

Speaking Notes for Barry Stuart  
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REFLECTIONS ON WHAT WORKS AND WHAT FAILS IN NEGOTIATIONS BETWEEN  
FIRST NATION AND CANADIAN GOVERNMENTS

Canada with at least four levels of government operating in every jurisdiction provides an incredibly rich resource for determining what works and what does not work in intergovernmental negotiations. Yet, we seem destined to repeatedly turn to what does not work and rarely apply what does. The past and current history of negotiations between First Nations and other levels of Government is infamous for failing to structure negotiations on what works to build and sustain good agreements.

There are many more than the following 12 elements needed to generate and enhance good agreements between First Nations and other levels of Government, and many more factors to consider than noted in each of these 12 elements. These reflections should get us started on the work desperately needed to ensure we build and sustain constructive agreements between First Nations and all other governments.

As First Nations step forward to assume governmental responsibilities we need to build processes and conditions that produce the best possible agreements and the best possible means of implementing agreements. This is a crucial nation building moment, one can say as important as any other nation building moment in our history.

### **A Dozen Elements for Consideration**

IN 1974 Papua New Guinea [PNG] stood on the brink of independence. Australia had been the colonial power governing Papua New Guinea since the First World War. The struggle for independence faced numerous challenges arising from resistance in both countries. PNG with 802 different languages, 3 million people, many parts of the country accessible only by sea or air, and several secessionist movements brewing, faced a difficult up hill struggle to maintain momentum for independence. From the Australian perspective, the spectrum of opposition ranged from genuine concern for the future of a very primitive country to a selfish desire to hold onto the substantial resource potential not yet fully exploited and retain control over a large land mass that offered a buffer between Australia and the threat of invasion from Asian countries. Negotiations between PNG and Australia urgently needed to successfully reach agreement. A deadlock in negotiations threatened independence. Public officials on both sides had reached an impasse on several key issues. The teams met to desperately find a break through. A break through seemed impossible. The Prime minister to be of PNG sought a private meeting with the Australian Prime Minister. At this private meeting, the strong relationship that had evolved between the two leaders was the foundation for both to make independence possible. They both took the risk needed to clear the way for independence.

The same PNG Prime Minister met secretly with a secessionist leader when all negotiations to bring a peaceful end to a pending violent confrontation had failed. Their long-standing relationship enabled them to meet secretly and find a way to avoid the loss of many lives in what seemed an inevitable violent war. Their relationship created the space for the difficult conversation essential to preserve independence.

Successful intergovernmental relationships depend on good relationships among leaders. The history of successful new governments and of great partnerships among governments, especially of peaceful co-existence bears witness to the critical importance of the courage to create and sustain good relationships among leaders. The same applies to the history of interactions between First Nations and all other governments in Canada. Bad relationships mark the failures in developing First Nation Governments as readily as good relationships mark successes. When good relationships exist throughout all levels of governmental interaction, the impossible is possible. Good relationships enable the focus of interaction to target mutual gain, to promote decisions based on the bigger picture and build mutual trust, respect and understanding. Without good relationships, an adversarial environment prevails fostering misunderstanding, distrust and Machiavellian complicated strategies driven by a barely concealed motivation to 'beat the other'.

From my participation in the struggle for independence in Papua New Guinea, to participating in several agreements in many different settings, to my work in negotiating the Yukon treaty and in implementing this agreement, one thing stands out ...bad relationships destroy the potential for great breakthrough agreements and turn good agreements into bad outcomes. In the Yukon history of interactions between First Nations and Canadian governments momentous advances have been made by great leaders who knew the importance of good relationships, and enormous potential squandered by leaders who never managed to muster the insight to see the larger picture, nor the courage to build the good relationships required to realize the larger vision. Many knew to say the right things, but persistently fell short of doing the right thing. Their failure was not a function of having the courage to 'stick to their guns ' but rather a function of not developing genuinely good relationships to appreciate what targets their guns ought to shoot at.

Thus there is only one, has always been only one element in producing and maintaining successful negotiations in any complex negotiations in any setting. The following twelve elements are part of what contributes to create and maintain the one singular element of successful negotiations...GENUINELY GOOD RELATIONSHIPS. Without good relationships, complex negotiations have little chance of generating innovative solutions to complex problems, of producing agreements that last, or of creating the foundation for mining the full potential of partnerships among the parties. Constructive relationships are essential to create the quality of governmental partnerships needed for First Nations to flourish, to realize their full potential to contribute to their people and thereby to all Canadians.

These 12 elements contribute to success in many different ways, but all contribute to building and sustaining genuinely good relationships.

## **1. Taking Care of Differences in a Good Way**

Marriage is a complex negotiation; one might even say a complex intergovernmental negotiation. Studies persistently reveal that the single most important factor in a successful marriage is the ability to resolve differences constructively. Conversely, a destructive process for resolving differences is the single greatest factor in destroying a marriage. A destructive process focuses on who is right, who is wrong, drives

toward winners and losers, renders the dispute more important than the relationship, removes responsibility for outcomes from the parties and plays by rules and values ill suited to strengthening relationships and undermines crucial shared objectives. Destructive processes are played out through power struggles ...power that is engaged by exercising power over another not by engaging all sources of power in working with each other to mutually discover innovative solutions.

Building constructive processes for dealing with differences among the parties is the hallmark of success in all complex negotiations. From negotiations in the kitchen, to over back yard fences, to over international borders, handling differences constructively is essential to good relationships.

Since every relationship inevitably involves conflicts, approaches to resolve disputes must be accepted by the parties, meet their particular needs and foster the fundamental building blocks of constructive relationships [mutual respect, understanding and trust]. The ability to constructively resolve differences creates durability and resiliency in every relationship.

Factors necessary to build a constructive process for resolving differences include:

- a. **Forums for dialogue not argument...** Working together at the outset to establish a safe place for difficult exchanges; a safe place that encourages dialogue not argument promotes actions based on shared values and engages differences in ways that promote trust and understanding. Dialogue seeks to understand not ignore differences, tackles underlying causes of conflict, not merely pass over differences with superficial compromises that leave fertile ground for differences to arise again and again in different settings.

Many decisions in negotiations demand that we find ways to listen to opposing points of view, and find ways to accommodate deeply held and differing values. Conventional decision making mechanisms tend to exclude rather than include different values and do not cope well with the complexity these differences introduce.

- b. **Build on shared principles** ...Processes for resolving differences built by the parties are successful if based on principles derived from common values and target shared visions for outcomes.
  
- c. **Build before need** ...Agreeing what to do with conflict before it happens can dramatically reduce the destructive potential of conflict. At the outset of any negotiation, the parties need to carefully consider and put into place a means of dealing with conflict. When one party sees no other option than to walk out in anger, a serious problem arises for all parties. Walking back into the room is much harder than walking out. Chasing the party to come back is not any easier. Creating a process in advance to respond to emotional walkouts, or to any conflict can reduce the magnitude of the conflict and move the parties beyond issues harboring the capacity to destroy negotiations.

Courts or any process that shifts responsibility to resolve differences to others, or engages the parties in adversarial exchanges can be destructive in marriages and in every other relationship. When the dust settles after any adversarial battle over differences, the center point of conflict may be shifted, but the issues that undermine relationships are often increased and relationships rendered less constructive. Adversarial processes are best used only as a last resort.

**2. Imagine conflict as opportunity.** Conflict offers a huge opportunity for innovative change and for building better relationships. Conflict contains enormous energy. This energy can be destructive or constructive. How conflicts are addressed determines whether conflicts are opportunities for building or for destroying relationships. Harnessing the energy in conflict constructively depends primarily upon the process engaged to resolve conflict. Process determines outcome.

### **3. Leaders Lead**

Every successful leader and certainly every successful politician knows getting anything done requires good relationships. Political leaders cannot abandon all the business of implementing

agreements to public servants, because this business has profound political implications. Whether it is negotiating or implementing agreements, this work is about constructing a new social contract for governments and their citizens. Developing new or amending existing social contracts involves constantly changing political choices.

Politicians need not be deeply involved at all times, but a close and direct connection is required throughout negotiations for several reasons.

a. A direct connection to the negotiations and to each other political leader is fundamental to the success of negotiations. Not just in the end but also throughout negotiations, political decisions are essential to progress. Negotiations are not about fitting mandates like pieces of a puzzle together. Reaching agreement requires stepping beyond mandates. Decisions only politicians can make.

b. Political choices require more than comprehensive briefings. For all leaders making the right choice in intergovernmental matters depends on the trust, mutual respect and understanding among political leaders. Briefings by officials cannot build these personal factors, only direct involvement of political leaders with each other within the negotiations can.

c. Nothing undermines relationships more effectively than failed negotiations or negotiations that drag on without significant progress. Long drawn out negotiations impose destructive demands on the limited resources and skilled staff of First Nations. Interminable negotiations without results are often interpreted by First Nations as a deliberate Government strategy, similar to a poker game where one party has a good hand, but the other with a large stack of chips can stay at the table raising the stakes beyond the means of others to stay in the game.

Only exchanges directly between leaders can recognize the true political costs of failed or interminable negotiations. Their timely interventions based on big picture political assessments can avoid the real costs to relationships of failed or drawn out negotiations caused by inflexible mandates and wrangling over details.

d. Direct exchanges among politicians are the only reliable means of ensuring they have a shared understanding of what all sides expect negotiations to achieve. A shared understanding of the purpose of negotiations is key to working together effectively.

Leaving politics to public servants is not fair to the public servants and a guaranteed way to ultimately undermine government-to-government relationships.

Yes, politicians cannot be intensely involved, nor can they only be involved as a last resort when negotiations breakdown.

#### **4. Talk About How To Talk**

How any negotiation starts enormously influences how the negotiation ends. Investing sufficient time and resources in talking about how to talk is rarely done and if done, is quickly done in the rush to 'get at it'. Talking about how to talk before jumping in to 'get at it' makes a substantial difference to outcomes. Indigenous people always knew this. Corporations and progressive governments are now awakening to the importance of beginning in a good way by talking about how to talk.

When negotiations are an integral part of an ongoing relationship, then as important as the agreement may be, relationships are always more important. Good relationships are not just necessary to reach innovative agreements, to successfully implement agreements, but as well to build the capacity to enter in a good way the many more agreements to come in an on going relationship. In negotiations within ongoing relationships, good relationships cannot be sacrificed for immediate gains.

Talking about how to talk at the outset of negotiations avoids short sighted focus on immediate gains by exploring the bigger picture of best interests, enhances the prospect of reaching practical and durable agreements, and strengthens relationships for working past barriers that inevitably turn up in the process of negotiation.

What does talking about how to talk include?

- *Exploring shared values and visions of the future [a shared image of the future can be fundamental influence on current attitudes and actions]*
- *Identifying not just what one party wants, but what both parties need to achieve [this talk can initiate a shift from positions to interests]*
- *Determining and agreeing on what needs to be talked about, who needs to be included, how to create a safe place for difficult exchanges. Knowing what to expect in any negotiation process and how to pursue expectations profoundly contributes to secure commitments to the process.*
- *Clarifying what information will be needed, what external events may impact negotiations, and what challenges confront the parties in securing timely instructions are a few of the preliminary matters to address in creating the capacity for all parties to fairly participate.*
- *Agreeing on ground rules for maintaining a safe place*

- *Gaining a better perspective on what elements must be designed into the process to fit the special circumstances of the parties and the matters to be negotiated. [Every negotiation process design will be different, but the most successful processes are built on the same principles. Just as all well constructed buildings can be very different but all are based on very similar construction principles. See attached appendix A for process design principles common to many successful processes.]*
- *Identifying the incentives for all parties in reaching agreement and the negative consequences of failing to agree. If parties do not have a clear appreciation of what is to be gained from working together or a full appreciation of the consequences of not working together their commitment to the process will readily falter. Conversely, understanding these matters builds and retains commitment.*
- *Appreciating what preliminary matters should be dealt with before the process gets under way (for example, pre-negotiation to bring key participants to the table)*
- *Assessing what parallel activities must be considered (for example, a pending legal action, or election)*

Talking about these topics and many others is instrumental in creating good relationships to begin and in reducing the source of several destructive challenges to good relationship encountered throughout negotiations.

The need for talking about how to talk remains throughout the process. Even when agreements are reached, a need persists for talking constructively between governments at all levels. The magic in good relationships is not in agreements, the magic resides in talking, in constructive talking that builds relationship, that generates the understanding and respect essential to turn talking into action. A western Chief noted a long time ago that

*Once a long time ago, First Nation people sat down with government people, smoked a peace pipe together, talked for a long time, learned to see who we were, what we needed. Now we just 'make paper' .Now, he noted, his people had to send young people off to learn how to be 'paper makers.'*

Agreements are simply benchmarks that mark next steps in a long journey. Talk and most important dialogue among governments never ends, the focus may change but if it ends, the end of their constructive relationship is not far off. Thus it is always crucial to talk about how to talk to ensure the talk continues in a good way.

## **5. Home Made Process**

There is no off the shelf processes ready made for every relationship, for every negotiation. Certainly there is no one size fits all process for every relationship. The best processes are 'home built' by the parties, not mandated by any one party. Self-built processes are more relevant, flexible and durable. Because the parties build it and own it they will make it work by collectively working on adjustments necessary to fit each issue encountered.

Reaching agreement on how to proceed provides participants with an opportunity to practice and experience reaching agreement before they address substantive issues.

A lack of clarity about what a process aspires to achieve, how, when and who will be involved and the respective responsibilities of each participant places relationships and negotiations at risk. In designing their own process the parties are in the best position to ensure the requisite level of clarity.

Accountability must be imbedded in a successful process. Relationships become unglued and serious conflict is certain when expected measures of accountability are breached. The precondition to accountability is clearly appreciating what is expected from participants in negotiations and from within their organizations. Each party has the best understanding of how their respective governing structures work and thereby can ensure the limits of their respective internal processes are understood and incorporated into the design of the process.

## **6. Power of Good Questions**

What is, and what people think is" are often two different things. Whether one calls it perceptions or metaphorically "Elvis sightings", behavior is driven by what people believe or assume to be true. People have different ways of looking at the same things. These different perceptions can derail negotiations and undermine relationships. What we believe to be true affects how we act and how we approach each other. The power of a well thought out question can dramatically remove much of the damage caused by a failure to appreciate differences in perceptions of reality.

Further what we think, what we do, and especially how we approach change is substantially impacted by the questions we ask. Asking questions about what works starts a journey in a very different way than asking about what does not work. The more positive the question the more positive the collective sense of what is possible. The ask ought to be what can we do to produce the best outcome for all parties. Asking questions about what is life giving not life destroying contributes to the enormous supply of positive affect and attitude necessary to generate the commitment required to turn dreams into reality through negotiations.

## **7. Awareness of Barriers to Agreement**

Governments are accustomed to doing their business in certain ways and First Nations governments are acclimatized to doing business with other governments in certain ways. If relationships between governments are to be improved both will need to develop new ways of doing business. Identifying what has been a barrier to good relationships and what needs to change is a necessary start to avoiding the 'same old same old' problems. Working together to remove or reduce old barriers is the best means of both parties demonstrating their good faith to begin working at the highest levels of collaboration.

## **8. Throw away mandates**

If mandates were only indicators of comfort zones, not hardened rules, if mandates were openly available to all parties, not secret instructions for battle, if mandates were jointly developed, not unilaterally imposed, if mandates evolved after the parties shared their visions of a future, not constructed long before the parties met, then maybe mandates would be worth keeping as they might be important guides and not weapons in an adversarial battle.

What constitutes successful negotiations can never be individually measured, can never be measured by whether the agreement 'cost less' than the budgets mandates imposed. The measure of a success has little to do with initial mandates but rather must be measured by the collective sense of fairness among all parties and ultimately by whether the agreement enhances the capacity of the parties to work collaboratively to build upon the agreement rather than turn to fight over what an agreement does or does not contain.

## **9. Build Continuity**

Over time people involved and the circumstances surrounding and influencing the making of agreements change. In these changes the collective memory of implicit promises and intentions molding agreements, as well as the constructive spirit and nature of institutional relationships created within negotiations dissipate, sometimes differentially among groups as people and situations change differently over time. The legacy of these changes is tension and misunderstandings that boil into conflicts. Conflicts that render partners into warring parties who often then take their conflicts to litigation. Maintaining an “institutional “ memory of the spirit and intent of an agreement is critical to mine an agreement’s potential for constructive change in relationships.

Too often those who negotiate agreements have little to do with implementing agreements. Lawyers or those who have become known as ‘negotiators’ who lead negotiations once an agreement is reached move on to other negotiations, other responsibilities. The Public servants working in the field or managers in line departments who usually lead implementation negotiations are generally excluded from or only peripherally involved in the initial negotiations. Rarely is enough done to transfer the knowledge of negotiation teams to implementation teams. It is a persistent delusion to believe that handing over the agreement like a baton in a relay race from negotiators to implementers transfers the success in negotiations to a successful finish in the implementation phase. The magic of a successful negotiation is never adequately captured in the words of an agreement. The magic lies in the new relationships and in the abiding spirit of what is intended. It is the spirit of agreement and the new relationships that steer the agreement through the inevitable unforeseen changes that escaped the crystal ball gazing of negotiators.

Many steps can be taken to retain the overriding spirit and intent of agreements. Keeping lawyers or ‘negotiators in play during implementation is not one. Conversely, one of the steps needed calls upon involving in initial negotiations those who must live with the agreement, the managers and officials in the field who must make the changes introduced by the agreement work in real life.

As the business of land claims became institutionalized, departments were established to look after implementation. This will be a regressive step if these new departments do not fully engage the public servants who will live with the changes agreements introduce to their daily business. At every phase of creating and implementing agreements, the more directly the officials on all sides who are responsible for implementing agreements are involved, the more likely the agreement will be practical and in many ways the more likely the agreement will be successfully implemented.

In the very least all parties must recognize the need to talk about how the agreement will be implemented before completing the initial negotiations. Implementation is an essential part of the success of every agreement. This talk will need to address how to incorporate the original intent in monitoring, reviewing, adjusting and adapting agreement as situations evolve and change.

Maintaining the continuity of the spirit and intent of agreements is not just critical for the durability of the agreement but essential in retaining and enhancing relationships among the parties. Agreements between First Nations and other levels of Government if they fail to generate the conditions and relationship for collaboration they fail to help any government serve the best interests of their citizens.

#### **10. Agreement is a Beginning not an End**

Reaching an agreement marks not the end, but the beginning of a critical phase in building relationships. The initial phase of building a new social contract among governments, negotiating agreements, attracts the attention of leaders, of the press and of the public. In relative terms the importance and magnitude of the second phase, implementing agreements, receives inadequate attention and resources required for success. A failure to recognize the importance of implementation has much to do with the unraveling of any good relationships among the parties generated by reaching an agreement. One hears all the inspiring speeches about the dawning of a new era rung in by reaching a Land Claim Agreement. Agreements require much more than inspiring speeches to live up to their promise.

#### **11. Build Connections Beyond The Table**

Relationships among governments are directly and significantly influenced by the views of their respective constituencies. What government's think and do are not a function solely of what they want to do, but are profoundly shaped by what they believe they must do to placate\serve powerful interest groups. Investing resources and time to collectively discover and answer the concerns of all interests impacted by agreements can significantly reinforce government commitments to their agreements and to each other. Building an inclusive and open process for both the negotiation and implementation of agreements can improve the content of

agreements, increase the support for and practical nature of implementation measures, and strengthen the resolve of governments to work together. Sooner or later the voice and influence of those kept outside the process will be heard. Better sooner if their support for and inputs are genuinely sought.

Imagine briefing third party interests before briefing political decision makers! Every time when that happens third party interests feel and are respected. They are then more likely to become allies not enemies of the process. Their inputs shift from creating barriers to building bridges. Their inclusion renders the process transparent. From meaningful participation of third party interests politician's fears over what third parties might do are replaced by what third parties genuinely need to be supportive. The biggest surprise for politicians flowing from third party involvement is the difference between what politicians assumed was the intransigent third party position and what emerges as the real interest of third parties. Given a chance to be meaningfully engaged shifts most people from hardened opposition to curiosity of what might happen if. ...and in some cases to active support of outcomes their input helped shape.

## **12. MUTUAL RESPECT**

Western government leaders have yet to fully recognize the new politicians in the political community. First Nation Chiefs are every inch as deserving of the same respect as the leaders of any western government. In words, speeches, and in public ceremonies appropriate respect for First Nation Chiefs is often manifested. But in the day-to-day behind the scenes business of government the appropriate measure of respect is often lacking. When a western leader calls a Chief or visits a First Nation what would happen if it was not the Chief on the other end of the call or at the door to meet the western leader? In the very least relationships would suffer. Yet when a Chief makes the call or the visit to a western leader often a public servant takes the call or turns up to meet the Chief. Among leaders it is not the size of a leaders power that matters, but the position of leadership. It is not the person but the position that warrants respect. Certainly respect for the person enhances relationship. The first is warranted by the position held, the second is earned. Even nations at war understand that positions of leadership are respected.

Relationships, effective working relationships depend on genuine equal measures of respect in all interactions between and among leaders. One could argue when western leaders urgently needed support from Chiefs in the 18<sup>th</sup> and 19<sup>th</sup> century, western leaders readily accorded respect to Chiefs.

For many and for me, experiencing the lack of respect some western leaders and some public servants show Chiefs has been a source of embarrassment and shame. Conversely when the requisite respect is shown, it is a source of pride and hope in the potential of partnerships between First Nation and Western leaders, between aboriginal and all other Canadians.

## **We can be certain of at least four things ...**

**Change is coming that the agreements did not \ could not foresee**

- 1. Any government alone cannot successfully manage the complexity of current and future problems. Collaboration among all governments at all levels is an essential pre condition to cope with the complexity of issues confronting all governments**
- 2. Without fundamental changes in the way governments interact and relate, there will be no change in outcomes and no ability to genuinely collaboratively manage current complex challenges.**
- 3. The individual and collective capacity of governments to collaborate will be determined by how governments talk and relate.**

**If we are going to give future generations a fighting chance to govern effectively we have to find a way to stop fighting among governments and build the collaborative regimes desperately needed to negotiate and implement agreements. It is not the technical details that need attention: it is how governments interact and talk.**

Barry Stuart September 2010 CSE

## APPENDIX A: GUIDING PRINCIPLES FOR DESIGNING PARTICIPANT DRIVEN COLLABORATION

The thirteen multi-stakeholder Round Tables of Canada, and the Canadian Council of the Ministers of the Environment developed through a national negotiation process of nearly three years a concise, comprehensive, and authoritative statement of principles which were set out in the 1993 document “Building Consensus for a Sustainable Future: Guiding Principles”. These principles were developed under the leadership of a National Task Force

While others have evolved similar principles and articulated them in different ways, what distinguishes this work is the manner in which it was created, and the range and depth of perspective that was reflected from across the country in the consensus achieved. Any process designed to respond to complex issues will need to be specially shaped to meet the particular circumstances and players. The Guiding Principles set forth below in summary form offer guidance to design processes that generate effective working relationships and produce innovative sustainable outcomes

### *PRINCIPLE #1 - Purpose Driven*

*People need a reason to participate in the process.*

*The parties should have a common concern and believe that a consensus process offers the best opportunity for addressing it. This belief requires an informed understanding of consensus processes and a realistic view of available alternatives. If the parties conclude consensus offers a better option to pursue their interest, then a greater commitment to the process and its outcomes will be generated.*

*Business, government, non-governmental organizations, and other groups can apply consensus processes to a wide range of situations including planning and policy development, and regulation, licensing, and site-specific development.*

### *PRINCIPLE #2 - Inclusive not exclusive*

*All parties with a significant interest in the issues should be involved in the consensus process.*

*Care needs to be taken to identify and involve all parties with a significant interest in the outcome. This includes those parties affected by any agreement that may be reached, those needed to successfully implement it, or who could undermine it if not included in the process.*

*It is sometimes appropriate for those representing similar interests to form a caucus or coalition.*

*When decisions require government action, the appropriate authorities should participate.*

*The integrity of a consensus process may be compromised if the parties are not given the opportunity to determine their representatives through their own processes and mechanisms, particularly in circumstances where the direct interests of the parties will be affected by the outcome.*

### *PRINCIPLE #3 - Voluntary Participation*

*The parties who are affected or interested participate voluntarily.*

*The strength of a consensus process flows from its voluntary nature. All parties must be supportive of the process and willing to invest the time necessary to make it work. The possible departure of any key participant presses all parties to ensure that the process fairly incorporates all interests.*

*A consensus process may complement other processes. It asks the parties to make their best efforts to address issues through consensus. If that process fails, participants are free to pursue other avenues.*

#### *PRINCIPLE #4 - Self Design*

*The parties design the consensus process.*

*All parties must have an equal opportunity to participate in designing the process. There is no “single” consensus process. Each process is designed to meet the circumstances and needs of the specific situation.*

*An impartial person, acceptable to all parties, can be an important catalyst to suggest options for designing the process, but the ultimate control over the mandate, agenda, and issues should come from the participants themselves.*

*Designing a consensus process enables the participants to become better acquainted before they deal with difficult substantive issues.*

*It is important to take time at the beginning to:*

- Define the issues clearly;
- Assess the suitability of a consensus process for each issue - as opposed to other decision making processes;
- Clarify roles and responsibilities for everyone involved;
- Establish the ground rules for operating.

*Establishing ground rules up front, and allocating time for the participants to appreciate each other’s values and interests can help communications.*

#### *PRINCIPLE #5 - Flexibility*

*Flexibility should be designed into the process.*

*It is impossible to anticipate everything in a consensus process. By designing flexibility into the process, participants can anticipate and better handle change when it faces them.*

*A consensus process involves learning from the perspectives of all participants. Feedback must, therefore, be continually incorporated into the process.*

*Flexibility is important. The initial design may evolve as the parties become more familiar with the issues, the process, and each other.*

#### *PRINCIPLE #6 - Equal Opportunity*

*all parties have equal access to relevant information and the opportunity to participate effectively throughout the process.*

*All parties must be able to participate effectively in the consensus process. Unless the process is open, fair and equitable, agreement may not be reached and, if reached, may not last.*

*Not everyone starts from the same point - particularly in terms of experience, knowledge and resources.*

*For example:*

- The process involves time and expenses - resources that not all participants may readily afford
- The process revolves around the sharing of information on issues and impacts - something to which not all participants have ready access

*To promote equal opportunity, consideration needs to be given to providing:*

- Training on consensus processes and negotiating skills
- Adequate and fair access to all relevant information and expertise
- Resources for all participants to participate meaningfully

#### *PRINCIPLE #7 - Respect for Diverse Interests*

*Acceptance of the diverse values, interests, and knowledge of the parties involved in the consensus process is essential.*

*A consensus process affords an opportunity for all participants to better understand one another's diverse values, interests, and knowledge. This increased understanding fosters trust and openness, which invaluablely assists the participants to move beyond bargaining over positions to explore their underlying interests and needs.*

*Recognizing and addressing all relevant stakeholders' values and interests provides a basis for crafting creative solutions that are more likely to last.*

*Sometimes parties may be deeply entrenched in an intense conflict prior to a consensus process. Reaching a consensus agreement involves exploring and developing common interests despite differences in values.*

#### *PRINCIPAL #8 - Accountability*

*the participants are accountable both to their constituencies and to the process that they have agreed to establish.*

*It is important that the participants representing groups or organizations effectively speak for the interests they represent. Mechanisms and resources for timely feedback and reporting to constituencies are crucial and need to be established. This builds understanding and commitment among the constituencies and minimizes surprises.*

*Given significant public concern about environmental, social and economic issues, keeping the public informed on the development and outcome of any process is important.*

#### *PRINCIPLE #9 - Time Limits*

*Realistic deadlines are necessary throughout the process.*

*Clear and reasonable time limits for working towards a conclusion and reporting on results should be established. Such milestones bring a focus to the process, marshal key resources, and mark progress towards consensus.*

*Sufficient flexibility, however, is necessary to embrace shifts or changes in timing.*

*PRINCIPLE #10 - Implementation*

*Commitment to implementation and effective monitoring are essential parts of any agreement.*

*Parties must be satisfied that their agreements will be implemented. As a result, all parties should discuss the goals of the process and how results will be handled. Clarifying a commitment to implementing the outcome of the process is essential.*

*The support and commitment of any party responsible for follow-up is critical. When decisions require government action, the participation of government authorities from the outset is crucial.*

*A post-agreement mechanism should be established to monitor implementation and deal with problems that may arise.*