; to support kinship ties and a child's attachment to the extended family; and to promote a well-functioning family and community life. In an Aboriginal Rights Agreement, the Jurisdiction of child and family services can vary significantly in a community versus regional Indigenous government context.

In 2019, the Government of Canada passed *An Act respecting First Nations, Inuit and Métis children, youth and families*, which describes a different approach to recognizing Indigenous government law in the area of child and family services. Since then, the negotiations regarding child and family services has been approached in alternative ways, by working from the model developed by the GNWT or working from the model set out in *An Act respecting First Nations, Inuit and Métis children, youth and families*. The GNWT is open to both approaches to describe the Jurisdiction of the Indigenous government in the area of child and family services.

The principles guiding negotiators with regards to the Jurisdiction over child and family services in Aboriginal Rights Agreements is set out in the *Child and Family Services* mandate.

- The jurisdiction with respect to child and family services including program and service development, that seeks to promote and safeguard the best interests, protection and well-being of children and their families.
- The limitations of Indigenous government jurisdiction in this area differ significantly between community based and regional self-governments. The reason for this distinction is in the interest of prioritizing the best interest of the child, the delivery of child and family service programs must require that an impartial third party be the objective decision maker with respect to determining whether a child is in need of protection and what actions ought to be taken. In the GNWT view, this can only be achieved through a regional self-government model.
- GNWT has concerns with respect to challenges a community based Indigenous government may have in ensuring an impartial third party be the objective decision maker over children in care. For this reason, the GNWT has an interest in including a requirement that an impartial third party be the objective decision maker, and that Indigenous government legislation must include basic criteria resulting in actions being taken to protect a child that are equivalent, in scope and application, to those found in GNWT child and family services legislation.

- With respect to community based Indigenous governments, the GNWT retains the ability to re-assert GNWT laws over child and family services where the ongoing and continuing ability of a community based Indigenous government to act in the best interest of a child who requires or may require protection is compromised. This would only be relevant in circumstances involving systemic failure, where a community based Indigenous government is not meeting the responsibilities regarding the promotion of the best interests, protection, and well-being of children.
- At the regional level, an Indigenous government can effectively assume full legislative authority in the area of child and family services.
- The paramount objective in the provision of child and family services is to promote the best interests, protection, and well-being of children, recognizing that different cultural values and practices must be respected.
- Given that this subject matter pertains to the responsibility and for the care and protection of a vulnerable population, clarity with respect to jurisdiction is imperative.

Guardianship and Trusteeship:

The GNWT recognizes that guardianship and trusteeship may be a subject matter which would form part of an Indigenous government's inherent right of self-government. This Jurisdiction refers to Indigenous government law-making authority concerning the appointment, powers, and responsibilities of guardians and trustees appointed to adults who are determined to be incapable of making their own decisions. A guardian makes or assists with decisions concerning the individual's personal and health care, such as nutrition, shelter, clothing, hygiene, and/or safety. A trustee makes or assists with decisions concerning the individual's finances, such as real and personal property. The principles guiding the negotiation of guardianship and trusteeship are set out in the *Guardianship and Trusteeship* mandate.

- This jurisdiction does not include any of the authorities or subject matters described in the *Mental Health Act*.
- The GNWT has an interest in ensuring that adults incapable of making their own decisions are protected through guardianship and trusteeship services, as well as ensuring the process of determination of need, appointment and termination, decision-making powers and responsibilities are clearly defined in law.
- The GNWT has an interest in ensuring that a guardian or trustee shall always act in the best interests of the represented person. The powers of a trustee shall correspond to a represented person's need for assistance in making their own financial decisions and the powers of a guardian shall correspond to a represented person's need for assistance in making personal care decisions.

Marriage

The GNWT recognizes that Indigenous governments should have the jurisdiction to enact laws concerning the solemnization of marriage as part of the articulation of the inherent right to self-government. This Jurisdiction pertains to the authority of Indigenous governments to enact laws in relation to the solemnization of marriage. Marriage is typically understood as involving two components: the capacity to marry (who can marry whom) and the solemnization of marriage (how marriages are performed). The principles and interests pertaining to the negotiation of marriage is described in the *Marriage* mandate.

- The GNWT recognizes that Indigenous governments may choose to have powers and authorities concerning the solemnization of marriages.
- Indigenous government marriage laws can describe how their marriages will be performed; this will allow Indigenous governments to create culturally specific marriage ceremonies. Like the GNWT, Indigenous governments will not have the authority to determine who can marry whom and will not have authority over divorce. These authorities rest with the federal government.

Wills and Intestate Affairs:

The GNWT recognizes the Jurisdiction over wills and intestates to form part of the inherent right to self-government. This refers to the law-making authority pertaining to the establishment of requirements that ensure the validity of a will and the detailed description of how a deceased person's property is to be distributed in the event that they die without a will. The principles guiding the negotiators on this subject matter are set out in the *Wills and Intestate Affairs* mandate.

- The GNWT has an interest in ensuring that all people have access to services in the administration of estates, and that these services are provided in an effective and timely manner.
- The GNWT has an interest in ensuring the rights, assets, and affairs of a deceased person are dealt with in an efficient and secure manner by specialized staff.
- The Indigenous Government jurisdiction does not include rules governing trusts and variations of trusts, survivorship, and presumption of death or the right of an administrator to take legal action following a fatal accident.

Education and Training

Early Learning and Child Care

The GNWT recognizes the Jurisdiction of education to form part of the inherent right to self-government. Early learning and childcare refers to law-making authority with regard to early childhood learning and childcare services provided in licensed facilities to children under the age of 12 outside the junior kindergarten to grade 12 education system. The principles guiding negotiators with respect to this subject matter are described in the *Early Childhood Education* mandate.

- Early childhood education jurisdiction refers to law making authority which will apply to its citizens within its geographic area of authority, regarding early childhood learning and childcare services. This jurisdiction typically contains two key elements: regulatory (protection, health and safety, licensing/monitoring of facilities, certification of instructors and caregivers) and program development/support.
- GNWT has an interest in ensuring that early childhood education systems throughout the NWT provide for protection, health and safety and development of children.
- The GNWT has an interest in ensuring facilities are regulated through an effective licensing regime by the government that has authority over the jurisdiction.

Junior Kindergarten – Grade 12 (K-12) Education:

The GNWT recognizes the Jurisdiction of education to be part of the inherent right to self-government. Junior Kindergarten – Grade 12 (JK-12) Education refers to law-making authority with regard to the delivery of education programs. The negotiation of the junior kindergarten – grade 12 (JK-12) education chapter may include the develop of a curriculum framework and grade 12 diploma or may provide for the education curriculum to follow NWT curriculum. The Jurisdiction does not include setting requirements for grade 12 graduation. The principles guiding negotiators with respect to this subject matter are described in the *Kindergarten- Grade 12 Education* mandate.

- The GNWT views the scope of this jurisdiction to be the authority to enact laws in regards to the system of education delivered to individuals, usually between the ages of 4 and 21 with the intent of achieving a high school diploma.

- This may include the development of a curriculum framework (which describes learning outcomes), graduation requirements and the certification of teachers. An Indigenous government's laws in this area must ensure that, at a minimum, teachers meet the established NWT teacher certification requirements.
- Should an Indigenous government wish to develop its own curriculum framework, it must be willing to take on the responsibility of granting its own grade 12 diploma and negotiating recognition of that diploma by other jurisdictions and post-secondary institutions. An Indigenous government is not required to establish a curriculum framework.
- GNWT has an interest in ensuring that students in the NWT have the ability to transfer between school systems in the Northwest Territories and in Canada with comparable levels of achievement. With this, the GNWT has an interest in some comparability between curricula elsewhere in Canada.
- GNWT has an interest in ensuring Northwest Territories students receive a JK-12 education that can provide access to a wide variety of territorial, national, and international post-secondary education programs.
- GNWT has an interest in ensuring that all JK-12 students are taught by qualified and certified teachers and that teacher mobility between JK-12 systems is not compromised.

Post-Secondary Education

The GNWT recognizes the Jurisdiction of education to be part of the inherent right to self-government, this includes the Jurisdiction over post-secondary education. Post-secondary education is distinguished from other types of learning (such as adult education and training) by its provision of credit-based education that results in a degree, diploma, or certificate. The principles guiding the negotiation of the Jurisdiction over post-secondary education are set out in the *Post-Secondary Education* mandate.

- The GNWT recognizes that the Indigenous government should have the authority to enact laws with respect to post-secondary education, which includes the establishment and regulation of post-secondary education programs, services, institutions, and curriculum.
- GNWT will not require that Indigenous governments adopt standards guiding the design of their post-secondary education system and will not assume a monitoring role.
- This law-making authority does not include the transfer of GNWT post-secondary education program resources or assets to Indigenous governments.

Adult Education

The GNWT recognizes the Jurisdiction of education to be part of the inherent right to self-government, this includes the Jurisdiction adult education. This jurisdiction also provides Indigenous governments with the authority to establish educational institutions committed to the provision of adult education programs and services. The principles guiding negotiators in the discussions pertaining to the Jurisdiction over adult education are set out in the *Adult Education* mandate.

- GNWT views the scope of this jurisdiction of an Indigenous government pertains to the authority to enact laws with respect to adult education, which typically results in the development of educational programs and services for adults who are seeking to increase their employability or enhance their literacy.
- The jurisdiction of adult education can also be understood to include the “high school equivalency” programs referred to in the Northwest Territories as Adult Literacy and Basic Education (ALBE). However, because the ALBE curriculum is closely based on the JK-12 curriculum framework, if an Indigenous government wishes to deliver its own ALBE programs, it must be willing to take on the responsibility of negotiating recognition of that program by other jurisdictions and post-secondary institutions.

Training

Training can be defined as a learning process that involves the acquisition of knowledge, sharpening of skills, concepts, rules or changing of attitudes and behaviours to enhance performance through professional development opportunities. The principles guiding negotiators in the discussions pertaining to the Jurisdiction over training are set out in the *Training* mandate.

- GNWT views the scope of this jurisdiction to be the authority to enact legislation and develop programs and services in the area of training.
- The GNWT recognizes that Indigenous governments should have the ability to enact laws and develop their own training and skills development programs and services for their citizens.
- GNWT maintains the position that the Indigenous government’s law-making authority in the area of training and skills development must not include the authority over certification requirements for trades and occupations, or the regulation of professions. This prevents inconsistencies in program standards, which is vital as certification requirements are linked to inter-jurisdictional and national agreements.

Student Financial Assistance

The GNWT recognizes the Jurisdiction of education to be part of the inherent right to self-

government. This includes the Jurisdiction over Student financial assistance (SFA), which is the provision of financial assistance to all eligible residents of the Northwest Territories pursuing post-secondary education. The principles guiding the negotiation of the law-making authority over SFA set out in the *Student Financial Assistance* mandate.

- The GNWT views the scope of this jurisdiction to be the authority to enact laws regarding the provision of financial assistance to post-secondary students.
- The GNWT has an interest in ensuring that appeal mechanisms are in place for students that have been denied assistance or have faced a reduction in assistance.
- The GNWT has an interest in having general comparability of student financial assistance programs in the Northwest Territories.

Municipal Services

Municipal Services mandate

If an Indigenous government is negotiating a Public/Inclusive Partnership Indigenous Government in which they will represent all individuals living in the community, the GNWT recognizes the need to negotiate the Jurisdiction over local services. The GNWT has an interest in ensuring all citizens represented by and receiving programs and services from the Indigenous government have the ability to participate in the government in a meaningful way.

Within the context of the delivery of local services, there are aspects of this Jurisdiction that must remain with the Territorial or Federal Government based upon limitations of resources and an interest in maintaining the integrity of some territorial system. Some aspects of this jurisdiction need to be held at a territorial level for practical reasons. The principles guiding the negotiation of the local services chapter as set out in the *Municipal Services* mandate.

- The jurisdiction over municipal services with respect to a Public/Inclusive Partnership Indigenous Government includes:
 - Law making powers of a municipal nature that are necessary to provide good government to the resident of the community, develop and maintain a safe community and provide the services, products, and facilities necessary or desirable for the community; and
 - additional authorities and responsibilities of a municipal nature as set out in NWT legislation for community governments.
- The GNWT is prepared to recognize Indigenous government law-making power includes those of a municipal nature in the area of municipal services and are equivalent in scope to the municipal by-law making power provided to Northwest Territories community governments through the four GNWT municipal statutes (*the Cities, Towns and Villages Act, Hamlets Act, Charter Communities Act and Tłı̄chǫ Community Government Act*).
- In certain instances, this jurisdiction includes other municipal authorities and responsibilities that are equivalent to those provided to NWT community governments, such as land management, business licensing and public infrastructure.
- The GNWT has an interest in ensuring that the Public/Inclusive Partnership Indigenous Government is accountable to all residents through democratic processes and follow due process to their residents consistent with the provisions that normally protect the public under territorial municipal legislation.
- Aside from *Indian Act* reserves pursuant to Treaty Land Entitlement Agreements, the GNWT has an interest in ensuring that NWT communities are open to all residents.

- In order to enhance the ability of the Public/Inclusive Partnership Indigenous Government to manage community affairs, the GNWT supports the transfer of ownership for Commissioner's Lands within the community to the Indigenous government, except for lands that are required to deliver current or future GNWT programs and services.
- With respect to certain authorities and responsibilities, the GNWT laws must be paramount to the Indigenous government laws. This includes fire protection and prevention, emergence preparedness and emergency measures, motor vehicles, and property assessment and taxation.
- A Public/Inclusive Partnership Indigenous Government jurisdiction does not include the regulation of the price of utilities, the establishment of a land title system, consumer protection, occupational health and safety and the expropriation of mines and minerals.

Gaming and Gambling

The GNWT recognizes the Jurisdiction over gaming and gambling to be part of the inherent right to self-government. The principles guiding the negotiation of the law-making authority over gaming and gambling is set out in the *Gaming and Gambling* mandate.

- The GNWT is willing to recognize a limited degree of authority over licensing of gaming and gambling for Public/Inclusive Partnership Indigenous Government, as an aspect of their responsibilities for matters of a local nature.
- In order to maintain the GNWT's continuing responsibilities pursuant to the *Criminal Code*, this authority cannot take the form of law-making authority for the Indigenous government. Rather, the GNWT is willing to agree that no licence or approval of gaming or gambling in a Public/Inclusive Partnership Indigenous Government within the agreement area shall be issued without the consent of the Indigenous government.
- Gaming and gambling is an umbrella term that includes those games of chance commonly known as bingo, Nevada tickets, casino, raffle, and sports draft lotteries but not multi-jurisdictional lotteries, such as 6/49 jackpot. Pursuant to the restrictions set out in the *Criminal Code*, the GNWT must retain law making authority over lotteries, gaming, and gambling.

Liquor and Intoxicants

Related to the GNWT's *Jurisdiction Over Settlement Lands negotiating mandate*, the prohibition or control of the transport, sale, exchange, possession, or consumption of liquor and intoxicants is recognized by the GNWT as a jurisdiction for Indigenous governments on their settlement lands, or in the context of a Public/Inclusive Partnership Indigenous Government - within the community. The principles guiding the negotiation of the law-making authority over liquor and intoxicants is set out in the *Liquor and Intoxicants* mandate.

- Indigenous governments have the jurisdiction in relation to the use, management, administration, control and/or protection of their settlement lands, includes the ability to enact laws concerning the prohibition or control of the transport, sale, exchange, possession, or consumption of liquor and intoxicants.
- Indigenous governments' jurisdiction related to the control/prohibition of liquor and intoxicants in that Public/Inclusive Partnership Indigenous Government is of a local or community nature. This jurisdiction does not include the jurisdiction over the manufacturing, importing/exporting and distribution of liquor and intoxicants within and outside of the NWT.

Transportation

As part of the negotiations pertaining to local services, the GNWT recognizes Jurisdiction over transportation. Jurisdiction over transportation in communities includes the law-making authority over the local transportation systems, community roads and operation of all-terrain vehicles should be considered to form part of the Jurisdiction of a Public/Inclusive Partnership Indigenous Government. The principles guiding the negotiation of the law-making authority over transportation is set out in the *Transportation* mandate.

- The GNWT is prepared to recognize the jurisdiction of a municipal nature with respect to local transportation systems, community roads, and the operation of all-terrain vehicles. This subject matter forms part of the Public/Inclusive Partnership Indigenous Government jurisdiction over municipal services.
- This jurisdiction would not be applicable in an exclusive Indigenous model of government.
- This jurisdiction does not include the law-making authority with respect to public highways, motor vehicles and public airports.

Lands and Resources

The GNWT recognizes that lands and resources are a vital component to the recognition of Aboriginal Rights. The negotiating instructions for land and resource management only prescribes basic principles, such as the requirement for an integrated land and resource management system. Negotiators must take into account past agreements, departmental interests, public interests, the rights of other Indigenous peoples, and existing third party interests to develop fair and comparable solutions. The negotiation process for lands and resources requires that negotiators seek table specific mandates. The principles guiding negotiators in discussions pertaining to lands and resources are set out in the table specific mandate, as well as the *'Negotiations Framework Partnership and Aboriginal Governments'*, *'Aboriginal Governments (Jurisdiction over Settlement Lands) Negotiating Instructions for Land and Resources'*, *'Framework for Developing Table-Specific Negotiating Instruction for the Interim Withdrawal and Selection Commissioner's Land'*, *'Framework for Developing Table specific Negotiating Instructions for the Identification and selection of Settlement Land at Comprehensive Land Claim Negotiations'* and *'The Gifting and Trading of Harvested Resources'* mandates.

Framework for Developing Table-Specific Negotiating Instruction for the Interim Withdrawal and Selection Commissioner's Land:

- The negotiation of the interim withdrawal and interests related to the selection of public Lands in communities to become community settlement lands requires negotiators to get a table-specific mandate before beginning negotiations.
- Community lands will be fee simple lands subject to the authority of the community government including zoning, permits, and taxation.
- Amount of land transferred to Indigenous governments pursuant to the Aboriginal Rights Agreement should be fair and comparable to other Aboriginal Rights Agreements.
- Land may be identified for economic, cultural, or program delivery.
- The GNWT shall retain select parcels of for public lands required for program delivery, airports, recreation, etc.

Negotiations Framework Public Inclusive Partnership Indigenous Governments

- In circumstances where a Public/Inclusive Partnership Indigenous Government is created as a result of an Aboriginal Rights Agreement, the Indigenous government assumes ownership of all or a substantial portion of lands within a community's boundaries. At least six factors should be considered when transferring the ownership of community public lands to Public/Inclusive Partnership Indigenous government:
 - transfer of ownership;
 - administration of lands;
 - registration of new interests;
 - lands to be transferred;
 - GNWT land interests; and
 - third party interests.
- The GNWT has an interest in ensuring the public and interested parties should be able to access technical information about the status of individual lots or blocks of land within the community, including legal status and any attached third-party interests.
- There should be agreement on a secure land registry system, consistent with the interest of transfer of ownership, before lands are transferred to a Public/Inclusive Partnership Indigenous Government.
- The GNWT requires that the community lands jurisdiction of a Public/Inclusive Partnership Indigenous Government operate within the existing Northwest Territories Land Title System pursuant to the *Land Titles Act*.

Negotiating Instructions for Land and Resources

- Renewable and non-renewable resources should be managed through public government institutions and processes (ex. Land and Water Boards, Land Use Planning Boards etc.). These institutions and processes:
 - Must take into account Aboriginal rights and Indigenous interests;
 - Must take into account the interests of all residents of the NWT; and
 - May include representatives nominated / appointed by Indigenous governments and public governments
- Resources in the Mackenzie are best managed by an integrated and coordinated system of resource management (ex. MVRMA).
- Regional adaptations may take into account the unique nature of different Indigenous peoples and should not create disparity or inequality between regions.
- Indigenous government jurisdiction includes the power to enact laws in relation to:
 - The use, management, administration, control, and protection of Settlement lands;
 - Forest resources on settlement lands; and

- Exercise of harvesting rights of members/participants.
- The GNWT has an interest in retaining jurisdiction in the areas of:
 - Management of wildlife and wildlife habitat;
 - Regulation of water;
 - Regulation of public lands; and
 - Forest resources on public lands
- The negotiating instructions for land and resource management only prescribes basic principles. Negotiators must take into account past agreements, departmental interests, and the rights of other Indigenous peoples to develop fair and comparable solutions.

Negotiating Framework – Aboriginal Governments (Jurisdiction over Settlement Lands)

- Indigenous governments Jurisdiction for some aspects of the use, management, control, and protection of their settlement lands, may include the following areas:
 - administration of their settlement lands;
 - granting of interests in settlement lands and the expropriation of those interests by the Indigenous government;
 - trespass;
 - control or prohibition of the transport, sale, manufacture, or use of dangerous substances on settlement lands; and
 - the enforcement of laws relating to use, management, control, and protection of settlement lands.
- The GNWT has an interest in maintaining an integrated and coordinated system of land and water management in the Mackenzie Valley and a further interest in enabling the creation of such a system for all of the Northwest Territories.
- The renegotiation of any existing lands and resources agreements should only occur in processes specifically established to consider past lands and resources agreements, and not in processes only meant to address Indigenous government Jurisdiction over existing lands and resources.

Framework for Developing Table specific Negotiating Instructions for the Identification and selection of Settlement Land at Comprehensive Land Claim Negotiations

- The selection of settlement land (outside communities) requires negotiators to get a table-specific mandate before beginning negotiations to take into account the unique context of each region.
- Amount of land should be fair and comparable to other agreements – including taking into account the economic value of land.
- 45% of any region should consist of open public land where development can occur to maintain the

ability of the GNWT to raise revenues to provide programs and services.

- The table- specific mandate will list the interests that must be taken into account (ex. Public lands required for program delivery, contaminated sites, existing interests, etc.)

The Gifting and Trading of Harvested Resources

- The Aboriginal Rights Agreements will describe the right to gift and trade wildlife, plants, and trees harvested under the agreement.
- Gifting is to bestow voluntarily and without compensation of any kind. Trading is to trade, barter, or sell (i.e. trade for money) an item.
- Gifting and trading are not for commercial purposes
- The Aboriginal Rights Agreement must include a boundary where gifting and trading may occur referred to as the 'Traditional Trading Area'.
- Wildlife, plants, and trees harvested under the agreement can be gifted to any individual in Canada for their personal use and consumption.
- Trading
 - Wildlife
 - Trade non-edible parts to any individual
 - Trade edible parts with other members or other Indigenous people in the traditional trading area for their personal use and consumption
 - Trees - Trade trees with other members or other Indigenous people in the traditional trading area for a specific set of uses
 - Plants - Trade plants with other members or other Indigenous people in the traditional trading area for personal use and consumption