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et du Nord Canada

Final Report

Evaluation of the Federal Government's Implementation of Self- Government and Self- Government Agreements

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Evaluation, Performance Measurement,
and Review Branch
Audit and Evaluation Sector



Canada 

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List of Acronyms

| | |
|-------|--|
| AIP | Agreement in Principle |
| BC | British Columbia |
| CBSG | Community-Based Self-Government |
| CWB | Community Well-Being |
| CLCA | Comprehensive Land Claim Agreement |
| CYFN | Council of Yukon First Nations |
| EPMRB | Evaluation, Performance Measurement and Review Branch |
| EPMRC | Evaluation, Performance Measurement and Review Committee |
| FTA | Financial Transfer Agreement |
| FY | Fiscal Year |
| INAC | Indian and Northern Affairs Canada |
| IRP | Inherent Right Policy |
| ICC | Inuit Community Corporation |
| JBNQA | James Bay and Northern Quebec Agreement |
| LIA | Labrador Inuit Association |
| LILCA | Labrador Inuit Land Claims Agreement |
| LIL | Labrador Inuit Lands |
| LISA | Labrador Inuit Settlement Area |
| MK | Mi'kmaw Kina'matnewey |
| NFLD | Newfoundland and Labrador |
| NWT | Northwest Territories |
| NS | Nova Scotia |
| NIHB | Non-insured Health Benefits |
| NEQA | Northeastern Quebec Agreement |
| NG | Nunatsiavut Government |
| OSR | Own Source Revenue |
| PSSSP | Post-Secondary School Student Program |
| QC | Quebec |
| RCAP | Royal Commission on Aboriginal Peoples |
| TAG | Treaties and Aboriginal Government |
| VGFN | Vuntut Gwichin First Nation |
| YT | Yukon Territory |
| YTG | Yukon Territorial Government |

Executive Summary

The Government of Canada's current approach to Aboriginal self-government, the 1995 Inherent Right Policy, articulates the federal government's general recognition of the inherent right of self-government as an existing Aboriginal right under Section 35 of the *Constitution Act, 1982*. Self-government agreements set out arrangements for Aboriginal groups to govern their internal affairs and assume greater responsibility and control over the decision-making that affects their communities. The purpose of the Evaluation of the Federal Government's Implementation of Self-Government and Self-Government Agreements is to provide an assessment of the degree to which the Government of Canada has operationalized the implementation of the 1995 Inherent Right Policy (IRP).

This evaluation examined self-government negotiation and implementation activities undertaken in the lead up to and after the introduction of the IRP. The terms of reference for the evaluation was approved by Indian and Northern Affairs Canada's (INAC) Audit and Evaluation Committee in April of 2009 and field work was conducted from September 2009 to September 2010. Evaluation results were based on the analysis and triangulation of data obtained through file and document review, literature review, Community Well-Being (CWB) analysis, key informant interviews, focus group sessions with First Nations not participating in self-government activities, and case studies of three self-governing Aboriginal communities.

The scope of the evaluation was very broad making it difficult, in one report, to evaluate negotiations, implementation as well as impacts of a complex subject matter such as Aboriginal self-government. It was also difficult to secure participation of self-governing communities under the methodology imposed during this study. To address these challenges, a new approach was endorsed at the November 2010 Evaluation, Performance Measurement and Review Committee (EPMRC) for future evaluative work related to comprehensive land claim agreements and self-government agreements.

The evaluation supports the following conclusions regarding the relevance, performance, and efficiency and economy of these agreements.

Relevance

The evaluation examined the relevance of the federal government's implementation of self-government by providing an assessment of the alignment of the goal of the IRP with government priorities, its consistency with federal roles and responsibilities as well as demonstration of continuing need.

Findings from the evaluation conclude that the goal of the IRP, to implement a process that will allow practical progress to be made and empower Aboriginal people to become self-reliant, remains highly relevant as the Policy provide a viable alternative to the *Indian Act* for Aboriginal communities wishing to negotiate self-government. The Policy supports federal government priorities as well as international norms towards greater recognition of the rights of Indigenous

people to self-government. Moreover, the negotiation and implementation of self-government under the IRP is fully consistent with federal roles and responsibilities.

Self-government remains relevant to First Nations, Inuit and Métis peoples. The Policy provides the framework for negotiation for those Aboriginal communities wanting to exercise their inherent right. Moreover, Canadian courts recognize that Section 35 can include the right to self-government, however, the Courts have set a high standard for proving the existence and extent of such a right. Findings from the evaluation suggest that the IRP has removed pressure from the courts to decide on this issue.

National Aboriginal organizations have been highly critical of the IRP. Aboriginal governments have also expressed difficulty in establishing a government-to-government relationship with the Crown. A review of the literature and discussions with First Nation community members point to an overall frustration with what has been accomplished under the IRP. Outstanding issues also include self-government as it applies to Métis off a land base and the link between self-government and historic treaties.

Performance

The evaluation examined the achievement of results as indicated by the status of current self-government agreements and negotiations, a quantitative assessment of results based on an analysis of CWB Index for communities currently under self-government arrangements, and a qualitative assessment of results based on the case studies undertaken for this evaluation.

There are currently 18 self-government agreements in place as well as 91 tables negotiating self-government (70 active tables and 21 inactive tables). Of the active tables, 50 tables are comprehensive land claims related with 20 tables as stand-alone/sectoral self-government negotiations. It is worthy of note that 51 percent (36 of the 70) of the active negotiating tables are within British Columbia (BC) as part of the BC Treaty Process. Data from the 2009-2010 Table Review process indicate that tables in negotiations, both active and inactive, represent approximately 350,000 Aboriginal people.

Empirical research shows that taking control of selected powers of self-government and capable governance institutions are indispensable tools to successful long-term community development in Aboriginal communities. The CWB analysis conducted indicates that Aboriginal communities currently with a self-government arrangement in place score higher on the CWB Index than First Nation communities (9 points higher) and Inuit communities (4 points higher), though remain lower than all Canadian communities (11 points lower).

Qualitatively, self-governing communities report that a major perceived benefit of self-government is a renewed sense of pride that they now have their own government as well as the right to elect their own governments and to make important decisions affecting their lives. Issues of scope and complexity of operating a new government, unrealistic expectations for what would be achieved under self-government, as well as access to financial resources were however identified as barriers to success.

Efficiency and Economy

An assessment of efficiency and economy is difficult as there is currently no agreed upon benchmark or framework for measuring efficiency and economy in the context of self-government negotiations and implementation. Further detailed examination of these issues will take place in the context the upcoming *Evaluation of Negotiations and Implementation of Comprehensive Land Claim Agreements and Self-Government Agreements*, scheduled for 2011/12. This will allow for efficiency and economy issues to be brought forward in the broader context of the negotiation and implementation of modern treaties.

Key issues related to efficiency and economy identified in this evaluation includes:

Self-government negotiations taking longer than anticipated: Though there are many negotiations taking place, the number of self-government agreements that have been concluded is fewer than anticipated when the IRP was introduced. Negotiations are taking longer than expected with the average length of time of 14 years (average of 16 years when negotiating as part of the Comprehensive Land Claim Agreement (CLCA) and 10 years for stand alone or sectoral).¹

Self-government negotiations are costing more than anticipated: With longer than anticipated negotiating time, contribution and loan funding to Aboriginal communities is also higher than anticipated. Contribution and loan funding to Aboriginal communities negotiating self-government is estimated at over 1 billion dollars (approximately half in loans and half in contribution funding). Approximately half of all funding, \$488 million, is being spent in BC as part of the BC Treaty Process. It should be noted that when self-government is being negotiated in the context of a CLCA, these figures reflect the cost of both self-government and CLCA negotiations. It should also be noted that all loan funding is for self-government being negotiated within the context of a CLCA as sectoral and stand-alone self-government negotiations are not eligible for loans.

Self-government negotiations are taking place with small communities: This is particularly notable in the context of the BC Treaty Process where approximately 40 percent of negotiation tables are taking place with communities of 500 or less individuals. Outside of BC, approximately 60 percent of negotiation tables are occurring with communities of 5,000 or less people.

Lack of capacity to support self-government: Community capacity to implement a self-government agreement was among the most pressing issue cited by key informants with respect to the successful implement self-government agreements.

Possible disincentives to enter into self-government negotiations: Legislative models, such as *First Nations Land Management Act*, *First Nations Oil and Gas and Moneys Management Act*,

¹ Based on Annual Review of Tables data 2009/2010: Includes both active and inactive tables and those that begun negotiations under a CLCA. Length of time in negotiations was calculated for tables outside of BC, by the date accepted into the process; and for BC Tables, the date British Columbia Treaty Commission declared the party ready to negotiate.

and *First Nations Commercial and Industrial Development Act*, increase jurisdictional authorities for First Nations. As Own Source Revenue (OSR) is not being applied to these legislative models, but is being applied to self-government agreements under the IRP, findings from the evaluation suggest that an inconsistent approach to the application of OSR may be occurring.

Fiscal agreement renewals are cumbersome: Renewal negotiations are taking longer than expected with a majority of agreements requiring one or more extensions before new financial agreements can be established.

The evaluators did note the number of initiatives in progress at INAC to address efficiency and economy issues related to the negotiation and implementation of self-government. These include a new national approach to fiscal harmonization that has been launched to determine the financial support the federal government provides to self-governing Aboriginal groups. As well as the recent sustainability of self-government initiative which provides a source of funds for incremental increases to governance and other self-government requirements.

Conclusions and Recommendations

The IRP has provided a flexible framework from which self-government has been, and continues to be, negotiated. Self-government under the IRP has remained relevant and positive impacts have been demonstrated within self-governing communities.

The transition to self-government has proven to be a complex, incremental process and the delivery of effective programs and services remains a major challenge for all levels of government in Canada. A number of inefficiencies in both the negotiation and implementation processes have been identified, many of which are currently being addressed by INAC.

A lack of shared vision exists between the federal government and Aboriginal communities regarding self-government and how it is be operationalized within the framework of the IRP. This may be contributing to significant misunderstandings and miscommunications regarding the interpretation of the Policy and contributing to the high level of frustration that exists among Aboriginal organizations and Aboriginal communities about what has been accomplished under the IRP.

It is recommended that INAC:

1. Continue to work on initiatives that are currently underway to improve processes related to the negotiations and implementation of self-government agreements.
2. Consider putting in place a mechanism to ensure that policies and legislation that affect the negotiation and implementation of self-government agreements support, not work against, one other.
3. Consider establishing a framework for dialogue with Aboriginal organizations and Aboriginal communities regarding how a common vision of self-government can be achieved and operationalized under the IRP.

Management Response / Action Plan

Evaluation of the Federal Government's Implementation of Self-Government and Self-Government Agreements

Project: 07065

Sector: Treaties and Aboriginal Government

Management Response

The negotiation and implementation of self-government agreements is one of INAC's priority areas. With fewer agreements in place, and negotiations taking longer than anticipated when the IRP was first introduced, INAC, on behalf of the Crown, is engaging in a number of initiatives to move both the self-government and treaty agendas forward. The results of this evaluation support the work currently underway. It also highlights where additional work is required including the development of a framework to support a quantitative and qualitative data collection strategy to measure the impacts of self-government as well as a framework for measuring the efficiency and economy of self-government negotiations and implementation. Moreover, the evaluation highlights the need for dialogue to ensure that there is a shared vision between the federal government and Aboriginal communities as to what is to be achieved through self-government and how this vision can be reasonably operationalized within the framework of the IRP.

Action Plan

| Recommendations | Actions | Responsible Manager (Title / Sector) | Planned Start and Completion Dates |
|---|---|--|---------------------------------------|
| 1. Continue to work on initiatives that are currently underway to improve processes related to the negotiation and implementation of self-government agreements. | We do concur. | DG – Implementation Branch DG - Policy Development and Coordination | Start Date: Ongoing |
| | Treaties and Aboriginal Government (TAG) will continue work on developing resource documents and tools such as Treaty Obligation and Monitoring System, CLCA.net, Implementation Management Framework, Guidelines, Table Review and FAPP. Will also continue to implement the new national approach to fiscal harmonization as well as the sustainability of self-government initiative. | | Completion: Ongoing |
| 2. Consider putting in place a mechanism to ensure that policies and legislation that affect the negotiation and implementation of self-government agreements support, not work against, one other. | We do concur. | DG – Implementation Branch | Start Date: Ongoing |
| | Will continue ongoing outreach to sectors as well as with the TAG negotiation teams. TAG will explore the possibility of including a self-government lens, similar to what is in place for | | Ongoing |

| | | | |
|---|---|---|--|
| | <p>gender analysis and sustainability development, to be applied within the department.</p> <p>TAG will work with other sectors of INAC to explore approaches in non-self-government initiatives to lessen any disincentives for Aboriginal communities to move into self-government by the application of Canada's policy on Own Source Revenue.</p> | | |
| <p>3. Consider establishing a framework for dialogue with Aboriginal organizations and Aboriginal communities regarding how a common vision of self-government can be achieved and operationalized under the IRP.</p> | <p>We do concur.</p> | <p>DG – Policy Development and Coordination</p> | <p><i>Start Date:</i></p> <p>Ongoing</p> |
| | <p>TAG will explore opportunities to engage with Aboriginal groups, and where appropriate National Aboriginal Organizations, regarding a dialogue on policy issues and negotiation positions, to seek greater clarity and mutual understanding of the underlying differences in respective approaches to the negotiation and implementation of self-government.</p> <p>TAG will explore opportunities to engage with other federal departments on developing a common vision and approach to implementing the government-to-government relationship pursuant to Canada's policy on self-government.</p> | | <p><i>Completion:</i></p> <p>Ongoing</p> |

I recommend this Management Response and Action Plan for approval by the Evaluation, Performance Measurement and Review Committee

Original signed by

Judith Moe

A/Director, Evaluation, Performance Measurement and Review Branch

I approve the above Management Response and Action Plan

Original signed by the Program

The Management Response / Action Plan for the Evaluation of the Intervention Policy were approved by the Evaluation, Performance Measurement and Review Committee on February 22, 2011.

1. Introduction

1.1 Overview

The purpose of the Evaluation of the Federal Government's Implementation of Self-Government and Self-Government Agreements is to provide an assessment of the degree to which the Government of Canada has operationalized the implementation of the 1995 Inherent Right Policy (IRP). The goal of the IRP is as follows.

Our goal is to implement a process that will allow practical progress to be made, to restore dignity to Aboriginal peoples and empower them to become self-reliant. Aboriginal governments need to be able to govern in a manner that is responsive to the needs and interests of their people. Implementation of the inherent right of self-government will provide Aboriginal groups with the necessary tools to achieve this objective.²

1.2 Profile

Canada's approach to Aboriginal self-government has evolved over time in response to the representations of Aboriginal groups, evolving jurisprudence and growing public awareness. In 1985, Canada introduced the Community-Based Self-Government (CBSG) policy to enable negotiation of relationships outside of the *Indian Act*. While interest in the CBSG was high, it fell short of Aboriginal needs and interests. The Government of Canada's current approach to Aboriginal self-government, the 1995 Inherent Right Policy, implements the federal government's general recognition of the inherent right of self-government as an existing Aboriginal right under Section 35 of the *Constitution Act, 1982*.

Self-government agreements set out arrangements for Aboriginal groups to govern their internal affairs and assume greater responsibility and control over the decision-making that affects their communities. Self-government agreements may provide for Aboriginal jurisdiction or law-making and related harmonization requirements, delegated authority for administration and delivery of certain federal programs and services, or institutional or administrative arrangements between Aboriginal and other governments. Self-government agreements must ensure the maintenance of Canada's sovereignty, defence and external relations, including Canada's international legal obligations. Self-government agreements provide women and men the continued protection of the *Charter of Rights and Freedoms* to ensure equal voice in governance and the opportunity to influence their communities' priorities.

Because Aboriginal groups have different needs, negotiations do not result in a single model of self-government. Self-government arrangements may take various forms based on the diverse historical, cultural, political and economic circumstances of the Aboriginal groups, regions and

² Canada. (1995). *Aboriginal Self-Government: The Government of Canada's Approach to the Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*. Department of Indian and Northern Development. (p.2).

communities involved. Currently, self-government agreements range from those that cover a single sector, such as the Mi'Kmaq Education Agreement in Nova Scotia, to ones that include multiple sectors, such as governance structures, social welfare and health services, and fiscal arrangements as is the case with the Westbank First Nation Self-Government Agreement in British Columbia (BC). Agreements may be negotiated with a single First Nation, such as the Sechelt Indian Band in BC, or with an aggregation of Aboriginal communities, such as the Union of Ontario Indian or the Nishnawbe-Aski Nation, both in Ontario.

There are currently 18 self-government agreements in place with 15 in context of a comprehensive land claims agreements, two as stand-alone self-government agreements and one sectoral education agreement. In addition, a form of self-government arrangement with the Cree-Naskapi (of Quebec) Act gives effect to nine Cree communities and one Naskapi community on local government commitments contained in the James Bay and Northern Quebec Agreement (JBNQA) and the Northeastern Quebec Agreement (NEQA). In addition, 91 negotiation tables are underway with 70 tables currently active and 21 tables inactive. This represents 331 Aboriginal communities including 302 First Nations, 20 Inuit communities, nine James Bay Cree communities, and some Métis locals. At present, the majority of self-government agreements and negotiations occur in the context of comprehensive land claims.

1.3 Objective

The objective of self-government is to strengthen Aboriginal communities by supporting stable and sustainable Aboriginal governments and greater self-reliance.

1.4 Target Population

Recognition of the inherent right is based on the view that Aboriginal people 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 intuitions, and with respect to their special relationship to their land and resources. The Government recognizes that Indian, Inuit and Métis people have different needs, circumstances and aspirations, and may want to exercise their inherent right in different ways.

1.5 Governance

Aboriginal Signatories

The ultimate stakeholder of a self-government agreement is the Aboriginal signatories and the communities to which they are accountable.

Indian and Northern Affairs Canada

Indian and Northern Affairs Canada (INAC) coordinates the relationships among signatories on behalf of Canada. Also on behalf of Canada, INAC's Treaties and Aboriginal Government (TAG) Sector is responsible for coordinating the negotiations, bringing into effect, and implementation of self-government agreements.

Other Government Departments

The IRP implicates other federal government departments where agreements involve their areas of responsibility or jurisdiction. Other government departments are therefore called upon to participate in the negotiation and implementation of self-government agreements to ensure resulting arrangements meet federal interests and support feasible, harmonious and sustainable Aboriginal self-government and intergovernmental relationships.

Federal Committee Structures

The Federal Steering Committee on Self-Government and Comprehensive Claims is responsible for providing direction to federal departments and agencies with substantial roles under modern treaty and self-government implementation. In addition, a Federal Caucus serves as the pan-federal forum for the development and provision of broad strategic policy and operational guidance and support to both regional operations and the Federal Steering Committee to ensure effective federal management of Canada's obligation and responsibilities under modern treaties and self-government agreements. Moreover, regional caucuses or councils are established, or are being established, in regions where negotiations and/or implementation agreements are underway. These structured interdepartmental forums provide a useful venue for collaborative and effective fulfillment of agreement provisions, consistent with departmental programming and processes.

Provincial and Territorial Governments

Provincial and territorial governments are necessary parties to self-government negotiations and in the resulting self-government arrangements where subject matters normally fall under their jurisdiction. Provincial and territorial participation ensures resulting agreements achieve harmony between provincial and Aboriginal jurisdictions and that the necessary interjurisdictional administrative or institutional arrangements are in place to support stable and sustainable Aboriginal governments and program and service delivery.

1.6 Resources

Table 1 details the 2009/10 grant and contribution funding related to negotiation and implementation of self-government for fiscal year 2009/10.

Table 1: Grant and Contributions towards Self-Government (FY 2009/10)

| | |
|---|-------------|
| Grants and Contribution (Negotiation) ³ | 25,325,818 |
| Grants and Contributions (Implementation) ⁴ | 164,849,589 |

³ Includes funding under Gathering Strength and Self-Government Negotiation Support Funding.

⁴ This figure does not include grant funding under the Mi'Kmaq Education Agreement which totals \$35,431,000 in 2009/10.

| | |
|-------|---------------|
| Total | \$190,175,407 |
|-------|---------------|

2. Methodology

2.1 Scope and Timing

The evaluation examined self-government negotiation and implementation activities undertaken in the lead up to and following the introduction of the 1995 Inherent Right Policy. The terms of reference for the evaluation was approved by INAC's Audit and Evaluation Committee in April of 2009 and field work was conducted from September 2009 to September 2010.

2.2 Evaluation Issues

The evaluation focused on the following issues:

Relevance

- Assessment of the alignment with government priorities, consistency with federal roles and responsibilities and demonstration of continuing need.

Performance

- Assessment of progress towards expected results.

Efficiency and Economy

- Assessment of resources utilization in relation to the production of outputs and progress towards expected results.

2.3 Methodology

The evaluation's findings and conclusions are based on the analysis and triangulation of the following multiple lines of evidence:

Document and file review:

The review examined various federal files and documents relating to the federal approach to negotiating and implementing self-government as well as specific self-government agreements and implementation documents. This includes data from the 2009-2010 Annual Review of Tables. The document and file review was conducted by evaluators within Evaluation, Performance Measurement and Review Branch (EPMRB).

Literature review:

The literature review focused on the perspectives of First Nations, Métis, and Inuit as well as an additional review to determine perspectives of Aboriginal women. The literature review was conducted by the consulting firm, Institute of Governance.

Community Well-Being (CWB) Analysis:

CWB analysis was conducted using band-level data and aggregated averaged scores for current self-government agreements. It provided comparison with non-self-governing Aboriginal communities and other Canadian communities nationally and regionally for five periods in time

from 1981 to 2006 and by CWB component scores Education, Income, Labour Force and Housing. The CWB analysis was conducted by INAC's Strategic Policy and Research Branch.

Key Informant Interviews: Interviews were conducted by evaluators within EPMRB.

A total of 68 key informant interviews were conducted with the following:

- INAC: Headquarters (32), regions (9)
- Other federal departments (5)
- Provincial/territorial governments (11)
- Aboriginal organizations (4)
- Self-governing First Nations (2 in addition to those conducted as part of case studies)
- Subject matter experts (5)

Focus Groups: Two focus group sessions with First Nations not participating in self-government activities were undertaken in Winnipeg and Halifax during March of 2010 with seven First Nation representatives. The purpose of the focus groups were to explore reasons why some First Nations communities have either chosen not to participate in self-government negotiations or have taken part but were unable to reach a satisfactory conclusion. The focus groups were conducted for EPMRB and TAG by the consulting firm, Gaspé Tarbell Associates.

Case Studies: Three case studies were conducted between September 2009 and September 2010 which explored with self-governing communities the progress that has been made, the impacts that have been experienced, and the factors that influence progress of self-government. The case studies were conducted for EPMRB and TAG by the consulting firm, Alderson-Gill and Associates Consulting Inc.

- The Nunatsiavut Government (NG), Newfoundland and Labrador,
- The Vuntut Gwitchin First Nation (VGFN) in the Yukon; and,
- Mi'kmaq communities of Nova Scotia participating in the Mi'kmaq Kina'matnewey (Mi'kmaq Education) Agreement.

The case studies included a document review, interviews and focus group sessions to explore the following thematic areas:

- Economic opportunities resulting from the agreement;
- Land and resource management as a facilitator of economic development;
- Sustainability of the community;
- Governance issues and the roles of women and community elders;
- Comparability of programs and services;
- Education, training and capacity development;
- Cultural well-being; and,
- Relationships with governments and other partners.

The Nunatsiavut Government (NG) of Newfoundland and Labrador:

- Key informant interviews were conducted with a total of eight participants. These interviews were restricted to NG political representatives and government officials.

The Vuntut Gwitchin First Nation (VGFN) in the Yukon:

- Key informant interviews were conducted with a total of 14 participants. These interviews canvassed the perspectives of the VGFN Government political representatives, government officials, treaty negotiators, leaders in business as well as one representative from the Yukon Territorial Government.
- Three focus groups conducted with a total of eight participants. The focus groups provided a perspective from community members with respect to specific issues related to the progress made and current status of governance, economic development and health and social services in the community.

Mi'kmaq communities of Nova Scotia participating in the Mi'kmaw Kina'matnewey Agreement:

- Key informant interviews were conducted with a total of ten participants. These interviews were restricted to teachers, directors of education and other administrators in three communities participating in the Agreement. An interview was also conducted with a Mi'kmaq College administrator.
- Two Focus groups were conducted with a total of 13 participants. The focus groups were held in two Cape Breton First Nation communities, Membertou and Waycobah. The focus groups provided a perspective from community members not directly involved in the delivery of education programs and services.
- Interviews were also conducted with Mi'kmaw Kina'matnewey Corp; INAC, the Province of Nova Scotia, and two Aboriginal organizations.

2.4 Limitations and Considerations

Limitations

The CWB analysis does not assess if the improvements of well-being in the self-governing communities are associated with the agreement themselves. This is not to say that such association does not exist, but rather that these CWB measures do not demonstrate a direct relationship and that other factors may be more influential. In addition, communities are defined in terms of census subdivisions and these subdivisions at times do not accurately reflect the population under the self-government agreement. For example, non-Aboriginal people may be included with the census subdivision, as in the case for Tsawwassen First Nation. Moreover, CWB scores do not include members who do not reside in the community.

The scope of the evaluation was very broad making it difficult, in one report, to evaluate negotiations, implementation as well as impacts of a complex subject matter such as Aboriginal self-government. It was also difficult to secure participation of self-governing communities under the methodology imposed during this study. However, many communities indicated that they would be willing, and better able, to participate in the future if a joint evaluative approach was undertaken.

Considerations

To address these limitations, a new approach has been developed to evaluate comprehensive land claims agreements and self-government agreements. This approach was endorsed at the

November 2010 Evaluation, Performance Measurement and Review Committee (EPMRC) and proposes a three prong approach for future evaluative work related to CLCA and self-government agreements:⁵

1. **Evaluation of the Negotiations and Implementation of Comprehensive Land Claims Agreements and Self-Government Agreements:** This evaluation will focus on how INAC, on behalf the Crown, is managing the processes for negotiations and implementation of the agreements. It is scheduled to be conducted in 2011/12.
2. **Evaluation of the Impacts of Comprehensive Land Claims Agreements:** This evaluation will focus on the impacts of CLCAs and will be conducted jointly with three participating Aboriginal communities with CLCAs in place. This evaluation will also assess self-government when part of the CLCA. It is scheduled to be completed in 2012/13.
3. **Evaluation of the Impacts of Self-Government Agreements:** This evaluation will focus on the impacts of self-government agreements and will be conducted jointly with three participating Aboriginal communities with sectoral or stand-alone self-government agreements in place. It is scheduled for completion in 2013/14.

2.5 Roles, Responsibilities and Quality Assurance

The evaluation was directed and managed by EPMRB in line with the EPMRB's Engagement Policy and Quality Control Process. EPMRB worked jointly with TAG on the focus groups and case studies. Preliminary findings were presented to the EPMRC in February 2010.

⁵ Since the November EPMRC, the strategy has evolved to include comprehensive land claims and self-government agreements together when self-government was negotiated in the context of a CLCA.

3. Context

First Nations leaders have long argued that self-government is not a new concept but rather one preceding the arrival of newcomers to North America, inherent, and based upon local sovereignty, resulting, therefore, in a right to govern local affairs.⁶

Aboriginal self-government gained prominence after the tabling of the federal government's White Paper on Indian Policy of 1969, which proposed the termination of special status for Indians and the devolution of services and programs to the provinces. The Paper was withdrawn as a result of the strong opposition from Aboriginal leaders and communities.

*The policy's tabling acted as a catalyst galvanizing Native leaders to unprecedented levels of political opposition and activism, and led to a subsequent period of organizing calculated to ensure the protection of what were now being described as Aboriginal rights. And so the modern-day self-government was born.*⁷

A review of the literature suggests that during the 1970's, Aboriginal community leaders were putting forward a contemporary form of self-government based on traditional philosophies. As the self-government agenda developed, the leadership for the movement shifted from the community to Aboriginal political organizations and the federal government.⁸

In 1982, the federal government commissioned a special committee of the House of Commons to review the legal and institutional issues related to the implementation of Indian self-government. The 1983 Report of the Special Committee on Indian Self-Government, known as the Penner Report, recommended that a process be established for the negotiation of self-government, the constitution be amended to recognize explicitly and entrench the right of self-government, and that First Nations Government be included as a distinct order of government within the Canadian federation.⁹

Though the federal government did not endorse the approach put forward by the Penner Report and rejected many of its recommendations, the need to establish a new relationship with Aboriginal people and the acknowledgement that Indian Nations have always been self-governing was accepted. As stated in the federal government's response:

The Government agrees with the argument put forward by the committee that Indian communities were historically self-governing and that the gradual erosion of self-

⁶ Belanger, Yale D. (2008). *Future Prospects for Aboriginal Self-Government in Aboriginal Self-Government – Current Trends and Issues*. edited by Yale D. Belanger. (p.395).

⁷ *Ibid.* (p. vii).

⁸ Newhouse, David and Yale Belanger. (2001). *Aboriginal self-government in Canada: a review of literature since 1960*. Native Studies, Trent University. (p.7).

⁹ House of Commons Canada. (1983). *Indian Self-Government in Canada, Report of the Special Committee*. (Issue No. 40, October 1983).

*government over time has resulted in a situation which benefits neither Indian people nor Canadians in general.*¹⁰

Between 1983 and 1987, four First Ministers conferences took place, that included the Prime Minister, Premiers, and leaders from four national Aboriginal organizations, to discuss Aboriginal and treaty rights, including the constitutional recognition of the right of self-government.¹¹ These conferences lead to the amendments proposed in the Charlottetown Accord of 1992, including the following.

- *The Constitution should be amended to recognize that the Aboriginal peoples of Canada have the inherent right of self-government of Canada. This right should be placed in a new section of the Constitution Act, 1982, Section 35.1(1)*
- *The recognition of the inherent right of self-government should be interpreted in light of the recognition of Aboriginal governments as one of three orders of government in Canada.*¹²

At the same time as the constitutional conferences and Charlottetown Accord negotiations were underway, modern forms of self-government were being passed by Parliament. This included a form of self-government under the *Cree-Naskapi (of Quebec) Act*, which was passed by Parliament in 1984, implementing a chapter of the James Bay and Northern Agreement. The Act recognizes local governance commitments contained in the JBNQA and the NEQA. It recognized a form of self-government for the first time in Canada. In 1986, the *Sechelt Indian Band Self-Government Act* was also passed by Parliament, which resulted in a legislated, municipal style self-government.

In 1986, the federal government introduced its Community-Based Self-Government (CBSG) policy. The purpose of the CBSG policy was to enable negotiation of new Crown - Aboriginal relationships outside of the *Indian Act*. These negotiations consisted of community-by-community discussions with Indian bands, and a tripartite process between the federal government, provincial governments, and Métis and Non-Status Indians. Through the policy, Canada proposed to consider various institutional and financial arrangements that would meet individual community needs while at the same time be broadly enough defined so as not to detract from, or be limited by, the ongoing constitutional debate. While interest and participation in the CBSG was high, few agreements were reached under this policy. This was mainly due to the fact that the range of jurisdictions offered under the policy were delegated and therefore not protected under the constitution or as a treaty right. This fell short of Aboriginal interests as many groups viewed constitutional recognition of self-government as a foundation to the negotiation of specific legislative self-government initiatives.

¹⁰ Canada. (1984). *Response of the Government to the Report of the Special Committee on Indian Self-Government*. (p.1).

¹¹ The *Constitution Act, 1982* and the subsequent Accord of 1983 required that four Aboriginal constitutional conferences be convened in the five-year period 1982 to 1987.

¹² Consensus Report on the Constitution: Final Text, Charlottetown, August 28, 1992 [Charlottetown Accord]

Significant amendments to the 1973 Comprehensive Land Claims Policy also took place in 1986 that included, among other things, the possibility to negotiate self-government as part of a comprehensive land claim agreement.

Unable to gain support in a national referendum for the proposed constitutional package, the Charlottetown Accord failed in October 1992. It did, however, provide a signal that parties to the accord were prepared to recognize that Aboriginal peoples already possessed the inherent right to govern themselves within Canada.¹³

Against the backdrop of the failure of the Charlottetown Accord, in 1995 the federal government announced the IRP in which the Government recognized the inherent right of Aboriginal self-government as an existing right under Section 35 of the *Constitution Act, 1982*. The underlying objectives of the IRP are to build a new partnership with Aboriginal peoples and to strengthen Aboriginal communities by supporting stable and sustainable Aboriginal governments and greater self-reliance. Negotiated agreements under the IRP set aside legal debates in favour of practical arrangements that operate within the framework of the Canadian Constitution. Agreements establish government-to-government relationships that provide for jurisdictional clarity and address capacity and responsibility for program and service delivery.

The following year, the Royal Commission on Aboriginal Peoples (RCAP) final report was issued. The Report put forward an approach to self-government built on the recognition of Aboriginal governments as one of three orders of government in Canada and suggested that only once Aboriginal nations are reconstituted and recognized as nations can they exercise their right to self-government.¹⁴ In 1997, the federal government issued its response to RCAP in *Gathering Strength – Canada's Aboriginal Action Plan*.¹⁵ The response confirmed that the federal government had recognized the right of self-government as an inherent Aboriginal right within Section 35 *Constitution Act, 1982* and committed to consulting with Aboriginal organizations and the provinces and territories on appropriate instruments to recognize Aboriginal governments and provide a framework of principles to guide jurisdictional and intergovernmental arrangements. *Gathering Strength* expressed its intention to focus on capacity building in relationship to the negotiating and implementing of self-government. The federal government also stated its preparedness to work in partnership with Treaty First Nations to achieve self-government within the context of the treaty relationship, as well as consider an approach to self-government for Métis and other off reserve Aboriginal people, including self-government institutions, devolution of programs and services, and public government.

There has been significant evolution and transformation of the self-government landscape in a relatively short time frame. As stated by academics, Yale Belanger and David Newhouse,

The idea of self-government has broadened considerably over the last three decades. It has grown from an initial concept as local municipal style government rooted in the Indian Act to a conception as a constitutionally protected inherent right finding its most

¹³ Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples*. (Volume 2, Part 1, Section 2.3).

¹⁴ *Report of the Royal Commission on Aboriginal Peoples*. (1996). (Volume 2, Part 1, Section 2.3).

¹⁵ Indian and Northern Affairs Canada. (1997). *Gathering Strength, Canada's Aboriginal Action Plan*.

recent expression in the idea of 'Aboriginal national government' as a distinct order of government within the Canadian federation.

The scope of people affected by the discussions has grown considerably. The initial focus of self-government was on status Indians residing on reserve. This has now broadened to include Métis, Inuit and urban Aboriginal peoples.

The basis of self-government has fundamentally changed. We no longer conceive of Aboriginal self-government as rooted in the Indian Act but see it as an 'inherent' right, rooted in history and treaties.

The scope of authority and jurisdiction for self-government has also enlarged considerably. Aboriginal governments are now seen as more than municipalities, also encompassing federal, provincial and municipal authorities as well as some unique Aboriginal authorities.

The debate about self-government has fundamentally changed. It is now about how rather than why. There are now multiple sites for the debate: among lawyers, Aboriginal leaders and academics, the literature focuses on broad issues and still has an element of why; but among local Aboriginal community leaders and politicians and consultants, it is about how to govern on a daily basis.¹⁶

And as stated in the IRP,

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 governments structures; and some want institutional arrangements. The Government is prepared to support various approaches, taking into account the differing needs and circumstances, and to be flexible on the specific arrangements, which may be negotiated.¹⁷

¹⁶ Belanger, Yale D. and David R. Newhouse. (2004). *Emerging from the Shadows: The pursuit of Aboriginal Self-Government to Promote Aboriginal Well-Being*. The Canadian Journal of Native Studies. (p. 188).

¹⁷ Canada. (1995). *Aboriginal Self-Government: The Government of Canada's Approach to the Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*. (p.17).

4. Profiles of Three Self-Governing Communities

The following section provides profiles of three self-governing communities that participated in the evaluation.

- The Nunatsiavut Government (The Labrador Inuit Land Claims Agreement)
- The VGFN (The Vuntut Gwitchin First Nation Self-Government Agreement)
- Mi'kmaq communities of Nova Scotia participating in the Mi'kmaq Kina'matnewey (Mi'kmaq Education) Agreement

These three agreements reflect the diversity among agreements, with Inuit and First Nation groups, self-government agreements separate and as part of a land claim agreement, and a sectoral self-government agreement.

4.1 The Labrador Inuit Land Claims Agreement

Type of Agreement: Self-Government was negotiated as part of the Labrador Inuit Lands Claim Agreement. Self-Government is provided for by Chapter 17 of the Land Claim Agreement, which sets out the law making and regulatory powers, authorities, and responsibilities of the Nunatsiavut Government

Settlement Area: Coastline, interior, and offshore of northern Labrador

Settlement Lands: 15, 799 square kilometres of Labrador Inuit lands

Date settled: August 29, 2003

Effective Date: December 1, 2005

Communities: Hopedale, Makkovik, Nain, Postville and Rigolet

Agreement Beneficiaries: 7102

Beneficiaries living in Nunatsiavut: 2590

Beneficiaries living in Goose Bay/Lake Melville and elsewhere in Canada: 4512

Financial Settlement: Capital Transfer of \$160.3 million (2005\$) over 15 years and implementation funding of \$172.9 million (2005\$) over 10 years.

Jurisdiction: The Nunatsiavut Government has law-making powers on Labrador Inuit Lands and in the Inuit Communities in relation to the environment and resources, culture and language, education, health, income support, child and family services, family matters and housing. To date, the Nunatsiavut Government has developed policies and assumed responsibility for the management and administration of programs and services in each program area, but jurisdiction continues to be held by either the federal or provincial governments until such time that NG has

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| the capacity to draw down the areas in their entirety. |
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Introduction

The Nunatsiavut Government was established through the Labrador Inuit Land Claims Agreement (LILCA), a modern treaty negotiated over three decades between the Labrador Inuit Association, Canada and the province of Newfoundland and Labrador. The Agreement provides beneficiaries with a wide range of land and resource rights, and establishes a self-government regime for the Labrador Inuit within their settlement area. It is the first modern treaty in Atlantic Canada and one of five settled Inuit land claims in Canada, including the James Bay and Northern Quebec Agreement (1975), the Inuvialuit Final Agreement (1984), the Nunavut Land Claim (1993), and the Nunavik Land Claim Agreement (off-shore) (2007).

Community Profile

The Inuit of Labrador are direct descendants of the prehistoric Thule who spread from Alaska across to the circumpolar regions of Canada and Greenland. The LILCA represents approximately 7,102 beneficiaries living within and outside the settlement area known as Nunatsiavut. Nunatsiavut, which means “our beautiful land” in the traditional language of Inuktitut, is home to 2,590 people residing primarily in five coastal communities located at Nain, Hopedale, Postville, Makkovik and Rigolet. In addition, there are 4,512 beneficiaries living in Goose Bay/Lake Melville and elsewhere in Canada.

History of Negotiations

The Labrador Inuit Association (LIA) was formed in 1973 to promote Inuit culture and advance the rights of Inuit to land, which they traditionally harvested and occupied. LIA submitted its claim to Canada under the 1973 Comprehensive Claim Policy. The Claim was accepted by Canada in 1978, and agreement to participate from the Province was established in 1980. Negotiations formally began in 1988 and an Agreement in Principle was reached in 2001. The Final Agreement was initialed by all parties in 2003 and ratified in 2004 with 76.4 percent¹⁸ of those community members voting in favour and Newfoundland and Canada moved forward with their own ratification processes. The Agreement officially came into effect, along with the Labrador Inuit Constitution, on December 1, 2005, at the first Assembly of the Nunatsiavut Transitional Government.

General Provisions of LILCA

The Labrador Inuit Land Claims Agreement constitutes the final settlement of the Aboriginal rights of the Labrador Inuit and sets out rights to land, resources and self-government, which are recognised and protected by Section 35 of the *Constitution Act, 1982*. The Agreement is supported by five ancillary agreements: the Labrador Inuit Implementation Plan; a Fiscal Financing Agreement; an Own Source Revenue Agreement; a Park Impacts and Benefits Agreement; and a Tax Treatment Agreement.

¹⁸ INAC Website <http://www.ainc-inac.gc.ca/ai/mr/nr/m-a2005/02684cbk-eng.asp>

Labrador Inuit Lands (LIL), provide the most rights and benefits to the Inuit as these lands are owned in fee simple and are under the administration, control and management of the Nunatsiavut Government. In addition to LIL, the Agreement establishes the Labrador Inuit Settlement Area (LISA). These lands comprise of 72,500 square kilometres in Northern Labrador, and approximately 48,690 square kilometres of adjacent ocean zone in which Inuit may exercise harvesting rights and rights to participate with governments in the management of wildlife, fish, plants and environmental assessments among other rights¹⁹. The Agreement further establishes the Torngat Mountains National Park reserve covering an area of approximately 9,700 square kilometres of land within LISA.

Nunatsiavut (Labrador Inuit) Government

Under the Agreement, NG has jurisdiction over its internal affairs, including Inuit language and culture, and the management of Inuit rights and benefits under the Agreement. The Agreement also provides that Inuit Governments may make laws to govern residents of Labrador Inuit Lands and the Inuit communities on matters such as education, health, child and family services, and income support. As with other self-government agreements, the NG operates within the Canadian constitutional framework and remains subject to federal laws such as the *Charter of Rights and Freedoms*, federal labour laws and the criminal code.

The LILCA also requires the establishment of a separate Labrador Inuit constitution, which sets out the powers and rights of Inuit governments. The Nunatsiavut Inuit Constitution, which came into effect on December 1, 2005, establishes two distinct but connected levels of government: the Nunatsiavut Regional Government and five Inuit community governments. The Constitution further provides for the establishment of non-profit Inuit Community Corporations (ICC) representing the interests of Inuit residing outside the LISA. There are currently two ICCs, one for beneficiaries residing in North West River and Sheshatshiu and a second for beneficiaries residing in Happy Valley-Goose Bay and Mud Lake.

The Nunatsiavut Regional Government has similar responsibilities and rights of other governments in Canada including the responsibility to implement social programs on behalf of Inuit members, to preserve Inuit culture and plan for sustainable economic development. This level of government consists of the President, The First Minister of Nunatsiavut, the Nunatsiavut Treasurer and other Ministers who oversee seven departments including the Department of Nunatsiavut Affairs, Health and Social Development, Lands and Resources, Education, Economic Development, Culture, Recreation and Tourism. Together, these members form the Nunatsiavut Executive Council and exercise the executive authority of the Nunatsiavut Regional Government by developing policy, preparing and initiating legislation, implementing laws as well as coordinating and overseeing the functions of all departments, divisions and administrations of the Government.

At effective date, five Inuit Community Governments replaced the existing municipal governments. They are the second level of government in Nunatsiavut and have the power to make laws in relation to the direct taxation of Inuit for Inuit Community Government purposes, as well as the power to enact by-laws with respect local or municipal matters. They are

¹⁹ INAC Website <http://www.ainc-inac.gc.ca/ai/mr/nr/m-a2005/02684cbk-eng.asp>

responsible for serving all residents of their communities and provide local services such as water, sewage and waste management, snow removal, and local recreation.²⁰ The legislative authority of each community government is vested in an Inuit Community Council composed of Inuit Community Councillors and an AngajukKâk (mayor), who acts as representative of his or her constituency in Nunatsiavut Assembly.

The mayors of each of the five communities, the Chair of each of the Inuit Community Corporations and the President of the Nunatsiavut Regional Government, along with a representative for members living elsewhere in Canada, are brought together in the Nunatsiavut Assembly to appoint the First Minister and oversee the actions of the Executive Council, consider issues affecting Labrador Inuit and to make laws for the Government²¹. The Nunatsiavut Assembly is the highest order of government of the Labrador Inuit and is the law making body of all the elected representatives.

Highlights of Activities and Achievements

Since the establishment of the NG, the Inuit of Labrador have developed policy and delivered programs and services in key economic and social sectors. The following section outlines some of the activities and achievements of the NG to date.

Lands and Resources

The Department of Lands and Resources serves to protect renewable resources and maximize benefits while minimizing the impact of land and resource development on human well-being, Inuit cultural heritage and the environment. The NG has set mineral exploration standards under the *Mineral exploration and Quarrying Standards Act* which regulates mineral exploration on LIL. Per the terms of the LICLCA, nominated members of the NG, in conjunction with officials from the province, are working together through the establishment of the Labrador Inuit settlement Area Regional Planning Authority to develop a Regional Land Use Plan to manage the use of land, water and resources in the LISA. Community consultations regarding the plan were carried out in 2006 and 2010 and drafting of the plan is underway.

Education

Primary and secondary education programs and services in the five communities continue to be delivered primarily by the Labrador School Board. However, the Department of Education and Economic Development of the NG administers two funding programs to enhance education among beneficiaries including the Inuit Pathways and the Inuit Post-Secondary Student Program (PSSSP). The Inuit Pathways Program, created through an agreement with Human Resources and Social Development Canada, supports labour market training and business development for Nunatsiavut beneficiaries. PSSSP provides financial assistance to eligible beneficiaries towards the costs of their post-secondary education. The Department has also formed a partnership with the College of the North Atlantic and other partners to establish integrated post-secondary programs such as a nursing program, which provides the opportunity for beneficiaries interested

²⁰ Nunatsiavut Government Website <http://www.ainc-inac.gc.ca/ai/mr/nr/m-a2005/02684cbk-eng.asp>

²¹ Nunatsiavut Government. *The Labrador Inuit Constitution*, 2002. p.38.

in a career in nursing to study in a community-based program for the first two years of a five-year program.

Health and Social Services

Although NG has taken administrative responsibility for many areas of health and social services, primary health care continues to be delivered at community health clinics in each of the five communities through the Labrador – Grenfell Health Authority. These clinics vary in size according to community needs and are staffed with one or more Regional Nurse(s), Personal Attendant(s) and a Maintenance Repairer. Public health is delivered by the Nunatsiavut Government through teams consisting of Public Health Nurses, Community Services Workers, and Child Care Workers. The NG Department of Health and Social Services continues to develop to harmonize health and social programs offered by the province, Canada and the Nunatsiavut Regional Government. In addition, the Department oversees core programs of the former Labrador Inuit Health Commission with regard to mental health, addictions, community health and communicable disease control, child care and child development, home and community care, environmental health. The Department is also responsible for the administration of all aspects of the Non-Insured Health Benefits program (NIHB), a program formally administered by Health Canada.

Labour and Economic Development

The Labrador Inuit Development Corporation is the economic development arm of the NG. It was established in 1982 by the Labrador Inuit Association with a “mandate to improve the living condition of Inuit of Labrador by providing employment opportunities with a focus on traditional Inuit skills”.²² The NG works through the corporation to invest in a range of operations including mining, quarry operations, fisheries, radar site operations, logistics support and real estate to generate employment and provide business opportunities for Labrador Inuit both within and outside of LIL.

The Inuit of Labrador are also involved in a number other enterprises and own businesses in industries ranging from industrial and commercial supply to manufacturing and retail. Residents are employed in a range of permanent full and part-time jobs in the public service sector with community governments, the regional government as well as many other commercial operations. For example, seasonal employers include the Torngat Fish Producers Cooperative which is owned by the 500 Inuit members and exports a variety of fish to China, Taiwan and the United States. The Voisey’s Bay Mining Project is also a major contributor to economic development in Nunatsiavut, employing beneficiaries and holding contracts with Inuit businesses. Under the Agreement, Nunatsiavut receives five percent of provincial revenues from subsurface resources in the Voisey’s Bay area. The NG Department of Education and Economic Development works closely with other departments to identify new opportunities for community members, and supports new initiatives by maximizing Inuit participation in the public service, ensuring labour market participation through IBAs and assisting and promoting Labrador Inuit businesses through the Nunatsiavut Business Centre Incorporated.

²² Anderson, Robert Brent, *Economic Development Among the Aboriginal Peoples in Canada: The Hope for the Future* (Concord: Captus Press Inc.), p. 151.

Culture, Recreation and Tourism

Language and Culture are a priority for the NG. The Department of Culture, Recreation and Tourism has therefore undertaken several projects to enhance the use of Inuttitut including the development of an Inuttitut Dictionary and other language tools such as the Rosetta Stone CD (a language learning software) and the publication of children's books in Inuktitut. In July 2006, the Government struck a Tourism Steering Committee to participate in tourism planning. Through research and community-based consultation workshops the committee is developing a strategic plan to set priorities and identify opportunities for sustainable tourism.

Administration of Trusts

In addition to program delivery and policy development in the key areas above, the NG administers two Labrador Inuit trust funds to receive and administer the capital transfer set out in the Agreement: the Inuit Capital Trust and the Inuit Implementation Fund. The Government has also established a third fund to hold, protect and invest funds received from Inco Ltd. as a result of an Impact Benefit Agreement in relation to the Voisey's Bay Project.²³

4.2 Vuntut Gwitchin First Nation Self-government Agreement

Type of Agreement: The Vuntut Gwitchin First Nation Self-Government Agreement is a separate agreement which came into effect at the same time as the Vuntut Gwitchin Final Agreement. The negotiation of Self-Government agreement sets out the law making and regulatory powers, authorities, and responsibilities for the signatory Yukon First Nations.

Umbrella Final Agreement Total Settlement Lands: 41,439.81 square kilometers

Vuntut Gwitchin Settlement Lands:

- 7,744.06 square kilometers of land with surface and sub-surface, title; and
- 7.16 square kilometers of land set aside as reserve.

Date settled: May 29, 1993

Effective Date: February 14, 1995

Registered Population of the Vuntut Gwitchin First Nation: 523

Communities: Old Crow, Yukon

Population of Old Crow: Approximately 300

Financial Settlement to Vuntut Gwitchin First Nation:

- Capital Transfer of \$22,234,780 million (1993\$) over 15 years

²³ Further information on Nunatsiavut Government activities and initiatives can be found at <http://www.nunatsiavut.com/>

Jurisdiction: Under the Vuntut Gwitchin First Nation Self-Government Agreement, the VGFN Government exercises law-making powers of a local nature on settlement lands. In addition the VGFN Government has the power to make laws in relation to internal affairs for Vuntut Gwitchin citizens in relation to the provision of programs and services within the program areas of culture and language, lands and resources, education, health, income support, child and family services, family matters and housing. To date, the VGFN has assumed responsibility for the management, administration and delivery of some programs and services within the program areas provided for in the Self-Government Agreement and set out in Program and Service Transfer Agreements (PSTAs). The PSTAs, together with Financial Transfer Agreements, are renegotiated bilaterally between VGFN and Canada, and renewed normally during a five year cycle.

Introduction

The Yukon is home to 14 First Nations, 11 of which have negotiated tripartite Comprehensive Land Claim and Self-Government Agreements with Canada and the Yukon territorial Government. The Vuntut Gwitchin First Nation of Old Crow was one of the first four Yukon First Nations to sign their Agreements.²⁴

Community Profile

The most northerly community in the Yukon, Old Crow is located 128 kilometres north of the Arctic Circle and is home to approximately 300 residents. The community is situated at the confluence of the Crow and Porcupine Rivers and is only accessible by plane, snow machine or by boat during the summer months.

The Vuntut Gwitchin people, which means “people of the lakes” in the Gwich’in language, are part of the Athapaskin language family and are closely related to the Tetlit Gwich’in in Peel River, and the Tukduh people of the Blackstone area. The Vuntut Gwitchin of Old Crow are one of 19 communities spread across Alaska, the Yukon and the Northwest Territories. These 19 villages and cities are inhabited by over 7500 people who together form the Gwich’in Nation.

Historically, the Vuntut Gwitchin were nomadic, following and hunting for Porcupine Caribou in their traditional territory. The First Nation continues to depend on the Porcupine Caribou herd which passes through the settlement lands and north to the arctic coastal plain to calve in the summer months and south of Old Crow in the autumn to its wintering range. Other traditional activities in which community members actively pursue include fishing, trapping and snow shoeing among others.

²⁴ In the Yukon, although the Land Claim and Self-Government Agreements were negotiated separately, they came into effect at the same time.

History of Negotiations

In 1973, the then Council of Yukon First Nations (CYFN) (formerly the Council of Yukon Indians), representing both status and non-status First Nations, submitted their land claim to the Government of Canada. An Agreement in Principle (AIP) was reached between the parties in 1984 but was not ratified. A new AIP was reached in 1988, which modified the 1984 version to link with the Comprehensive Land Claim Policy. On May 29, 1993, The *Umbrella Final Agreement* (UFA), an Agreement pursuant to which each of the 14 Yukon First Nations may conclude a land claim agreement and self-government agreement, was signed by CYFN, Canada and the Yukon Territorial Government.

The UFA came into effect in 1995, along with the Final Agreements and Self-Government Agreements of the First Nation of Nacho Nyäk Dun, Champagne and Aishihik First Nations, Vuntut Gwitchin First Nation and Teslin Tlingit Council. By 1998, the Little Salmon/Carmacks First Nation, the Selkirk First Nation, and the Tr'ondëk Hwëch'in became self-governing followed by the Ta'an Kwäch'än Council in 2002, the Kluane First Nation in 2003, the Kwanlin Dün First Nation in 2005 and the Carcross/Tagish First Nation in 2006. Liard First Nation, White River First Nation and the Ross River Dena Council have not settled land claims and remain Indian Bands under the *Indian Act*.

Council for Yukon First Nations Umbrella Final Agreement

Representing approximately 7,000 beneficiaries, the UFA provides for 41,595 square kilometres of settlement lands in the Yukon with benefits of both surface and some subsurface rights as well as a compensation amount of \$242,673,000 (1989\$) to be shared among the 14 First Nations. The Agreement also established two trusts, initial capital for the establishment of an Implementation Fund, payment in exchange for *Indian Act* Section 87 tax rights, as well as rental revenues from surface leases and royalties from the development of non-renewable resources on settlement land. Other key provisions include guaranteed membership on public government bodies dealing with water management, lands planning, a development assessment process, heritage resources and renewable resources. The Agreement also provides for wildlife harvesting, water and forestry rights in the Yukon, and commits the parties to negotiation of self-government agreements. The UFA alone is not a land claim insofar that it does not create or effect rights within the meaning of s.35 of the *Constitution Act*. Each First Nation Final Agreement contains UFA provisions along with provisions unique to that First Nation. The negotiation of separate Final and Self-Government agreements is provided for by Chapter 24 of the UFA.

Vuntut Gwitchin First Nation Final and Self-Government Agreements

On February 14, 1995, the VGFN Final Agreement and Self-Government Agreements came into effect. The amount of compensation dollars allocated to Vuntut Gwitchin from the UFA was \$22,234,780 million (1993\$) over 15 years and a total of 7,744 square kilometres of land with both surface and subsurface title. Other features of the Vuntut Gwitchin Land Claim include the establishment of a National Park in the Old Crow Flats area, a Fishing Branch Ecological Reserve, and the Old Crow Flats Special Management Area.

The Self-Government and Land Claim Agreements are connected in that the land claim guarantees the negotiation of self-government, provides a land base, and allows Yukon First Nations to retain reserves established under the *Indian Act*. Legislation giving effect to self-government establishes the Vuntut Gwitchin Government as a legal entity for the purpose of administering obligations outlined in the Land Claim Agreement. Through the Vuntut Gwitchin First Nation Self-Government Agreement, VGFN exercises law-making powers of a local nature on settlement lands and has the power to make laws in relation to internal affairs. In addition, they may make and administer laws in relation to their citizens with respect to social and cultural matters, language, health and social services, and education.

The VGFN Self-Government Agreement is supported by a Self-Government Agreement Implementation Plan as well as a Financial Transfer Agreement (FTA) which provides VGFN with resources to provide public services to its citizens. As with other self-government agreements, FTAs are renewed every five years. As part of the renewal process, Self-Governing Yukon First Nations may also negotiate Programs and Services Transfer Agreements, which transfer responsibility and funding for management, administration and delivery of federal programs to self-governing Yukon First Nations. Programs and services for which the VGFN have assumed responsibility are delivered to all Vuntut Gwitchin First Nation citizens who are Indians within the meaning of the *Indian Act* residing in the Yukon.

Vuntut Gwitchin First Nation Government

The Vuntut Gwitchin First Nation Government is comprised of four branches: The General Assembly; the Elders' Council; the Council; and the Vuntut Gwitchin Court. The General Assembly is comprised of all citizens of the Vuntut Gwitchin First Nation who are sixteen years of age or older. The role of the General Assembly is to follow a consensus approach to approve all reports received from the Council, the Elders' Council and the Court, direct policy development and amend the Vuntut First Nation Constitution as required.

The Council consists of the elected Chief, a Deputy Chief, and three Councillors who each hold office for a term of four years. Like the General Assembly, decisions made by the Council are reached by consensus or by a majority vote when consensus cannot be obtained. The Council is the law making body of the VGFN and is responsible for enacting legislation, land use codes, setting government priorities, policy development and ensuring the general good management of the Government. The Council also establishes a Management Committee, which forecasts government spending, presents budgets and ensures government expenditures and transactions stay within the parameters of the budget approved by Council.

The Elders' Council includes all members of the VGFN 60 years of age or older. The role of the Council is to advise Council on such matters as determining membership within the provisions set out in the Citizenship Code, and may administer programs and services for elders as approved by Council.

The Vuntut Gwitchin First Nation Court hears and decides all cases in relation to alleged violations of Vuntut Gwitchin law and may assume additional responsibilities and authorities as provided under the various Agreements.²⁵

Highlights of Activities and Achievements

Since the establishment of self-government, the VGFN has undertaken initiatives, developed policy and delivered programs and services in key economic and social sectors. The following section outlines some of the activities and achievements of the VGFN to date.

Lands and Resources

The protection of lands and resources both within the settlement lands and throughout traditional territory is a major focus of the Vuntut Gwitchin Government. VGFN works with other governments and as members of bodies created as a result of the UFA to ensure regional conservation measures are in place while still allowing for current and future economic development opportunities. The UFA provides for the establishment of (or for First Nations nominations to) several implementing bodies with responsibilities for managing lands and resources, conducting environmental impact assessments and reviewing development proposals, addressing heritage issues, settling disputes that may arise in the interpretation of the Agreement, and for determining who is qualified to participate as a beneficiary of the Agreement²⁶. For example, in 2009 VGFN worked in conjunction with Parks Canada to draft a five year management plan for the Vuntut National Park. VGFN has also worked closely with the Yukon Territorial Government to establish the North Yukon Regional Land Use Plan, which provides management direction for all Yukon public lands and all VGFN Settlement lands outside of existing Protected and Special Management Areas.

Education

The Chief Zzeh Gittlit School is the only school in Old Crow and delivers primary education from Kindergarten to grade 9 to 39 students²⁷. The school continues to be managed and administered by the Yukon Territorial Government (YTG). As a result of the Western and Northern Canadian Protocol²⁸, the Chief Zzeh Gittlit School, along with all other public schools in the Yukon, follow the British Columbia program of studies. However, curriculum at the school is jointly adapted by VGFN and YTG with a strong emphasis on integrating Gwich'in language and all aspects of Gwich'in life into education program areas including math, social studies and fine arts. All the students spend some time on the land during the school year and VGFN offers tutorial services to students at the Chief Zzeh Gittlit School.

²⁵ Specific duties and powers of the four branches of the Vuntut Gwitchin First Nation Government are outlined in the Vuntut Gwitchin First Nation Government section of the Vuntut Gwitchin *First Nation Constitution*

²⁶ Yukon Land Claim Agreement Annual Review 1995-1996.

²⁷ Yukon Territorial Government Website. May 2010 Enrolment Report.
<http://www.education.gov.yk.ca/psb/pdf/may2010enrolment.pdf>

²⁸ In December 1993, the ministers responsible for education in Manitoba, Saskatchewan, Alberta, British Columbia, Yukon Territory and Northwest Territories signed the Western Canadian Protocol for Collaboration in Basic Education, Kindergarten to Grade 12. The protocol supports the development of common curriculum frameworks for Western and Northern Canada.

After grade 9, students travel to Whitehorse to attend public school. To support students living away from the community, VGFN offers home and school supply subsidies and pays an Education Support Worker to provide guidance and counseling to students regarding their education requirements, personal and other issues as they arise.

VGFN also provides support to citizens pursuing post-secondary education and other employment training opportunities. In 2004, an Education Committee was established to oversee programs which provide financial assistance to students wishing to pursue post-secondary and other training.

Health and Social Services

Although primary health services continue to be delivered to Old Crow residents by Health Canada and the territorial government, VGFN works closely with the other governments to enhance health and social services by providing for a Community Wellness Worker, a Community Care Coordinator, a Community Health Representative, a Justice Coordinator and a Community Recreation Coordinator. In addition to liaising with other providers to harmonize service delivery in the community, coordinators are responsible for providing counselling and support to individuals and families and deliver such programs as the National Native Alcohol and Drug Addiction Program, Aboriginal Diabetes Initiatives, and the National Aboriginal Youth Suicide Prevention Strategy among others.²⁹

4.3 Mi'kmaw Kina'matnewey Agreement, an Agreement with Respect to Mi'kmaq Education in Nova Scotia

Type of Agreement: The Mi'kmaw Kina'matnewey Agreement, an Agreement with Respect to Mi'kmaq Education in Nova Scotia is a sectoral agreement, which provides for jurisdiction over the specific subject matter of education.

Signed Agreement: February 14, 1997

Participating Communities: The nine original participating communities include Malikialq (Acadia), Kanpalijek (Annapolis Valley), Eskisoqnik (Eskasoni), Sipekni'katik (Indian Brook/Shubernacadie), Maupeltuk (Membertou), Puksaqte'kne'katik (Pictou Landing), Potlotek (Chapel Island), Wagmitkuk (Wagmatocook) and We'koqma'q (Waycobah) with the addition of L'setkuk (Bear River), which, in 2005, became the tenth community to participate in the Agreement.

Participating Community Mi'kmaw Student Population (2009-2010): 2735

2009/2010 Grant: \$35,431,000.00

Jurisdiction: Primary, elementary and secondary education on reserve; law-making powers in

²⁹ Further information on the Government of the Vuntut Gwich'in activities and initiatives can be found at <http://www.vgfn.ca/index.php>

relation to the administration and expenditure of community funds in support of post-secondary education for community members wherever resident; and the power to enter into agreements with respect to the provision of primary, elementary, and secondary education respecting members residing on reserve.

Introduction

On February 14 1997, the chiefs of nine of the thirteen Mi'kmaq communities in Nova Scotia and the Government of Canada signed an Agreement with Respect to Mi'kmaq Education in Nova Scotia (the Agreement). The first of its kind in Canada, the Agreement provides ten Mi'kmaq communities in law-making authority and administration over primary, elementary and secondary education on reserves, as well as law-making powers in relation to the administration and expenditure of community funds in support of post-secondary education for community members wherever resident. The Agreement also allows participating communities to enter into agreements with other education service providers such as the Province of Nova Scotia with respect to the provision of primary, elementary and secondary education for members residing on reserve.

Community Profile

Nova Scotia's Aboriginal population is primarily made of Mi'kmaq people. At the time of first contact with European explorers in the 16th and 17th centuries, the Mi'kmaq lived in the region now known as the Maritime Provinces and the Gaspé Peninsula. Later they also settled in New England and Newfoundland. The Mi'kmaq called themselves L'nu'k, meaning "the people". There are approximately 15,240 First Nation people in Nova Scotia, the majority of who are of Mi'kmaq descent. In total, there are thirteen bands and 42 reserve locations in Nova Scotia.

The ten participating communities are all members of the Mi'kmaq Nation and vary in size ranging from 104 in L'setkuk to 3413 in Eskisoqunik. Each has its own set of education interests, needs and capacities with regard to the delivery of education services and programs on reserve. While some communities deliver primary, elementary and secondary schools on reserve, others send students off reserve to attend public schools. In the 2009/10 school year, the total number of 2735, with 85 percent attending First Nations-operated schools.

| Community | Total On-Reserve Population | Mi'kmaq Kiina'matnewey First Nation Schools | # Students Attending First Nations Operated Schools | # Students Attending Provincial Schools |
|------------------|-----------------------------|---|---|---|
| Acadia | 181 | - | 0 | 76 |
| Annapolis Valley | 110 | - | 3 | 27 |
| Bear River | 104 | - | 1 | 19 |
| Chapel Island | 534 | Chapel Island Mi'kmaewey School | 97 | 68 |
| Eskasoni | 3413 | Eskasoni High School; Eskasoni Elementary and | 1171 | 11 |

| | | | | |
|----------------|-------------|---|-------------|------------|
| | | Middle School; Eskasoni TEC | | |
| Membertou | 798 | Membertou Elementary School | 77 | 170 |
| Pictou Landing | 470 | Pictou Landing First Nation Elementary School | 73 | 59 |
| Shubernacadie | 1239 | Muin Sipu Mi'kmaq Elementary | 458 | 0 |
| Wagmatcook | 569 | Wagmatcook School | 141 | 0 |
| We'koqma'q | 848 | We'kodqma'q Elementary School; We'kmoqma'a Secondary School | 294 | 1 |
| Total | 8266 | | 2315 | 420 |

*Table figures for On-Reserve Population retrieved from INAC website. First Nations Profiles: Registered Population (current to July, 2010) <http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/Search/SearchFN.aspx?lang=eng>. On-Reserve figures include males and females living on other reserves.

* Table figures for student enrolment were retrieved from Mi'kmaw Kina'matnewey nominal roll submitted to INAC for the 2009-2010 school year.

In addition, the Agreement supports both on and off reserve Mi'kmaq Nova Scotians enrolled in post secondary studies. In 2008-2009, there were 496 post-secondary students supported under the Agreement.

History of Negotiations

In recognition of the vital importance of education to the future of the Mi'kmaq Nation, in 1991 the Assembly of Nova Scotia Chiefs approached INAC and proposed that a Mi'kmaq Education Authority be established for the devolution of federal education programming to the thirteen Mi'kmaq communities in Nova Scotia. In June 1993, the chiefs changed their request from the transfer of the responsibility to administer education on reserve from INAC to a complete transfer of Canada's jurisdiction over education on reserve. This jurisdiction includes the power to make and administer laws and regulations with respect to primary and secondary education, and law-making powers with the respect to the administration and expenditure of community funds in support of post-secondary education, enabling the thirteen Mi'kmaq communities to assume full legal responsibility and control over First Nations education in Nova Scotia. Their request was met with an agreement from Canada to commence negotiations, which formally began in 1994 when a political accord was struck between the parties. In December of 1996, A Tripartite Agreement between First Nations, the Province of Nova Scotia and Canada was signed, affirming Nova Scotia's acknowledgement of Mi'kmaq jurisdiction. Federal and Provincial legislation (Bill C-30 and Bill no.4 respectively) were enshrined in federal and Nova Scotia Law in 1999, giving force to the Agreement with Respect to Mi'kmaq Education in Nova Scotia (the Agreement) between nine of the thirteen Mi'kmaw bands and Canada.

The Agreement with Respect to Mi'kmaq Education in Nova Scotia

Jurisdiction with respect to Mi'kmaq education is exercised by individual First Nations in accordance with the Agreement. In addition to the transfer of law-making and administrative authority for primary and secondary education on reserve, and law-making power with respect to the administration and expenditure of community funds in support of post-secondary education, the Agreement removes participating communities from s. 114-122 of the *Indian Act* and provides for the harmonization of Mi'kmaq, federal and provincial laws over education. In addition, the Agreement provides for the establishment of education boards and outlines the standard of education to be provided for by participating communities. The Agreement states “the participating communities shall provide primary, elementary and secondary education programs and services comparable to those provided by other education systems in Canada, so as to permit the transfer of students between education systems without academic penalty, to the same extent as the transfer of students is effected between education systems in Canada” (s. 5.4).

The Agreement is supported by a separate five year funding agreement that is renegotiated and renewed normally during a five year cycle. Through the Funding Agreement, INAC transfers an annual grant to participating communities through a single administrative body (Mi'kmaq Kina'matnewey – MK) for capital repairs and replacement, second level services as well as governance. The amount of the annual grant is adjusted annually for price and volume and is distributed on a quarterly basis. The current agreement took effect in 2005/06 and established an annual transfer of \$29,063,977 (base amount). A one year extension to the current agreement was established in March 2010. It is anticipated that the renewal of a successor (3rd) funding agreement will be complete by March 31, 2011.

MK also receives addition funding for INAC-targeted education programs through contribution agreements which are separate from the grant. There are currently nine targeted programs that MK applies to, on behalf of communities:

- Elementary/Secondary Instructional Services – Band Operated Schools;
- Teacher Recruitment and Retention;
- Parental and Community Engagement Strategy;
- New Paths for Education;
- First Nations SchoolNet;
- First Nation Student Success Programs;
- Partnership Initiative – Education;
- Special Education/High Cost; and
- Youth Employment Strategy Program.

Mi'kmaw Kina'matnewey (MK)

The objectives of the Agreement are to:

1. Specify the procedures and instruments through which education jurisdiction of participating communities will be realized; and
2. Determine the specific governance and administrative structures through which the participating communities will exercise jurisdiction with respect to education.

In fulfillment of these objectives, the Agreement provides for the creation of Mi'kmaw Kina'matnewey, a legally recognized corporate authority whose Board of Directors consists of the elected Chiefs from each participating community.

MK administers the Final Agreement with Respect to Mi'kmaq Education in Nova Scotia and allocates funding to participant communities as provided for by the Funding Agreement (Schedule "A" of the main Agreement). The organization is led by an Executive Director who manages the education programming, finance and administration staff. MK does not have the authority to enact education laws as jurisdiction lies solely with the communities themselves. Only individual band councils may enact laws applicable to primary, elementary and secondary education programs and services in their respective communities.

MK serves as the collective voice in education for the ten participating communities. The primary purpose of MK is to identify the needs of the communities and to assist them in meeting common objectives in the delivery of education programs and services. The corporation takes its direction from the elected chiefs of the ten member communities who each occupy a seat on MK's Board of Directors. The Board, in turn, makes decisions on budgets and programming on the advice of several working groups comprised of the Directors of Education, principals and educators, community members as well as provincial and federal officials. The Agreement requires that MK establish a constitution, setting out the powers of the organization, the powers of the Board as well as general procedures for establishing budgets and funding allocation, voting, and a process for dispute resolution which includes the use of a traditional Mi'kmaq process called Nuji Koqajatekewinu'k.

As stated in their constitution, the objectives of MK are:

- To assist and provide services to individual bands in the exercise of their jurisdiction over education;
- To assist individual Bands in the administration and management of education for the Mi'kmaq Nation in Nova Scotia;
- To provide the Mi'kmaq Nation in Nova Scotia a facility to research, develop and implement initiatives and new directions in the education of Mi'kmaq people; and
- To coordinate and facilitate the development of short and long-term education policies and objectives for each Mi'kmaq community in Nova Scotia, in consultation with the Mi'kmaq communities.³⁰

³⁰ Mi'kmaw Kina'matnewey Constitution, November 4, 1998.

In addition to supporting communities in the delivery of education programs and services, MK has established a number of key program areas in which they initiate and manage a range of small and large scale projects including the establishment of a web based Mi'kmaw language dictionary and the introduction of the student data gathering and monitoring system. Through an agreement with INAC, MK has also assumed responsibility as the Regional Management Organization for the Atlantic Canada's First Nation Help Desk, to deliver the First Nations SchoolNet Program (FNS). FNS provides First Nation schools in Nova Scotia with support and resources to manage information and integrate technology into education. The program also assists schools with Internet connectivity and in troubleshooting local area networks and connectivity problems through the Help Desk.

Through the Agreement, MK has the authority to negotiate tuition agreements and financial arrangements with the Province of Nova Scotia. In 2008, MK and the Province established the Master Education Agreement. The Master Agreement sets out the rate that MK contributes for students to attend public schools. The Master Agreement also includes provisions for enhanced services such as professional development, and provides for assessments of students both on and off reserve.

MK has also established partnerships with other organizations and institutions that support the enhancement of education services and programming in participant communities. For example, MK participates as a representative on the Education Working Committee of the Mi'kmaq-Nova Scotia-Canada Tripartite Forum. The purpose of the Forum is to discuss, investigate, negotiate and implement solutions to substantive issues of mutual concern and jurisdictional conflict. As a member of the Committee, MK assists in identifying issues through research and community engagement and brings them back to the forum for consideration. Other partnerships established by MK include research activities through St. Francis Xavier University, as well as culture and language activities with the University of Cape Breton program for Mi'kmaq Studies.

To set priorities and determine the direction of the organization from year to year, MK hosts an annual education symposium in which participating communities are invited to present their achievements from the past year, and communicate their specific education needs and priorities to MK and the Board of Directors. MK also reports on its own priorities, activities and expenditures through an annual report, a requirement set out in the terms of the Funding Agreement.³¹

Community Initiatives

In addition to education programs and service support provided by MK, since the establishment of the Agreement, individual communities have taken up a number of initiatives to enhance education programming, particularly in the area of culture and language. For example, the communities of Membertou and Eskasoni have established Mi'kmaq Emersion programming. In Membertou, the program is offered to students beginning in Kindergarten through to Grade 2. In Eskasoni, this program is offered to students beginning in Kindergarten through to Grade 3. Other community initiatives include the development of Mi'kmaw language tools such as children's books, day care programs with Mi'kmaw language instruction, adult learning

³¹ Annual reports and other information about MK and participating communities can be found at <http://kinu.ns.ca/>.

programs and attendance initiatives, among others. Through the Agreement, communities have also formed partnerships to plan, develop and implement community-specific programming. Information on these initiatives and other education activities are outlined in MK's Annual Reports and community websites.

5. Evaluation Findings: Relevance

The evaluation examined the relevance of the federal government's implementation of self-government by providing an assessment of the alignment of the goal of the IRP with government priorities, its consistency with federal roles and responsibilities as well as demonstration of continuing need.

Findings from the evaluation conclude that the goal of the IRP, to implement a process that will allow practical progress to be made and empower Aboriginal people to become self-reliant, remains highly relevant as the Policy provides a viable alternative to the *Indian Act* for Aboriginal communities wishing to negotiate self-government. The Policy supports federal government priorities as well as international norms towards greater recognition of the rights of Indigenous people to self-government. Moreover, the negotiation and implementation of self-government under the IRP is fully consistent with federal roles and responsibilities.

Self-government remains relevant to First Nations, Inuit and Métis peoples. Through the IRP, the Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under Section 35 of the *Constitution Act, 1982*. The Policy provides the framework for negotiation for those Aboriginal communities wanting to exercise their inherent right.

Canadian courts recognize that Section 35 can include the right to self-government. However, the courts have set a high standard for proving the existence and extent of such a right. Findings from the evaluation suggest that the IRP has removed pressure from the courts to decide on this issue.

National Aboriginal organizations have been highly critical of the IRP. As well, Aboriginal governments have expressed difficulty in establishing a government to government relationship with the Crown. A review of the literature and discussions with First Nation community members point to an overall frustration with what has been accomplished under the IRP. Outstanding issues also include self-government as it applies to Métis off a land base and the link between self-government and historic treaties.

5.1 Alignment with Government Priorities

INAC negotiates and implements self-government agreements on behalf of the Government of Canada, with other federal departments being involved where self-government agreements involve their areas of responsibility or jurisdiction. The negotiations and implementation of treaties and self-government agreements are important contributors to INAC's overarching mandate and currently one of the department's priority areas. Self-government negotiations are linked to the *Cooperative Relationships* program activity within the *Government* strategic outcome as outlined in the 2011-12 departmental Program Activity Architecture. Self-government implementation is linked to the *Treaty Management* program activity.

These activities support INAC's priorities by fulfilling its obligations to Aboriginal people and building strengthened relationships through progress on governance and self-government.³² Self-government activities also support INAC priority of improving economic development and sustainability, as the IRP supports Aboriginal governments and institutions developing their own sources of revenue in order to reduce reliance on transfers from other governments.

*The desire of Aboriginal peoples to be self-governing political entities can be fully realized only with a transformation in their capacity to provide for themselves. A nation does not have to be wealthy to be self-determining. But it needs to be able to provide for most of its needs, however these are defined, from its own sources of income and wealth.*³³

Moreover, the negotiation and implementation of self-government supports international norms towards greater recognition of the rights of Indigenous people to self-government as expressed in the United Nations Declaration on the Rights of Indigenous Peoples, to which Canada became a signatory in November of 2010. As stated in Article 4 of the Declaration,

*Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.*³⁴

5.2 Consistency with Federal Roles and Responsibilities

The negotiation and implementation of self-government is fully consistent with federal roles and responsibilities. The IRP represents Canada's responsibility towards Aboriginal people under Section 91(24) and Section 35 of the *Constitution Act, 1982*. As stated in the IRP,

*The Crown has a unique, historic and fiduciary relationship with Aboriginal peoples of 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.*³⁵

5.3 Continuing Need

The IRP provides the framework for negotiation for those Aboriginal communities wanting to exercise their inherent right and provides a viable alternative to the *Indian Act*. The large number of tables negotiating self-government, currently there are 91 tables with 70 active tables and 21 inactive tables, reflect this demand.

³² Priorities as stated in Indian and Northern Affairs and Canada Polar Commission 2010-2011 Estimates. *Report on Plans and Priorities*.

³³ *Report of the Royal Commission on Aboriginal Peoples*. (Volume 2, Part Two, Chapter 5).

³⁴ *United Nations Declaration on the Rights of Indigenous Peoples*, Adopted by General Assembly Resolution 61/295 on 13 September 2007.

³⁵ The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government. (1995). (p.12).

The IRP serves as a tool to foster reconciliation of Crown and Aboriginal interests through negotiations rather than litigation. Canadian courts recognize that Section 35 can include the right to self-government. However, the Courts have set a high standard for proving the existence and extent of such a right. For example, in a leading decision on the issue (*R. v. Pamajewon* [1996]), the Supreme Court of Canada found that, even if Section 35 could include self-government rights, the particular Aboriginal community in that case was unable to prove the right to control gaming initiatives on its land. Findings from the evaluation suggest that the IRP has removed pressure from the courts to decide on this issue.

5.4 Aboriginal Perspectives

Self-government remains relevant to First Nations, Inuit and Métis. As noted by Aboriginal key informants, self-government supports:

...creating space in Canada's federal state for First Nation, Métis, and Inuit people to govern their own affairs. It is about creating room in post colonial Canada for the continuation of indigenous people.

*...bringing Aboriginal people into the confederation in a distinct and meaningful way. Self-government means that Aboriginal Government becomes part of the governing structures of the country.*³⁶

National Aboriginal organizations have however expressed strong concerns with the Inherent Right Policy and its implementation. The IRP is perceived as a federal government policy that did not include Aboriginal input into its development and that negotiations with Métis groups without a land base has been limited.

*The existing inherent right policy was developed unilaterally by the federal government contrary to what the Supreme Court of Canada has been declaring with respect to consultation, the fiduciary relationship and reconciliation. The policy has been rejected by First Nations and has not produced the desired results, therefore, needs to be revisited in its entirety.*³⁷

*Although the policy clearly indicates that Métis are to have access to the policy and that resulting rights in agreements (with provincial support) can be protected as constitutionally-protected Section 35 rights, federal negotiators have refused to enter into substantive discussions on implementing self-government off a land base.*³⁸

The link between self-government and historic treaties is also an outstanding issue. For example, in Saskatchewan, governance arrangements for the province's Treaty First Nations led to an Agreement-in-Principle and Tripartite-Agreement-in-Principle in 2003 though an impasse on negotiations was reached and these agreements were not ratified. The reasons are documented in the Office of the Treaty Commissioner report on treaty implementation and include:

³⁶ Quotes from Aboriginal key informants as part of the evaluation process.

³⁷ Assembly of First Nations. *Negotiation Background Paper*. Canada-Aboriginal Peoples Roundtable 2005.

³⁸ Métis National Council. *Negotiation Policy Paper*. Canada-Aboriginal Peoples Roundtable 2005.

*What is missing, both in the federal government's 1995 "Inherent Right Policy" and the Agreement-in-Principle, is a commitment to define the relationship between the treaties and the overlapping sovereignties of the parties and explicitly recognize that contemporary governance agreements where treaties have been made will necessarily build upon a pre-existing foundation of reconciliation.*³⁹

Moreover, as self-government agreements are between an Aboriginal signatory and the Crown, Aboriginal governments expressed difficulty in establishing a government to government relationship with the Crown. As stated by the Land Claims Agreement Coalition in 2006,

*Recognition that the Crown in Right of Canada, not the Department of Indian and Affairs and Northern Development, is party to our land claims agreements and self-government agreements.*⁴⁰

A Review of the Literature

The following section highlights key findings from a literature review that explores self-government over the past two decades from a First Nations, Métis, and Inuit perspectives as well as Aboriginal women's perspectives. The focus of the literature review focused primarily on Aboriginal authors, most of whom are renowned scholars, lawyers, and/or politicians and generally recognized experts, both in their own communities and across Canada. Appendix A provides a bibliography of all documents reviewed for this section.

First Nation Perspective

The literature review reveals a number of First Nations perspectives on self-government and all begin with a general frustration that despite recent dialogue, negotiations, and policies, very little has actually been accomplished. The relationship continues to be unequal, with Canada possessing more power in negotiations while attitudes remain adversarial and inflexible instead of working towards mutually beneficial and community-specific partnerships. Canada continues to set the rules for engagement and expresses Canadian vision and self-interest, an approach that simply reinforces a colonial relationship maintained by INAC. Most authors express a need to decolonize political institutions (including the *Indian Act*, the reserve system, and the Assembly of First Nations) and some criticise the Royal Commission on Aboriginal Peoples for not doing enough to promote an entrenchment of self-government along similar lines as the Charlottetown Accord.

These mostly First Nations authors use history to confirm, from their point of view, the inherent Aboriginal right to self-government, which has been recognized in the past by the *Royal Proclamation* (1763) and various treaties (although some argue against an over-reliance on treaties since they exclude provincial governments today and are not internationally binding as Aboriginal nations are not states). Of course, different understandings of the Proclamation and

³⁹ Office of the Treaty Commissioner. (2007) *Treaty Implementation: Fulfilling the Covenant*. (Saskatoon: Office of the Treaty Commissioner. (p. 108).

⁴⁰ Land Claims Agreements Coalition *Four-Ten Declaration of Dedication and Commitment*. (December 2006, p1.)

treaties existed, understandings that evolve over time and shape our comprehension of the relationship today, as do diverse notions of concepts like sovereignty and ownership. Even the idea of self-government is contentious, as it implies recognition by a superior political power, while some authors prefer terms like nationhood and self-determination to better express the idea of ‘right relationships’ with people and the land. Additionally, from their point of view, the right to self-determination is guaranteed by international law and provinces cannot assume the Crown’s fiduciary and constitutional obligations without Aboriginal consent.

All authors suggest big-picture ways in which to move forward, although they do not necessarily speak with one voice. While some argue that Aboriginal rights to self-determination are already entrenched in the Constitution thanks to various treaties (that express multiple pluralisms instead of a single Canadian sovereignty), others insist on a constitutional amendment to clearly outline the scope and protection of these rights (somewhat similar to the ‘domestic dependent nation’ status in the United States). Indeed, a better definition of what exactly self-government would entail and how it would be implemented is of major focus. Suggested reforms include:

- development of First Nations constitutions, legal codes, and procedural codes to develop the rule of law in communities;
- creation of Aboriginal Charters of Rights to be included in First Nations constitutions that would consider Aboriginal values and dispute-solving mechanisms, would protect legal and individual rights, and would preserve social, economic, and collective rights and responsibilities. The *Canadian Charter of Rights and Freedoms* need not be replaced, but these community-based charters would help contextualize Aboriginal values and responsibilities;
- abolition of INAC and the creation of a ‘Ministry of First Nation—Crown Relations,’ establishment of auditor and attorney generals, an ombudsman, a treaty commissioner, an Aboriginal and Treaty Rights tribunal and a national treaty policy (that the AFN has been promoting for years);
- respect for the spirit and intent of treaties and formation of various structures and mechanisms for treaty implementation in both the short and long-term (26 recommendations to achieve these steps in Saskatchewan listed in Arnot’s work);
- development of a centralized education body, either on a national scale or based on specific language groups and/or cultures, to devise curricula, accredit teachers, and provide resources to fully realise the promise of Aboriginal-controlled education.

Emphatically, self-government should not simply reflect what many authors viewed as insubstantial municipal powers, but must include real powers, such as:

- personal and territorial jurisdiction, that stems from the Creator, to be applied to all residents on First Nation territories; Crown responsibility to demonstrate that Aboriginal jurisdiction in a particular area has been diminished (the ‘full box’ model);
- concurrent and exclusive powers for the expression of law on the territory;
- intergovernmental cooperation in the area of Aboriginal law (so that First Nations governments could ‘rent’ services out to another government as they develop their own capacity to deliver);

- administration of justice that may be carried out in collaboration with other orders of government; and
- financial support of self-government by levying taxes, borrowing money, and accessing transfer monies from other levels of government.

Finally, in order to realise self-government aspirations, First Nations need capacity building, a strong leadership, and good governance (that includes accountability and transparency, a constitution and rule of law, and a system of conflict resolution). Economic integration is key for self-sufficiency and a stable government and transparent business approaches will make communities attractive to investors. Democratic reform is also needed for success (which includes an improved band council structure and better election processes) in order to decolonize the mindset of dependency on the federal government and to empower Aboriginal communities to solve problems themselves. Finally, education is also closely linked to self-government and both the leadership and the communities must be trained in ways of governing and building businesses.

Métis Perspective

The Métis perspectives surveyed through the literature review highlight several key governance goals, including land security, local autonomy, and self-sufficiency. All authors stress the idea of evolution over time: contemporary governance is not meant to be rigid or final, but should be an evolving relationship between the Métis Nation and the Crown. Historical, cultural, and political issues of the Métis provide a context for self-government discussions, as does the examination of some current examples of successful Métis governance. Several themes appeared quite frequently: lack of a Métis land base and defined Métis membership; a constitutional obligation for the Crown to negotiate and actively protect and promote Métis rights instead of ignoring the issue; and a need to stop jurisdictional quarrels between the federal and provincial governments on who is responsible for the Métis.

The lack of a Métis land base remains of major concern for all authors. One article explores the Métis Settlements of Alberta, Canada's only legislated, land-based Métis Government, which might provide a model for other Métis or Aboriginal governments. Most other Métis governance structures to date have evolved off a land base and a significant urban population exists with their own developed organisations. Of course, the question of whom these organisations represent is also central and the Crown, several authors claim, has used this perceived lack of unity to deny constitutional rights on the basis of not knowing who or where the Métis actually are. The Supreme Court Decision *Powley* set out self-identification, ancestral connection, and community acceptance as criteria for determining membership, but one author criticises the centrality of race as a factor (ancestral connection) and protests the use of the Court—instead of the Métis themselves—to define a people.

The *Powley* decision also found that the Métis had constitutional rights similar to other Aboriginal peoples and the Crown has a duty to take *positive* action to negotiate and define them. While most authors view Section 35 of the Constitution as a guarantor of Métis and other Aboriginal rights, one author rejects what he considers a colonial framework and describes his offence at the apparent equivalence of the right to weave baskets to the right to good governance

under s.35. Instead, international human rights doctrine is a better protector of Métis rights, he maintains.

Regardless of how exactly these rights are protected, all authors agree they must be negotiated, which the federal government has avoided doing until recently. Political participation of the Métis and other Aboriginal peoples in these negotiations is crucial for Canada to have a legitimate governing order. Of course, recognition of Métis rights can also be achieved in the courts—one author suggests simply exercising a right, like hunting, and then taking it to court when the province challenges it—but litigation is a costly and time-consuming process.

The authors suggest fewer concrete recommendations than other perspectives, likely due to the relatively new way of conceptualizing Métis rights and the recent reversal of the federal refusal to negotiate. Nevertheless, the recommendations touch on several issues:

- *Métis membership*: establish a Métis National Registry based on their own national definition of citizenship to define the scope of the Métis Nation and its homeland; establish a National Métis Citizenship and Elections Commission; have an independent Métis Nation Auditor General audit the registration system.
- *Métis participation*: establish a wide and transparent consultation process for the Métis Nation to discuss constitutional development and the following issues: roles and responsibilities of different levels of Métis governments; leadership selection issues and accountability; the Métis Nation's vision within Canadian federation.
- *Métis governance*: develop the Métis Nation's capabilities: look to successful past practices to expand longer-term capacity building and Métis-specific training initiatives; explore how to generate revenue for Métis governments.
- *Intergovernmental relationships*: address the jurisdictional impasse where both the federal and provincial governments refuse to take responsibility for the Métis, a policy that results in the denial of much needed programs and services (the Métis National Council has long claimed that the federal government has primary responsibility although one author argues the provincial and federal Crowns cannot be separated); expand effective relationships and review other intergovernmental models.
- Build upon the *Canada-Métis Nation Framework Agreement* to recognize the Métis Nation, their contributions to the Canadian federation, and to commit to a new nation-to-nation negotiation approach that includes the Métis in federal policies and in the development and implementation of future initiatives.
- Develop and pass a *Canada-Métis Nation Relations Act* to focus on a nation-to-nation relationship and the recognition of existing Métis Nation self-government institutions. Maintain transparent and accountable democratic governance, a Métis Nation citizenship registry, and the delivery of social and economic government services and programs paid for by the federal government, as occurs in other Aboriginal communities. Establish a Métis Nation Commission, similar to the Indian Claims Commission, to look at scrip, treaty, and compensation claims. Negotiate self-government based on Métis jurisdiction and law-making authority on a Métis land base, control over cultural and socio-economic activities, establishment of effective intergovernmental relations, and the Crown's legal duty to consult and accommodate.

Inuit Perspective

Since a number of self-government agreements for Inuit have already been—or are in the process of being—ratified, Inuit perspectives in this section concentrate less on the actual right to self-determination and focus instead on existing challenges, implementation, and policy priorities. Key areas of engagement include implementation and governance, sovereignty, global warming, economic development, funding, and education. Little focus is placed upon difficult social conditions in communities (the three biographies do recount past injustices), although issues of housing shortages and problems with drinking and violence are mentioned peripherally; a number of authors also insist that Inuit standards of living must be brought in line with the rest of the country. Similarly, the unique concerns of women do not feature prominently in these summaries (perhaps as only two authors are women), except for two biographies, which briefly mention the idea of creating a gender parity rule for Nunavut's legislature, a proposal that failed when put to the people. A number of authors concentrate on the past negotiation of various agreements and two contentious issues that continue to divide Inuit and Canadian authorities frequently appear: offshore jurisdiction and the extinguishment clause.

Moving on to the key areas of engagement, implementation continues to frustrate some authors as they feel the Canadian Government has not done enough to negotiate in the context of a renewed relationship and instead simply fulfil the bare minimum of obligations. That said, three new areas of Inuit self-government now exist or are close to being realised, with public governments in Nunavut and under negotiation in Nunavik, while Nunatsiavut is a regional government for Inuit only in Labrador. Of course, regardless of having a public government, the large Inuit majority in Nunavut allows—and will allow in Nunavik—they to shape policy and services in culturally and linguistically appropriate manners and integrate Inuit customs into laws. All systems are interesting hybrid, distinctly northern models; the newer regions of Nunavik and Nunatsiavut envision devolving jurisdictions, and, like Nunavut, high levels of community involvement. Most authors agree that Government should be decentralised so it can best respond to local concerns, but others fears this will create too large of a bureaucracy with redundant jobs. Education, housing, and health care remain of primary importance and several authors dislike having federal policy imposed upon them, like a new hunting license requirement or same-sex marriage legislation.

Sovereignty also played a major role in the literature, but it should be mentioned that all authors viewed Inuit sovereignty as being exercised within the Canadian state. That said, one author described sovereignty as beginning at home and stressed that Canada must ensure Inuit have the same standard of education, health care, infrastructure, and economic involvement as other Canadians. Inuit connections also extend beyond Canadian borders to Indigenous peoples in Greenland, Alaska, and Russia, all of whom possess the right to self-determination under international law and remain united under the Inuit Circumpolar Council. Regional institutions provide useful mechanisms for international cooperation and security and several initiatives should be explored, including Arctic-orientated military initiatives, a marine authority for transportation purposes and jurisdictional issues, responsible environmental management, sound civil administration, as well as common education and language priorities.

The authors highlighted that global warming is also opening up the Arctic to outside involvement; Inuit want to ensure they stay at the forefront of negotiations and that Canada and the international community value their consent, perspectives, and expertise as we create international partnerships in areas such as sustainable development, global environmental security, and other economic, military, health, and social initiatives. Similarly, discussion by the authors around the economy focused on renewable resources, the heritage of all Inuit, and a need for environmental monitoring (perhaps by the Arctic Rangers). Sustainability is also important, especially in light of climate change, and a permanent economy must focus on industries like fishing, windmills, and sun power instead of natural resource extraction with negative boom and bust cycles. Inuit must be onside for major development projects and, in the years since the creation of Nunavut, relations between Inuit and investors have improved, creating greater confidence in the Nunavut market and success in industries such as share holding in ships, the Qikiqtaaluk Corporation and an Inuit-owned airline. In terms of funding these new self-government entities, a number of authors call for a reduction in unnecessary costs and for the end of an unwieldy and costly system of applying for funding that is neither efficient, nor stable and hinders the development of long-term policy. Authors lament the large disparity in funding exists compared to First Nations communities, but Inuit governments are slowly establishing their own revenue streams through taxes, rent, royalties, etc.

Finally, protecting, preserving, and actively promoting language and culture remains of critical importance and multiple authors discuss the importance of teaching Inuktitut in schools and making it the primary language for Government. Just as the federal government supports English and French minorities in the rest of the country, Inuktitut must be supported in the North. Authors also call for a greater Inuit control of education: one author calls for establishment of an Inuit northern university while another desires an Inuit Knowledge Centre focused on research. Inuktitut-speaking teachers must be trained, Inuit curricula developed, and elders should be honoured for their knowledge and contributions.

Aboriginal Women Perspective

The literature revealed that Aboriginal women place much emphasis on the barriers to realising self-government, including the poor socio-economic conditions and extreme violence lived by many women, as well as discriminatory policies of the Indian Act, patriarchal values adopted by Aboriginal men that muzzle women, and the loss of language and culture in residential schools. Fundamental human rights must be addressed for self-government to be achieved, including the protection of the family, mother, and child, as well as the right to an adequate standard of living and to health. Unfortunately, mainstream remedies do little in poor, remote communities and authors instead call for gender-based, culturally appropriate approaches to health, social services, and governance structures. Historic origins of female involvement in governance also help guide the way and many women look to a resurgence of traditional values where women chose chiefs, helped govern by consensus, and passed down the language and culture.

Some authors see the Canadian Government as restricting Aboriginal self-government to fit under their own jurisdiction and law, and instead propose their own understanding of the term: the concept of “our way of life” or “our way of being,” preferred by women at one forum, reflect indigenous languages, cultures, beliefs, ceremonies, and responsibilities, all of which are implied

in the term self-government. A distinction between self-government and self-determination is also important for some with the former being a mid-point between assimilation and self-determination and reflected by agreements such as the Indian Act, which ultimately restricts indigenous independence.

Multiple authors use domestic and international laws, statutes, and covenants to insist upon an end to discrimination against indigenous women. The Canadian Constitution protects the inherent Aboriginal right to self-government and by consequence could affirm matriarchal governments and women's rights to political and cultural participation in Aboriginal societies. That said, some remain frustrated that litigation focuses on Aboriginal and Treaty rights, which often concentrate on traditionally male domains, such as hunting and fishing, usually ignoring female economies, such as gathering, agriculture, tanning skins, and sewing clothing. Furthermore, the Canadian Charter of Rights and Freedoms should protect the individual equality rights of women, which need not conflict with the collective rights of Aboriginal communities as both coexist in international law. Some authors argue for a hierarchy of rights where individual (political and civil) rights of women prevail over rights of Aboriginal collectivities, while others assert all rights exist within both the individual and the collective. Indeed, an Aboriginal woman cannot be removed from her culture and therefore her idea of rights differs dramatically from mainstream feminism: instead of demanding equality, for instance, indigenous women might desire a return to their traditional roles. One author emphasises that the entire concept of rights is wrong; the dialogue should instead focus on responsibilities in an Aboriginal context.

Much discussion revolved around Bill C-31, which continues to discriminate against women and their children with its second-generation cut-off rule, and the now-defunct Bill C-7, the *First Nations Governance Act*, which some authors saw as perpetuating discriminatory practices in violation of Canada's domestic and international promises. Similarly, some sexist *Indian Act* provisions include: continued status restriction even after the 1985 amendments; required identification of child's father and his status; denial of band membership to some women; prevention of non-members from living on reserves; and registration of homes and property in the male spouse's name. On the last note, the literature was also concerned with the issue of matrimonial real property and one article outlined the different concept of ownership found in Aboriginal customary law—opposed by the *Indian Act*—whereby, a custodial relationship exists between the land and the people who hold it in trust for future generations (for westerners, the emphasis is placed on land value, individual rights, and exclusive ownership).

Each author presented several recommendations to end discrimination against indigenous women and to move self-government forward. Key recommendations include:

- reform the *Indian Act* to eliminate all discriminatory provisions and policies; create a mechanism for dispute resolution and to remove leaders;
- fill legal gaps concerning matrimonial real property by consulting with elders and families; ensure equality in the division of assets after a divorce; prioritize solutions that serve the best interests of children;
- cut funding to band councils who refuse to provide services to re-instated women and children; re-evaluate membership laws and status declaration;

- fund a culturally relative gender-based analysis framework to be adopted by all levels of government involved in negotiations; focus on capacity-building for First Nation's women's groups;
- promote equal representation and participation for women in leadership roles at the negotiation and policy tables;
- guarantee equality rights set out in the Charter and the Constitution; possible establishment of an Aboriginal-specific charter or a national or regional human rights panel and a First Nations ombudsperson;
- adopt the *UN Declaration on the Rights of Indigenous Peoples*;
- apply the recommendations of the RCAP, especially those related to family law;
- apply Aboriginal customary law but stress the principles of equality, fairness, and rights that may have been removed due to colonial and sexist practices;
- encourage good governance with accountable, transparent structures of decision-making, an inclusion of gender equality principles, an understanding of the past to better envision the future, a focus on the rule of law, the centrality of the land, and consensus-based decision making;
- define the roles and responsibilities of women, men, elders, youth, the family, and the clan; educate community members to their roles, responsibilities, and traditions to help them heal from a legacy of cultural genocide and abuse; and
- create a code of conduct for leaders, men, and women to help communities unite and stop fighting and discriminating against themselves; return power to the people; create independence and self-sufficiency with a land and resource base.

6. Evaluation Findings – Performance

The evaluation examined the achievement of results as indicated by the status of current self-government agreements and negotiations; a quantitative assessment of results based on an analysis of CWB Index for communities currently under self-government arrangements; and, qualitative assessment of results based on the case studies undertaken for this evaluation.

There are currently 18 self-government agreements in place as well as 91 tables negotiating self-government, 70 active tables and 21 inactive tables. Of the active tables, 50 tables are comprehensive land claims related with 20 tables as stand-alone/sectoral self-government negotiations. It is worthy of note that 51 percent (36 of the 70) of the active negotiating tables are within British Columbia as part of the BC Treaty Process. Data from the 2009-2010 Table Review process indicate that tables in negotiations, both active and inactive, represent approximately 350,000 Aboriginal people.

Empirical research shows that taking control of selected powers of self-government and capable governance institutions are indispensable tools to successful long-term community development in Aboriginal communities. The CWB analysis conducted indicates that Aboriginal communities currently with a self-government arrangement in place score higher on the CWB Index than First Nation communities (9 points higher) and Inuit communities (4 points higher), though remain lower than all Canadian communities (11 points lower).

Qualitatively, self-governing communities report that a major perceived benefit of self-government is a renewed sense of pride that they now have their own government as well as the right to elect their own governments and to make important decisions affecting their lives. Issues of scope and complexity of operating a new government, unrealistic expectations for what would be achieved under self-government, as well as access to financial resources were however identified as barriers to success.

6.1 Current Status of Self-Government Agreements and Negotiations

The following section provides information on the current status of self-government arrangements in place as well as the status of self-government negotiations underway. Claims related self-government agreements are defined as those negotiated in context with land claim agreements; stand-alone self-government agreements cover a wide range of subject areas but are not negotiated as part of a land claim; and sectoral self-government agreements include governance arrangements and may include additional jurisdiction such as education or child welfare.

Self-Government Agreements in Place

There are currently 18 self-government agreements in place. Eighty-three percent (15 of the 18 agreements) are associated with a comprehensive land claim. Also of note is that 61 percent (11 of the 18 agreements) are self-government agreements in the Yukon negotiated under the Umbrella Final Agreement (UFA). There are currently two stand alone agreements, both located in British Columbia – Sechelt Indian Band Self-Government Agreement and Westbank First Nation Self-Government Agreement. In addition, the *Cree-Naskapi (of Quebec) Act* gives effect to nine Cree communities and one Naskapi community on local government commitments contained in the JBNQA and the NEQA.

Table 2: Self-Government Agreements in place by Province/Territory

| | Province/ Territory | Year Agreement Signed | # of Commu- nities | Registered Population |
|---|------------------------|-----------------------------|--------------------------|--------------------------|
| Claims Related Self-Government Agreements | | | | |
| Nisga'a Final Agreement | BC | 2000 | 4 | 5,807 |
| Tsawwassen First Nation Final Agreement | BC | 2009 | 1 | 286 |
| Labrador Inuit Land Claims Agreement | NFLD | 2005 | 5 | 7,102 ⁴¹ |
| Tilcho Land Claims and Self-Government Agreement | NWT | 2005 | 4 | 2,832 |
| Umbrella Final Agreement (1993) | | | | |
| Vuntut Gwichin First Nation Self –Government Agreement | YT | 1995 | 1 | 524 |
| First Nation Nacho Nyak Dun Self-Government Agreement | YT | 1995 | 1 | 474 |
| Teslin Tlingit Council Self-Government Agreement | YT | 1995 | 1 | 573 |
| Champagne and Aishihik First Nation Self-Government Agreement | YT | 1995 | 1 | 813 |
| Little Salmon/Carmacks First Nation Self-Government Agreement | YT | 1998 | 1 | 609 |
| Selkirk First Nation Self-Government Agreement | YT | 1998 | 1 | 514 |
| Tr'ondëk Hwëch'in Self-Government Agreement | YT | 1998 | 1 | 695 |
| Ta'an Kwach'an Council Self-Government Agreement | YT | 2002 | 1 | 237 |
| Kluane First Nation Self-Government Agreement | YT | 2004 | 1 | 143 |
| Kwanlin Dun First Nation Self-Government Agreement | YT | 2005 | 1 | 964 |
| Carcross/Tagish First Nation Self-Government Agreement | YT | 2005 | 1 | 615 |
| Stand-Alone Self-Government Agreements | | | | |
| Sechelt Indian Band Self-Government Agreement | BC | 1986 | 1 | 1,267 |
| Westbank First Nation Self-Government Agreement | BC | 2004 | 1 | 691 |
| Sectoral Self-Government Agreement | | | | |
| Mi'kmaq Education Agreement | NS | 1999 | 10 | 2,735 ⁴² |
| Additional Self-Government Arrangements | | | | |
| <i>Cree-Naskapi (of Quebec) Act</i> | QC | 1984 | 10 | 17,260 |

⁴¹ Beneficiary population

⁴² K-12 population

Self-Government Negotiations

As of February 2011, INAC reports 91 negotiation tables with 70 active and 21 inactive. These tables represent 331 Aboriginal communities, including 302 First Nations, 20 Inuit communities and 9 James Bay Cree communities, and some Métis locals. Of the active tables, 50 tables are comprehensive land claims related with 20 tables as stand-alone/sectoral self-government negotiations. It is worthy of note that 51 percent (36 of the 70) of the active negotiating tables are within British Columbia as part of the BC Treaty Process. Data from the 2009-2010 Table Review process indicate that tables in negotiations, both active and inactive, represent approximately 350,000 Aboriginal people.

Table 3: Active Self-Government Negotiations by Province/Territory

| | # of Active Tables | # of Communities |
|--|--------------------|------------------|
| Claims Related Self-Government Negotiations by Province | | |
| British Columbia | 36 | 82 |
| Ontario | 1 | 1 |
| Quebec | 4 | 12 |
| Atlantic | 4 | 32 |
| NWT | 5 | 16 |
| <i>Total Claim Related Self-Government Negotiations</i> | 50 | 143 |
| Stand Alone / Sectoral Self-Government Negotiations by Province | | |
| British Columbia | 0 | 0 |
| Alberta | 1 | 1 |
| Saskatchewan | 2 | 9 |
| Manitoba | 1 | 1 |
| Ontario | 3 | 91 |
| Quebec | 4 | 25 |
| Atlantic | 1 | 1 |
| Yukon | 1 | 1 |
| NWT | 7 | 13 |
| <i>Total Active Stand Alone Self-Government Negotiations</i> | 20 | 142 |
| Total Active Self-Government Negotiations | 70 | 285 |

6.2 Quantitative Assessment

Though no comparable study has been conducted in Canada, the emphasis on governance capacity is grounded in a growing body of evidence on the impact of good governance on the development of strong, healthy, and prosperous communities. The fundamental impact of good governance on socio-economic development objectives is supported by more than fifteen years of empirical research at Harvard University's Project on American Indian Economic Development. Their research consistently confirms that taking control of selected powers of self-government and capable governance intuitions are indispensable tools to successful long-term community development.⁴³

For the evaluation, an analysis of the CWB Index was conducted. CWB measures the quality of life of First Nations and Inuit communities in Canada relative to other communities. It uses

⁴³ Refer to <http://hpaied.org/> for details regarding the Harvard Project

Statistic Canada's Census and Population data to produce well-being scores for individual communities based on four indicators: Education, Labour Force, Income and Housing. It is important to note that the CWB Index data does not assess if the improvements of well-being in the self-governing communities are associated with the agreement themselves. This does not say that such association does not exist, but rather that these CWB measures do not demonstrate a direct relationship and that other factors may be more influential. In addition, communities are defined in terms of census subdivisions and these subdivisions at times do not accurately reflect the population under the self-government agreement. For example, non-Aboriginal people may be included with the census subdivision, as in the case for Tsawwassen First Nation. Moreover, CWB scores do not include members who do not reside in the community,

The CWB Analysis conducted indicates that overall Aboriginal communities currently with a self-government arrangement in place score higher on the CWB Index than First Nation, and Inuit communities though lower than all Canadian communities.

Table 4: CWB 2006 Average Scores

| | 2006 Average CWB Score | Differential |
|---|------------------------|--------------|
| All Canadian communities | 77 | +11 |
| Self-government communities ⁴⁴ | 66 | - |
| Inuit communities | 62 | - 4 |
| First Nation communities | 57 | - 9 |

⁴⁴ This figure is calculated using the CWB scores for communities who currently having a self-government agreement in place. As previously noted, the CWB analysis does not assess if the improvements of well-being in the self-governing communities are associated with the agreement themselves.

The following section provides details of the CWB data including scores by individual self-governing communities.⁴⁵

Table 5: CWB Index Data from 1981 to 2006⁴⁶

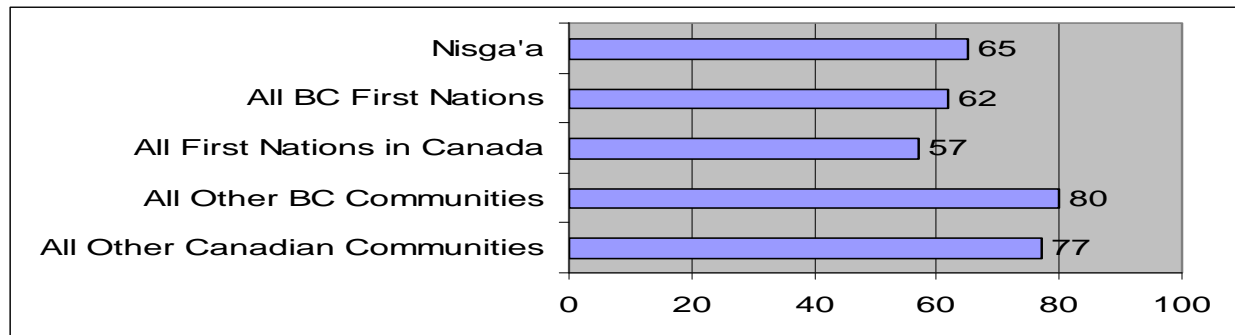
| | Province/ Territory | Year Agreement Signed | CWB Score 1981 | CWB Score 1991 | CWB Score 1996 | CWB Score 2001 | CWB Score 2006 |
|---|------------------------|-----------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Claims Related Self-Government Agreements | | | | | | | |
| Nisga'a | BC | 2000 | 51 | 57 | 61 | 66 | 65 |
| Tsawwassen | BC | 2009 | - | 81 | 78 | 81 | 89 |
| Labrador Inuit | NFLD | 2005 | 51 | 52 | 57 | 62 | 66 |
| Tilcho | NWT | 2005 | - | - | 51 | 59 | 60 |
| Vuntut Gwichin | YT | 1995 | - | - | 64 | 70 | 71 |
| Nacho Nyak Dun | YT | 1995 | - | - | 73 | 73 | 79 |
| Teslin Tlingit Council | YT | 1995 | - | 57 | 64 | 66 | 72 |
| Champagne and Aishihik | YT | 1995 | - | - | 76 | 79 | 80 |
| Little Salmon / Carmacks | YT | 1998 | - | - | - | - | - |
| Selkirk | YT | 1998 | - | - | - | 72 | 71 |
| Tr'ondëk Hwëch'in | YT | 1998 | - | - | - | - | - |
| Kluane | YT | 2004 | - | - | - | 74 | 78 |
| Kwanlin Dun | YT | 2005 | - | - | - | - | - |
| Carcross/Tagish | YT | 2005 | - | 53 | 67 | 71 | 74 |
| Stand-Alone Self-Government Agreements | | | | | | | |
| Sechelt | BC | 1986 | 53 | 64 | 67 | 63 | 70 |
| Westbank | BC | 2004 | 69 | 69 | 72 | 74 | 78 |
| Sectoral Self-government Agreements | | | | | | | |
| Mi'kmaq Education Agreement | NS | 1999 | 48 | 51 | 58 | 60 | 63 |
| Acts | | | | | | | |
| <i>Cree-Naskapi (of Quebec) Act</i> | QC | 1984 | 47 | 51 | 60 | 60 | 64 |
| First Nations and Inuit Communities and Other Canadian Communities | | | | | | | |
| First Nation communities | - | - | 47 | 51 | 55 | 57 | 57 |
| Inuit communities | - | - | 48 | 57 | 60 | 61 | 62 |
| Other Canadian Communities | - | - | 67 | 71 | 72 | 73 | 77 |
| Self-governing Aboriginal communities | - | - | - | - | - | - | 66 |

⁴⁵ For 1981, 1991 and 1996, few First Nations and Inuit communities were part of a self-government agreement. The aggregations above reflect those communities that eventually implemented a self-government agreement. Additionally, many of the communities did not have a CWB score and caution should therefore be exercised when interpreting the average CWB score for self-governing communities during these years. Although more First Nations and Inuit communities were part of a self government agreements by the 2001 and 2006 census year, some did not have a CWB score and caution should be exercised when interpreting the average CWB score for these years as well. CWB scores are derived from only those communities that have CWB scores available. These include communities with populations of at least 65, that participated in the census, and for which there was no data quality issues. Component scores (income, education, housing and labour force activity) are derived from only those communities that have CWB scores available. These including communities with populations of at least 250, that participated in the census, and for which there is no data quality issues.

⁴⁶ No summary comparisons of CWB results are listed when a First Nation or Inuit community did not possess a CWB score.

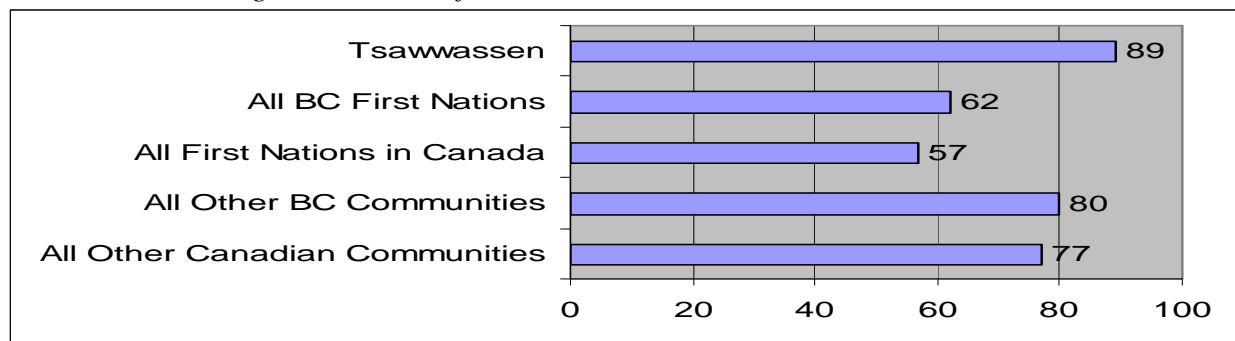
The following provides details of the CWB analysis by self-governing community.

Nisga'a : Average CWB Scores for 2006



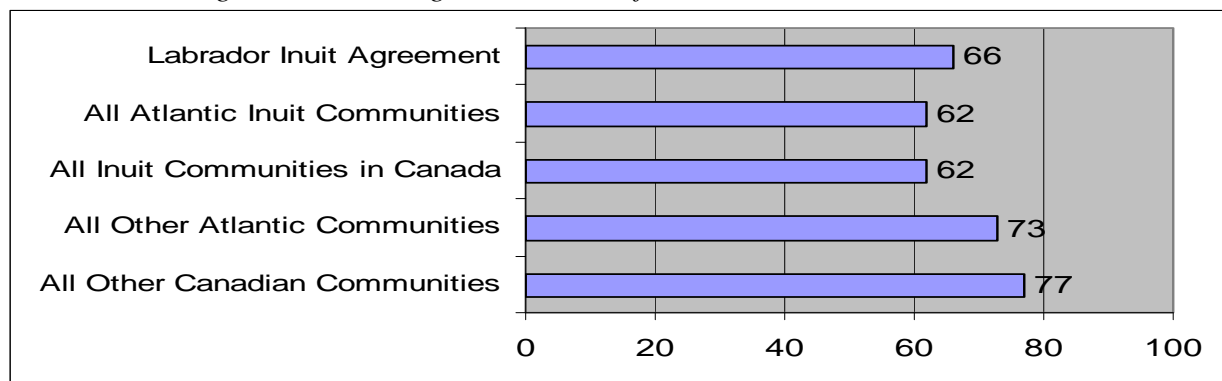
| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|--------------------------------|-----------|-----------|-----------|--------------|
| Nisga'a | 57 | 48 | 75 | 70 |
| All BC First Nations | 59 | 38 | 76 | 73 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Other BC Communities | 85 | 58 | 94 | 85 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

Tsawwassen: Average CWB Scores for 2006



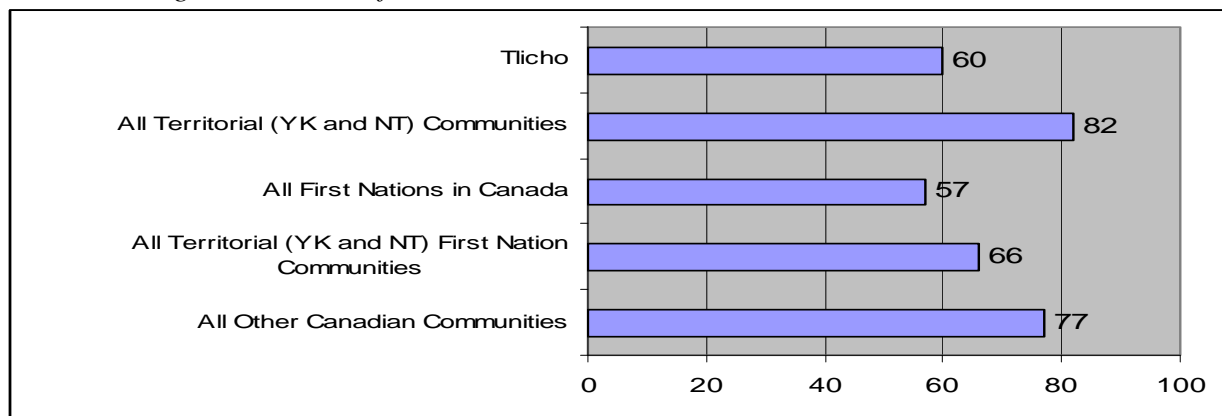
| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|--------------------------------|------------|-----------|-----------|--------------|
| Tsawwassen | 100 | 70 | 96 | 91 |
| All BC First Nations | 59 | 38 | 76 | 73 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Other BC Communities | 85 | 58 | 94 | 85 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

Labrador Inuit Agreement: Average CWB Scores for 2006



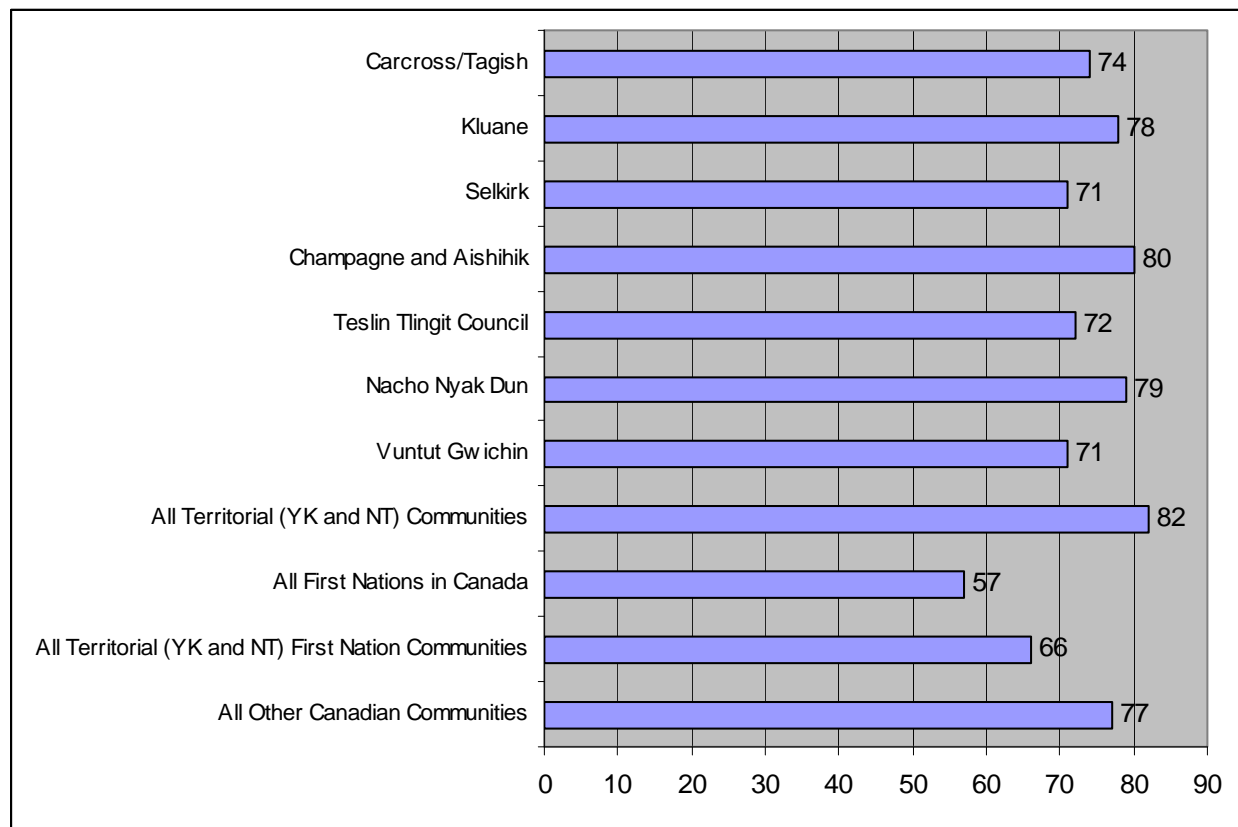
| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|--|-----------|-----------|-----------|--------------|
| Labrador Inuit Agreement | 70 | 42 | 78 | 68 |
| All Atlantic Inuit Communities | 71 | 43 | 81 | 68 |
| All Atlantic First Nations Communities | 56 | 46 | 81 | 73 |
| All Other Atlantic Communities | 76 | 46 | 94 | 76 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

Tlcho: Average CWB Scores for 2006



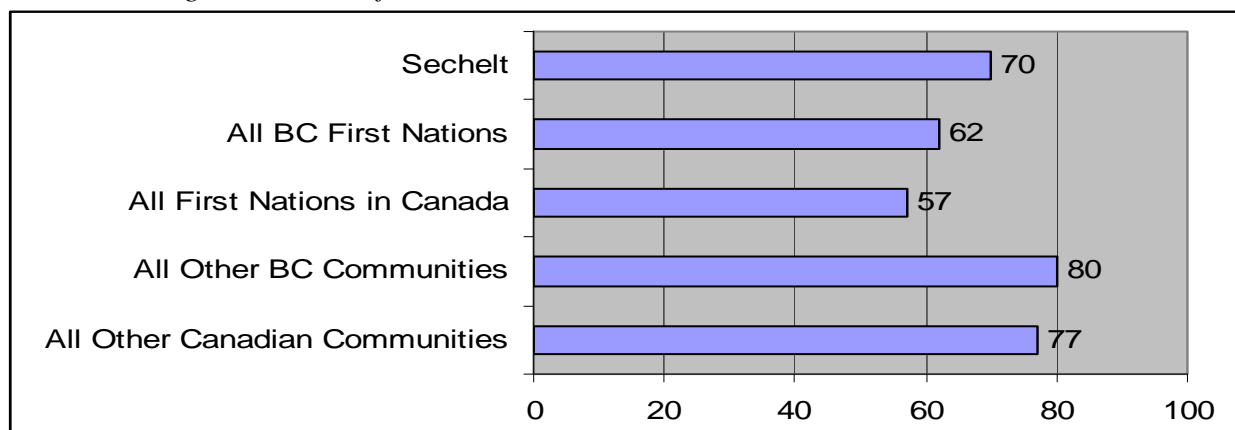
| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|---|-----------|-----------|-----------|--------------|
| Tlcho | 68 | 28 | 64 | 73 |
| All Territorial (YK and NT) First Nations | 75 | 36 | 76 | 78 |
| All Territorial (YK and NT) Communities | 91 | 59 | 88 | 89 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

Yukon First Nations: Average CWB Scores for 2006



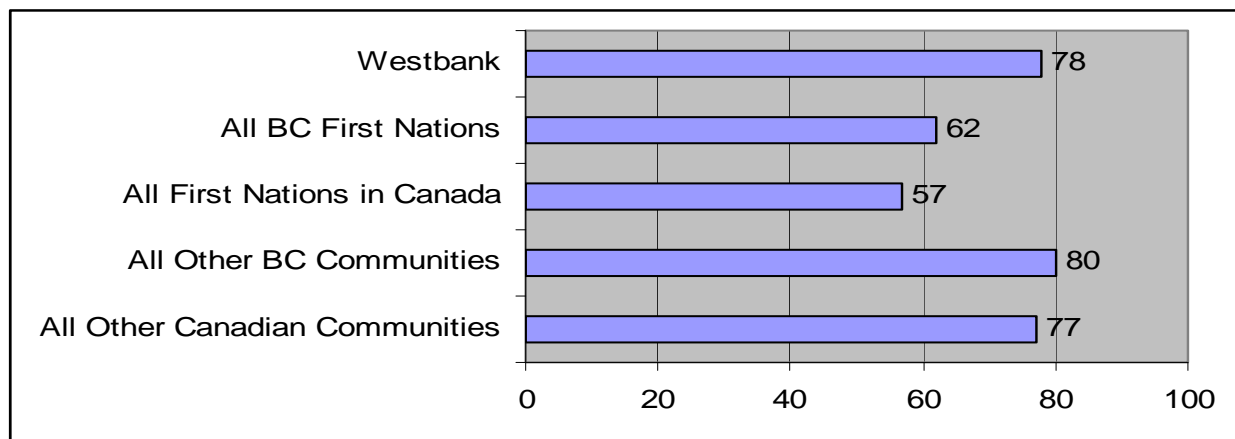
| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|---|-----------|-----------|-----------|--------------|
| Vuntut Gw ichin | 83 | 39 | 80 | 84 |
| All Territorial (YK and NT) First Nations | 75 | 36 | 76 | 78 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Territorial (YK and NT) Communities | 91 | 59 | 88 | 89 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |
| Champagne and Aishihik | 86 | 58 | 89 | 87 |
| All Territorial (YK and NT) First Nations | 75 | 36 | 76 | 78 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Territorial (YK and NT) Communities | 91 | 59 | 88 | 89 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |
| Selkirk | 80 | 43 | 78 | 82 |
| All Territorial (YK and NT) First Nations | 75 | 36 | 76 | 78 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Territorial (YK and NT) Communities | 91 | 59 | 88 | 89 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |
| Carcross/Tagish | 81 | 49 | 86 | 78 |
| All Territorial (YK and NT) First Nations | 75 | 36 | 76 | 78 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Territorial (YK and NT) Communities | 91 | 59 | 88 | 89 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

Sechelt: Average CWB Score for 2006



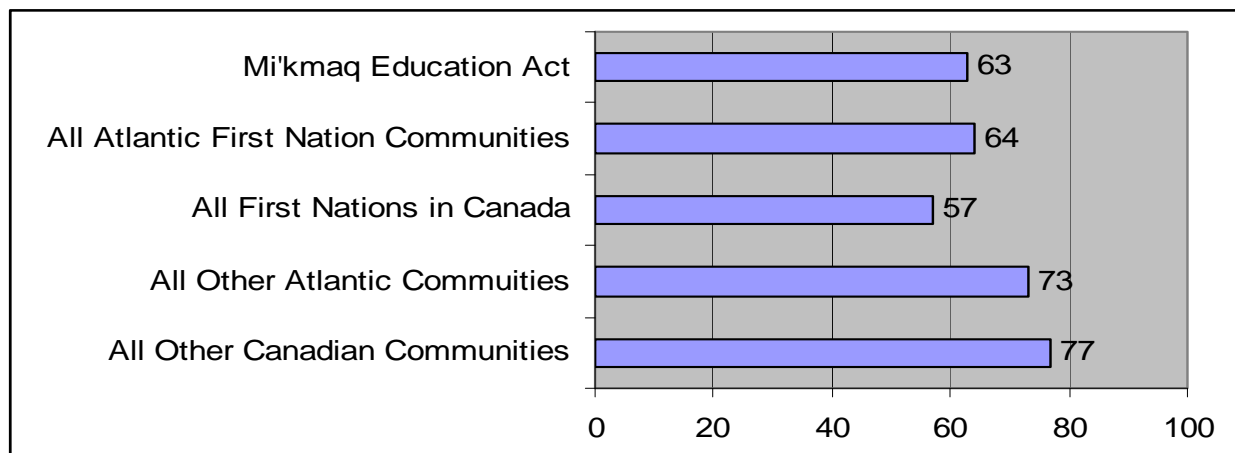
| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|--------------------------------|-----------|-----------|-----------|--------------|
| Sechelt | 69 | 49 | 82 | 79 |
| All BC First Nations | 59 | 38 | 76 | 73 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Other BC Communities | 85 | 58 | 94 | 85 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

Westbank: Average CWB Score for 2006



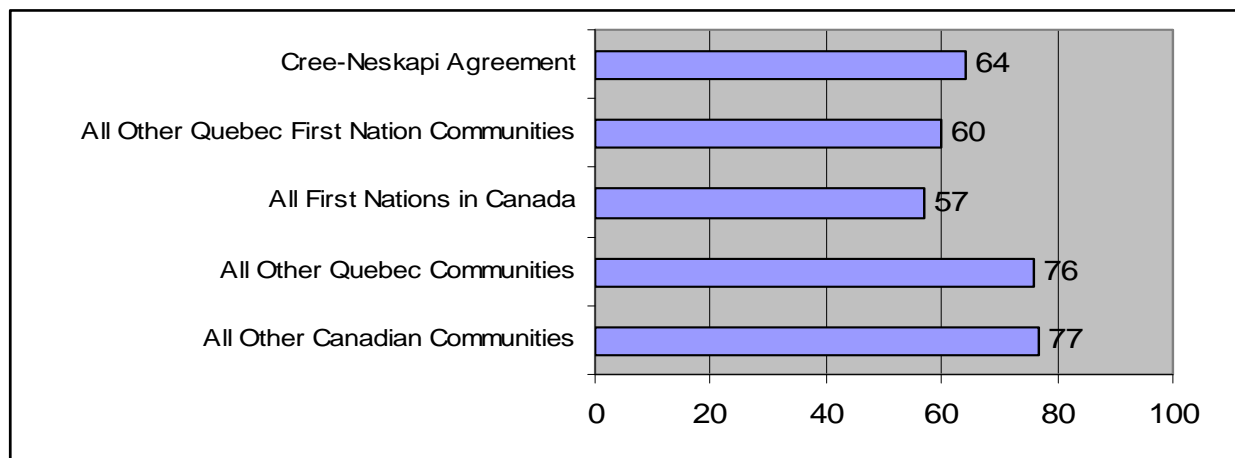
| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|--------------------------------|-----------|-----------|-----------|--------------|
| Westbank | 78 | 53 | 94 | 84 |
| All BC First Nations | 59 | 38 | 76 | 73 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Other BC Communities | 85 | 58 | 94 | 85 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

Mi'kmaq Education Act: Average Score for 2006



| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|---------------------------------------|-----------|-----------|-----------|--------------|
| Mi'kmaq Education Act | 49 | 47 | 77 | 70 |
| All Atlantic First Nation Communities | 56 | 46 | 81 | 73 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Other Atlantic Communities | 76 | 46 | 94 | 76 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

Cree-Naskapi (of Quebec) Act: Average Score for 2006



| 2006 Component CWB Scores | Income | Education | Housing | Labour Force |
|-------------------------------------|-----------|-----------|-----------|--------------|
| Cree-Naskapi (of Quebec) Act | 69 | 36 | 69 | 80 |
| All Quebec First Nation Communities | 60 | 32 | 74 | 73 |
| All First Nations in Canada | 55 | 34 | 70 | 71 |
| All Other Quebec Communities | 79 | 48 | 94 | 83 |
| All Other Canadian Communities | 80 | 49 | 94 | 84 |

6.3 Qualitative Assessment

Key qualitative findings were derived from the case studies with three participating Aboriginal communities. The following highlights their overall perspectives regarding the achievements and challenges of self-government in their communities.⁴⁷

- A major perceived benefit of self-government is a renewed sense of pride that self-governing Aboriginal groups now have their own government, the right to elect their own governments, and to make important decisions affecting their lives.
- Self-government agreements, both comprehensive and sectoral, are viewed as being sufficiently broad in terms of what is covered in the agreements to allow them to manage their own affairs. However, while the structure of the agreements is sufficient, the human and financial resources required to fully realize the potential of the agreements are not currently available.
- The manner in which federal government funding is calculated under the self-government agreements is viewed as prejudicial to successful implementation of self-government. Amounts allocated for functions taken over by the new Aboriginal governments are seen as inadequate partly because they were inadequate under the *Indian Act* already, and partly because they don't adequately factor in the costs of transition. Transfers for government operations are similarly viewed as inadequate because the costs of establishing a new government are higher than the funding anticipates, and because substantial funding targeted for government operations are used to cover the costs of programs and services for basic community and individual needs that are themselves not adequately funded.
- While access to financial resources was widely viewed as a barrier to success, some respondents pointed to the benefits of greater flexibility under the agreements, that allows funds to be moved more freely among programs and between fiscal years than was the case under the *Indian Act*. This flexibility is said to have fostered better long-term planning and more scope for innovation in service delivery. In one case this flexibility was said to have even helped attract and retain local residents who had been educated (and in some cases employed) outside the community.
- Aboriginal governments are realizing the scope and complexity of operating a new government, and the need for educated and experienced people to lead the process and fill government positions. The plan in all cases is to focus on education and training to help fill public service positions with community members. However, Aboriginal governments reportedly face difficult challenges in recruiting and retaining educated community members to take public service positions, against higher-paying positions in other levels of government and the private sector.

⁴⁷ This information will be further analysed by TAG as part of the Impact Assessment II currently underway.

- Expectations for what would be achieved under self-government were described as unrealistic for both community leaders and members. In many cases, community members thought that the agreements would bring an early influx of money, jobs and improved services. Aboriginal governments recognize that change resulting from self-government will take place incrementally, over several generations. They also recognize that this change is dependent on improvements in education outcomes as well as labour and economic development opportunities.

Governance and Intergovernmental Relationships

Governance

- Interviews with Aboriginal Government officials highlight the fact that that success to date has been largely in establishing governance structures, procedures and associated legislation, and in setting priorities and preparing to take on new authorities and jurisdictions. This work surprised most respondents in its complexity and in the time it has taken to set the foundation for governance under the self-government agreements.
- Interview participants recognized that there is a degree of frustration and disappointment among community members at the slow pace of change in the communities. There was an expectation, reportedly widely shared by residents and shared to a lesser degree by community leaders, that land claim agreements and self-government (which are often viewed together by community members) would transform the lives of community members through the creation of employment, the influx of money from land claim agreement settlements, and the new ability of their own governments to make decisions in key areas. However, respondents remain cautiously optimistic that these expectations will be realized over time.
- To date, the work of Aboriginal governments has focused primarily on developing the structures, procedures and legislation that the new governments require to operate. Government respondents noted that citizens have expressed concern that their governments are “working behind closed doors”. While government respondents recognized this concern, they described the extent of openness and public consultation their government has undertaken in an effort to be as transparent as possible and to engage residents in governance. The respondents believed that the concerns are largely borne out of the limited direct benefits being experienced to date in areas such as education, employment and housing.
- Public participation in governance was described as very positive compared to before self-government was in effect. More community members are running for government positions, and voter turnout has reportedly increased (up to about 75 percent in Nunatsiavut, for example, as compared to well under 50 percent before self-government). In Labrador women are reportedly more politically active as well. Respondents there noted that before self-government, women were active in community gatherings but less active in formal governance. Since self-government, many women are running for office and assuming public service positions.

Intergovernmental Relationships

Self-government establishes government-to-government relationships where they did not exist previously. Previous studies have suggested that Aboriginal groups had greater expectations of a new partnership with the federal government than what they have realized to date.⁴⁸ The self-government interviews addressed this issue, and found the following:

- In program areas in which communities are not equipped or do not have sufficient resources to assume control as provided for in the agreements, the nature of the relationship with the federal government is perceived as being the same as prior to the agreements (i.e. “Band Council to federal bureaucracy” rather than government-to-government).
- Interview participants expressed concern that there is no clear location in the federal government with which to establish a government-to-government relationship. Points of contact are primarily INAC representatives on implementation committees and officials responsible for federal programs for which the communities continue to apply to for funding as they did prior to self-government.
- Interview participants in Yukon and Labrador noted the barriers to implementing self-government that result from INAC’s perceived limited influence over line departments and government agencies. In particular, Yukon respondents pointed to a recent example in which INAC and local government representatives spent considerable time and effort working together to identify changes that were needed, but little change resulted due to a lack of support from other departments/agencies.
- Relationships with implementation committee representatives are described as cordial and professional, but focused on technical aspects of fulfilling the agreements, as opposed to developing a new government-to-government relationship.
- There is a perception among Aboriginal Government leaders that there is little concerted effort among line departments within the federal system to educate staff about the agreements. They said that Aboriginal governments therefore consistently have to “re-educate” their federal counterparts about the agreements and about community concerns related to implementation.
- The relationship with the federal government is limited because the majority of federal contacts reside almost exclusively in Ottawa. Where exceptions to this exist, such as with Parks Canada in the Torngat Mountains National Park in Nunatsiavut, a strong and collaborative working relationship is developing that benefits both parties.⁴⁹

⁴⁸ See for example, Indian and Northern Affairs Canada, *Impact Evaluation of Comprehensive Land Claim Agreements*, February, 2009.

⁴⁹ It is worth noting that because the Inuit in Northern Labrador did not function under the *Indian Act*, prior to self-government, their relationship with the federal government was less developed than most First Nations, and this has likely had an impact on the current relationship. Also, prior to becoming self-governing in 1995, the VG operated in an environment in which the territorial government had responsibility for delivering many programmes that the

- Participants in Yukon and Labrador reported that the agreements have resulted in significant positive change in the relationship between the Aboriginal governments and the provincial/territorial governments. Provincial and territorial government leaders are said to be making concerted efforts to support successful implementation of self-government, and officials in most relevant provincial/territorial departments are coming to understand and follow this direction. This means that when the province/territory takes action in a given area of responsibility, whether or not the function has been drawn down by the new Aboriginal Government, discussion (and sometimes negotiation) takes place to ensure that the interests of the Aboriginal Government and communities are taken into account. Participants noted that this deeper level of consultation results in policies or program terms and conditions that are tailored to meet specific needs and preferences of the Aboriginal governments and communities. Prior to the agreement this kind of consultation and adaptation reportedly rarely took place. This is not to say that respondents did not note any challenges in the relationship with provincial/territorial governments. In Labrador they noted some initial pressure to take over authority in areas such as education, before they felt ready to do so and in their view without sufficient resources. They also referred to instances in which provincial bureaucrats would decline to discuss provincial programs with them because “they had their own government now”. In Yukon there were reported instances of initial reluctance to tailor programs to meet VG needs. However, these problems were reported as having been largely overcome at this point.

Economic Development

- Most interview participants acknowledged that economic development fostered by self-government is still in the early stages for several reasons. First, Aboriginal communities own little in the way of capital equipment or financial assets required to take on sizeable business ventures. Second, the kind of entrepreneurial spirit needed to bring about local business development is not traditional to residents, and will have to be developed over time with increased training and education. Third, the lower standard of living in most communities, especially in regard to housing and other community infrastructure, is not conducive to attracting educated citizens to return to their communities permanently. As a result, a large proportion of the populations have little education and training as a basis for taking advantage of economic development.
- There are, however, a number of direct economic development benefits deriving from self-government that gave interview participants a sense of optimism. One such benefit is that the communities now have decision-making authority and control over funds for capital projects such as housing, roads, water and sewage projects. Participants reported that before self-government came into effect these decisions were made by the province/territory, often without consultation. As a result of the agreements, Aboriginal governments can negotiate the types of projects and how the work will be undertaken. Similar negotiations are taking place between Aboriginal governments and private

federal government took responsibility for South of 60, and so the relationship with the federal government in these cases may not be the same as for self-governing Aboriginal groups elsewhere in the country.

businesses. In most cases there is no local contracting firm with the equipment and experience to undertake large infrastructure projects so outside contractors are engaged. Those contractors meet with community leaders to agree on local training and hiring wherever possible. Aboriginal governments are identifying business opportunities through these kinds of processes, and making investments to help equip local people to take on this kind of work.

- Another area of benefit resulting from the land claim and self-government agreements is that Aboriginal governments now have more control over resource development projects in their settlement areas, and the right to be consulted as part of any environmental assessment. They also negotiate Impact Benefit Agreements (IBAs) which help to maximise the local benefits of development projects by ensuring that developers train and employ community members. The land claim agreements set out the authorities and rights in this area. Governments established under self-government are viewed as providing a better position from which to manage the Aboriginal role in the development process.
- Aboriginal governments have created economic development positions with responsibility to ensure that the benefits which flow from settlement of the land and resource issues, such as IBA's and similar agreements, are honoured and that opportunities for employment and business development for community members are maximized. While Aboriginal officials described the economic development process as slow for the reasons described above, they noted that there have been successes in developing partnerships with outside enterprises that have an interest in doing business in Aboriginal-owned lands and in the broader settlement areas.

Education

- Education is universally viewed among government and community respondents as the cornerstone of the future under self-government. It is recognized that education of individuals acts as a building block not only to enable the individual to gain socio-economic advantage through improved employment choices and income, but also in building the foundation for community development and prosperity.
- One of the most serious limits to progress in self-government, according to respondents, is the lack of indigenous community members with the education and training to hold political and bureaucratic positions of authority. Those who do obtain the necessary education and training are often attracted to employment outside the communities. Aboriginal governments administering schools and health and social service centres, for example, cannot compete with provincial/territorial pay scales. Although community leaders celebrate the success of community members in obtaining gainful employment outside the community and recognize the significant benefit of this for those individuals, the result is that Aboriginal governments continue to experience capacity shortfalls.
- For the Vuntut Gwitchin and Nunatsiavut governments, education continues to be primarily the responsibility of the province/territory. Interview participants reported that

their governments are hesitant to assume jurisdiction over education due to a lack of local capacity and inadequate financial resources, and a reluctance to assume responsibility for a function that they view as historically underfunded.

- The experiences of interview participants in working with provincial and territorial governments to deliver education programs and services vary considerably depending on the extent to which the education authority is prepared to accommodate local preferences and culture. Where a collaborative approach is taken, participants noted a significant change in the delivery of education, such as the integration of student instruction “on the land” while at the same time maintaining jurisdiction-wide academic standards. Where such collaboration has not developed to date, participants expressed frustration with the lack of progress in education.
- A common concern among Directors of Education is the difficulty of attracting and keeping highly-qualified and experienced teachers. In the ten Nova Scotia communities where education is under Aboriginal authority, communities cannot offer the same rate of pay as the provincial schools. In all three cases studies here, teachers not from the communities often experience challenges living in remote communities with relatively low standards of living including poor quality housing. As a result, respondents said that it is common for schools to be without teachers qualified to teach core subjects such as math and sciences. This situation, according to participants, contributes to the pre-existing gap in Aboriginal education and creates barriers for young citizens to equip themselves for success in the modern world.
- Whether or not education has been taken over as a responsibility under the Aboriginal Government, a lack of resources for education is viewed unanimously as a major roadblock to progress. Even where communities have succeeded in establishing culturally-appropriate education programs or adult education programs of their own, respondents said that resources typically come from the overall budgets of the Aboriginal Government because regular INAC or provincial/territorial allocations are inadequate. This means that resources are drawn away from other basic community priorities and needs.

Health and Social Services

- The Nunatsiavut Government is undertaking initiatives in some areas of public health and social services including home care, counselling for mental health and addictions (but no clinical interventions), licensed daycare, Head Start programs, suicide prevention, Aboriginal healing, and the administration of NIHB. The Vuntut Gwich'in Government is also undertaking some modest services with a focus on home care and Elder care.
- In Nunatsiavut there was notable enthusiasm for the progress that has been made under self-government, including the development of flexible, innovative programs that respond to community needs and cultural preferences. Community members who are trained as nurses and administrators are reportedly returning to the community because the NG is able to design and run programs that meet the specific needs of the community.

- The Nunatsiavut Government has established an Integrated Nursing Access Program in partnership with the Association of Registered Nurses of Newfoundland and Labrador, the College of the North Atlantic, Memorial University/Grenfell College, the province's three schools of nursing and the Government of Newfoundland and Labrador. The purpose is to design Inuit-appropriate health curricula in keeping with provincial standards. They have also integrated elders and other community members in program delivery models. In addition, the Nunatsiavut Government institutes "return service" agreements with students trained in nursing and administration to ensure the investment they make in post-secondary student support is returned to the community. Participants view these all these initiatives together as integral to enhancing health and social services.
- Participants reported that the Nunatsiavut Government is achieving significant efficiencies in the delivery of the Non Insured Health Benefits program which was previously delivered by Health Canada. Due to the remoteness of the five Northern Labrador communities, the program was costly for Health Canada to manage and deliver. As a result, equipment and supplies were not routinely tracked and shared between communities. Under the administration of the Nunatsiavut Government, equipment and supplies provided for by the NIHB program are redistributed through NG homecare programs which move medical instruments and supplies to where they are needed.
- Before self-government, community members were required to fly out of the community to obtain professional health and dental services. Interview participants reported that the Nunatsiavut Government has since changed this practice by bringing medical and dental professionals to the communities on a monthly basis. As a result, the Government is able to maximize dollars for health and social services. As well, because they have community members as nurses and other service providers in the communities they can do a better job of assessing medical needs and ensuring that the appropriate services are provided.
- These successes point to the benefits of locally-designed and operated services. As in most areas, however, funding has been a challenge. The NIHB is the highest cost item administered by the Nunatsiavut Government. A few years ago, the transfer payments provided for by Health Canada reportedly greatly underestimated the number of members covered under the agreement living outside the settlement area. When the discrepancy was recognized, they said, only a proportion of it was reimbursed to the Nunatsiavut Government. As is the case with other program areas, this discrepancy reportedly forces the Government to draw from other budgets to administer the NIHB program.

Language and Culture

- Self-government agreements do not provide for specific language and culture programs for which Aboriginal governments assume control. However language and culture are viewed as important elements of all aspects of self-government, and integration of appropriate language and culture is one way that Aboriginal governments can deliver more effective programs than the federal or provincial/territorial governments.

- Immersion programs in two Mi'kmaw communities were highlighted by interview participants as a major achievement of self-government. According to participants, the benefits of these programs go beyond language preservation to include improvements in student's academic achievement, behaviour and pride. According to Directors of Education, the children enrolled in immersion programs are successful not only in Mi'kmaw classes but in all academic areas, including English. Parents who were reluctant at first to enrol their children from fear that they might fall behind in mainstream academic areas are reportedly seeing positive results, and demand for the program is high.
- For the Nunatsiavut Government, the challenge to revive the Inuktitut language is significant. The Inuk represent a minority in some of the communities under the jurisdiction of the Nunatsiavut Government. With the move from traditional villages to provincial municipalities in the 1950s and 1960s, the role of the elders has diminished, and with it the use of Inuktitut as the majority language. To address the decline, the Nunatsiavut Government has instituted several projects such as the Rosetta Stone project, (a CD and on-line language learning program), the publication of an Inuktitut story telling book, and a recent language conference in Nain. However, with only one staff member to promote these and other potential programs progress has been slow. While the Nunatsiavut Government has been successful in applying for some project funding, there is no core funding for staff to manage projects and develop a coordinated, regional approach for language and cultural development. In Nunatsiavut schools, language programs are in place, including adult education programs, but uptake has been limited to date.

7. Evaluation Findings – Efficiency and Economy

An assessment of efficiency and economy is difficult as there is currently no agreed upon benchmark or framework for measuring efficiency and economy in the context of self-government negotiations and implementation. Further detailed examination of these issues will be take place in the context the upcoming Evaluation of Negotiations and Implementation of Comprehensive Land Claim Agreements and Self-Government Agreements, scheduled for 2011/12. This will allow for efficiency and economy issues to be brought forward in the broader context of the negotiation and implementation of modern treaties.

Findings from this evaluation however point to number issues related to efficiency and economy of self-government negotiations and implementation. The evaluators note that considerable work towards improving the processes both for negotiations and implementation of self-government agreements is underway at INAC.

Key issues identified though this evaluation process include:

Self-government negotiations taking longer than anticipated: Though there are many negotiations taking place, the number of self-government agreements that have been concluded is fewer than anticipated when the IRP was introduced. Negotiations are taking longer than expected with the average length of time of 14 years (average of 16 years when negotiating as part of the CLCA and 10 years for stand alone or sectoral).⁵⁰

Self-government negotiations are costing more than anticipated: With longer than anticipated negotiating time, contribution and loan funding to Aboriginal communities is also higher than anticipated. Contribution and loan funding to Aboriginal communities negotiating self-government is estimated at over 1 billion dollars (approximately half in loans and half in contribution funding). Approximately half of all funding, \$488 million, is being spent in BC as part of the BC Treaty Process. It should be noted that when self-government is being negotiated in the context of a CLCA, these figures reflect the cost of both self-government and CLCA negotiations. It should also be noted that all loan funding is for self-government being negotiated within the context of a CLCA as sectoral and stand-alone self-government negotiations are not eligible for loans.

Self-government negotiations are taking place with small communities: This is particularly notable in the context of the BC Treaty Process where approximately 40 percent of negotiation tables are taking place with communities of 500 or less individuals. Outside of BC, approximately 60 percent of negotiation tables are occurring with communities of 5,000 or less people.

⁵⁰ Based on Annual Review of Tables data 2009/2010: Includes both active and inactive tables and those that begun negotiations under a CLCA. Length of time in negotiations was calculated for tables outside of BC, by the date accepted into the process; and for BC Tables, the date British Columbia Treaty Commission declared the party ready to negotiate.

Lack of capacity to support self-government: Community capacity to implement a self-government agreement was among the most pressing issue cited by key informants with respect to the successful implement self-government agreements.

Possible disincentives to enter into self-government negotiations: Legislative models, such as *First Nations Land Management Act*, *First Nations Oil and Gas and Moneys Management Act*, and *First Nations Commercial and Industrial Development Act*, increase jurisdictional authorities for First Nations. As Own Source Revenue (OSR) is not being applied to these legislative models, but is being applied to self-government agreements under the IRP, findings from the evaluation suggest that an inconsistent approach to the application of OSR may be occurring.

Fiscal agreement renewals are cumbersome: Renewal negotiations are taking longer than expected with a majority of agreements requiring one or more extensions before new financial agreements can be established.

There are a number of initiatives in progress at INAC to address these issues including capacity building support and negotiation and implementation process improvements. As an example, a new national approach to fiscal harmonization has been launched which determines the financial support the federal government provides to self-governing Aboriginal groups. The intent of the new approach is to manage fiscal relations between the federal government and Aboriginal governments in a manner more consistent with the formula-based approaches employed in fiscal arrangements between Canada and the provinces, and Canada and the territories. The new approach will include a published federal policy statement, a formula-based funding methodology, an ongoing advisory process, measures to address the differing circumstances of Aboriginal groups, and appropriate accountability provisions. As well as the recent sustainability of self-government initiative, which provides a source of funds for incremental increases to governance and other self-government requirements.

Evaluative work scheduled for FY 2011/12 will examine these key issues and further explore the direction the federal government is taking with regards to:

- Streamlining the negotiation process including the possible use of opt-in legislation, exploratory processes, and guidance on how to disengage with non-productive tables, and
- Streamlining the implementation process including new approaches to managing renewals and ensuring shared responsibilities for self-government among federal, provincial and territorial governments and Aboriginal governments and institutions.

8. Conclusions and Recommendations

When the IRP was introduced in 1995, there was a lack of clarity on how self-government might unfold. Fifteen years later, we have the opportunity to now reflect on what has been accomplished.

- The IRP has provided a flexible framework from which self-government has been, and continues to be, negotiated. Self-government under the IRP has remained relevant and positive impacts have been demonstrated within self-governing communities.
- The transition to self-government has proven to be a complex, incremental process and the delivery of effective programs and services remains a major challenge for all levels of government in Canada. A number of inefficiencies in both the negotiation and implementation processes have been identified, many of which are currently being addressed by INAC.
- A lack of shared vision exists among federal, provincial and Aboriginal communities regarding self-government and how it is to be operationalized within the framework of the IRP. This may be contributing to significant misunderstandings and miscommunications regarding the interpretation of the Policy and contributing to the high level of frustration that exists among Aboriginal organizations and Aboriginal communities about what has been accomplished under the IRP.

It is recommended that INAC:

1. Continue to work on initiatives that are currently underway to improve processes related to the negotiations and implementation of self-government agreements.
2. Consider putting in place a mechanism to ensure that policies and legislation that affect the negotiation and implementation of self-government agreements support, not work against, one other.
3. Consider establishing a framework for dialogue with Aboriginal organizations and Aboriginal communities regarding how a common vision of self-government can be achieved and operationalized under the IRP.

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