



Northwest Tribal Treaty Nations

NWTN Nations Governance Project

Phase Two Summary Proceedings

Building a Foundation for the Future

“We have a chance to make a difference.”

Northwest Tribal Treaty Nations
April 2003

TABLE OF CONTENTS

TABLE OF CONTENTS	2
INTRODUCTION	3
PHASE TWO COMMUNITY MEETINGS SUMMARY	4
1. First Nations Governance Act	5
A. The Proposed Legislation	5
B. General Context for First Nations Governance	6
i. Capacity to Govern	6
ii. Community Capacity to Participate in Governing	7
2. Northern Economic Strategy: Building and Being a Part of the Northern Economy	8
a. Internal First Nations Issues	8
b. External Relations	9
c. Specific Strategic Needs and Opportunities	10
3. Current Issues: Committee Working Groups Update	10
a. Forestry	10
b. Health	11
c. Child and Family Services	11
d. Wildlife	11
4. Other Concerns	11
a. First Nations History	12
b. Reserve Land Management	12
c. Racism	12
d. Consultation	12
5. Future of Northwest Tribal Treaty	12

INTRODUCTION

In April 2000, the Honourable Robert Nault, Minister of Indian Affairs and Northern Development officially announced his intention to introduce legislation in Parliament to reform the *Indian Act*. Specifically, the Minister intended “to modernize the governance components of the *Indian Act* and provide First Nations people with the governance tools needed to improve the quality of life in their own communities.”

The Minister introduced this legislation as Bill C-61, the *First Nations Governance Act* on June 14, 2002. The legislative process was interrupted when Parliament prorogued for the Queen’s visit in September 2002 and the Bill was reintroduced as Bill C-7 on October 9, 2002. Since that time, the Bill has been in committee review by the all-party parliamentary Standing Committee on Aboriginal Affairs and Northern Development.

It is anticipated that the Bill will be enacted this spring, and will come into effect in 2006. A series of “default regulations” that will prescribe the procedures required by the Act will be developed and enacted during that period.

The Bill has been forcefully rejected by many First Nations and First Nation organizations in Canada. The Northwest Tribal Treaty Nations (NWTT) adopted a different approach to this controversial issue. That approach accepted that there was a pressing need to pursue changes to the *Indian Act* provided that NWTT was involved in identifying the areas for change and in developing the proposed new legislation.

As a first step to achieving this, NWTT negotiated a contract with the Department of Indian Affairs to conduct consultations with its member nations. Under the direction of a Steering Committee comprised of representatives from the First Nation signatories to the 1991 Northwest Tribal Treaty, NWTT proceeded according to a four stage process.

Phase One was the establishment of teams of resource people to visit the member communities to inform them of the content of the governance initiative and to seek reactions and recommendations. These meetings took place from January to March, 2002 and the proceedings were summarized in a detailed Phase One Final Report dated May 27, 2002.

Phase Two is currently underway and involves further community consultations to build on more current information and the results of Phase One. These discussions are intended to formulate more focused input to the governance initiative. This report summarizes the proceedings of these meetings.

Phase Three is intended to develop a joint proposal between INAC and NWTT to implement the results of Phases One and Two. To the extent that this stage may yet proceed, this report is intended to inform that process.

Phase Four will involve further development and implementation of NWTT participation in the actual legislative process of the *First Nations Governance Act*. This objective was partially fulfilled on February 20, 2003 when the Northwest Tribal Treaty made a formal presentation to the parliamentary Standing Committee on Aboriginal Affairs and Northern Development sitting in Prince Rupert.

Although the NWTT Nations Governance Project is focused on the analysis and development of the First Nations Governance initiative, the project also provides an opportunity to address other pressing issues. These issues include advancing a northern economic development strategy and the work of NWTT committees dealing with Forestry, Health, Child and Family Services, and Wildlife.

Community members who participated in the Phase Two meetings also took this opportunity to raise other matters of concern. Where applicable these are included in this report to provide a permanent record and more importantly, to clarify the context for further governance development.

PHASE TWO COMMUNITY MEETINGS SUMMARY

Between February 12 and March 5, 2003, community meetings were held as follows:

- February 11, 12, 13 and 14 in Prince Rupert
- February 18 in Hazelton
- February 19 in Smithers
- February 21 in Terrace
- February 25 in Haida Gwaii
- March 3 in Burns Lake
- March 4 in Stella'ten
- March 5 in Prince George

Although attendance varied according to weather and unforeseeable community obligations, a total of one hundred and ninety-seven community members formally registered at these meetings.

The specific objectives of each meeting were:

- To share information on the Indian and Northern Affairs Governance Project
- To share information on the Northwest Tribal Treaty Group and the NWTT Governance Project
- To hear thoughts and ideas about governance in the communities in the short and long term
- To discuss next steps

Discussions to achieve these objectives at each meeting were structured according to the following three topics:

- The *First Nations Governance Act*
- Building and being a part of the Northern Economy
- Current Issues: Forestry, Health, Child and Family Services, Wildlife

Following is a summary of those discussions.

1. *First Nations Governance Act*

Participants addressed the specific provisions of the draft legislation at various levels of detail, but discussions tended to focus on broader issues related to the capacity to govern and to be governed.

A. The Proposed Legislation

Participants recognized that the *Indian Act* governs fundamental aspects of the lives of Indian people from before birth until after death and is in need of reform. However participants expressed considerable suspicion about the Department of Indian Affairs First Nations Governance initiative. Some saw it as a resurrection of the 1969 White Paper. Others have concluded that the Department is attempting to divest itself of its fiduciary and financial obligations without adequately addressing the corresponding needs of First Nations.

Although prior levels of awareness about the legislative initiative varied among the communities, there is a commonly shared suspicion that the Department is not providing full information on this and other initiatives. Many participants raised concerns about the level of consultations on this initiative and were sceptical about the Department's claims regarding the extent and purpose of these consultations. Others reacted against the apparent presumption that Chiefs and Councils are corrupt.

Even though past experience has not always been positive, membership rules and development of membership codes were recognized as important matters. The continuing effects of Bill C-31, including financial obligations that were imposed on Bands without commensurate funding, remains an important governance issue and a barrier to trust in new legislative initiatives.

Participants recognized the importance of clarifying the legal status and capacity of First Nation governments. At the same time, the implication of the proposed legislation changing these parameters on basic activities needs to be clearly understood. For example, will this change in capacity and any corresponding change in fiduciary obligations affect the practice of securing credit through ministerial guarantees? As well,

there is concern with the concepts of legal status regarding “holding” and “disposing of” land.

Community participants have also concluded that neither the *Indian Act* nor the proposed *First Nations Governance Act* accommodates the diversity of First Nations. The proposed legislation leaves no room to incorporate First Nation values or collective rights. In this and other respects, participants did not see the proposed legislation as being based on First Nations needs.

A number of other more specific provisions of the proposed legislation were identified as requiring attention and clarification. These included:

- The need for clarity on the impact of criminal charges on leadership selection
- Extraordinarily high ratification requirements
- The need for information on the proposed “Default Regulations”
- The need for mechanisms to remove councillors from office for cause
- How the unspecified residual powers of the Minister contained in the proposed legislation might be used
- Enforceability of bylaws
- The need for clarification as to the effect of the new legislation on Freedom of Information and Privacy legislation

One participant expressed support for the application of Human Rights Legislation. Several participants in the workshops identified interest in a legal analysis and strategy to address shortcomings in the proposed legislation. Others suggested that the First Nations Governance Act might provide a fall back process, or perhaps an interim step, if treaty negotiations do not succeed.

B. General Context for First Nations Governance

i. Capacity to Govern

Much of the discussion in the communities passed over the specific provisions of the proposed legislation and focussed on the general context within which any governance system must operate. These discussions approached this issue from two perspectives: one, the capacity of First Nations to govern and two, the capacity for community members to participate in good governance.

As to the capacity for First Nations to govern, many of the concerns were related to fiscal issues. These discussions are summarized under the following section of this report dealing with a northern economic strategy. Band Councils are universally caught between member needs and expectations, and lack of adequate resources for programs. Some participants suggested that centralized institutions that realize economies of scale need to be considered, for example, in housing program delivery.

Other requirements that were identified included the need to develop new governing institutions and institutional capacity. Creativity and “thinking outside the box” were identified as critical to this development process. The alternative is to “continue to manage our oppression” as a mere delivery arm of departmental programs over which aboriginal governments have no meaningful control and to operate in a reactive mode rather than taking control of the developmental agenda. In this and other respects, such as economic arrangements, effective policy-making was recognized as an important aspect of governance.

Throughout the proceedings, participants stressed the importance of understanding and accommodating the role of hereditary governing systems. At one level, these systems provide a historical model of independence and a system of governance that was accountable and effective. It is possible even under the existing *Indian Act* to develop “custom” forms of government. Referring back to the hereditary systems may make it possible to define a modern identity while remedying the effects of colonialism and imposed governing systems. However that process requires community support.

Preservation of languages was identified as an important part of building on the past so as to move forward in governance and other areas.

At another level, most participants see governance as an aboriginal right which depends for its validity on links to prior aboriginal governing systems. Some remarked on the need for any new governance initiative to include a non-derogation clause so as not to infringe this pre-existing right. Other participants expressly recognized that the Charter of Rights and Freedoms could affect some aspects of the hereditary systems.

ii. Community Capacity to Participate in Governing

As to the capacity of First Nation members to participate in well-governed communities, key needs identified were the need to inform the members of how governance systems work. These basic issues include development and operation of constitutions, accounting systems, understanding the Canadian political system and the role of the Department of Indian Affairs. Although change is always threatening, community members must be assisted to understand and cope with this change.

A corresponding need is to overcome jealousies and negativity in the communities. This will be a huge challenge, but aboriginal people bear some responsibility to assess and deal with these problems. As one participant put it “we have to look at the external barriers and the barriers we have set up for ourselves.” The starting point for building this healthy foundation is simple, open dialogue. Part of this is the need to be honest about cultural changes and influences.

Another approach is to be less critical and more analytical of those in the community who stand for elected office or other leadership roles. Chief and Council are often “caught in the middle” between members and the Department. They are required to defend

unpopular departmental policies. They are overworked, under resourced and often powerless. As one Chief Councillor stated, “people probably need to hear what we’re going through.”

At a very practical level, members need to understand that they need to come out and vote in ratification processes. Members also need to get involved in activities such as fund raising and volunteer programs that help to offset fiscal limitations in the Bands. Greater member involvement in community affairs would result in more social control as opposed to outside policing, which would be more consistent with First Nation values.

Many participants stressed the importance of joint efforts at the political and economic development level. A necessary part of independence is learning to work together.

2. Northern Economic Strategy: Building and Being a Part of the Northern Economy

The link between healthy economies and effective governance was a central theme throughout the sessions, reflecting the basic reality that it is not possible to separate economic and political issues. Workshop participants approached this issue from two perspectives: issues internal to First Nations on one hand, and issues involving relations external to the First Nation on the other.

a. Internal First Nations Issues

A recurring theme stressed the need for adequate resources to develop, implement and enforce First Nation laws, institutions and institutional capacities.

Relations between First Nations and members residing off-reserve comprised a subset of this issue. At a very basic level, there is insufficient capacity to adequately communicate with off-reserve members, or in some cases for those members to communicate with their Bands. Some saw this as a calculated effort by the Department to keep people divided. At the same time, rural and isolated reserves are not benefiting from new programs being developed for urban aboriginal people and urban reserves.

The Department of Indian Affairs’ requirement for audits of First Nation accounts were identified as a significant burden. Although no one questioned the need for accountability in respect of Band operations, the Department does need to recognize the present and future administrative and other costs associated with its escalating demands for accountability, and become more efficient in its requirements.

The intrusion of departmental audit requirements into Band economic development corporations was identified as contributing to this administrative burden. Although it was not referred to specifically, the concept of “Own Source Revenue” was raised as a

concern in the sense that combining program transfer funds with First Nation business profits could be used to legitimize cuts to transfer funds.

Another issue identified was the difficulty of recovering debt from needy Band members, even though losses vest collectively on the First Nation. First Nations are also finding it necessary to subsidize cutbacks to social assistance.

Participants examined different aspects of the very small reserve land base available to support first nations and first nation governments in north-western British Columbia. While the Harvard Project on American Indian Economic Development has concluded that a successful economy can be developed without a large land base, it is recognized that there is a connection between the land base and economic potential and between the land base and the issues and structures that shape any government.

Many participants recognized the need to work together collectively if individual progress is to be made. A strategic point was made about the potential of remote communities to maximize their purchasing power through cooperation and coordination. This idea was extended to suggestions that strategic community joint ventures and partnerships be formed. In the same way, a number of small investors pooled together could create effective pools of skill and capital.

b. External Relations

In addition to economic issues which operate internally to NWTT member nations, workshop participants recognized the importance of coming to terms with practical issues and opportunities that may involve the larger regional political and economic community. The high proportion of aboriginal people in northern British Columbia was identified as an asset to developing these relationships.

At a government to government level, linkages with other governments, including NWTT discussions with the Union of BC Municipalities are an important element of governance and economic development. One First Nation also reported on positive experience participating in a regional Land and Resource Management Plan process.

Linkage with third parties who may be using or affecting First Nation lands and resources is equally important for a healthy economy. At a practical level, it will therefore be necessary to develop relationships with these industries and third parties. Such relationships are necessary to develop investor and partner confidence that First Nations will operate efficiently and fairly with third parties. Third parties also have a great deal of data that could be shared and used in aboriginal programs. However care must be taken not to incur the debts of third party partners.

Many barriers to First Nations are based on ignorance, but these can be overcome with mutual efforts such as cross-cultural exchanges and education programs.

c. Specific Strategic Needs and Opportunities

Participants were informed of the successful NWTT application for funding to support research into an economic development strategy. There was general support for this project and in addition to the broad approaches identified above workshop participants identified a number of more specific needs and opportunities. These are summarized as follows:

- Tourism was identified as an opportunity that could be realized on the existing land base
- Targeting international markets and customers is important
- Opportunities continue to exist in the wage economy, particularly in the trades, but it is necessary to avoid the trap of dead end training
- Economic “leakage” from the communities and flow of revenues through the communities need to be part of the economic development strategy
- Hereditary systems and historical knowledge may be used to recreate traditional inter-tribal trade relationships and exchanges
- Because of the complexities involved in First Nation economic development, building a mediation or adjudication function into economic development initiatives needs to be considered
- Limited access to economic opportunity extends into the inability to legally benefit from commercial fisheries opportunities. Members who have no access to economic opportunity other than fish sales are being charged.
- It may be timely to reassess approaches taxation in terms of creating advantages for First Nations communities.

Throughout the discussions, the conclusions of the Harvard Project on American Indian Economic Development were referred to positively. There was no reference to the proposed First Nations Fiscal Institutions Initiative and the suite of financial and statistical legislation that the department is proposing.

3. Current Issues: Committee Working Groups Update

a. Forestry

Formation of the NWTT Forestry Committee was seen as a positive development, but the Committee is unable to address all the issues. Important issues include:

- Access to timber
- Access to tenures
- Changes to forest legislation
- The international softwood lumber agreement
- Transferability of third party licenses
- Stumpage relief, “water bedding” and sliding scale calculations
- Revenue sharing

Workshop participants received a detailed briefing on the March 3 meeting between the NWTT Steering Committee and provincial Minister of Forests de Jong. NWTT will be working on a protocol with the Ministry of Forests to create a process to discuss revenue sharing and jurisdiction.

b. Health

Funding cutbacks are the major issue, with the situation of dentists opting out of the NIHB system being a recent and distressing development. The increasing amount of paper work required when obtaining medical services is a matter of general concern. Some members are concerned about not knowing how the information from those documents will be used.

c. Child and Family Services

The committee is currently inactive, but the most frequently raised issue was cutbacks to services. In some areas services have been cut by one-third. It will be necessary to re-involve communities and families in raising children but it will take time to develop programs that work. Child apprehension and removal from their families and communities remains a problem in some areas.

d. Wildlife

The committee is currently inactive. However cutbacks to field staff and enforcement officers are a growing problem. There is a need to explore possibilities for co-management and information sharing with adequate funding to support such arrangements. Biologists are managing wildlife from their computers but have no links to the actual situation on the ground. Non-resident hunters are active in the north, but contribute nothing to the local economies.

Firearm control is a persistent issue which some community members feel is not being adequately represented on their behalf by aboriginal organizations. The disrespectful way in which that legislation was imposed on hunting cultures was noted.

Inter-tribal protocols are needed for hunting and fishing.

4. Other Concerns

a. First Nations History

Participants in the community sessions frequently took the opportunity to connect present developments with the historical context for those developments. As noted earlier in this summary report, this has immense implications on the social and political context for all future governance issues. Historical injustices under the *Indian Act*, such as the “anti-Potlatch” laws and bad faith dealings or misunderstandings with the Department of Indian Affairs bureaucracy figured prominently in these presentations.

Participants noted that there is a need to preserve and pass on this history. At the present time it is inadequately presented in history books, but the aboriginal perspective on this history must be transferred to youth and the public so that the foundation for moving forward is clear.

b. Reserve Land Management

First Nations are not able to make their own decisions about reserve land use. Certificates of Possession have created problems that the Department has not resolved. One session identified difficulties obtaining tenure under Certificates of Possession as creating conflicts between members and the First Nation.

Another set of issues related to conflicts with hereditary governance systems and hereditary land holding systems when Certificates of Possession and other tenures are issued on and off reserve irrespective of those systems.

c. Racism

Discrimination in employment, housing and education still exists. Tax exemptions are a source of ridicule. This is a barrier to relationships with the overall community and to individual and collective opportunities.

d. Consultation

This highly important issue received considerable attention. Recognition of the need for government and industry to accommodate aboriginal interests emerged as an increasingly significant expectation but there was no specific discussion as to how “accommodation” might be defined in practice.

5. Future of Northwest Tribal Treaty

There was relatively little specific discussion of this agenda item at the workshops. One participant suggested that NWTT might assist the member First Nations to explore drafting of constitutions for their own governments. NWTT could have a role in implementing the *First Nations Governance Act*. NWTT is also seen as a clearing house for information. At the same time, it is noted that the NWTT approach to these issues very clearly reflects community priorities.