



Aboriginal Affairs and Northern Development Canada

Internal Audit Report

Audit of the Implementation of Modern Treaty Obligations

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Audit and Assurance Services Branch

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ACRONYMS

AANDC	Aboriginal Affairs and Northern Development Canada
ADM	Assistant Deputy Minister
CLCA	Comprehensive Land Claim Agreement
FSC	Federal Steering Committee
IB	Implementation Branch
IC	Implementation Committee
OGD	Other Government Department
SGA	Self-Government Agreement
TAG	Treaties and Aboriginal Government
TOMS	Treaty Obligation Monitoring System

EXECUTIVE SUMMARY

Background

Comprehensive land claim agreements (CLCAs) and self-government agreements (SGAs) (hereafter “modern treaties”) are important to Canada's political, cultural, and socio-economic landscape. CLCAs are enshrined in legislation and provide a clear, certain, and long-lasting definition of land rights for all Canadians. The rights and obligations contained in the agreements are given important legislative recognition and are legally enforceable. CLCAs define a wide range of rights and benefits to be exercised by claimant (Aboriginal) 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.

SGAs provide arrangements for Aboriginal groups to govern their internal affairs, and assume greater responsibility and control over decision-making affecting their communities. SGAs address the structure and accountability of Aboriginal governments, their law-making powers, financial arrangements, and provision of programs and services. As indicated in the Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government, the government views the scope of Aboriginal jurisdiction or authority as extending for the most part to matters that are internal to the group, integral to its distinct Aboriginal culture and essential to its operation as a government or institution. Self-government also reconciles the law-making jurisdictions among the federal, provincial/territorial, and Aboriginal governments.

The implementation of modern treaties is a whole-of-government responsibility. Over 30 federal departments and agencies have specific legal obligations pursuant to these agreements, and over 400 obligations apply to all departments and agencies. Whereas individual departments and agencies are responsible for implementing their respective obligations, Aboriginal Affairs and Northern Development Canada (AANDC or the Department) plays a lead role in coordinating the federal approach to treaty implementation and in providing guidance to Other Government Departments (OGD) with respect to their obligations. AANDC's Treaties and Aboriginal Government (TAG) Sector is responsible for the Department's role in negotiating and bringing into effect CLCAs and SGAs.

Since the *Comprehensive Land Claims Policy's* inception in 1973 (AANDC-led), 24 CLCAs and two (2) SGAs have been concluded and are being implemented. Of the 24 CLCAs, 18 include provisions related to self-government.

Audit Objective and Scope

The objective of this audit was to provide assurance to management of the adequacy and effectiveness of controls in place to support AANDC's role in the coordination and oversight of the implementation of federal obligations included within existing comprehensive land claim agreements and self-government agreements.

The scope of this audit included all CLCAs/SGAs with an effective date previous to March 31, 2013. The focus of the audit was on activities related to the federal obligations as outlined in the agreements during the period from April 1, 2011 to March 31, 2013.

The scope of the audit focused on AANDC's (specifically the Treaties and Aboriginal Government (TAG) Sector) oversight and coordination responsibilities for federal implementation of obligations as outlined in the *Guide for Federal Implementers of Comprehensive Land Claims and Self-Government Agreements* in the following categories:

- Oversight and Coordination;
- Coordination of Government of Canada Obligations;
- Ongoing Implementation Activities; and
- Managing AANDC Implementation.

Of the population of agreements in place, a sample of five (5) were selected for testing taking into account differences between CLCAs and SGA, geographic/regional disparity and effective dates of the agreements, as follows:

- Tsawwassen First Nation Final Agreement (CLCA)
- Carcross/Tagish First Nation Final Agreement (CLCA)
- Eeyou Marine Region Land Claims Agreement (CLCA)
- Nunavut Land Claims Agreement (CLCA)
- Westbank First Nation Self Government Agreement (SGA)

This audit focused on the implementation of AANDC treaty obligations and their responsibility for the oversight and coordination of federal Implementers. The audit did not examine the responsibilities of the treaty partners (i.e. provincial/territorial governments or aboriginal signatories), nor did it include the implementation of obligations assigned to OGDs outside of AANDC.

Statement of Conformance

The audit conforms to the *Internal Auditing Standards for the Government of Canada*, as supported by the results of the quality assurance and improvement program.

Observed Strengths

During the audit fieldwork, the audit team observed the following strengths:

- The development of the *Federal Framework for the Management of Modern Treaties* (Implementation Management Framework) that establishes the oversight and governance for federal implementation of obligations under CLCAs/SGAs;
- Effectiveness of the escalation of issues through the governance framework from the Regional Caucus to the Federal Caucus to the Federal Steering Committee (FSC), as necessary; and
- Ongoing identification of the need for additional guidance for Federal Implementers and the associated development of such guidance documents – most recently developed Guide for Annual Reports.

Conclusion

Generally, the audit found that the Department has taken significant steps in establishing foundational elements to manage and coordinate the federal responsibilities as outlined within the specific CLCAs/SGAs. This includes the establishment of the Implementation Management Framework, the establishment of the governance structures and the development of tools and guidance documents to help OGDs fulfill their own obligations. However, to strengthen the effectiveness of the governance structures and to support and manage the implementation of the federal obligations, we identified opportunities to improve key elements of the IMF including designing formal responsibilities and business processes for proactive monitoring of the status of Federal obligations, establishing foundational elements of the regional caucuses and developing formal orientation materials for new members of the oversight bodies representing the federal governance structure.

Recommendations

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

1. The Senior Assistant Deputy Minister, Treaties and Aboriginal Government (TAG) Sector should work with the oversight bodies to ensure that the roles and responsibilities for the proactive monitoring of federal obligations are formally defined for the three (3) decision-making bodies and embedded in the appropriate Terms of Reference/mandates and meeting agendas. Additionally, reporting requirements should be established to ensure that AANDC provides these oversight bodies with obligation status-related information required to monitor the status of implementation and ensure that obligations are being implemented on a timely basis.
2. The Senior Assistant Deputy Minister, TAG Sector should ensure that a structured business process is defined and implemented for the update of the Treaty Obligation Management System (TOMS) on a regular basis (i.e. quarterly) by obligation owners with follow-up, as necessary. The caucuses and Federal Steering Committee should be provided status-related information from TOMS to proactively monitor the status of implementation.
3. The Senior Assistant Deputy Minister, TAG Sector should work with the OGDs to develop formal Terms of Reference/mandates for the regional caucuses that set out their purpose, membership, roles and responsibilities, frequency of meetings and required activities/documentation.
4. The Senior Assistant Deputy Minister, TAG Sector should ensure that orientation material is developed for Regional Caucus, Federal Caucus and Federal Steering Committee members so that all members have a consistent understanding of the purpose and role of the committee/caucus, the role of the oversight body in the overall Federal Framework (IMF) and their individual responsibilities as a member to ensure effective operation of the oversight body.

Management Response

Management is in agreement with the findings, 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 in this report.

1. BACKGROUND

The Audit of the Implementation of Modern Treaty Obligations was included in the Aboriginal Affairs and Northern Development Canada (AANDC or the Department) 2013-2014 to 2015-2016 Risk-Based Audit Plan approved by the Deputy Minister on February 27, 2013. The project was included in the plan on the basis that there have been no recent audits of this area completed by Audit and Evaluation Sector, the legal risks are high and the Office of Auditor General has identified concerns regarding the implementation of modern treaties obligations.

Federal policy divides Aboriginal land claims into two broad categories¹:

- Comprehensive land claims are based on the assertion of continuing Aboriginal rights and title that have not been dealt with by treaty or other legal means.
- Specific land claims arise from alleged non-fulfillment of treaties or other legal obligations, or from the alleged improper administration of lands and other assets under the *Indian Act* or other formal agreements.

This audit relates to comprehensive land claims.

Comprehensive land claim agreements and self-government agreements (also referred to as “modern treaties”) are based on two federal government policies: The *Comprehensive Land Claims Policy (1986)*; and the *Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* - most commonly referred to as the *Inherent Right Policy (IRP)*.

Modern treaties are important to Canada's political, cultural, and socio-economic landscape.

1.1. Comprehensive Land Claim Agreements

CLCAs are enshrined in legislation and provide a clear, certain, and long-lasting definition of land rights for all Canadians. The rights and obligations contained in the agreements are given important legislative recognition and are legally enforceable. CLCAs are given further legal effect through implementing legislation and many are also constitutionally protected under Section 35 of the *Constitution Act, 1982*.

CLCAs define a wide range of rights and benefits to be exercised by claimant (Aboriginal) 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* implemented in 1973, 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. The implementation of modern treaties is a whole-of-government responsibility. Over 30 federal departments and agencies have specific

¹ Parliamentary report - “Settling Comprehensive Land Claims”, September 2009

legal obligations pursuant to these agreements, and over 600 obligations apply to all departments and agencies. Whereas individual departments and agencies are responsible for implementing their respective obligations, AANDC plays a lead role in coordinating the federal approach to treaty implementation and in providing guidance to Other Government Departments (OGD) with respect to their obligations.

1.2 Self-Government Agreements

Under the *Inherent Right Policy*, the Government of Canada's recognition of the inherent right of 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 their land and resources.

Self-Government Agreements (SGA) provide arrangements for Aboriginal groups to govern their internal affairs, and assume greater responsibility and control over decision-making affecting their communities. SGAs address the structure and accountability of Aboriginal governments, their law-making powers, financial arrangements, and provision of programs and services. As indicated in the *Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, the government views the scope of Aboriginal jurisdiction or authority as extending for the most part to matters that are internal to the group, integral to its distinct Aboriginal culture and essential to its operation as a government or institution. Self-government also reconciles the law-making jurisdictions among the federal, provincial/territorial, and Aboriginal governments.

Since the *Comprehensive Land Claims Policy's* inception in 1973 (AANDC-led), 24 CLCAs and two (2) SGAs have been concluded and are being implemented. Of the 24 CLCAs, 18 include provisions related to self-government. Additional CLCAs are at various stages in the negotiation process and involve groups in the Atlantic Provinces, Newfoundland and Labrador, Québec, Ontario, Manitoba, Saskatchewan and the Northwest Territories. However, most are centered in British Columbia.

1.3 AANDC roles and responsibilities

AANDC's Treaties and Aboriginal Government (TAG) Sector is responsible for the Department's role in negotiating and bringing into effect CLCAs and SGAs (the agreements). TAG plays the lead role in fulfilling AANDC obligations pursuant to CLCAs and SGAs, although other sectors of AANDC also involved.

The Implementation Branch (IB), within AANDC's TAG Sector, plays a coordination and oversight role of the federal implementation of agreements after their effective date, although each Federal Department and Agency is individually responsible for fulfilling their respective obligations.

1.4 Collaboration between AANDC and other Federal Departments

AANDC developed *The Federal Framework for the Management of Modern Treaties* (Implementation Management Framework - IMF) which was intended to strengthen the management of modern treaty implementation across the federal government by improving

coordination and decision making between departments. It was approved by the Federal Steering Committee in 2009 for a three-year trial. The IMF was intended to help federal officials fulfill Canada's modern treaty responsibilities in a coordinated, consistent, and timely manner by: (i) improving information sharing; (ii) improving oversight; (iii) clarifying accountabilities and responsibilities; and, (iv) facilitating timely and efficient decision-making.

As part of the IMF, and to support the implementation of modern treaties, there are three information and decision-making bodies in place to facilitate the interaction between federal officials across Departments and Agencies, regions and throughout the management structure, as follows:

Federal Steering Committee on Self-Government and Comprehensive Claims (senior level (Assistant Deputy Minister (ADM)) committee): The Federal Steering Committee (FSC) is responsible for providing direction to affected federal departments and Agencies on implementation issues. A committee executive (ADM-level representative) provides direction on strategic and fiscal issues. As appropriate, the FSC makes decisions or recommendations with respect to implementation mandates, and fiscal and policy issues. AANDC IB collaborates with the TAG's Mandating Coordination and Liaison Unit and coordinates the FSC's agenda, including IB issues.

Federal Caucus: The Federal Caucus provides guidance and makes recommendations to the FSC (and to federal implementers) during both the negotiation and implementation stages of CLCAs and SGAs. Membership in Federal Caucus includes representatives from Federal Departments' and Agencies' headquarters (in the National Capital Region) that have a role in implementing modern treaties, including central agencies. Regional office representatives may participate in Federal Caucus as appropriate.

Federal officials facing issues with broad implications for implementation across the country can bring these issues forward to Federal Caucus. Generally, TAG's IB is responsible for tabling issues in Federal Caucus. Regional caucuses forward and vet issues through TAG's IB as a first step.

Regional Caucuses: Regional caucuses provide structured interdepartmental forums to help ensure collaborative, consistent and effective fulfillment of implementation activities undertaken in the regions. These meetings allow members of federal departments with implementation responsibilities to discuss implementation-related matters, propose that certain issues be raised at Federal Caucus, and consult with Canada's representative on the Implementation Committee (IC) about committee business before IC meetings. Essentially, regional caucuses link regional federal representatives to one another, to agreement signatories and to members of Federal Caucus and the FSC.

1.5 Implementation of Modern Treaties

Since the mid-1980s, the federal government has required that modern treaties be accompanied by an Implementation Plan that states the roles and responsibilities of the parties in executing the provisions of the agreements.

Once a CLCA or SGA is signed and ratified, the parties move to the implementation of the agreement and the associated implementation plan that was negotiated in conjunction with the agreement. In addition to building strong partnerships between Aboriginal people and governments, successful implementation of final agreements creates a positive and stable climate for investment and economic growth on Aboriginal lands and in surrounding communities.

The Government of Canada's *Guide for Federal Implementers of Comprehensive Land Claims and Self-Government Agreements (2011)* was developed by AANDC to guide federal implementers at various stages, whether preparing for negotiations, developing implementation plans, or managing implementation after the effective date. Other guides and resources have also been developed related to key issues like dispute resolution and reviews.

1.6 Related Audits, Evaluations and Reviews

Evaluation of the Federal Government Implementation of Self Government and Self Government Agreements (2010-11)

The evaluation examined self-government negotiation and implementation activities undertaken in the lead up to and after the introduction of the 1995 IRP. It noted that the transition to self-government had proven to be a complex, incremental process and that the delivery of effective programs and services remained a major challenge for all levels of government in Canada.

The evaluation's recommendations, which have since been implemented, included putting in place a mechanism to ensure that policies and legislation that affect the negotiation and implementation of self-government agreements support, not work against, one other and the establishment of a framework for dialogue with Aboriginal organizations and Aboriginal communities to develop a common vision of self-government and how it can be operationalized under the IRP.

2009 Impact Evaluation of Comprehensive Land Claim Agreements

The purpose of this evaluation was to assess the impacts of CLCAs and the extent to which the objectives established for them had been achieved. The audit examined four agreements. It noted that the CLCAs have been an important contributor in transforming the role of Aboriginal people in the economy by contributing to the development of Aboriginal infrastructure and Aboriginal business development. This resulted in communities being well-positioned to take advantage of resource and other economic development opportunities.

Recommendations, which have since been implemented, included a partnership between Aboriginal organizations and other federal departments and agencies, to establish: (i) a policy for the implementation of CLCAs; (ii) a senior-level oversight working group; and, (iii) the setting of specific objectives and targets, to monitor progress and take remedial action as required to properly implement agreements.

2009 Follow-up audit to the 2005 Office of the Auditor General (OAG) Audit on Treaty Land Entitlement Obligations

In 2005 the OAG examined the Department's management of its responsibilities under treaty land entitlement agreements and found some deficiencies that affected the Department's

fulfillment of its obligations. The 2009 follow-up concluded that the Department had made satisfactory progress in converting and planning to convert land to reserve status, in its efforts to coordinate environmental assessments and in improving its capture and processing of data. A recommendation was made for the Department to commit to helping First Nations resolve third-party interests and how data integrity issues are resolved as well as on the development of a consistent file process to monitor the status of treaty land entitlement selections.

2. AUDIT OBJECTIVE AND SCOPE

2.1 Audit Objective

The objective of this audit was to provide assurance to management of the adequacy and effectiveness of controls in place to support AANDC's role in the coordination and oversight of the implementation of federal obligations included within existing comprehensive land claim agreements and self-government agreements.

2.2 Audit Scope

The scope of this audit included all CLCAs/SGAs with an effective date previous to March 31, 2013. The focus of the audit included activities related to the federal obligations as outlined in the agreements during the period from April 1, 2011 to March 31, 2013.

Due to the inherent risks associated with non-compliance with the obligations outlined in the agreements (i.e. risk of potential breach of the agreement and legal action) and the role that AANDC plays in the coordination and oversight of these federal obligations, this audit focused on the following AANDC activities²:

(A) Oversight and Coordination

1. Acting as a central point of contact for agreement signatories, other federal departments, AANDC, and other line departments' regional staff, with questions about their direct and indirect responsibilities under CLCAs and SGAs.
2. Coordinating and administering, the implementation management framework, which includes the Federal Caucus and the FSC (consisting of senior-level officials from all Federal Departments with implementation responsibilities).
3. Coordinating federal input into monitoring and reporting processes, such as annual reports. Development and maintenance of the Treaty Obligation Management System (TOMS), and CLCA.net.

(B) Coordination of Government of Canada Obligations

4. Administering funding for agreement signatories, some boards, and committees.
5. Providing federal input, in collaboration with other federal departments and agencies, in mandated reviews.

² AANDC responsibilities as outlined in the *Guide for Federal Implementers of Comprehensive Land Claims and Self-Government Agreements (2011)*.

6. Representing Canada on ICs, with participation by other federal departments and agencies when appropriate.

(C) Ongoing Implementation Activities

7. Reviewing annual audits of Aboriginal signatories, boards, and committees.
8. Managing, in conjunction with AANDC regional offices, Order-in-Council and Ministerial appointments to boards and committees (some board/committee appointments are the responsibility of other federal departments).

In addition to the coordination role for the federal government obligations, AANDC has direct responsibility to manage the implementation of its own obligations as outlined in the agreements. As a result, the scope of the audit further included the following:

(D) Managing AANDC Implementation

9. Monitoring and managing the implementation of obligations for which AANDC has responsibility.

Through the development of a sampling approach, appropriate coverage was determined in terms of agreement and specific obligation sample selections. Of the population of agreements in place, a sample of five (5) were selected for testing, as follows:

- Tsawwassen First Nation Final Agreement (CLCA)
- Carcross/Tagish First Nation Final Agreement (CLCA)
- Eeyou Marine Region Land Claims Agreement (CLCA)
- Nunavut Land Claims Agreement (CLCA)
- Westbank First Nation Self Government Agreement (SGA)

This audit focused on the implementation of AANDC treaty obligations and their responsibility for the oversight and coordination of federal implementers. It did not focus on the responsibilities of the treaty partners (i.e. provincial/territorial governments or Aboriginal signatories) nor did it focus on the implementation of obligations assigned to OGDs outside of AANDC.

3. APPROACH AND METHODOLOGY

The Audit of the Implementation of Modern Treaty Obligations was planned and conducted in accordance with the requirements of the Treasury Board *Policy on Internal Audit* and followed the Institute of *Internal Auditing Standards for the Government of Canada*.

The audit team examined sufficient relevant evidence and obtained sufficient information to provide a reasonable level of assurance in support of the audit conclusion.

The principal audit techniques used included:

- Interviews with key TAG Sector officials with responsibility related to the coordination of federal responsibilities under the agreements and the implementation of AANDC-owned obligations;
- A review of relevant documentation related to the coordination of federal implementation of treaty obligations;

- Walk-throughs of key implementation processes at headquarters, including the key systems in place to support the monitoring of federal implementation activities (i.e. TOMS and CLCA.net); and,
- Testing of a sample of treaty agreements and associated obligations based on the sampling methodology outlined below.

In order to develop a sampling methodology that addressed the audit criteria, as identified in Appendix A, a sample of agreements were selected for testing. The following outlines the approach used to select samples from the population of agreements in place.

A) Selection of CLCAs/SGAs to Audit

Factors in the selection of the sample of CLCAs/SGAs for inclusion in the audit testing included the following:

- Coverage of CLCAs and SGAs – Given that these two agreements are distinct, the sampling approach included both types. The selection was based on the relative proportion of signed agreements (i.e. 24 CLCAs to two (2) SGAs.)
- Geographic Disparity – The planning phase identified that the management within the IB of TAG segregated the agreements by geography – West, Central and East. In order to identify any differences in management of the coordination role across geographic locations, the sample considered this element. As a result, our sampling approach considered the population of CLCAs/SGAs in place within Western Canada (21), Central Canada (0) and Eastern Canada (5).
- Effective Date of Agreements – Since a significant number of “one-time” obligations are due to be implemented upon the effective date of the agreement, in order to be able to test these obligations as part of the scope of the audit, we selected CLCAs/SGAs that had an effective date between April 1, 2011 and March 2013 (total population of two (2) Agreements.)

Based on the above criteria and with the objective to assess the oversight and coordination activities of AANDC, we selected a total of five (5) agreements for testing as part of the conduct phase of the audit, as follows:

	Agreement Name	Type	Region	Effective Date of Agreement
1	Tsawwassen First Nation Final Agreement	CLCA	BC (West)	April 3, 2009
2	Carcross/Tagish First Nation Final Agreement	CLCA	Yukon (West)	October 22, 1995
3	Eeyou Marine Region Land Claims Agreement	CLCA	Quebec (East)	November 1, 2011
4	Nunavut Land Claims Agreement	CLCA	Nunavut (East)	July 9, 1993
5	Westbank First Nation Self Government Agreement	SGA	BC (West)	May 6, 2004

The sample of five (5) agreements listed above represent approximately 18% of the total number of CLCAs/SGAs in effect, representing 697 (14%) of the obligations that the federal government is responsible for implementing.

B) Selection of Obligations within each Sampled CLCA/SGA

The second element of the sampling approach relates to the selection of federal obligations within the agreements selected above. The following table outlines the population of obligations, as tracked in TOMS, included within each of the five (5) sampled agreements:

Agreement Name	Total Federal Obligations Specified in the Agreement	OGD/All Department Obligations	AANDC Obligations
Tsawwassen First Nation Final Agreement	105	49	56
Carcross/Tagish First Nation Final Agreement	196	83	113
Eeyou Marine Region Land Claims Agreement	168	98	70
Nunavut Land Claims Agreement	155	62	93
Westbank First Nation Self Government Agreement	73	29	44
Total	697	321	376

The obligations included in the table above have been assigned a 'type' within TOMS. The break-down of the type of obligations for the sampled agreements are as follows:

	Annual	Contingent	One-time	Ongoing	Other	Permissive	Total
Tsawwassen First Nation Final Agreement	1	57	22	7	0	18	105
Carcross/Tagish First Nation Final Agreement	11	47	83	53	1	1	196
Eeyou Marine Region Land Claims Agreement	0	131	13	24	0	0	168
Westbank First Nation Self Government Agreement	1	31	15	19	0	7	155
Nunavut Land Claims Agreement	6	35	43	71	0	0	73
Total	19	301	176	174	1	26	697

The audit testing included a total of 10 obligations sampled within each agreement resulting in an overall sample of 50 obligations. For each agreement, five (5) AANDC obligations were

selected as well as five (5) OGD samples (for status monitoring only). Targeted sampling was used to ensure all relevant types of obligations were proportionally covered.

4. CONCLUSION

Generally, the audit found that the Department has taken significant steps in establishing foundational elements to manage and coordinate the federal responsibilities as outlined within the specific CLCAs/SGAs. This includes the establishment of the Implementation Management Framework, the establishment of the governance structures and the development of tools and guidance documents to help OGDs fulfill their own obligations. However, to strengthen the effectiveness of the governance structures and to support and manage the implementation of the federal obligations, we identified opportunities to improve key elements of the IMF including designing formal responsibilities and business processes for proactive monitoring of the status of federal obligations, establishing foundational elements of the regional caucuses and developing formal orientation materials for new members of the oversight bodies representing the federal governance structure.

5. FINDINGS AND RECOMMENDATIONS

Based on the evidence gathered through the examination of documentation, analysis and interviews, each audit criterion was assessed by the audit team and a conclusion for each was determined. Where a significant difference between the audit criterion and the observed practice was found, the risk of the gap was evaluated and used to develop a conclusion and to document recommendations for improvement initiatives.

5.1 Responsibility for Proactive Monitoring of the Status of Federal Obligations

As noted above, AANDC has developed *The Federal Framework for the Management of Modern Treaties (IMF)* to assist the Government of Canada in fulfilling its obligations and responsibilities within the Modern Treaties in a coordinated, consistent and timely manner. The IMF was designed to:

- Improve information sharing (between departments, headquarters and regions, implementers and senior management);
- Improve treaty implementation oversight, including improved monitoring and reporting;
- Clarify accountabilities and responsibilities; and
- Facilitate timely and efficient decision-making.

To meet these objectives, the IMF is supported by three (3) federal coordination and decision making bodies: Regional Caucus, Federal Caucus and the FSC.

The audit identified that within each oversight body, there is no formally defined responsibility for the proactive monitoring of the status of federal obligations. More specifically, the mandates of these oversight bodies (with the exception of the regional caucuses who do not have a formal mandate – see Section 5.3 below) do not include the responsibility for the proactive monitoring of the status of obligations. Further, status monitoring of obligations is not a regular agenda item

for any of these oversight bodies nor is any regular reporting provided on the status of federal implementation of obligations.

Without a proactive reporting/monitoring mechanism on the status of obligations, the three (3) federal coordination and decision-making bodies are not in a position to provide sufficient oversight, escalation and decision-making relative to federal obligations, which could ultimately lead to a breach of the agreements.

Recommendation

1. The Senior Assistant Deputy Minister, Treaties and Aboriginal Government (TAG) Sector should work with the oversight bodies to ensure that the roles and responsibilities for the proactive monitoring of federal obligations are formally defined for the three (3) decision-making bodies and embedded in the appropriate Terms of Reference/mandates and meeting agendas.

Additionally, reporting requirements should be established to ensure that AANDC provides these oversight bodies with obligation status-related information required to monitor the status of implementation and ensure that obligations are being implemented on a timely basis.

5.2 Process to Update/Report on the Status of Federal Obligations

To facilitate the monitoring and reporting of issues to the federal coordination and decision making bodies, AANDC has developed TOMS. TOMS is a system that is administered by AANDC. It tracks information on all federal obligations and tracks the status of progress in implementing these obligations. TOMS also has a reporting function to help analyze federal obligations. TOMS acts as a statistical database of federal obligation fulfillment over the long term, providing an empirical reporting tool that complements the collaborative, more qualitative annual reports. All Federal Departments are required to review and verify their obligations as set out in TOMS for completeness and accuracy, and will be required to provide updates on the status of their obligations.

To date, a business process has not been defined or implemented to ensure that TOMS is updated on a timely basis and that status-related information is provided to key oversight bodies. Although federal obligations have been reflected in TOMS and ownership assigned to specific OGDs, access has been granted neither to these OGDs nor to all Treaty Managers to maintain the currency of the status of the obligations which they own. All updates are being performed by the TOMS system administrator as status-related information is received. Further, no status-related reporting is being provided to the oversight bodies for their review and escalation of outstanding obligations, as necessary.

Without a structured process that ensures timely updates to TOMS, AANDC is not in a position to generate accurate obligation status reports that can be used to proactively monitor and report on the status of obligations to the decision making bodies.

Recommendation

2. The Senior Assistant Deputy Minister, TAG Sector should ensure that a structured business process is defined and implemented for the update of TOMS on a regular basis (i.e. quarterly) by obligation owners with follow-up, as necessary. The caucuses and Federal Steering Committee should be provided status-related information from TOMS to proactively monitor the status of implementation.

5.3 Regional Caucuses

As noted above, *The Guide for Federal Implementers of Comprehensive Land Claims and Self-Government Agreements* outlines the purpose and responsibilities of the FSC, the Federal Caucus and the regional caucuses. The regional caucuses play a critical role in facilitating collaboration among regional representatives with implementation responsibilities and deciding what regional issues get escalated to a federal level.

Regional caucuses consist of representatives from OGDs at the regional office level and provide a forum for discussions and resolution of issues related to obligation implementation. These representatives meet to discuss the implementation and management of the obligations for the treaties they are responsible for within the region. These caucuses vary in size depending on the region.

It was noted that there were no standard Terms of Reference for any of the regional caucuses within the audit sample of five (5) agreements represented by four (4) regional caucuses – British Columbia, Nunavut, Quebec and Yukon.

It was further noted that while meetings have been ongoing for three (3) of the four (4) regional caucuses within our sample, the Yukon Regional Caucus has not formally met since April 2012.

Within the regional caucuses that have continued, it was identified that the existence of key foundational elements within these caucuses has been inconsistent. For each Regional Caucus, limited to no meeting minutes or records of decisions were taken when meetings took place. In some cases, examples of formal agendas were available but these were inconsistently prepared over the two-year audit timeframe across all sampled regional caucuses.

Without a formal Terms of Reference and ongoing meetings, the regional caucuses may not achieve the outcomes they were established to achieve. The lack of meeting minutes/formal agendas limits the effectiveness of the Regional Caucus as a key component of the IMF as it becomes challenging to hold parties accountable for follow-up.

Recommendation

3. The Senior Assistant Deputy Minister, TAG Sector should work with the OGDs to develop formal Terms of Reference/mandates for the regional caucuses that set out their purpose, membership, roles and responsibilities, frequency of meetings and required activities/documentation.

5.4 Orientation of Caucus/Federal Steering Committee Members

It is currently the responsibility of the committee/caucus members to be aware of their own responsibilities as per the mandate of their committee/caucus as a representative of their OGD and the responsibility of the respective OGD to train/orient new committee/caucus members.

Although AANDC has been assigned the unique oversight and coordination role relative to federal obligations across OGDs, it was noted that no structured, standard orientation program materials exists to support new members of the committee/caucuses on their roles and responsibilities as members of these oversight bodies, as well as the roles and responsibilities of the oversight bodies themselves. It was noted that for the regional caucuses in Eastern Canada (Quebec, Nunavut and Atlantic), historically, new Regional Caucus members have received informal briefings on the purpose of their Caucus as well as guideline documents and prior meeting minutes (if available).

Without formal, consistent orientation for new committee/caucus members, roles and responsibilities for new members may not be clearly understood. This could lead to ineffectiveness in the operation of the oversight bodies as intended.

Recommendation

4. The Senior Assistant Deputy Minister, TAG Sector should ensure that orientation material is developed for Regional Caucus, Federal Caucus and Federal Steering Committee members so that all members have a consistent understanding of the purpose and role of the committee/caucus, the role of the oversight body in the overall IMF and their individual responsibilities as a member to ensure effective operation of the oversight body.

6. MANAGEMENT ACTION PLAN

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>1. The Senior Assistant Deputy Minister, Treaties and Aboriginal Government (TAG) Sector should work with the oversight bodies to ensure that the roles and responsibilities for the proactive monitoring of federal obligations are formally defined for the three (3) decision-making bodies and embedded in the appropriate Terms of Reference/mandates and meeting agendas. Additionally, reporting requirements should be established to ensure that AANDC provides these oversight bodies with obligation status-related information required to monitor the status of implementation and ensure that obligations are being implemented on a timely basis.</p>	<p>Agreed.</p> <p>TAG, Implementation Branch (IB) will propose the development of monitoring and accountability tools, such as an annual letter from the DM to his DM colleagues that will ensure OGD's are aware of the status of their obligations.</p> <p>The Department will also propose to OGDs other mechanisms on the establishment of a focal point to ensure obligations are being met by other government departments.</p>	<p>Senior Assistant Deputy Minister, TAG Sector</p>	<p>Q2 2014-15</p>
<p>2. The Senior Assistant Deputy Minister, TAG Sector should ensure that a structured business process is defined for the update of the Treaty Obligation Management System (TOMS) on a regular basis (i.e. quarterly) by obligation owners with follow-up, as necessary. The caucuses and Federal Steering Committee should be provided status-related information from TOMS to proactively monitor the status of implementation.</p>	<p>Agreed.</p> <p>TAG, Implementation Branch will continuously improve and implement a business plan that is currently in place, incorporating business process elements within it.</p> <p>IB meets regularly with OGDs to review their agreements and information in TOMs to ensure there is agreement on obligations assigned to each OGD.</p>	<p>Senior Assistant Deputy Minister, TAG Sector</p>	<p>Q2 2014-15</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>3. The Senior Assistant Deputy Minister, TAG Sector should work with the OGDs to develop formal Terms of Reference/mandates for the regional caucuses that set out their purpose, membership, roles and responsibilities, frequency of meetings and required activities/documentation.</p>	<p>Agreed. TAG will develop terms of reference and share with FSC.</p>	<p>Senior Assistant Deputy Minister, TAG Sector</p>	<p>Q1 2014-15</p>
<p>4. The Senior Assistant Deputy Minister, TAG Sector should ensure that orientation material is developed for Regional Caucus, Federal Caucus and Federal Steering Committee members so that all members have a consistent understanding of the purpose and role of the committee/caucus, the role of the oversight body in the overall Federal Framework and their individual responsibilities as a member to ensure effective operation of the oversight body.</p>	<p>Agreed. TAG will fully roll out Collaboration and GCPedia tools and websites and provide regular updates to FSC and Federal Caucus and OGDs as requested/required</p>	<p>Senior Assistant Deputy Minister, TAG Sector</p>	<p>Q3 2014-15</p>

Appendix A: Audit Criteria

To ensure an appropriate level of assurance to meet the audit objectives, the following criteria were developed to address the objectives as follows:

Audit Criteria	
Oversight and Coordination	
1.0	AANDC actively communicates with and provides guidance to OGDs on CLCAs/SGAs and their direct and indirect obligations.
2.0	A cross government tracking and reporting mechanism has been established for federal obligations provided within existing CLCAs/SGAs.
3.0	There is a mechanism in place to assess issues/concerns by OGDs on CLCAs/SGAs which translate to issue-specific guidelines.
4.0	A formal governance structure is in place to monitor and escalate federal obligations for all CLCAs/SGAs.
5.0	Proper record keeping of obligations is maintained that facilitate tracking of federal obligations for all CLCAs/SGAs.
Coordination of Government of Canada Obligations:	
6.0	All funding released under a CLCA/SGA is approved by the appropriate delegated authority in accordance with the requirements of the relevant agreement.
7.0	Disbursed funds are used in compliance with the work plans / budgets approved by AANDC.
8.0	AANDC collaborates with designated representatives from OGDs to provide the federal input in the mandated reviews in accordance with the CLCAs/SGAs.
9.0	Canada's representatives on the Implementation Committees are appropriately appointed by the Minister (where necessary) in a timely manner.
10.0	AANDC fully engages the federal government (as necessary) in their role on the Implementation Committee.
Ongoing Implementation Activities:	
11.0	Timely identification and recommendations of qualified candidates on boards and committees by AANDC.
Monitoring and Managing AANDC's Implementation:	
12.0	AANDC obligations are formally assigned to the appropriate sector/ region within AANDC.
13.0	There is ongoing oversight (i.e. monitoring and reporting) of the status of AANDC obligations.

Appendix B: Relevant Policies/Directives

The following authoritative sources (i.e. guidance documents/policies) were examined and used as a basis for this audit:

- Guide for Federal Implementers of Comprehensive Land Claims and Self-Government Agreements
- Instituting a Federal Framework for the Management of Modern Treaties (Implementation Management Framework)
- A Federal Implementer's Guide to Reviews in Self-Government and Comprehensive Land Claim Agreements
- Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties
- Process for Federal Caucus on Self-Government and Comprehensive Claims
- Streamlined Mandating and Approval Processes for Self-Government and Comprehensive Claims – FSC Process
- Contracting Policy Notice 2008-4 – Amendments to the Treasury Board Contracting Policy: Clarification of the obligations to monitor and report contracts under Comprehensive Land Claim agreements
- Treaty Obligation Monitoring System (TOMS) User Guide/Manual