

FNLC Shared Territories and Overlaps Forum Discussion Paper: Summary of Previous Forums and Principles

BACKGROUND	2
PRINCIPLES FOR ADDRESSING SHARED TERRITORIES AND OVERLAPS	4
Summary of Principles	4
1991 Report of the British Columbia Claims Task Force	6
2007 All Chiefs Forum	6
2014 All Chiefs Forum	7
2019 Union of BC Indian Chiefs Symposium Summary Report: Implementing our Title and Rights: Upholding Self-Determination through Nation-to-Nation, Consent-Based Negotiations and Agreement-Making	8
CONCLUSION	9
APPENDIX A: EXCERPTS FROM PREVIOUS FORUMS AND DOCUMENTS	10
2007 All Chiefs Forum “All our Relations” Declaration	10
2014 All Chiefs Forum Guiding Principles	11
Union of BC Indian Chiefs Symposium Summary Report: Implementing our Title and Rights: Upholding Self-Determination through Nation-to-Nation, Consent-Based Negotiations and Agreement-Making Principles	12

Background

As Indigenous Peoples, we have unique cultures, languages, laws, and rights, all of which flow from and intricately tie us to the land. Our connections and relationship to our territories, lands and resources is fundamental to our physical, cultural and spiritual survival. We are guided by the principle that we possess an inherent right and responsibility to care for and protect our lands and resources for present and future generations. We uphold the responsibility to ensure those lands and resources continue to exist for the benefit of the generations to come. Further to this, we continue to govern ourselves and to enter into relationships with other Nations, in accordance with our laws, protocols and legal traditions.¹

First Nations have traditional mechanisms, processes and protocols for engaging with one another and resolving issues and continue to utilize these tools today to seek resolution on issues of shared territories and overlaps. It is widely acknowledged that the resolution of this issue is the primary responsibility of First Nations, without interference from any outside party.² However, the culpability of the Crown governments in instigating, perpetuating, and exacerbating the issue through colonial law and policy is also acknowledged. This means that the Crown has a responsibility to support First Nations-led approaches to shared territories and overlaps.

These issues – of conflicts between First Nations who share territories, histories, and families, continue to be a key concern for communities. This is demonstrated by the various resolutions BC Chiefs have passed at meetings of the Union of BC Indian Chiefs (UBCIC), the First Nations Summit (FNS) and the BC Assembly of First Nations (BCAFN), which call for solutions to resolve overlap and shared territory issues. Through such resolutions, the UBCIC, FNS, and BCAFN, working together as the First Nations Leadership Council (FNLC), were mandated to host a forum for BC Chiefs and Councillors, hereditary and traditional leadership, technicians and experts to come together for a solutions-oriented, strategic dialogue on shared territories and overlaps to continue the dialogue and build on work of previous forums and Nation-to-Nation initiatives.

The FNLC has also been mandated in the *Commitment Document* to consider the design of an Indigenous Commission that could provide institutional support to First Nations in their efforts to address shared territory and overlap issues, among other supports. *The Joint Agenda: Implementing the Commitment Document – Concrete Actions: Transforming Laws, Policies, and Processes, and Structures* identifies actions that will be undertaken through joint processes that are agreed-upon by First Nations and BC. These processes are co-governed by BC's Premier and Ministers and the FNLC. The actions in the Commitment Document are focused on creating systemic change and affirm that First Nations and BC "need to establish new institutions,

¹ Excerpt from *Overlap & Shared Territory Issues, "All our Relations" Backgrounder and Framework: Goals, Guiding Principles, Best Practices, Mechanisms and Instruments for Resolution (2014)*, p 3

² Ibid.

processes and structures based on recognition of Indigenous rights, to support/facilitate reconciliation efforts, enable new negotiations and dispute resolution approaches, and provide capacity and governance development support to First Nations and BC.”³

There has been substantive progress on the first action in the Commitment Document, which was to implement the United Nations *Declaration on the Rights of Indigenous Peoples* in BC law and review provincial law and policy to bring it into alignment with the UN Declaration. The BC *Declaration on the Rights of Indigenous Peoples Act* came into force on November 28, 2019, and a review of legislation and policy will follow. This will require substantial resources and take time, however we cannot delay actioning the remaining priorities.

The Commitment Document outlines the following actions in relation to Indigenous Nations and Governance Building as the second action in the *Commitment Document*.

First Nations have long identified the need for support to rebuild and strengthen their Nations and to evolve their governance. This work is required to support a robust, constructive and progressive government-to-government relationship with the Crown.

Goal 1: Establish an Indigenous commission: designed, established and driven by First Nations, to provide certain supports to First Nations, respectful and reflective of, and consistent with, First Nations’ rights of self-government and self-determination. The commission would provide a range of processes and options that First Nations may opt-in to use, from non-binding to binding outcomes. The commission would support First Nations upon request with respect to:

- i) boundary resolution, in accordance with First Nations’ respective laws, customs, and traditions; and
- ii) nation and governance building including:
 - a. constitution development,
 - b. territory decision-making and land use/territory planning,
 - c. law-making,
 - d. policy development, and
 - e. development of political institutions, consistent with principles of the proper title and rights holder.

Once established, it is expected that both the federal and BC provide the necessary, sustainable resources/funding for the effective functioning of the independent commission.⁴

³ Joint Agenda: Implementing the Commitment Document – Concrete Actions: Transforming Laws, Policies, and Processes, and Structures, p 1. https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/concrete_actions_final_26nov2018.pdf

⁴ Joint Agenda: Implementing the Commitment Document , p 2.

Principles for Addressing Shared Territories and Overlaps

BC Chiefs have also articulated a number of principles that must be upheld in addressing shared territory and overlap issues. These principles were drawn from previous work detailed in the following documents:

- The Report of the British Columbia Claims Task Force, 1991
- *All our Relations Declaration* from 2007 All Chiefs Forum
- *Framework* from 2014 All Chiefs Forum
- 2019 Union of BC Indian Chiefs *Symposium Summary Report* and;

Summary of Principles

- The sovereign and inherent right of First Nations to self-determination, including political, social, and economic self-determination
- The centrality and diversity of Indigenous laws and cultures, which are founded on the ways of life, traditions and values of our ancestors, and include systems of governance, law and social organization
- Full recognition of our inherent laws, jurisdiction, Aboriginal Title, and Rights and the autonomy of our nations
- The need for a range of flexible and adaptable approaches that are First Nations-led, and are not “one size fits all” approaches
- The importance of honour and respect for agreements/protocols/resolutions that are reached
- The right to compensation and redress with regard to territories, lands and resources which have been confiscated, taken, occupied, used or damaged without our free, prior and informed consent. Consistent with articles 8, 11, 20 and 28 of the UN Declaration, negotiations and agreements must include pathways and measures for redress. Approaches to redress through agreements will vary and reflect the specific historic experiences of First Nations, the impacts those continue to have today, and how a First Nation has determined its future vision and priorities.
- The fact of interdependence among Nations and the strength of unity. Partnership and cooperation amongst nations promotes unity in the face of colonial divide and conquer tactics. Mutual, early engagement and information sharing on how our respective Indigenous laws apply demonstrates respect.
- The need to incorporate our languages as our languages, laws, and lands are intimately linked
- It is importance for First Nations and the Crown to be open to innovation, and new approaches that evolve, and are open, fluid, co-designed, adaptable and flexible. Processes cannot be prescriptive, pre-determined, or unilateral.
- All Nations must have capacity to engage in resolving shared territory and overlap issues

- Each Nation must do their own internal work to gain community input and ensure that leaders represent the collective interests of the proper title and rights holders
- Negotiations and agreements should prioritize structuring proper relations between Indigenous governments, laws, and jurisdictions and Crown governments, laws, and jurisdictions. This includes recognizing the roles and responsibilities of Indigenous governments, as well as the structures, processes, and mechanisms between Indigenous Crown and governments.
- Nation and government re-building, determined and led by First Nations, must be appropriately supported and advanced through negotiations and agreements.
- Shared territory and overlap issues are to be resolved by First Nations, without third party interference
- The Crown has an obligation provide resourcing support for First Nations to address shared territory and overlap issues,
- The Crown must make legislative amendments in alignment with commitments to reconciliation and the UN Declaration, and must be transparent, involve Ministers and senior officials in processes with First Nation political leaders
- The importance of being open to third party assistance, such as an Indigenous-led commission or institution

These principles provide a foundation for developing and implementing a range of strategies and mechanisms for the resolution of shared territory and overlap issues. In 2014 the aim of the forum was “to outline an agreed upon approach and to and ultimately bring together our collective efforts to generate instruments and mechanisms that may be of assistance to First Nations in efforts to achieve resolution of this issue.”⁵ While First Nations have generally arrived at a set of agreeable principles, the challenging work of implementation requires further steps. First Nations still need to “bring together our collective efforts” and ensure accountability for forward progress. Part of this collective effort can be to provide a mandate to the First Nations Leadership Council on concrete steps forward.

A number of ideas to operationalize these principles have been, and will be proposed throughout the duration of the forum. So far large-scale meaningful progress on overcoming the issues related to shared territories and overlaps has not been realized. This is due to multiple factors. The Crown has yet to fully engage in the hard work of rights recognition, and continues to pursue divisive policies and practices as noted in the discussion backgrounder on key policy issues. There is also a significant need for First Nations to have sufficient time, resources, and incentive to engage in this work of inter-nation reconciliation. As well, a number of potential tools to support First Nations that have been suggested would require a coordinating institution. A successful approach forward needs to account for all of these considerations.

⁵ Backgrounder and Framework, p 3

1991 Report of the British Columbia Claims Task Force

On June 28, 1991 the BC Claims Task Force released its report detailing recommendations for the negotiation of modern treaties, which led to the establishment of the BC Treaty Commission. With regard to overlapping territories, the report noted:

In many instances, traditional territories of First Nations overlap one another. To the extent that these overlaps may affect negotiations, it is the responsibility of First Nations to resolve them.

Preparation for negotiations must include discussions with neighbouring First Nations on the issue of overlapping territories. Because treaties will identify specific territories, it is not necessary to settle such issues prior to beginning the negotiations, but a process for resolution should be in place before conclusion of the treaty. In exceptional cases, the parties may agree to implement the provisions of a treaty in all but the disputed territory.

The commission, where requested by First Nations, will provide advice on dispute resolution services available to resolve overlap issues. It should be noted that First Nations may require funding from the commission to carry out the necessary studies to assist in resolving overlaps.

The Task Force Recommends that:

8. First Nations resolve issues related to overlapping traditional territories among themselves.⁶

2007 All Chiefs Forum

At the All Chiefs' Forum convened by the FNLC in November 2007, First Nations Chiefs and leadership issued the "All Our Relations" Declaration (see Appendix A). The Declaration signified the growing unity among First Nations in BC and highlighted the need to build unity through the creation of Nation-to-Nation protocols, resolution of overlaps and development of principles that focus on relationship building. It declared:

We acknowledge the interdependence we have with one another and respectfully honour our commitment with one another where we share lands, waters and resources. We commit to resolving these shared lands, waters and resources based on our historical relationship through ceremonies and reconciliation agreements.

And affirmed the commitment to:

⁶ The Report of the British Columbia Claims Task Force (1991), p 20,
https://bctreaty.net/files_3/pdf_documents/bc_claims_task_force_report.pdf

Recognize and respect each other's autonomy and support each other in exercising our respective title, rights and jurisdiction in keeping with our continued interdependency.

2014 All Chiefs Forum

In March 2014 the FNLC held the BC Chiefs Forum on Overlaps and Shared Territory Issues to discuss amongst First Nations leadership in BC the significant challenges facing our Nations with respect to these issues. The goals of the forum were:

- To engage in mutually respectful dialogue and work toward achieving or maintaining a mutual, recognition-based relationship and to facilitate reconciliation amongst ourselves;
- To achieve more effective communication and information-sharing among First Nations;
- In areas where there is mutual agreement among First Nations that this is appropriate to do so, to develop new processes for shared-decision making about lands and resources for revenue/benefit sharing
- To ensure that all parties with an interest are engaged as early as possible in the negotiations process;
- To ensure any approach by Canada with respect to shared territories and overlaps respects the guiding principles identified by First Nations.

Some of the key considerations for establishing any process to address shared territory and overlap issues included:

- The appropriate design of the process.
- Who should oversee/carry out the process?
- Who will hold the parties accountable?
- How will the process be resourced?
- What is the goal of the process – supporting the parties in reaching a consensus or gathering evidence to enable a decision-maker to make a determination?

The resulting 2014 framework outlines guiding principles for understanding and addressing shared territory and overlap issues (See Guiding Principles in Appendix A). It acknowledges that there is no “one size fits all” process, and that the of First Nations in BC and the circumstances of each overlap/shared territories issue will require different approaches and mechanisms for resolution.

However, it affirms that there are some general points of unity for all First Nations attempting to address this issue, building on the *All our Relations Declaration*. In this context, guiding principles that were developed are intended to serve as starting points for First Nations in building resolution mechanisms.

The guiding principles include, Inherent legal traditions and jurisdiction, Honour and Respect, Decolonization and Recognition, Cooperation and Partnership, First Nations Driven Process, Traditional Language, Community Input, Innovation, and Capacity.

The Framework also contemplates potential approaches and mechanisms such as information sharing between nations, the establishment of a database with resources to assist First Nations, working groups, cultural ceremony, inter-tribal and protocol gatherings, (alternative) dispute resolution, and mediation.

[2019 Union of BC Indian Chiefs Symposium Summary Report: Implementing our Title and Rights: Upholding Self-Determination through Nation-to-Nation, Consent-Based Negotiations and Agreement-Making](#)

The focus of the Symposium was on emerging developments in negotiations and agreement-making, and in particular, agreements with the BC government outside of the British Columbia Treaty Process (BCTC Process). The Symposium reviewed the Four Principles that were developed by consensus of BC Chiefs on September 11, 2014 as part of a response to the Tsilhqot'in Nation decision. The Four Principles include:

1. Acknowledgement that all our relationships are based on recognition and implementation of the existence of Indigenous peoples' inherent Title and Rights, and pre-confederation, historic and modern treaties throughout British Columbia.
2. Acknowledgement that Indigenous systems of governance and laws are essential to the regulation of lands and resources throughout British Columbia.
3. Acknowledgement of the mutual responsibility that all of our government systems shall shift to relationships, negotiations and agreements based on recognition.
4. We immediately must move to consent-based decision-making and Title based fiscal relations, including revenue sharing, in our relationships, negotiations and agreements.

The Four Principles form a foundational approach for articulating the shift that is needed, and articulate the proper basis for proper relations. All of these themes are underscored by the centrality of self-determination.

However, it was acknowledged at the symposium that these Four Principles remain quite broad and general, and a set of principles that specifically help guide negotiations and agreements will need to be more specific.

Based on the discussion at the Symposium, the following principles were confirmed by the UBCIC Chiefs Council as a collective expression of what should guide negotiations and agreements in 2019 (See Appendix A for Principles). They reflect the UN Declaration, the Four

Principles adopted by the Chiefs of British Columbia in 2014, and Tsilhqot'in Nation. All of the principles are grounded in recognition and respect of Indigenous peoples' inherent Title and Rights, and their sovereignty and autonomy in establishing and advancing relations with the Crown.

The principles include Self-Determination; Indigenous governments, laws, and jurisdictions; Recognition and Implementation of Title and Rights; Nation and government re-building; Unity; Redress; Flexible and Adaptable; Legislative Change, Transparency, Political involvement, and Third Party Assistance.

The Summary Report also discusses the shishalh Foundation Agreement⁷ and the agreement reached through a process with the 'Namgis First Nation, the Kwikwasut'inuxw Haxwa'mis First Nations and Mamalilikulla First Nation regarding aquaculture in the Broughton Archipelago⁸. The progress of negotiations and agreements that are near completion was also discussed.

Conclusion

These principles provide a robust framework upon which to discuss and design strategies and mechanisms for next steps toward addressing shared territories and overlaps.

The purpose of this forum is to explore the application of these principles in relation to:

- Outstanding core policy issues
- Current issues, needs, and goals for addressing the issues
- Governance and nation building
- Indigenous laws, and
- the design of institutional supports such as an Indigenous Commission

⁷ https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shishalh_nation_foundation_agreement_-_final_-_redacted_-_signed.pdf

⁸ <https://news.gov.bc.ca/releases/2018PREM0151-002412>

Appendix A: Excerpts from Previous Forums and Documents

2007 All Chiefs Forum “All our Relations” Declaration

At the All Chiefs’ Forum convened by the First Nations Leadership Council (“FNLC”) in November 2007, First Nations Chiefs and leadership issued the “All Our Relations” Declaration.

**“ALL OUR RELATIONS”
A DECLARATION OF THE SOVEREIGN
INDIGENOUS NATIONS OF BRITISH COLUMBIA**

We, the Indigenous leaders of British Columbia, come together united and celebrate the victory of the Tsilhqot’in and Xeni Gwet’in peoples in securing recognition of their Aboriginal title and rights – and all those Indigenous Nations and individuals that have brought important court cases over the years resulting in significant contributions in the protection and advancement of Aboriginal title and rights, including the Nisga’a, Gitksan, Wet’suwet’in, Haida, Taku River Tlingit, Musqueam, Heiltsuk and Sto:lo - shining light on the darkness of years of Crown denial of our title and rights. After pursuing different pathways, we now come together to make this solemn Declaration out of our common desire to be unified in affirming our Aboriginal title.

As the original Peoples to this land, we declare:

- We have Aboriginal title and rights to our lands, waters and resources and that we will exercise our collective, sovereign and inherent authorities and jurisdictions over these lands, waters and resources,
- We respect, honour and are sustained by the values, teachings and laws passed to us by our ancestors for governing ourselves, our lands, waters and resources.
- We have the right to manage and benefit from the wealth of our territories.
- We have the inalienable sovereign right of self-determination. By virtue of this right, we are free to determine our political status and free to pursue our economic, social, health and well-being, and cultural development.
- We have diverse cultures, founded on the ways of life, traditions and values of our ancestors, which include systems of governance, law and social organization.
- We have the right to compensation and redress with regard to our territories, lands and resources which have been confiscated, taken, occupied, used or damaged without our free, prior and informed consent.
- We will only negotiate on the basis of a full and complete recognition of the existence of our title and rights throughout our entire lands, waters, territories and resources.
- We acknowledge the interdependence we have with one another and respectfully honour our commitment with one another where we share lands, waters and resources. We commit to resolving these shared lands, waters and resources based on our historical relationship through ceremonies and reconciliation agreements.
- We endorse the provisions of the UN Declaration on the Rights of Indigenous Peoples and other international standards aimed at ensuring the dignity, survival and wellbeing of Indigenous peoples.

We commit to:

- Stand united today and from this time forward with the Tsilhqot'in and with each other in protecting our Aboriginal title and rights.
- Recognize and respect each other's autonomy and support each other in exercising our respective title, rights and jurisdiction in keeping with our continued interdependency.
- Work together to defend and uphold this Declaration.

We, the undersigned, represent First Nations who carry a mandate to advance Title and Rights in our homelands today referred to as British Columbia and exercise our authorities in making this Declaration. We welcome other First Nations not present today to adhere to this Declaration if they so choose.

Signed by First Nations leaders on November 29, 2007

2014 All Chiefs Forum Guiding Principles

- **Inherent legal traditions and jurisdiction:** Since time immemorial, First Nations in BC have lived by and implemented their own Indigenous laws which govern their relationships with one another and to the land and resources;
- **Honour and Respect:** As First Nations, when we reach a resolution of overlap and shared territory issues, it is important that we each honour and uphold the protocols/MOUs/resolution agreements entered into;
- **Decolonization and Recognition:** All First Nations in BC are engaged in the common effort to achieve decolonization, and seek full recognition of our inherent laws, jurisdiction, Aboriginal Title, and Rights and we acknowledge the autonomy of our nations;
- **Cooperation and Partnership:** As First Nations, we must co-operatively engage with one another, to educate each other on how our respective Indigenous laws would apply to the issue and we must do this at the earliest possible opportunity, at the outset of any negotiations or discussions of economic development or opportunities. As First Nations, we each have a responsibility to exercise political discipline and respect for one another;
- **First Nations Driven Process:** It is acknowledged that the resolution of overlap and shared territory issues is primarily a matter for First Nations to resolve among themselves, through processes grounded in First Nations' customs, cultural teachings and practices and laws;
- **Traditional Language:** where possible, in our discussions with one another, our traditional language should be incorporated into the dialogue because our language, our laws and our lands are intimately linked to one another;
- **Community Input:** we must each do our own important internal work by engaging with our community members/citizens of our Nations and seek their input on principles to guide our engagement with our neighbours;

- **Innovation:** We will be open to considering new approaches and tools in the resolution of overlaps and shared territory issues and consider incorporating flexibility and adaptability for use by other Nations who are facing similar challenges; and
- **Capacity:** all First Nations impacted by overlap and shared territory issues need to be adequately funded at the outset of any engagement. All parties need to have access to funding to allow each Nation to build the capacity to fully participate in such important discussions. Without such funding, there is a real and significant risk of creating an unlevel playing field.

Union of BC Indian Chiefs Symposium Summary Report: Implementing our Title and Rights: Upholding Self-Determination through Nation-to-Nation, Consent-Based Negotiations and Agreement-Making Principles

1. Self-Determination: Negotiations and agreements must support and advance the right of self-determination. This means that the model and substance of agreements should be grounded in the specific priorities and visions of First Nations. As such, all aspects of a negotiation process should be co-designed to ensure it is responsive to the directions that the First Nations at the table have determined as vital to building the future for its citizens.

2. Indigenous governments, laws, and jurisdictions: Negotiations and agreements should prioritize structuring proper relations between Indigenous governments, laws, and jurisdictions and Crown governments, laws, and jurisdictions. This includes recognizing the roles and responsibilities of Indigenous governments, as well as the structures, processes, and mechanisms between Indigenous Crown and governments. This includes, for the purposes of consent-based decision-making, dispute resolution and the regulation of lands and resources.

3. Recognition and Implementation of Title and Rights: Negotiations and agreements should have as a priority the co-operative and systematic recognition and implementation of the fundamental aspects of Title, including consent-based decision-making and title-based fiscal relations, such as revenue-sharing. Negotiations should focus on how these elements of Title will be fully reflected in the particular relationship between the Parties, and agreements should express this substantive commitment. Negotiations and agreements must also uphold the standards in Articles 26, 27, and 28 of the *UN Declaration*, and reject models of legal certainty through the use of legal techniques. In addition to denial-based techniques such as extinguishment, modification, or surrender language, the imposition of legal releases and limitations upon First Nations in court are not consistent with the recognition of rights. While certainty and predictability are desired by all Parties, this is achieved through upholding rights; establishing clear structures, processes and mechanisms between governments; utilization of multiple forms of dispute resolution; and the establishment of deep relations grounded in trust.

4. Nation and government re-building: Nation and government re-building, determined and led by First Nations, must be appropriately supported and advanced through negotiations and agreements. This work must be led by First Nations on the terms they set, with governments

playing supportive roles and providing necessary capacity to see this work advance. First Nations will determine the pace and ways in which they will pursue this work – it is not for the Crown to dictate, shape, or influence. The Crown must support First Nations where they are at, not use the path First Nations are taking in this work to delay or avoid negotiations and agreements. They must have flexibility and adaptability to meet First Nations where they determine. Ultimately, as part of the work of reconciling Indigenous and Crown sovereignties, a shared goal must be harmonious relations between Indigenous proper Title and Rights Holders, their representative institutions, and the Crown.

5. **Unity:** The historic practice of the Crown has been to promote division and conflict between First Nations, especially through the development and implementations of negotiations and agreements. Today, the Crown must actively make decisions and take constructive actions that support the building of unity between First Nations, including the work First Nations are leading and doing to resolve issues of territorial boundaries. This requires the Crown to act with transparency to properly provide capacity and support to accelerate the work First Nations are doing to find solutions, to take positive steps with Nations to resolve matters and ensure that reconciliation with one Nation does not occur to the detriment of another, and to shift its internal priorities and culture of functioning to one where promoting unity overrides achieving self-interested goals. It also requires the Crown to recognize that stopping negotiations and agreements is not a valid response to issues of division – rather, it must actively take constructive action to resolve matters that arise to ensure that agreements are completed in ways that do not infringe the rights of others.

6. **Redress:** The right to redress must be respected as part of true reconciliation – building the future requires acknowledging and addressing the wrongs of the past. Consistent with articles 8, 11, 20 and 28 of the UN Declaration, negotiations and agreements must include pathways and measures for redress. Approaches to redress through agreements will vary and reflect the specific historic experiences of First Nations, the impacts those continue to have today, and how a First Nation has determined its future vision and priorities.

7. **Flexible and Adaptable:** The imperatives of recognition, respect, and self-determination necessitates approaches to negotiations and agreements that are open, fluid, co-designed, adaptable and flexible. The status quo approach of the government developing pre-determined models, limits, or approaches to negotiations and agreements which are then offered to First Nations is not acceptable. Prescriptive and unilateral approaches can never be aligned with the *UN Declaration*, and are not conducive to true reconciliation.

8. **Legislative Change:** Governments must explicitly recognize that legislative change is urgently needed to design and implement agreements that meet basic standards of recognition and the *UN Declaration*, and to meet Canada's commitment to have renewed relations with Indigenous peoples. Concrete legislative steps should be taken immediately to make space that facilitates successful actions in completing agreements.

9. Transparency: A perpetual challenge and obstacle to negotiations is transparency about how and why governments make decisions about negotiations and agreements. A culture of transparency needs to guide government approaches negotiations, and this could be supported by the government providing clear guidelines to negotiators about the importance of transparency and how to implement it. Topics that could be addressed include the government's internal decision-making process, issues and challenges that exist internally, issues and challenges with other First Nations that may impact negotiations, co-operative approaches to addressing the challenges, roles of lawyers, and reliance on legal advice, etc. Through such transparency, it is anticipated that greater trust and relationship-building will occur that facilitates better outcomes for all.

10. Political involvement: There has long been a disparity between the roles played by Indigenous leaders and those played by government ministers and senior executive officials in negotiations. While it is acknowledged that negotiators and staff have to do their work, all negotiations benefit from regular and focused discussion at the leader/Minister/senior official level to ensure issues and obstacles are being addressed, the process is continuing to advance, and understanding is being built. This should be systematized within the process and expectations for all negotiations and agreement implementation.

11. Third Party Assistance: There has long been a resistance to seeking help from experts, mediators, facilitators, and others to help guide, advance, and accelerate negotiations and achieve success in agreement implementation. There should be greater willingness and resource support to call on the appropriate expertise to help keep negotiations and agreement implementation on a constructive and successful track.