

A large, stylized graphic of a globe is centered on the page. The globe is rendered in shades of orange, white, and grey. A map of North America is visible on the globe's surface. Below the globe, there is a stylized profile of a person's head and shoulders, also in shades of orange, white, and grey. The globe is surrounded by a decorative border of grey, rounded shapes.

**NEGOTIATIONS SECTORAL  
FOLLOW-UP SESSION  
FLIP CHART NOTES  
FIRST NATIONS BREAKOUT GROUP**

The following reflects a transcription of the comments posted on flipcharts in response to the questions indicated below in boldfaced text, during the breakout group discussions.



## **FIRST NATIONS BREAKOUT GROUP NEGOTIATIONS SECTORAL FOLLOW-UP SESSION FLIP CHART NOTES**

### **FIRST NATIONS BREAKOUT GROUP**

#### Participant Introductions and Key Messages

Participants of the First Nations Negotiations of Aboriginal & treaty rights Sectoral Session were provided with the opportunity to introduce themselves and discuss at their tables key messages. Each table would record their messages on the flipcharts provided and report back to the plenary their input.

#### Launch Question

What **key messages** do you have for Canada (at all levels) with regards to negotiation?

#### **Table 1**

##### **Key Messages:**

- recognition of aboriginal rights and aboriginal title, and treaty rights (including implementation );
- get negotiations out of DIAND and into PCO or other;
- recognition needs to be mutual – Crown and Aboriginal;
- recognition/relationships building – ongoing process to be built on recognition.

#### **Table 2**

##### **Key Messages:**

- Canada recognizes inherent right to self government and starts now to build a new relationship;
- Canada must implement treaties according to spirit and intent of treaty relationship;
- relationship is two way street and ongoing process;
- Canada must provide adequate resources for research and legal services and negotiations;
- negotiations must be between politicians and not only bureaucrats;
- negotiations more transparent and less complicated;
- Moving from negotiations to listening to First Nations and see how to do it;
- recognize FIRST NATIONS as true governments and specific recognition (a voice) into Parliament;
- give time to develop FIRST NATIONS own systems;
- problem – recognition of inherent right down to bureaucrats;
- politics and processes updated to reflect current law;



### **Table 3**

#### **Key Messages:**

- speed up the process of negotiation and concluding agreements;
- more inclusive participation;
- dramatically change DIAND policy;
- less transaction, more relationship;
- be equals at the table, level playing field;
- implement existing treaties;
- don't lose sight of sacred document;
- treaties need to evolve over time;
- don't send negotiators with limited mandates;

### **Table 4**

#### **Key Messages:**

- live up to responsibilities to indigenous peoples;
- accelerate/negotiate faster/resolve;
- negotiate with mandate (power to say yes);
- rules (pre-negotiations, negotiations) model/identify problems/solutions;
- honour section 35 court decisions;
- policy cannot override decisions (don't appeal all victories);
- not bureaucratic – PM and higher cabinet;
- structures/processes (don't redo if done in other processes);
- recognition, negotiation, implementation First Nations traditional territories, resources;
- implement historic before making new treaties;
- reconcile, recognition, certainty;
- get rid of extinguishment – establish 'living' relationship;
- creative way to resolve impasse at negotiating tables (things outside box -> not limited by existing policy);
- alternative dispute resolution process;
- involve U.N. in nation-to-nation discussions;
- recognize historic treaty implementation as unfinished business;

### **Table 5**

#### **Key Messages:**

- #1 recognition of generic section 35 rights;
  - negotiate specifics;
  - less adversarial approach (greater respect);
- #2 representing all Canadians (honour of the Crown);
- #3 process more quickly to implement treaties.



## **Table 6**

### **Key messages:**

- Gender based analysis\inclusion of FIRST NATIONS women through capacity building strategy;
- The process of negotiation can and should be transformative – changing the way governments and individuals look at each other – and this is good in itself as well as leading to real change in relationships and between governments;
- Level playing field get over the (Canadian) supremacy, sovereign mentality, recognition of treaty;
- Base negotiations on mutual objective of recognition/continuation of Aboriginal nations;
- A treaty implementation policy to be overseen by a federal government central agency (not INAC);
- Clear policy with reasonable membership's codes that identify dual citizenship for women and children that would ensure rights preserved and recognized;
- Government of Canada to recognize and acknowledge the sovereignty and self determination of First Nations and thus recognize, acknowledge and implement the Treaty relationships between the Crown and First Nations in its true sense including its international nature in the spirit of respect and co-existence.

## **Table 7**

### **Key messages:**

- Negotiations information sharing for First Nations/Aboriginal Table negotiators;
- Federal policy changes to help speed up processes;
- Canada give more meaningful room for discussions at negotiation tables;
- More visible women at all levels;
- Meaning of certainty???
- Implementation in timely fashion;
- Governments should completely abandon old policies eg. extermination/assimilation, etc.

## **Table 8**

### **Key messages:**

- Get on with it and implement (RCAP);
- Inclusion of Aboriginal people (urban, rural, off-reserve, women, Métis, etc.);
- Get rid of Indian Act;
- Need formal policy on pre-confederation treaties;
- Recognition legislation;
- Arm's-length, independent funding agency for negotiations;
- No extinguishment of Aboriginal rights;
- Streamline processes - earlier outcomes;
- Address citizenship issue (registration, beneficiaries);
- Implement existing treaties.



## Critical Issues

Participants were asked to work at their tables and discuss critical issues effecting negotiations and Aboriginal treaty rights. Each table was asked to come to a consensus on naming two critical issues from each table. This would be recorded on the flipcharts and summarized by the facilitators into eight critical themes. These eight themes would be used to identify the recommendations and solutions over the next day.

### **Table 1**

#### **Critical issues:**

- (honor the Crown)
- 1. recognition of aboriginal rights and title and treaty rights – crown/gov't position of preserving litigation strategy needs to be reconsidered – as it is in effect a denial of rights
- 2. Protection of these rights during negotiations – which on average are 15 years – honor of the Crown?

### **Table 2**

#### **Critical issues:**

There is a need for consistent national policy, treaty implementation, including treaty commissions with real power:

1. Need joint Aboriginal/Gov design of new and existing processes and policies, including periodic joint reviews;

The government must honor and respect existing and future Treaties and recognize spirit and intent:

2. Need rights recognition as a starting point for negotiations;

### **Table 3**

#### **Critical Issues:**

1. Lack of political will to conclude and implement agreements rooted in fear by public;
2. Need for more flexibility of mandate/lack of mandate;

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### **Table 4**

#### **Critical Issues**

- lack of First Nation involvement in writing/drafting federal laws and policies;
- recognition of indigenous peoples own laws regarding land and resources;
- implementing existing promises made and not kept;
- recognition BEFORE reconciliation (first issue);
- INAC conflict of interest (fiduciary + negotiation – need independence);
- process to recognize rights outside of court (generic – then specific);
- [reject denial of rights].



## **Key Critical Issues (Note: rollup of previous discussion on critical issues)**

- #1 Recognition BEFORE reconciliation;
- #2 Change federal mandates and policy to reconcile them with existing court decisions;
- #3 Implement existing treaties/agreements;

### **Table 5**

#### **Critical Issues**

- #1 recognition of section 35 rights -- moving away from policy of extinguishments;
- #2 implementation of section 35 rights;
  - self-government one way of implementing section 35 rights;
  - self-government also manifestation of section 35 right;
  - resourcing;
  - competing, overlapping rights;

### **Table 6**

#### **Critical issues:**

- Relationship (negotiations, agreements, implementation) with Crown, not just DIAND;
- Ongoing alienation of resources/environment degradation during negotiations → [change] relationship to revenue sharing;

### **Table 7**

#### **Critical issues:**

- No system for understanding meaning of Aboriginal rights for negotiations eg. table etc.
- Extinguishment of rights;

### **Table 8**

#### **Critical issues:**

- Equal access to treaty-making and treaty implementation for all First Nations, Métis, and Inuit;
- Recognition Act:
  - Legislative process for nation-building;
  - First Nation, Métis, Inuit;
  - Include duty to consult;

#### Vision Statement

Participants continued to work at their breakout tables and were asked to consider their critical issues and then define a vision statement(s) based on future. Instructions included from the facilitator – that when brainstorming participants should envision that all obstacles have been cleared and their vision should indicate how or what the future looks like.



## **Table 1**

### **Vision Statement:**

1. overriding concern is the well being, in all respects, of our people in our respective communities (connection between the six priority sector tables)
2. that is, as it relates to seas, land and resources, an improved FIRST NATIONS/Crown relationship will include
  - joint development of land use plans
  - joint decisions about the use of land/resources
  - shared joint benefits from seas, lands and resources
  - to recognize existing (build new) gov't structures/jurisdictions according to traditions/values

## **Table 2**

### **Vision Statement:**

- create an environment (social, economic, political, and legal) in which opportunity exists to raise the standard of living and create a better way of life for FIRST NATIONS peoples. This would include:
  - community supported government
  - fair treaty settlements
  - changing of attitudes
  - rightful place in Canadian society
  - control of lands and resources (decision makers)

## **Table 3**

### **Vision Statement:**

- Nirvana (Gwanachewan means beautiful land)
- comprehensive, flexible agreements that are concluded and being implemented for the benefit of aboriginal people in all settings
- FIRST NATIONS have capacity/governance authorities and fiscal ability to provide for community
- supportive, informed public living in peaceful co-existence
- children/young adults feel hope for the future and feel they have the opportunity to do anything with their lives

## **Table 4**

### **Vision Statement:**

- if rights established in one area (e.g. Yukon, etc.), recognize as a starting point for all;
- separate Minister specifically responsible (accountable) to represent global responsibility;
- Indigenous people as equal and full participants in determining own future/process;
- settle nothing until indigenous demographics recover = political power;
- redress indigenous/Canadian power imbalance:
  - no negotiate or litigate



- equal access to \$/resources
- financial inequity (Canada = benefits from resources, Indigenous = denied access) -> unequal negotiating position;
- get rid of litigate/negotiate policy recognize treaty is only one step in the process of building a better working relationship;
- Indigenous peoples participating in determining own future equally along with Canada, provinces, territories, etc. To achieve socio-economic and health status equal to that of other Cdns (measurement of success is this indicator);

### **Table 5**

#### **Vision Statement:**

- all section 35 rights of all Aboriginal peoples are recognized and honourably accommodated through processes of mutual respect, recognition, responsibility and sharing;
- mechanisms – Royal Proclamation, Declaration, Recognition Act goals:
  - o closing human development index gaps
  - o adequate land and resource base to deal with demographic growth
  - o better public education and support
  - o mutual benefit for all Canadians

### **Table 6**

#### **Vision Statement:**

A future in which Aboriginal Nations continue as Nations, on their own territories with their own governments, languages and cultures, and with the means to achieve prosperity based on their own skills, efforts and assets.

### **Table 7**

#### **Vision Statement:**

In the future, we (future Aboriginal governments/with existing governments) will be dealing with challenges (with jurisdictions as recognized in future Aboriginal governments) rather than historical issues

### **Table 8**

#### **Vision Statement:**

- House of First Peoples (Parliament) so that Aboriginal peoples have access to power
- Access to natural resources in order to build self-sufficient Aboriginal communities
- Reconstruction of the true historical and Aboriginal nations
- In our world, no more fighting amongst Aboriginal peoples and organizations
- Aboriginal Recognition Act
- The government of Canada will not spend X \$ to have these sessions with our children.
- Therefore, they will be implementing our vision



## **FIRST NATIONS BREAKOUT – DAY 2**

### **PART 1: LAUNCH QUESTIONS FOR THE BREAKOUT:**

1. **WHAT** are the processes and mechanisms that need to change? **HOW** should they be changed?
2. **HOW DO WE** ensure the unique needs of Aboriginal women, non-status Aboriginal people living in urban and rural and remote areas – including northern, are met?
3. **WHAT TYPES** of new policy or changes to existing policies are required to allow for desired changes to the process and mechanisms?

Participants were asked to work at eight breakout tables. The tables were assigned one critical issue identified from the day before. The process would use a modified World Café session that would ask participants to start at their seats/tables and answer the three questions over a 60 minute period. Participants would then rotate to a table where they would like input into a critical issue. One participant would volunteer to stay behind and be a conversation holder to inform new participants rotating to the table. Additional recommendations would be recorded on the flip charts at each round.

### **PART 2: ROTATION ROUNDS:**

1. Conversation holder, note taker, recorder
2. Self select another critical issue
3. 15 minutes:
  - review notes
  - build on ideas (HOW TO)
  - add new ideas (WHAT AND HOW)

### **CRITICAL ISSUES FOR DISCUSSIONS:**

#### **1. Recognition of Rights**

Table 7 – Critical issue: Recognition of rights

- Extinguishment
- Certainty
- Implementation

1. **What are the processes and mechanisms that need to change?**
  - Develop a generic list of rights/powers with exclusions identified up front – certain exclusions would have to involve the Provinces/Territories being at the table on those issues (at a later date)
  - information sharing for FN/Aboriginal groups



- need a body for negotiation and implementation that has a rights recognition and implementation mindset
- public/corporate education – consistent education and communication of meaning of Aboriginal rights and title to 3<sup>rd</sup> parties
- new funding approaches for self-government/treaties implementation
- certainty: start with recognition of rights, how do we achieve certainty on the agreement of rights

### **How should they be changed?**

- recognition of Aboriginal sovereignty
- partnership mechanism with First Nation groups and governments
- Funding
- Get out of program mindset to develop negotiation/implementation body separate from INAC and mandate to deal with other government department issues
- National communication strategy which includes First Nations and government
- Analysis of REAL costs of running First Nation government
- Effective consultation
- Benefit sharing
- Interim protection measures

## **2. How do we ensure the unique needs of Aboriginal women, non status Indians, and Aboriginal people living in urban, rural and remote/northern areas are met?**

### *What*

- section 35(4) to be noted in agreements
- off and on-reserve issues (engaging provinces and territories)

### *How*

- funding for discussion on this issues in development of constitution and core laws – e.g. BC Nisgaa urban locals, portable rights, cross-jurisdiction?
- First Nation community developed matrimonial property laws

## **3. What types of new policies or changes to current policies are required to allow for desired changes to the processes and mechanisms?**

- Policy shift that recognizes the Aboriginal party comes to the table with specific rights at the onset and have negotiations based on this
- Recognize the paradigm challenges including internal and external overlap [boundary] issues that exist between the nation member bands existing within that nation where whole nation is not at the negotiating table
- Self-government focus: recognition and reconciliation of list of standard powers that First Nations assume to have in self-government agreements (e.g. policy statements; Recognition Act legislation – must focus on self-government/federal powers; recognize principles of nationhood – exclude word extinguishment, and recognition NO extinguishment; scrap extinguishment policy)



- capacity building:
  - o describe from FN perspective – meaning government perspective is different from FN viewpoint of capacity building
  - o must have trained FN peoples capable of administering their own government – training must be ongoing
  - o prior to effective date
  - o training programs
  - o national training facility
  - o dollars required (if success is to be achieved government needs to release massive dollars)
  - o further research may be necessary to determine exactly what capacity is required at the FN level e.g. Harvard studies?
- Self-government agreements: e.g. FN may not immediately assume full jurisdiction at the outset; e.g. health jurisdiction – may be too costly to implement (until sufficient dollars on table to administer)
  - o Specific laws flowing from self government agreement may take time to develop after implementation – e.g. membership laws
  - o Incremental evolution may be required

## 2. CLARIFICATION/DEFINITION OF ABORIGINAL RIGHTS

Table 6 – Critical issue:

### Clarification/Definition of Aboriginal rights (implementation)

#### 1. What are the processes and mechanisms that need to change?

- Agreement on the generic rights. All parties (Aboriginal, Crown, Provincial, Federal)

#### How should they be changed?

- Recognition of Aboriginal sovereignty
- Out of the box thinking
- A process of coming together to educate/enlighten each other as to how we are going to co-exist
- Unique non-judicial process within a specific time frame
- Short- and long-term strategies required

#### 2. How do we ensure the unique needs of Aboriginal women, non status Indians, and Aboriginal people living in urban, rural and remote/northern areas are met?

What - **lack of original/traditional nations**

#### *How- restarting original/traditional Aboriginal nations*

- Modernize ourselves
- Aboriginal places of learning
- Restore to our women their rightful places in our nations and honouring them as the creator intended



- All basic needs of Aboriginal peoples must be recognized and respected regardless of residence, status or gender

**3. What types of new policies or changes to current policies are required to allow for desired changes to the processes and mechanisms?**

What

- Recognition instrument

How

- only through joint Aboriginal/government design of new and existing processes and policies, including periodic joint review

What

- Historical treaties recognition and implementation

How

- political will
- flexibility in policy to fill the diversity of the Aboriginal peoples
- Arm's length from government body to hear issues that cannot be resolved during treaty/Aboriginal rights negotiations
- Process can be designed in different parts of Canada to reflect diverse needs and interests
- role for Provincial governments in processes

What

- moving from generic rights to specific rights
- agreement on who rights-holders are
- political commitment required – prairies – natural resources transfer agreement (1930) to be included
- part of new structure from government of Canada
- responsibility of Crown, not DIAND
- provinces to be committed to the process

How

- mechanisms to understand/agree on Aboriginal/treaty rights content
- use of facilitators
- public education
- need for continuing process: periodic review, not the final word but bringing stability, in an orderly fashion



### 3. IMPLEMENTATION

- **rights**
- **lack of mandate**
- **agreements**
- **court decisions**
- **types of treaties**

**What are the processes and mechanisms that need to change? How should they be changed? What and How:**

#### WHAT

- legislative framework for implementing obligations (eg. Employment Insurance Act financing is needs driven)
- treaty interpretation principles
- independent body to track process and resolve disputes
- get a real mandate to discuss substantive rights-based discussions
- need for consistency
- need for consistency with historic treaty FNs to reach common understanding
- interpretation principles
- funding principles (jointly developed)
- need to endure common understanding of components of treaties and review provisions

#### HOW

- legislation re: implementation principles
- independent body
- binding arbitration
- international dispute resolution processes (eg. special rapporteur)
- Ratification (eg. historic treaties, modern day treaties)
- improve conditions/programs on reserve so members don't feel forced to leave
- expand reserve land base/increase access to land
- FNs on reserve don't have access to provincial programs (eg. training \$\$)
- Accommodate needs of FNs off reserve (eg. access to education in FN language)
- Cultural sensitivity for gov't employees – general public – ongoing education programs
- Official recognition of FN rights – Royal Proclamation
- Make the needs/rights uniform across Canada (not unique)
- Aboriginal gov'ts assume responsibility (re: programs and services of Aboriginals off reserve) as well as the federal gov't
- Secure independent source of funding for core governance costs

**2.How do we ensure the unique needs of Aboriginal women, non status Indians, and Aboriginal people living in urban, rural, and remote northern areas are met? (see above - the group did not differentiate)**

**3.What types of new policies or changes to current policies are required to allow for desired changes to process and mechanisms?**



- Comprehensive claims policy changed, developed with FNs
- Recognition of existing rights
- reflect on-going relationship instead of certainty/finality
- include policy to address numbered treaties
- balance consistency and flexibility
- legislation or policy to speed up process (eg. implementation, ratification)
- incremental implementation of treaties
- include flexibility in the policy
- gov't needs to incorporate court decisions and Auditor General's reports
- role for PCO to oversee how native rights are respected by federal departments
- determine if current role of overseeing charter compliance can be expanded
- funding support for FN policy development – capacity and consultation (internal)
- joint FN/Gov't policy development plus additional consultation with impacted communities prior to policy approval
- joint policy approval process contingent on appropriate FN representative body
- create policies to address socio-economic stats/reports
- fully mandated honest discussions on what we can agree to disagree on

## **Round 2**

- Overview only – no notes on the flipchart

## **Round 3**

- how to move forward on basis of what we agreed on
- self' gov't as a way of implementing treaties
- better ways of having informed citizens

## **4. OVERLAP**

### **ISSUE 4: OVERLAP DISCUSSIONS**

#### **What Processes and Mechanisms Need To Be Changed:**

- A) geographic overlap
- B) governments (public and FN) using competition and overlap between other governments at table as delaying or undercutting tactics, e.g. funding
- C) competition with third party interests

#### **How Should They Be Changed:**

- A) preferred option is for First Nation parties to work out amongst themselves – not necessarily a final boundary for all purposes
- can't be used as evidence (by government) that there are no aboriginal rights or title
- dispute resolution in cases where it can't be worked out by those parties
- B) some common understanding at least a floor of what honour of the Crown means, perhaps in frameworks for negotiation and implementation



- C) Crown's responsibility – government-to-government process and need for real information going out to public letting public know what FNs and government are actually talking about – combat fear mongering joint development of communication
- Support for third party voices in process to provide real balance
- Can't do everything at a pace to meet interests of third party developers

### **Ensuring Unique Needs Are Met:**

- starting point: the nation must determine its citizenship
- all citizens must have the ability to be involved in the negotiation and other processes
- recognition of these communities and real outreach to them.
- they have to be resourced – responsibility of FN government as to how, but in order to do it government may need to provide resources to FN
- Indian Act creates inequities and continues to discriminate

### **New Policies or Changes to Policies:**

- consultation/accommodation policies that are acceptable to all parties to negotiation
- understanding (MOU) between provinces/territories and FNs as to how to address transboundary border claims – harmonizing a FNs claim on both sides of a border
- replace the Indian Act with new legislation (e.g. self-government, right to self determination)
- do away with any policy requiring a determination of a formal boundary as a pre-requisite for finalizing a land claim if a claim can be settled without the determination, e.g. sharing accords etc. let it go ahead
- non-derogation language – government must show clear process of consultation/accommodation
- there should be an agreement at start of each negotiation as to each party not using these issues to the detriment of the negotiation
- agreements with us as to transboundary claims – same amongst FNs, F/Ts
- ensure that agreements provide sufficient resources to meet the needs of their citizens wherever located – so do away with on-reserve/off-reserve dichotomy in respect of federal funding
- encourage and facilitate inter-governmental agreements in respect of service provision
- in order to lessen competition, FNs must have the means to build internal capacity
- overlap must be dealt with early in process – post Haida/Taku
- synchronize negotiations of adjacent FNs to facilitate this
- have to deal with overlaps earlier or start process with possible benchmarks, e.g. consult with overlapping FNs but lack of boundary doing away with overlap can't prevent a FN from finalizing
- a funded process to deal with overlaps
  - o funding staged
- could FNs start a process to arbitrate/mediate this problem based on traditional FN approaches
- problem with requirement of area of exclusivity – this cuts down creative options to addressing
- a lot of difference in interpretation as to historic rights – allowing another FN to access a resource in your traditional territory does not mean they have abandoned title there



- sharing agreements/common use could address this if FNs recognized historic use
- Indian Affairs historic inactivity has created much of this confusion, so that history should not be used as evidence
- Competition not just for land base, but also membership, culture, etc. This splits families and ignores familial and historic relationships.
- Funding based on population encourages this competition – so other ways of funding?
- overlap is used too loosely by government – common use area and shared areas are simply a fact
- need to know what the historic facts of occupation area – if they're known they can be used to guide shared use agreements

#### **4. RELATIONSHIPS**

##### **Critical Issues**

- **Crown (not just DIAND)**
- **jurisdiction**
- **balance of power**
- **third party**
- **political will**

Table 8 – **Critical issue: Relationships**

#### **1. What are the processes and mechanisms that need to change?**

- Conflict of interest of Minister of DIAND and other ministries, and fragmented approach of Crown

##### **How should they be changed?**

- Separate Minister of section 35 relations, reporting to the Prime Minister
  - o Separate budget and department
  - o Relations with Provinces, Territories and third parties
  - o Independent funding for negotiations
- Legislation – duty of the Crown
- Section 35 to drive policy/legislation

#### **2. How do we ensure the unique needs of Aboriginal women, non status Indians, and Aboriginal people living in urban, rural and remote/northern areas are met?**

- unique needs – women, urban, non-status, rural and remote – addressed in mandates and policy and legislation (inclusive) (eg. culturally appropriate, gender-based)

#### **3. What types of new policies or changes to current policies are required to allow for desired changes to the processes and mechanisms?**

##### *How*

- Step 1: admit you have a problem
- consult with section 35 peoples and assist in design of new structures
- education initiative – Canadian public regarding relationship, historic and current, section 35 rights. if you don't like treaty rights, just give back the land



- joint analysis/review/redesign of policy regarding Ministry negotiations and agreements (e.g. inherent right policy, litigate or negotiate)
- report card to Parliament regarding progress – joint and independent
- challenge third parties (one ton challenge) – we are all treaty beneficiaries – how can they help to make progress
- founding peoples
- legal pluralism
- attitudinal change – combat racism
- agreements benefit both Aboriginal and non-Aboriginal (e.g. east coast fishery)

## 6. INCLUSIVENESS

- **equal access**
- **all groups**
- **balance**

### What

- awareness of processes and mechanisms in place now in the traditional and modern way
- eg. conflict between traditional and modern elected system
- modern imposed system
- role of Chief and Council not defined
- social ills/issues impact inclusiveness (eg. poverty, violence, addictions, misuse of power, shame lead to inaction, parenting, abuse etc.)

### How

- include whole community (at home, away from home)
- role of Elders recognition and formalized top guide and advise the community
- define roles of community
- Elders meet with youth and share teachings (formalize)
- Elders council at local, regional, and national level
- Elders councils provided with respect to advise and provide guidance (spiritual, leaders, moral authority)
- Empower support Elders to guide youth, families, councils

- **Still in crisis in our communities**

### 1. How do we ensure the unique needs of Aboriginal women, non status Indians, and Aboriginal people living in urban, rural, and remote northern areas are met?

### What

- membership/citizens not included (cared for)
- lack of trust/respect (eg. leaving community reserve because of marriage, abuse etc.)
- respect women's voices and include in process – all processes (listen for understanding)
- membership rules guided by INAC (eg. marriage, alliances, adoptions, kinship ties, roots and relationships)



## How

- recognize full territory of FNs
- urban centres/offices
- inter FN protocols for services etc.
- restoration of healthy families and communities with an emphasis on gender relations
- FNs define and recognize own citizens, other gov'ts recognize our identification system

## 2. What types of new policies or changes to current policies are required to allow for desired changes to process and mechanisms?

- too many federal policies contradict 35.4 – accept and implement our own FNs policies
- policies developed consistent with sec. 35.4 (applies equally to women and men)
- proper levels of funding for urban centers, establishment of Elders councils at all levels, women's organizations, youth in developing our own FN policies, need to:
  - 1) support and partner with other Aboriginal organizations
  - 2) developing positive relationships with our non-native neighbors
- need lots of \$ for development and food

## Round 2 no notes

## Round 3

- when did we lose members from Nations? Reserve system? Section 91.24 BNA Act
- this exclusion cuts them out of social funding
- urban areas (need centers) – most of which people have to be away from home Nations are still concerned for them
- Needs to be Nation to Nation protocols to deal with people moving into the territories of other Fns. Need systems in play to deal with situation
- Separate funding for urban and mechanisms to support mobility (eg. move to different town + go to the bottom of the housing list)
- Above bullet re-written as follows: National Gathering of all nations to re-establish Nation to Nation protocols (urban embassies)

## 7. FINANCING

- **social, economic, health**
- **length of time to negotiate**
- **capacity building (HR)**
- **loan policy**

## Launch Question

**What are the processes and mechanisms that need to change? How should they be changed? What and How:**

**What (Note: some HOW may be mixed in as the group did not formally separate the two)**

- eliminate loan funding for treaty negotiations
- compensation for infringement/land and resources redress
- funding for negotiations



- equity in funding to address power imbalance
- loan situation creates a very negative fiscal environment
- not operating as an incentive to settle
- loan forgiveness for existing loans
- loan funding becoming part of the negotiation table (and shouldn't be)
- loan forgiveness/grants as part of an agreement on mutual goals to reach agreements/settlements
- still have to address equity of funding on each side – need an independent body
- need to address the original funding assumption and formulae to address the impact of funding limitations
- Roger Williams and Okanagan cases – apply principles to support funding for negotiations
- need to address information needs in the community
- capacity building needs of community should be part of funding to ensure inclusion of whole community
- dynamic, transformative change dependent on communication and capacity building with community members – needs to be bottom up
- need a parallel education process to address misinformation and stereotypes
- need mechanisms to ensure community members feel they are contributing
- need own benchmarks to measure transformative change based on our own FN values not federal gov't policy

#### Fiscal relations

- Formulas aimed at meeting our present and future needs
- to meet socio-economic needs, need to replace business model of settlement with vision of wealth transfer/creation of an economy and ensuring FNs are self-determining regarding their socio-economic goals and present + future well-being
- FN need to benefit from – receive equalization payments
- Federal Ministers need to be prepared to talk to FN leaders as they do provincial Premiers on revenue/resource sharing, equalization etc. etc. to address imbalance in access and to benefit from FN lands, territories and resources
- Need to shift entrenched thinking within bureaucracy that is driven by business model (get the cheapest deal at the cheapest cost) towards a focus requirement for transformative change

#### How

- involve public sector unions to ..... like private sector, church groups to assist in bringing about change in thinking within officials
- need changes in how TB and other central agencies measure success – performance indicators for officials
- consider working/basing/ performance measures to improvements in socio-economic conditions of FNs
- need to incorporate gender based analysis in all that we do, FNs and Canada do more
- need to recognize how we as FNs have been impacted by patriarchy
- mechanisms like Nis'ga – Gov't to ensure inclusion/voice of citizens living away (off reserve)
- need funding and funding mechanism that includes off reserve members



- inclusion – need mindset change to assert responsibility for off reserve members and women  
+ changes to program and service delivery based on FNs definition of selves
- 2. How do we ensure the unique needs of Aboriginal women, non status Indians, and Aboriginal people living in urban, rural, and remote northern areas are met?**
- 3. What types of new policies or changes to current policies are required to allow for desired changes to process and mechanisms?**
  - structural change a) role of federal Crown, b) DIAND, PCO c) Finance and TB
  - process – negotiations
  - substantive issues – eg. section 35, fee simple lands, fiscal relations
  - policy change needed re: programs and services to recognize right of communities to determine who their members are (eg. HRD program, Misquadi’s case) (Substantive issue)
  - need to identify why FNs are moving away from communities (eg. need for job creation, domestic violence, need for policies to address

#### Substantive issue

- need to create safe communities for our people, for women, (eg. zero tolerance FN policies)
- safe communities emerging as a big issue
- men need to step forward on violence against women issues
- identify linkages (eg. poverty, drug use)
- don’t measure well-being simply by \$\$
- use lower incarceration and performance rates as indicators
- if empower community members, engage them will lead to transformative change (need transfers of power and money, needs time and big investment)
- change with FNs not for FNs need to move legislative weapons to FNs away from Canada – must examine role of s. 88 re: provincial law (eg. child welfare)
- examine treatment + application of prov. and territorial laws to self-gov’t agreements

#### Process

- concern about an increased role of provinces in negotiations
- substantive issue – recognition is not giving FNs jurisdiction, they have it
- current inherent rights policy is really a contingent rights policy (contingent on agreements, contrary to Campbell
- substantive – policy needs to recognize that self-gov’t is primarily bilateral FN-Canada issue
- FNs should not be held to provincial standards
- Self-gov’t policy: remove standard of needing provincial concurrence to a deal
- Canada should recognize Aboriginal sovereignty

#### **Round 2 - Finances/Fiscal**

- funding needed to accommodate policy changes (eg. Specific Claims)
- need change in federal policy that sees s.91(24) jurisdiction limited to FNs on reserves



- can't use municipal model for funding formulas for FNs with agreements and for Indian Act band councils – FNs have broader responsibilities
- should have access to capital infrastructure funding post self-gov't agreement (Treaty office not set up to deal with it)
- a structural change issue re: Treaties
- agree with loan forgiveness proposal
- funding gap between final agreement and the effective date of agreement
- penalized for making more progress in reaching agreement
- incur interests costs and difficulties in getting bank loans in interim
- impact on keeping staff
- feds should pay negotiation costs
- Crown has an obligation to meet funding needs in negotiation to ensure fair power balance
- Use money supposed to repay negotiation loans to restore damaged land over same period it took to negotiate claim

### Round 3

- policy framework for negotiating financial transfer arrangement is inadequate; is not based on jurisdiction (eg. allows 4-8% increase to cover governance – should be related to actual costs of governance, jurisdiction)
- The \$600 Million out now in negotiation loans = 25% of the financial transfers under existing agreements
- Funding for land claims negotiations will have to be adjusted for changes to the process eg. funding to support consultation and new interim measures arising from Taku and Haida cases
- How to deal with a mix of contribution agreements and loans
- Need balance and flexibility
- What standards to sue to determine funding levels
- Fiscal agreements for new gov'ts
- Review of \$ going out of communities in taxes, take into account s. 87, s.88
- Funding of negotiations should not be an issue at the table (objective)
- Need to provide \$ through contributions for consultation, communication, and capacity bldg. in advance
- The benefits to flow from an agreement are an incentive to reach settlement
- Moving to self gov't should not put FNs in a worse off position (may require aggregation, new institutions, eg. school boards)
- Different views on how to address issue relating to own source revenue
- Incentives vs. claw backs
- Refusal to compensate for loss of resources, land, prior to agreement

### 8. LEGISLATION

- **Recognition Act**
- **Royal Proclamation (new)**
- **Declaration**
- **Enabling legislation**



## ISSUE 8: LEGISLATION DISCUSSIONS

### **What Processes and Mechanisms Need To Be Changed:**

- Self-Government Recognition Act
- re-affirmation of principles
- Act to cover existing treaties and areas of no treaties in a way to recognize rights
- to fit or be consistent with the Draft International Declaration of Indigenous Peoples

### **How Should They Be Changed:**

- no Royal Proclamation!
- commitment of the Crown. Order-in-Council
- no dilution or derogation of treaties in place
- nation-to-nation affirmation
- Declaration of Principles consistent with Royal Proclamation without derogating original Proclamation or treaties
- Declaration drawn on principles consistent with the integrity of Royal Proclamation without revisiting the Royal Proclamation. Recognize the sovereignty of Aboriginal peoples. Must be jointly developed.
- Important Message: Take time to review all the work reports, documents, etc. drafted/developed to date from years past – fundamental principles including key objectives are just as relevant today as they were when initially constructed with other processes. *New Policies must reflect past work developed and principles and processes.*

### **Ensuring Unique Needs Are Met:**

- funding/resources to reach out to all our constituents
- communication/ plans /strategies to include all our people and third party interests. Rights/responsibilities do not stop at reserve borders
- funding forms a barrier from our governments from looking after our (government) responsibilities
- recognition of portable rights
- policy nation-by-nation on how all members are looked after (outside the Indian Act – Abolish the Indian Act)
- protocol – government-to-government relationship to be intrinsically recognized

### **New Policies or Changes to Policies:**

- previous relevant key elements and recommendations reports/documents (RCAP, Penner, BC Claims (BCTC) Taskforce, etc. must be reflected with effect on principles and recommendations
- in the development of the Declaration, key elements from former work would draw together towards affirmation for the Declaration from which new effective and appropriate policies will flow from
- the Declaration sets the tone and the parameters for the establishment/ development of policy
- must have political will
- a shift must occur with status quo from authorities with this declaration in recognition that First Nation also have authority



- Fed -> Cabinet
- FN -> to be determined as per nation-to-nation protocols
- mutual development and mutual authority process
- mutual recognition of sovereignty
- re-affirmation at Niagara, Batoche, Sault St. Marie, etc. (treaty signing locations or other significant)

## **PRINCIPLES AND OBJECTIVES NECESSARY TO ACHIEVE THIS FUTURE**

Participants were asked to provide input into the launch question dealing with principles and objectives. The facilitator provided a continuum model that articulated the evolution and progression of potential principles and objectives for Aboriginal and treaty rights in the future. Examples were also shared to indicate and encourage forward thinking on the question. The following is the launch question and details of participant instructions for the exercise.

### **Launch Question**

What are the principles and objectives necessary to achieve this future?

#### **Instructions:**

- articulate principles in a small group
- small group discussion of objectives
- report back to full group

#### **Model (displayed as a circle)**

1. Who am I? (current state) Elders overview/perspectives on constitution, Aboriginal and treaty rights, key messages
2. Where did I come from? (current state) Critical issues, visions
3. Where am I going? (future) Process, mechanism, lens, policy renewal
4. What am I responsible for? (future) – Principles and objectives

#### **Examples:**

- Establish a living relationship – duty to consult – mechanism to ensure/require FN/agreement holders must be consulted when major activities in non-Aboriginal community occurs
  - o Government to government confirmed at all levels
- Ensuring fairness in the negotiations process – Objectives:
  - o engage all Aboriginal people
  - o establish adequate mandates
  - o apply the rule of law
  - o level playing field
  - o jointly negotiate policies and mechanisms

**TABLE 1:**

Following traditional values:

- everyone belonged
- everyone had and have a role and responsibility
- everyone has a right to be heard and understood

**TABLE 2:****Principles**

- the relationship should be based on mutual recognition (including sovereignty) peaceful co-existence, fiduciary relationship, and the honor of the Crown, sharing of teachings, lands and resources (won't have to spend time re-negotiating dif. Negotiators, won't have to prove we are Aboriginal people + title)
- reconciliation – peaceful co-existence, clarity for exercise of rights and of jurisdiction
- abandon positions of denial, doctrine of discovery, proof of Aboriginal people and title
- recognition of shared constitutional framework + co-existence (including treaties, agreements, Royal Proclamation etc.)
- these need to be developed first at community level (recognition alone doesn't create healthy communities)
- mutual benefit for all parties concerned
- treaties are a critical instrument of the relationship – part of the honor of the Crown

**Objective**

- Supreme Court of Canada cases become real and transformative change happens
- Creation of a stable gov't able to withstand the challenge from within and outside
- Access to lands and resources
- Creation of economies and healthy communities
- Implementation of treaties (their objectives, spirit, intent)
- Mutual survival
- Mutual benefit
- Bringing the sacred down to the real plane

**TABLE 3:****Principles**

- reclaiming mutual relationships based on respect, recognition, responsibility, sharing/generosity, and traditional values
- recognize spiritual relationship and responsibility for the land

**Objectives**

- build policies to bring these principles to life based on jurisdiction of sharing practices
- balance independence vs. interdependence



#### TABLE 4:

- negotiations are between Nations so government-to-government basis objectives
  - o government-to-government relationship includes but is greater than treaty
  - o treaties/agreements must be living documents to reflect that relationship
  - o need means to evaluate whether the treaty/agreement meets the objectives of the parties
- Aboriginal peoples must recognize commonality of interests objectives
  - o find better means to cooperate and share information
  - o information, ideas and experiences must be shared through means that make them accessible so people appreciate them, e.g. processes like traditional storytelling.
  - o can we do this kind of thing again?
  - o governments (public, FN) shouldn't foster division/competition
- federal government must not offload its responsibilities to Aboriginal peoples/FN governments/P/T governments

#### TABLE 5:

- KEY: mutual respect and recognition with the objective of reconciling rights and responsibilities of Aboriginal peoples of Canada with the rights and responsibilities of other governments in Canada in order to achieve mutual understanding and shared prosperity for all Canadians.
- trust
  - o achieved through political will and mutual commitment and good faith practices
- inclusiveness
  - o achieved through providing access to negotiations for all Aboriginal peoples of Canada

#### TABLE 7

##### Principles

- recognize the sovereignty of First Nations
- reaffirmation that the inherent right of self-government is an existing Aboriginal right within section 35 of the Constitution
- as long as Canada exists as a country, Treaty settlements, and/or self-government agreements (subject to living tree concept) will continue to exist and be recognized
- treaties/self government agreements (past/future) and other constructive arrangements to be implemented in the spirit and intent in which they were agreed to
- government to government recognized, irrevocable relationship (First Nations must be treated as real governments)

##### Objectives

- parliamentary irrevocable declaration to recognize sovereignty and inherent rights of First Nations
- all languages in treaties/self-government agreements to reflect government to government relationship



- start implementing all RCAP recommendations with timetables for implementation and priorities agreed to by First Nations
- catch-up programs required in certain areas
  - o housing frozen budget limits must be lifted (increased \$)
  - o post-secondary
  - o health
  - o infrastructure, etc

## **TABLE 8**

- agreements are inclusive
  - mandates and policies must include off-reserve, women, Métis...
  - involve provinces and third parties
  - Aboriginal parties must be inclusive
  - Aboriginal government constitutions are inclusive
- section 35 is the foundation of government activity
  - federal legislation – Slattery’s principles/rights
  - international conventions
- results are important – achieving social/political/economic progress in short term
  - report card to Parliament
  - interim measures strengthened
  - review current policies/processes now!
  - pilot projects
- agreements should embody mutual respect and provide mutual benefit
  - include resources in negotiation (management, sharing, interim measures)
  - recognize nation-to-nation relationship
  - include socio-economic development – balance for Aboriginal/non-Aboriginal
- agreements should focus on the long term, the future
  - constitutionally protect agreement
  - focus on principles and relationships

## **HOW DO WE KNOW THAT PROGRESS IS BEING MADE?**

Participant tables were given a sheet of flipchart paper to record their recommendations on progress. The instructions asked participants to think about how will First Nations, Government measure progress in the area of negotiations on Aboriginal and treaty rights? Tables were asked to fill in the what and how of the question.

Launch Question

**How do we know we are making progress?**

### **Table 1:**

#### **What**

- flawed, outdated policy
- colonization
- Canada lives up to its human rights responsibility



## How

- when the comprehensive claims policy is updated to match the rule of law and constitutionalism (inherent rights policy)
- when we are self-sufficient
- well-being of self, family and community
- when honor means something
- representation in Parliament guaranteed
- when we are compensated for everything
- when prov/feds start paying rent for our land
- when our languages, ceremonies are thriving and surviving
- when there's no INAC
- when justice is achieved
- when there is resource equity
- when everyone has a home, food, clothing
- when we don't have anymore suicides
- when we are all safe
- prosperity and harmony
- when our children have a better life and education (comparable to non-Aboriginal)
- when more of our people are returning home
- when we are at peace
- when our women have reclaimed their rightful role and status in the community
- when we have answers and/or constructive process to these recommendations (see attached the summary of recommendations from the FN summit)

## Table 2:

### What

- less fighting in court over rights
- more successful negotiations
- when life is better for Aboriginal people
- consensus on guiding principles for relationships/Honor of the Crown
- when Joe public becomes better informed
- when our people in our communities feel it in their hearts that the relationship with the Crown is honored and honorable
- when today conditions are a distant memory for our children

### How

- Gov./Aboriginal mutual respect and recognition
- Major policy reform
- Process reform
- Indicators are at least equivalent to other Canadians
- When we don't have to prove who we are; rights
- Public awareness campaigns – Indians winning, John Wayne go home
- Gov't transparency (eg. First Ministers meeting to be televised live)



#### **Table 4:**

##### **What**

1. real policy change
2. flexible negotiation mandates
3. implementation of treaties/land claim agreements
4. funding
5. reduction of delays

##### **How**

1. agreements with FNs
2. going beyond current policies
3. creation of central senior agency to ensure the letter, spirit and intent of agreements is met
4. increased level of resources
5. more human resources on all sides. Stability of mandates

#### **Table 5:**

##### **What**

- recognition
- report on results of Roundtable
- feedback/follow-up
- completion of existing negotiations on an expedited basis – where possible
- public recognition of issues
- provincial commitment to processes
- more engagement by private industry

##### **How**

- appropriate instruments
- containing significant policy decisions of Government of Canada giving effect to concepts considered here and with plan and timeframe for implementation
- forwarding report on Roundtable to participants
- more agreements
- public education/understanding
- provincial involvement
- private economic participation

#### **Table 6:**

##### **What**

- commitment from Prime Minister
- more agreements
- inclusion – process available for all Aboriginal people



## **How**

- Canada and Aboriginal people working together
- existing policies that allow movement
- broader and equitable policies
- adequate funding/resources

## **Table 7:**

### **What**

1. establishment of section 35 Relations reporting to P.M.
2. independent funding for negotiations
3. recognition of Aboriginal/treaty rights, Crowns duties and generic rights
4. improvement of social economic conditions
5. relationship improvements

### **How**

1. legislation jointly developed
2. required long-term authorities in place
3. legislation jointly developed
4. resources and interim agreements negotiated  
report on results to parliament
5. education

## **Table 8**

**What** – Financial resources

**How** – February 2005 and future budgets to reflect all proposals produced in roundtable sessions

**What** – PM controlled & directions

**How** – PM to make statement with detailed strategy for implementation of roundtable recommendations in concert with First Nation leadership

**What** – Public urgency and momentum

**How** – Joint (Government and FNs) national publicity campaign

**What** – Evaluation process of roundtables

**How** – Feedback, reports and inputs

**What** – see documents attached to flipchart – part of record:

1. *UN December 2, 2004 Indigenous Issues*
2. *First Nation Land Management issues – Lands Advisory Report*
3. *Backgrounder on Westbank First Nation Self Government negotiations*
4. *AFN Caucus Consensus Document – January 2005*