



Aboriginal Affairs and Northern Development Canada

Review Report

Review of the Negotiation of Comprehensive Land Claims and Self-Government Agreements

Prepared by:

Audit and Assurance Services Branch

Project No. 13-40

September 2014

TABLE OF CONTENTS

ACRONYMS ii

EXECUTIVE SUMMARY 1

1. BACKGROUND3

2. REVIEW OBJECTIVE AND SCOPE5

3. APPROACH AND METHODOLOGY6

4. CONCLUSION7

5. FINDINGS AND RECOMMENDATIONS8

6. MANAGEMENT ACTION PLAN18

ACRONYMS

AANDC	Aboriginal Affairs and Northern Development Canada
ADM	Assistant Deputy Minister
AiP	Agreement in Principle
BCTC	British Columbia Treaty Commission
CLCA	Comprehensive Land Claim Agreement
CFN	Chief Federal Negotiators
DoJ	Department of Justice
FSC	Federal Steering Committee
FAPP	Federal Action Plan and Profile
RMP	Regional Management Plan
OGD	Other Government Department
SGA	Self-Government Agreement
TAG	Treaties and Aboriginal Government

EXECUTIVE SUMMARY

Background

This review of negotiations of Comprehensive Land Claim Agreements (CLCAs) and Self-Government Agreements (SGAs) project was kicked off as an audit with the associated risk assessment and audit planning phase completed. Towards the end of the planning phase, management requested that specific elements of the table negotiation process be reviewed.

CLCAs define a wide range of rights and benefits to be exercised by Aboriginal claimant groups and usually include: full ownership of certain lands in the area covered by the settlement; guaranteed wildlife harvesting rights; guaranteed participation in land, water, wildlife and environmental management throughout the settlement area; financial compensation; resource revenue-sharing; specific measures to stimulate economic development; and, a role in the management of heritage resources and parks in the settlement area.

Under the *Inherent Right Policy*, the Government of Canada's recognition of the inherent right to self-government is based on the view that the Aboriginal peoples of Canada have a right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to the land and resources. SGAs provide arrangements for Aboriginal groups to establish stable, self-reliant governments to manage their internal affairs and assume greater responsibility and control over the decision-making that affects their communities. SGAs address the structure and accountability of Aboriginal governments, their law-making powers, financial arrangements, and provision of programs and services.

Aboriginal Affairs and Northern Development Canada (AANDC) is the key Federal government department responsible for meeting the Government of Canada's obligations and commitments to First Nations, Inuit and Métis and for fulfilling the federal government's constitutional responsibilities in the North, although other government departments also share this responsibility. AANDC negotiates and implements land claim and self-government agreements on behalf of the Government of Canada. AANDC's Treaties and Aboriginal Government (TAG) Sector is responsible for the Department's role in negotiating and bringing into effect CLCAs and SGAs. TAG plays the lead role in the negotiation of CLCAs and SGAs although other government departments (OGD) are significantly involved.

In 2012, AANDC announced a move toward a results-based approach for treaty negotiations that will focus resources on the most productive negotiating tables so that agreements can be reached sooner. AANDC is currently implementing the "new approach" which will promote alternative measures when appropriate and streamline TAG's processes.

Negotiation processes have generated a number of agreements over the course of the last 40 years and continue to produce innovation in both policy and process. The average current negotiation process, however, takes approximately 15 years to complete and while bureaucratic oversight is critical, the federal mandating and approval processes are cumbersome and can add significantly to the time required to negotiate agreements.

Review Objective and Scope

The objective of this review was to provide an independent assessment on a selection of management processes, which were identified for review by AANDC senior management, in place to support the following elements of negotiation tables for CLCAs and SGAs:

- Impact of governance structures on table activities;
- Efficient and effective use of resources; and
- Success Factors / Lessons Learned.

The scope of the review included a sample of table negotiation activities that took place during the period from April 1, 2012 to December 31, 2013. Activities occurring prior to April 1, 2012 were included in the scope for some samples deemed necessary to ensure a complete review of the negotiation process. The sampling approach, which was agreed upon with management, was based on the stage of negotiation, and the rate of progress at the table – as provided by management.

Conclusion

Within the scope of the topics reviewed, the following conclusions were arrived at:

- **Impact of Governance Structures on Table Activities** – The review identified that the governance structures in place are not currently effective in managing Other Government Departments (OGDs) involvement in negotiations and monitoring overall progress of table negotiations. Further, opportunities have been identified, based on shared best practices, to coordinate and prioritize requests for input by OGDs in the negotiation process to ensure OGD attention and resources are focused on the priority negotiations and to maintain a central repository of OGD feedback that can be leveraged as part of future OGD requests.
- **Efficient and Effective Use of Resources** - Formal processes are in place and are being consistently applied to support the efficient and effective use of resources, including table planning, table budgeting and associated monitoring and reporting. Opportunities to improve the overall efficiency and effectiveness of the table negotiation process were identified through the introduction of multi-year table work plans and determining the total cost of table negotiations by table.
- **Success Factors / Lessons Learned** - The review identified key success factors, lessons learned and best practices from negotiations that have been highlighted in this report. It was identified that while best practices, lessons learned and success factors are typically shared within Branches there is an opportunity to share them across all Branches.

Recommendations

The review team identified areas where management control practices and processes could be improved, resulting in five recommendations as follows:

1. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should explore potential changes to the oversight role of the Federal Steering Committee for

Treaty Negotiations undertaken by the Government of Canada to ensure accountability for progress at negotiating tables is shared amongst responsible Departments.

2. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should develop an approach to consolidate, track and prioritize all OGD requests (across all Branches) so that requests to OGDs are coordinated (i.e. similar requests consolidated) and prioritized for issues for which input of the OGD is more time or complexity sensitive. A Sector-level knowledge management tool or process should be developed to capture previous OGD feedback and input so negotiators can equip themselves with the positions/responses provided in the past and allow the input process to be more streamlined as more background/historical precedence can be leveraged.
3. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should determine an appropriate mechanism (e.g. policy or directive) to establish the requirement of federal multi-year work plans to support the tracking of table process against time-limited mandates. These plans should be developed in conjunction with all relevant OGDs. Monitoring of progress against the work plan should be assigned to the Federal Steering Committee.
4. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector, as part of the implementation of the results-based approach, should develop an approach to track all direct costs associated with table negotiations at a table level for use in decisions related to the development of multi-year work plans, resource allocation and prioritization of tables (including consideration of alternative measures).
5. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should develop a process whereby lessons learned, best practices and success factors can be shared across Branches periodically which would be documented and made available to all negotiators for future reference so that negotiators could consider these success factors and their applicability to their own tables.

Management Response

Management is in agreement with the observations, has accepted the recommendations included in the report, and has developed a management action plan to address them. The management action plan has been integrated into this report.

1. BACKGROUND

1.1 Introduction

Section 35 of the *Constitution Act, 1982* and the Courts have recognized the existence of Aboriginal rights. The reconciliation of those rights with the rights and interests of all Canadians

is essential to ensure Canada's prosperity, to limit federal liabilities and to avoid potential conflicts. The Government of Canada negotiates Comprehensive Land Claim Agreements (CLCAs) and Self-Government Agreements (SGAs) with Aboriginal groups and provincial and territorial governments in order to reach practical and workable agreements in an attempt to resolve outstanding issues in relation to asserted Section 35 Aboriginal rights and title.

1.2 Comprehensive Land Claim Agreements

CLCAs define a wide range of rights and benefits to be exercised by Aboriginal claimant groups and usually include: full ownership of certain lands in the area covered by the settlement; guaranteed wildlife harvesting rights; guaranteed participation in land, water, wildlife and environmental management throughout the settlement area; financial compensation; resource revenue-sharing; specific measures to stimulate economic development; and, a role in the management of heritage resources and parks in the settlement area.

The *Comprehensive Land Claims Policy (1986)* stipulates that land claims may be negotiated with Aboriginal groups in areas where claims to Aboriginal title have not been addressed by treaties or through other legal means. Comprehensive land claims are based on the assertion of continuing Aboriginal rights and title.

1.3 Self-Government Agreements

Under the *Inherent Right of Self-Government Policy (1995)*, the Government of Canada's recognition of the inherent right to self-government is based on the view that the Aboriginal peoples of Canada have a right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to the land and resources. SGAs provide arrangements for Aboriginal groups to establish stable, self-reliant governments to manage their internal affairs and assume greater responsibility and control over the decision-making that affects their communities. SGAs address the structure and accountability of Aboriginal governments, their law-making powers, financial arrangements, and provision of programs and services.

1.4 Negotiations of Comprehensive Land Claim Agreements and Self-Government Agreements

Negotiations of CLCAs and SGAs are based on two Government of Canada policies: The *Comprehensive Land Claims Policy (1986)* and the *Inherent Right of Self-Government Policy (1995)*. In accordance with the *British Columbia Treaty Commission (BCTC) Act, 1995*, negotiations in British Columbia (BC) follow a unique negotiation process under the BC Treaty Process where negotiations are overseen by an independent facilitator (The BCTC).

AANDC negotiates and implements CLCAs and SGAs on behalf of the Government of Canada. AANDC's Treaties and Aboriginal Government (TAG) Sector is responsible for the Department's role in negotiating and bringing into effect CLCAs and SGAs. TAG plays the lead role in the negotiation of CLCAs and SGAs although other government departments (OGDs) are significantly involved.

Negotiation processes have generated a number of agreements over the course of the last 40 years and continue to produce innovation in both policy and process. The average current negotiation process, however, takes approximately 15 years to complete and while bureaucratic oversight is critical, the Federal mandating and approval processes are cumbersome and can add significantly to the time required to negotiate agreements. Moreover, evolving constitutional law, changing public and economic environments, and experience from existing processes have served to identify a range of issues where there is a need to consider renewal of policies and processes for addressing Section 35 rights.

There are currently 93 CLCA/SGA negotiation tables in process. Of these tables, 53 (57%) are currently being negotiated under the BC Treaty Process.

1.5 Results-Based Approach

On September 12, 2012, the Minister of AANDC announced plans to work with its partners on a new results-based approach to treaty and self-government negotiations. This approach was designed to streamline the negotiation process and focus resources on the most productive negotiating tables so that agreements can be reached sooner.

The results-based approach focused on three key pillars.

Pillar 1: Results-based Negotiations to Achieve Results with Partners

Pillar 2: Promoting More Effective Use of Other Tools to Address Aboriginal Rights and Promote Economic Development and Self-sufficiency

Pillar 3: Speeding up Processes

At the time of the review the new approach has not been fully implemented. An assessment of all tables was completed and reported on and the implementation of Regional Management Plans (RMP) has been completed.

The announcement of the results-based approach without complete implementation has resulted in some unintended results, including:

- Uncertainty by negotiating partners regarding the impact of the results-based approach on their table; and
- Push by some previously dormant or unproductive tables to re-energize table negotiations to ensure the continuity of negotiations has resulted in increased demand on resources.

2. REVIEW OBJECTIVE AND SCOPE

2.1 Review Objective

The objective of this review was to provide an independent assessment on a selection of management processes that were identified for review by AANDC senior management.

2.2 Review Scope

The scope of the review included an assessment of the management processes in place to support the following elements of the negotiation tables for CLSAs and SGAs:

A) Impact of Governance Structures on Table Activities

- Responsiveness, flexibility and nimbleness of whole-of-government governance model (Federal Steering Committee (FSC) and Federal Working Group) for guiding individual table negotiations;
- Impact of results-based regional plans and planning processes on individual table negotiations; and
- Impact of regional and national strategic considerations on individual table negotiations.

B) Efficient and Effective Use of Resources

- Table planning and budgeting;
- Execution of table plans and ongoing management of table activities against the appropriate decision-making framework, including processes to adjust table plans as required based on opportunities or challenges; and
- Monitoring and reporting of table progress and budget, including processes to reallocate resources as required.

C) Success Factors / Lessons Learned

- Identifying barriers to success for negotiation tables;
- Identifying factors for successfully achieving goals at negotiation tables;
- Identifying lessons learned from successes and failures in negotiation processes; and
- Incorporating best practices / success factors / lessons learned into strategic planning and table planning.

The scope of this review included table negotiation activities that took place during the period from April 1, 2012 to December 31, 2013. Activities occurring prior to April 1, 2012 were included in the scope for some samples deemed necessary to ensure a complete review of the negotiation process. The sampling approach, which was agreed upon with management, was based on table categories and the stage of each table in their negotiation life cycle – as provided by management.

3. APPROACH AND METHODOLOGY

To the extent necessary, the review of the negotiation of CLCAs and SGAs was conducted in accordance with the requirements of the Treasury Board Secretariat *Policy on Internal Audit* and followed the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing*. The engagement team examined sufficient, relevant evidence and obtained sufficient information to support the conclusions provided in this report.

The methodology used for this review included performing various review procedures necessary to address the review's objective. The review approach included but is not limited to:

- Interviews with senior management of each Negotiation Branch (East, Central and West);
- Interviews with other key officials at Headquarters and within each of the Negotiation Branches;
- Interviews with Negotiators from each Negotiation Branch;
- A review of relevant documentation related to the negotiation of CLCAs and SGAs;
- Walkthroughs of key processes in the negotiation of CLCAs and SGAs at HQ (Negotiation East/Central) and TAG offices in Vancouver (Negotiation West); and
- Testing a sample selection of CLCAs and SGAs tables based on the sampling methodology outlined in the section below.

As part of the review procedures, a selection of tables was used to illustrate and confirm the existence of specific controls and activities. Of the 93 negotiation tables currently underway, a sample of 15 tables was selected with the input of management – five (5) in each of the East, Central and West Negotiation Branches. The selection of the table sample included a variety of table categories, which was based on the stage of negotiation of the table, and the rate of progress at the table.

4. CONCLUSION

Within the scope of the topics reviewed, the following conclusions were arrived at:

- **Impact of Governance Structures on Table Activities** – The review identified that the governance structures in place are not currently effective in managing OGD involvement in negotiations and monitoring overall progress of table negotiations. Further, opportunities have been identified, based on shared best practices, to coordinate and prioritize requests for input by OGDs in the negotiation process to ensure OGD attention and resources are focused on the priority negotiations and to maintain a central repository of OGD feedback that can be leveraged as part of future OGD requests.
- **Efficient and Effective Use of Resources** - Formal processes are in place and are being consistently applied to support the efficient and effective use of resources, including table planning, table budgeting and associated monitoring and reporting. Opportunities to improve the overall efficiency and effectiveness of the table negotiation process were identified through the introduction of multi-year table work plans and determining the total cost of table negotiations by table.
- **Success Factors / Lessons Learned** - The review identified key success factors, lessons learned and best practices from negotiations that have been highlighted in this report. It was identified that while best practices, lessons learned and key success factors are typically shared within Branches, there is an opportunity to share them across all Branches.

5. FINDINGS AND RECOMMENDATIONS

Based on the evidence gathered through the examination of documentation, analysis and interviews, each area within the scope of the review was assessed by the review team and strengths and opportunities for improvement identified.

5.1 *Governance over Table Activities*

Negotiations of CLCAs and SGAs require a high degree of coordination and cooperation between federal departments as the agreements address various areas/topics that are not the jurisdiction of AANDC. Although AANDC is responsible to lead and coordinate the federal government negotiation activities, in order to facilitate the coordination, a federal committee structure has been established to support the negotiation of these agreements which includes:

- Federal Working Group – The mandate of this governance entity is to strive for interdepartmental and Federal interest and consensus on all transactional items brought before it, before recommending their submission to the Federal Steering Committee (FSC). Representatives on the Federal Working Group are expected to have the knowledge and authority to present their department/agency's interests and to engage in the resolution of issues during the working group's deliberations before a recommendation is made to FSC.
- Federal Steering Committee (FSC) – An ADM level steering committee to provide direction to Federal departments on treaty and self-government agreements and to provide direction on strategic and fiscal issues. At a transactional level, specific responsibilities of the FSC are to review and approve or recommend negotiating mandates; provide regular ongoing review, at a senior level, of Federal self-government and comprehensive land claims priorities; negotiate strategies and operational issues that relate to negotiations; facilitate the participation of all Federal departments and agencies, as required, in the negotiation process; and develop performance indicators and monitor the progress of all self-government and comprehensive land claims negotiations.

5.1.1 Decision-Making Framework

The review confirmed an established decision-making framework for table negotiations within the Department. Interviews with negotiators and documentation review identified that negotiators have been delegated an appropriate level of responsibility for table negotiations. An escalation process is in place and understood by negotiators to engage senior management when addressing issues/decisions that require more senior level insight and perspective. The review noted instances where the Department, when able act independently of OGDs, displayed flexibility and nimbleness in their response to challenges or opportunities.

The review team understands that regional or national strategic priorities have accelerated negotiations at some tables in the past. Currently, the overall framework in which these strategic priorities are considered is not formal, as they are dealt with on an individual basis as situations arise. The new results-based approach is expected to formalize the consideration of strategic priorities.

At a government-wide level, challenges exist in the decision-making framework when the participation of OGDs is required (as described in 5.1.2).

5.1.2 Accountability/Oversight of OGDs

This Federal committee structure was established in the 1980s and was developed to support the negotiations of agreements North of 60, which did not require as much involvement of OGDs due to the jurisdiction differences in the North. With the introduction of *Inherent Right of Self-Government Policy* in 1995, the Department saw an increased number of claims being submitted South of 60 which introduced the increased need for involvement by OGDs; however, the same Federal committee structure was leveraged to address the necessary inter-departmental coordination.

Although within their mandates, it was noted that within the current Federal Steering Committee structure:

- There are no formal escalation mechanisms to address and resolve OGD negotiation-related issues in a timely manner; and
- There is no reporting, oversight or challenge on the progress of negotiations against their mandates.

Without a formal oversight program and escalation protocols associated with the governance over the negotiation process, the Federal committee structure may not be achieving its mandate and delays/inactivity in the development of agreements will continue, resulting in inefficient use of resources, mandate objectives not being achieved with the established timeframes and strained relationships with negotiation partners.

Currently there is no shared accountability across departments for the negotiation of CLCAs and SGAs. Rather, the perception tends to be that all Aboriginal issues are AANDC's responsibility. The audit team heard that this has led to a dynamic where OGDs are more likely to focus on protecting areas that might impact their jurisdictional authority, rather than looking for flexibilities in their position. From a performance perspective, this dynamic doesn't ensure there is incentive across government to address issues in a timely manner or to ensure negotiation delays are being addressed. Overall, this impedes the ability for the negotiation process to be nimble and flexible to address opportunities and challenges that arise during the course of a negotiation. Without shared accountability for the negotiation of CLCAs/SGAs, delays and challenges with government-wide coordination will continue, impacting the duration of a mandate/negotiation.

TAG Sector should explore opportunities to change the current dynamics of FSC such that the accountability for progress of negotiating tables is shared amongst those Federal Departments who have jurisdiction over components included in agreements.

Potential changes that could be explored include:

- Consider a co-chair for the FSC outside of AANDC such as PCO. Sharing the responsibility for chairing the FSC with a central government organization such as the PCO could facilitate OGD policy decision and development.

- Shifting the role of FSC to a strategic policy body. By focusing the attention of FSC to strategic policy decisions, FSC could focus their efforts on addressing complex policy issues that are currently causing delays across several tables.
- Establishing formal assignment of accountabilities among OGDs for the negotiation of CLCAs/SGAs. As outlined above, the perception tends to be that all Aboriginal issues are AANDC's responsibility, including negotiations. Formal accountability would help ensure that OGDs accept that they own a share of the responsibility to move negotiations forward, and would then be more active and results focussed participants in treaty negotiations.
- Monitoring work plans that reflect AANDC and OGD activities (see recommendation #3). The creation of federal government work plans that address the activities of AANDC and OGDs would facilitate active ongoing monitoring of negotiation process against a critical path. FSC would monitor the status of progress and address department specific issues as they arise.
- Development of escalation mechanism for issues. The development of escalation protocols for table negotiations would ensure that contentious issues requiring resolution could be identified and escalated in a timely manner.
- Overall enforcement of formalized accountabilities. Although the current Federal Steering Committee structure assigns responsibility for ongoing monitoring and issue resolution, these responsibilities are not being adhered to.

Recommendation:

1. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should explore potential changes to the oversight role of the Federal Steering Committee for Treaty Negotiations undertaken by the Government of Canada to ensure accountability for progress at negotiating tables is shared amongst responsible Departments.

5.1.3 Coordination/Prioritization of OGD Requests

As noted above, Treaty negotiations require a high degree of collaboration not only internally but also with OGDs. With over 90 ongoing negotiation tables at any given time, there are multiple points of contacts between AANDC and OGD analysts regarding negotiation requests.

Through interviews with senior negotiations it was highlighted that there is limited coordination between negotiators, either within Branches, or across the Department, regarding the requests being submitted to OGD analysts. This creates a risk that across the Department, multiple requests (potentially similar in nature) from numerous sources (negotiators, Implementation Branch, Policy Development and Coordinator Branch), could all be competing against each other for the attention of an OGD analyst with limited time available to support negotiation activities. Further, from an OGD perspective, it would be difficult to determine what is AANDC's overall priority regarding outstanding requests.

Recently, certain Branch-level initiatives have been implemented to address the coordination of OGD requests related to negotiations. These include:

- Annotated Chapters - In the Negotiation West Branch there is an initiative by the DoJ where they have compiled annotated chapters and have made this available to all negotiators. Negotiators consult these chapters if they have legal questions, to determine if these questions have been addressed in the past, before submitting to the DoJ. This reduces the number of requests for legal opinions and reduces the risk of delays.
- Consolidated Outstanding Policy Issue List - The Negotiation West Branch has consolidated outstanding policy issues that require requests from OGDs for input (at a Branch level). Branch negotiators can use the list to see what requests are outstanding and who has made the request. This can avoid having multiple requests on a single issue and can provide insight into the number of requests outstanding for any single OGD in order to gauge their workload and potential response timelines.
- Identification of Inter-Departmental Issues - As part of the 'Operational Plan' developed by the Negotiation East Branch, inter-departmental issues are tracked by table and can be reported at a Branch level through the Operational Plan.

Although these Branch initiatives provide opportunities to streamline OGD requests, there is no Departmental mechanism in place to consolidate and prioritize OGD requests across Branches.

Recommendation:

2. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should develop an approach to consolidate, track and prioritize all OGD requests (across all Branches) so that requests to OGDs are coordinated (i.e. similar requests consolidated) and prioritized for issues for which input of the OGD is more time or complexity sensitive. A Sector-level knowledge management tool or process should be developed to capture previous OGD feedback and input so negotiators can equip themselves with the positions/responses provided in the past and allow the input process to be more streamlined as more background/historical precedence can be leveraged.

5.2 Efficient and Effective Use of Resources

Given the recent Deficit Reduction Action Plan initiatives and the associated staff/budget cuts with the large number of table negotiations, there is a key focus in the Department on the efficient and effective use of resources during table negotiations. The review team assessed the management processes in place, at both the sector and branch level, that support the efficient and effective use of resources; however, it did not assess the appropriateness of spending levels.

Interviews were conducted with the Director General and Director of each branch as well as the Negotiators for each of the sample tables. The purpose of these interviews was to gain further insight into:

- The table planning and budgeting process;

- The ongoing management of table activities against the appropriate decision-making framework, including processes to adjust table plans as required based on opportunities or challenges; and
- The monitoring and reporting of table progress and budget, including processes to reallocate resources as required.

Through interviews/surveys across the three Branches and the file review on 15 tables, several effective management practices were noted.

Table Planning and Monitoring

The development and approval of annual all-party table plans is intended to articulate what the negotiating parties aim to collectively accomplish over the course of that year. Once table plans are agreed to, departmental plans and objectives are aligned to the all-party work plans and updated in the Federal Action Plan and Profile (FAPP) system. FAPP is used by two (2) of the three (3) branches to track and report on the status of departmental objectives and report on progress to senior management through quarterly reports. The Negotiation East Branch has recently developed an 'Operational Plan' that is used in place of FAPP. The Operational Plan provides the same reporting information as FAPP, in addition to other information including a financial summary for the Branch (including resources and expenditures), a status dashboard for all tables and intra-inter departmental challenges by table. The Operational Plan includes more information than the FAPP and provides a useful snapshot of the tables and the Branch as a whole.

It was noted that the overall table status and objectives for all sample tables were well reflected in the recently introduced Regional Management Plans (RMP). The RMPs provide a consolidated regional view on the overall objectives of the federal government for a specific region, and provide strategic information at both the regional and table level. The RMPs address the objectives of the "results-based approach" and is a step in the right direction should the Federal Government choose to adopt an approach to regional mandating from Cabinet.

Allocation of Resources

From a resource allocation perspective, within the negotiation Branches and Directorates, there are processes to allocate table responsibilities to negotiation teams. In addition, there are processes to identify Department of Justice (DoJ) requirements and allocate resources accordingly.

Table budgets are developed for specific cost elements (i.e. travel, Chief Federal Negotiators (CFN), hospitality). These budgets are allocated based on discussions between table leads and negotiation Directors, and aligned to the requirements laid-out by the all-party table plans. These budgets were actively monitored and managed by Table Leads, with the assistance of a branch budget tracking tool. Using budget information available through branch budgeting tools, funds could be monitored, and reallocated to other tables if required.

During the review it was evident that each Branch is also highly collaborative in nature and ample opportunities exist to discuss the status of tables, identification of any issues and the reallocation of resources as required. Within each Branch, there are weekly meetings that exist

for negotiators and directors to review the overall status of tables, discuss negotiation challenges, share best practices, budget excess or shortfall and agree on reallocation.

Numerous instances were noted where discretionary spending dollars were reallocated from one table budget to another where a need was identified, and funds were available. Interviewees also indicated that branches will reallocate human resources as required depending on the level of activity at different tables. This demonstrates that TAG can be flexible and react quickly to changes in negotiations and the associated impact on resources.

The review did identify two (2) areas where AANDC should consider adopting new management practices to better evaluate the efficiency and effectiveness of the use of resources in a multi-year context. They include:

5.2.1 Table Planning

Negotiations of CLCAs and SGAs are a lengthy process generally spanning more than 15 years and are comprised of multiple negotiations stages. With the exception of the Framework Agreement stage, Cabinet must mandate AANDC to negotiate on behalf of the federal government. Historically, Cabinet mandates did not have an associated expiration date. More recently, Cabinet has introduced time-limited mandates (usually five years) for each stage of a negotiation. If, within the time allotted for the mandate, the negotiation stage is not completed, AANDC must seek a renewed mandate from Cabinet to continue negotiations. Renewing a mandate can be a time-consuming process, potentially taking up to 18 to 24 months, which can significantly slow down or halt the table negotiation process.

During field work, it was observed that annual all party table plans are prepared that outline the annual table objectives. These annual table plans, which are agreed to by all negotiating parties, are used by AANDC to set annual table objectives which are tracked within FAPP and reported on quarterly to senior management.

Although AANDC has an effective mechanism to track annual objectives, there is no mechanism to track the overall progress of a negotiation table against the critical path required of a time-limited Cabinet mandate. Given the delays associated with having to go back to FSC and Cabinet where necessary, for an extension, there is criticality associated with ensuring the overall objectives of the mandate are being tracked and achieved in a timely manner. Without the establishment of a federal (AANDC and OGDs) multi-year plan at the beginning of a stage (i.e. mandate) of table negotiations, the Department and the FSC cannot establish a baseline from which to measure whether it is progressing towards its negotiation objectives and as a result, the overall efficiency and effectiveness of table negotiations cannot be measured or assured. In addition, without a multi-year plan, or critical path, the Departments cannot adequately identify future resource requirements.

Recommendation:

3. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should determine an appropriate mechanism (e.g. policy or directive) to establish the requirement of a federal multi-year work plans to support the tracking of table process against time-limited mandates. These plans should be developed in conjunction with all

relevant OGDs. Monitoring of progress against the work plan should be assigned to the Federal Steering Committee.

5.2.2 Table Budgeting and Costing

In alignment with the annual table plans, table budgets are developed on an annual basis for specific cost elements that can be attributed to a table – these generally include travel, CFN costs, translation costs, and hospitality. Within each Branch, budget monitoring tools exist to monitor the overall status of these cost elements which allow the flexibility to reallocate budgets to other tables as required. It was observed that these tools are effective for reallocating funds for the associated cost elements of the table within a given Branch.

However, it was also noted that not all cost elements associated with table negotiations are budgeted for or tracked at a table level for decision-making purposes on an ongoing basis. Other cost elements include DoJ charges and salaries of negotiating teams. Although grants, contributions, and loans for negotiation partners are tracked by table, it is unclear how they are being considered along with all other table cost elements for decision-making purposes. Without a holistic view of total negotiation costs by table, AANDC cannot easily determine the overall negotiation cost by table for any given year, stage or total costs required to reach final agreement.

To date, because this holistic view of table costs has not been maintained, prioritization and resource allocation decisions have not had the benefit of this critical element of the negotiation process. Historical table costing information could be leveraged to develop multi-year table budgets based on table characteristics such as stage, geographical location, length of negotiation, status negotiation, etc. This information would also be beneficial in estimating the long-term resource requirements associated with focusing on productive tables and critical information as the Department moves towards the results-based approach.

Recommendation

4. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector, as part of the implementation of the results-based approach, should develop an approach to track all direct costs associated with table negotiations at a table level for use in decisions related to the development of multi-year work plans, resource allocation and prioritization of tables (including consideration of alternative measures).

5.3 Success Factors and Lessons Learned

In the 40 years since AANDC has been in negotiations with First Nations and provincial and territorial partners, the Federal government has signed 29 agreements for CLCAs and SGAs, including three (3) final agreements in the last three years.

Given AANDC's rich overall experience in the negotiation process, and taking into account the recent experiences in reaching final agreements, a discussion on success factors and lessons learned was included in this review. The intent of the inclusion of success factors and lessons learned into this review was to provide a snapshot of what negotiators believed to be the core considerations for success.

5.3.1 Key Success Factors

Several key success factors were identified throughout the course of the review, based on the input of 27 individuals, including negotiators, table leads, Directors, and Director Generals. These factors were based on recent experiences at current negotiating tables as well as from concluded tables. They include:

- **Table Dynamics:** Tables that experience strong momentum towards, and successful completion of, shared objectives tend to have key dynamics around the negotiating table, including:
 - Establishing respect and trust of all parties in the negotiation process. These strong relationships can help facilitate dealing with contentious issues.
 - Stability amongst the negotiating teams. This facilitates the trust and respect of the negotiators at the table. Turnover, at the table can set back negotiations as the new relationships have to be established.
 - Adequately resourced tables. This includes having the right human resources at the table with the necessary skill set and experience to facilitate successful negotiations such as having a trusted and experienced CFN / Senior Federal Representative.
 - In the Negotiation West, Treaty Related Measures funding is instrumental in advancing tables. This funding is designed to facilitate capacity development to help communities prepare for treaty implementation Self Governing. In the other two (2) Branches, a funding known as “Gathering Strength” provides funding for similar activities such as ratification preparation and capacity development.
- **An Effective Federal Government Effort:** Success at the negotiating table requires a coordinated and cooperative working relationship amongst Federal stakeholders away from the negotiating table.
 - Strong relationship with OGDs. Establishing strong working relationship with OGDs can facilitate obtaining timely input on issues outside of AANDC jurisdiction.
 - Effective working relationships with Central Agencies supported through regular communication and briefings from lead negotiators. Without early buy-in from Central Agencies, progress can be stalled.
 - Having a flexible and up-to-date mandate from Cabinet provides negotiators with confidence at the table to push the agreement forward.
- **Factors not in Negotiators’ Control:** Often the success of a negotiation is dependent on factors not in the direct control of AANDC.
 - Strong political priority, interest and attention amongst all parties to complete a deal. This is seen, for example, when the agreement would allow for a major resource project to be implemented, which is desired by all parties. This also helps in accelerating the negotiation process.
 - Engagement and commitment in the process by the claimant, and by the provincial/territorial government.

5.3.2 Lessons Learned

Some of the lessons learned that were shared during the interviews included:

- **Leveraging Previous Agreements:** The ability to leverage the format, language, or model used in previous agreements can greatly streamline the negotiation process. The leveraging of language used in previous agreements for similar topics has worked for some tables and has reduced negotiation effort and time to concentrate on other issues. In a negotiation in the East Branch, where the negotiating First Nation agreed to use a previous agreement as a template, adopting the language of most chapters, it allowed the negotiation to be completed within a shorter period of time (approximately five (5) years). Note the use of wording in a previous agreement must reflect the assessment of its appropriateness to the agreement.
- **Community Involvement / Ratification Vote Planning:** Initiating communication with the First Nations Community from the onset or early in the negotiation process and continuing throughout the process with regular updates by the First Nation Negotiators has also been a successful strategy. In some cases the community have been invited to observe the negotiation process when there are negotiations in the Community. Communication is especially important where there are First Nation Bands aggregated in the negotiation process. Extending a standing invitation to Chiefs and council members to participate in the process can foster this communication.

Significant planning and preparation in advance of ratification votes is another success factor. These votes are political in nature and are better informed with careful planning and support to ensure the details and nature of the agreement is adequately communicated to the community members prior to voting. This responsibility lies with the Aboriginal Community, but the Department plays a key supporting role. During our interviews and sample review we noted two (2) tables that were derailed by ratification votes that failed because of insufficient planning.

- **Front Loading Challenging Issues:** Numerous negotiators emphasized the importance of completing as much as possible of the chapter negotiations, especially the contentious items early, during the Agreement in Principle (AiP) Stage rather than “punting” difficult items to the Final Agreement Stage. This mitigates the risk of negotiations being derailed late in the process. Having difficult discussions early in the negotiation process helps ensure potential “deal breaker” issues (e.g. application of Charter of Rights) are addressed prior to investing time and resources into a lengthy negotiation. In some instances the Lead negotiators discussed the benefit of setting expectations at the beginning of the negotiation process. This requires the First Nation to determine from the onset what they expect the final agreement to look like. Addressing the difficult issues at the beginning of negotiations ensures that all stakeholders have a common understanding of the potential outcome of the agreement and can determine if an agreement should be pursued. This also speeds up the pace of negotiations as many of the major issues have been discussed. Negotiators indicated

that when they spend more time at the AiP stage to ensure that the chapters are actually agreed upon “in principle”, there is less work at the Final Agreement stage.

- **Begin Overlap Discussions Early:** The Federal government has a ‘duty to consult’ when there are potential overlap issues. It is good practice to address overlap concerns and have overlap agreements in place prior to, or early in, the negotiations process which will result in less potential delays later in the process. In one negotiation in the Negotiations East Branch, the existence of a signed Overlap Agreement with the neighbouring Aboriginal group before the negotiation started expedited the discussion and saved time and effort. The Negotiation East Branch has indicated that they are involved with some overlap consultations and are preparing a document on Overlap Consultation to be shared with the other Branches.

5.3.3 Best Practices

The review has highlighted best practices identified within the Branches and the Sector. At a Branch level there were unique best practices identified and which have been highlighted throughout this report.

At the Branch level, negotiators of successfully completed tables have shared the successes with other Branch negotiators either through discussions or presentations. For example, in the Negotiation West Branch knowledge sharing of the successes through Maa’Nulth, Tsawassen and Yale are shared through presentations, reports and discussions within the Branch. For the Yale agreement, a chronology of the negotiation outlining the steps at each stage of the negotiation has been prepared and shared with negotiators at each Branch.

Although the various best practices have been adopted at Branch level and some cases these best practices have been shared, they are typically shared within the Branch and have not been shared and adopted across the other Branches. Without the sharing of best practices and lessons learned between the branches, negotiators might not benefit from the efficiencies that have been realized from past successes.

Recommendation

5. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should develop a process whereby lessons learned, best practices and success factors can be shared across Branches periodically which would be documented and made available to all negotiators for future reference so that negotiators could consider these success factors and their applicability to their own tables.

6. MANAGEMENT ACTION PLAN

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>1. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should explore potential changes to the oversight role of the Federal Steering Committee for Treaty Negotiations undertaken by the Government of Canada to ensure accountability for progress at negotiating tables is shared amongst responsible Departments.</p>	<p>As part of the Results-Based Approach initiative, TAG will be reviewing federal internal mandating and approval processes, including the FSC, to formulate options for improvements and streamlining to improve their efficiency and effectiveness. This will include exploration of ways to share accountability for progress at negotiation tables.</p> <ul style="list-style-type: none"> - Exploration work with OGDs: (Summer/fall, 2014) - Options will be developed for review (April 2015) - Implementation of potential changes (April 2016) 	<p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government Sector</p>	<p>December, 2014</p> <p>April, 2015</p> <p>April, 2016</p> <p>Progress update/Rationale:</p> <p>As of 31/03/2015:</p> <p>Following the Ministerial announcement of the renewal of the Comprehensive Land Claims Policy on July 28, 2014, it was agreed to that the work on streamlining would be pushed back until after completion of the Eyford engagement on the Comprehensive Land Claims Policy. The rationale is that Eyford's report could include recommendations that will contribute to streamlining of the approvals and negotiations</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
			<p>processes.</p> <p>A draft of a discussion paper with options that streamlining approvals and negotiations processes was completed and provided to senior management in December 2014. The options presented in the paper will be assessed against the related recommendations in the Eyford Final Report. His final report was released on April 2, 2015.</p> <p>AES: Implementation underway.</p>
<p>2. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should develop an approach to consolidate, track and prioritize all OGD requests (across all Branches) so that requests to OGDs are coordinated (i.e. similar requests consolidated) and prioritized for issues for which input of the OGD is more time or complexity sensitive. A Sector-level knowledge management tool or process should be developed to capture previous OGD feedback and input so negotiators can equip themselves with the positions/responses provided in the past and allow the input process to be more streamlined as more background/historical precedence can be leveraged.</p>	<p>As part of the Results-Based Approach initiative, TAG will be reviewing federal internal mandating and approval processes, including its own internal processes, to formulate options for improvements and streamlining to improve efficiency and effectiveness. The new Results Based Information System (RBIS) may be adaptable for use in this regard.</p> <p>This recommendation has been identified as an important component of our operational streamlining work. It will require a balance of coordination with OGDs to define their accountability, and expeditious action.</p> <ul style="list-style-type: none"> - Research and analysis of current approaches: (summer 2014) - Explore coordination/prioritisation 	<p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government Sector</p>	<p>October, 2014</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>needs and options with OGDs, in conjunction with work on recommendation 1: (summer/fall 2014)</p> <p>- develop knowledge capture tool and pilot its use: (fall 2014 to fall 2015)</p>		<p>December, 2014</p> <p>December, 2015</p> <p>Progress update/Rationale:</p> <p>As of 31/12/2014:</p> <p>The development of an elaborated FAPP called the RBIS (Results-Based Information System) database is developed and user acceptance testing has begun. Full implementation is targeted for March 31, 2015. The database will help monitoring and reporting on negotiation processes and will track the progress over time.</p> <p>AES: Recommend to Close. Closed.</p>
<p>3. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should determine an appropriate mechanism (e.g. policy or directive) to establish the requirement of federal multi-year work plans to support the tracking of table process against time-limited mandates. These plans should be developed in conjunction with all relevant OGDs. Monitoring of progress against the work plan should be assigned to the Federal Steering Committee.</p>	<p>Currently, there is multi-year work planning at some negotiation tables but its internal use is limited. Such plans will be piloted to inform the appropriate approach.</p> <p>The impact of existing internal multi-year work planning must be determined. Their use must also be balanced against the variable nature of our work, the high number of internal stakeholders and they must be coordinated with new planning tools such as the Results Based Information System (RBIS).</p>	<p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government Sector</p>	

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<ul style="list-style-type: none"> - examine effects of using multi-year work plans at all tables (January to April 2015) - pilot internal multi-year work planning (December 2014 to April 2015) - draft policy/directive (June 2015) 		<p>June, 2015</p> <p>Progress update/Rationale:</p> <p>As of 31/03/2015</p> <p>Following the Ministerial announcement of the renewal of the Comprehensive Land Claims Policy on July 28, 2014, it was agreed to that the work on streamlining would be pushed back until after completion of the Eyford engagement on the Comprehensive Land Claims Policy. The rationale is that Eyford's report could include recommendations that will contribute to streamlining of the approvals and negotiations processes.</p> <p>A draft of a discussion paper with options that streamlining approvals and negotiations processes was completed and provided to senior management in December 2014. The options presented in the paper will be assessed against the related recommendations in the Eyford Final Report. His final report was released on April 2, 2015.</p> <p>AES: Implementation underway.</p>
<p>4. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector, as part of the implementation of the results-based approach, should develop an approach to track all direct costs associated with table negotiations at a table level for use in decisions related to the development of multi-year work plans, resource allocation and</p>	<p>Direct costs of negotiation support funding and loans are currently tracked.</p> <p>Other table costs are not directly tracked (or not done consistently). The appropriate means to collect this information will need to be determined. Current options include eventual use of RBIS or changes to financial coding; options should not increase reporting</p>	<p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government Sector</p>	

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>prioritization of tables (including consideration of alternative measures).</p>	<p>burden on tables.</p> <ul style="list-style-type: none"> - Identify current gaps in data collection (Fall 2014) - develop interim tracking options (fall 2014) - explore more permanent options 		<p>December, 2014</p> <p>December, 2014</p> <p>September 2015</p> <p>Progress update/Rationale:</p> <p>As of 31/12/2014:</p> <p>RBIS database will not have the capacity to track financial resources.</p> <p>It has been determined that the only way to track the costs of FTEs at the table level would require negotiators to keep track of how much time is spent on each file. That would represent a significant increase in reporting for negotiation tables.</p> <p>Further to that, it would not be feasible for TAG to make changes to AANDC's financial coding which could require developing specific codes for each table. The result is not feasible when we have over 100 negotiation processes. Negotiators are often working on 3 or more negotiation tables.</p> <p>With respect to operating costs, when a federal team travels to meet with a group, a trip may include visits to multiple tables.</p> <p>AES: It would not be economically feasible to build a system to allow employees to track time spent on various negotiations. The current table review process is fairly robust and there would be little additional benefit obtained from more precisely tracking the costs by negotiation table. Recommend to</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
			close. Closed.
<p>5. The Senior Assistant Deputy Minister, of the Treaties and Aboriginal Government Sector should develop a process whereby lessons learned, best practices and success factors can be shared across Branches periodically which would be documented and made available to all negotiators for future reference so that all negotiators could consider these success factors and their applicability to their own tables.</p>	<p>Currently, reports on federal working group (“caucus”) meetings identifying common areas of concern are distributed to negotiation and implementation branches. TAG is considering the establishment of periodic conference calls among negotiation branches and the policy branch to identify any trends, policy issues or OGD concerns.</p> <p>Further work is required to document and disseminate information.</p> <ul style="list-style-type: none"> - Options will be developed for review (April 2015) - Implementation of potential changes (April 2016) 	<p>Senior Assistant Deputy Minister, Treaties and Aboriginal Government Sector</p>	<p>April, 2015</p> <p>April, 2016</p> <p>Update/Rationale:</p> <p>As of 31/03/2015:</p> <p>The Policy Development and Coordination Branch attend Federal Caucus working group meetings and distribute a monthly summary of meetings to all TAG branches for information.</p> <p>Further work is required because the current approach is not comprehensive; it does not capture the entirety of concerns that are raised by OGDs because often these concerns are discussed directly with federal negotiators,</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
			separate from the working group. AES: Implementation ongoing.