
To: Chief and Council

From: Stephanie Charlie

Throughout the document anything in red are my own thoughts on needs or questions we should be considering in our work and moving forward with what has been presented at these meetings.

April 11 – 13, 2018 – Recognition and Implementation Rights Forum, Vancouver, BC

Attached are my notes on the presentation. Main points from breakout group:

- Consultation needs to be determined by the nations
- Developing the legislation needs to be from the ground up not a top down approach
- The FN leaders in each region need to meet together to discuss what the consultation should be and what should be included in the legislation
- Summary from the meeting is to be sent to the Chief's office

Recognition and Implementation Rights Forum

April 11-13, 2018 – Vancouver, BC

Day 1 - Federal and Provincial objectives for the forum

Federal Objectives:

- Section 35 is to protect aboriginal rights
- To implement the rights under section 35 the group has to prove their rights
- Section 35 empty box of rights
- Modern treaty and self-government agreements under this had some positives but not many – inherent right policies
- Policies were impossible and costly for the nations.
- Canada was failing to fulfill the promised relationship with nations
- This process is an attempt to reset the relationship - time to stop piling on reports but start acting on the reports.
- Need to add to the work the Declaration on Indigenous Rights
- To reset the relationship have to acknowledge what has gone wrong and changes needed.
- Canada decided to put aside the existing policies and started over – collaborative approach.
- Indigenous engagement policy starting with the expression of need
- Start with points the nation wants to talk about; how they engage; what does self-determination look like.
- Learned elements that were constant and key features no matter the nation.
- Rights and Recognition discussions taking place with 60 nation
- This new process has challenged the internal Canadian departments/processes.
- Bilateral mechanisms – leader-to-leader discussions to guide policy. Not there to take the place to handle the rights and recognition discussions. AFN etc are leading this work on the nation side.
- Funding to work together to rebuild the relationship
- What legislation that is needed to secure self-determination recognition that cannot be reversed in the future.
- Need to work with province and territories.
- Exploratory Tables that did not fit within any framework or policies – helped better see from the nations – what was their vision and goals.
- What would implementing the Declaration mean in their own individual context.
- Recognition of Indigenous Rights and Self-Determination Tables is now what the tables are called.

Themes from the tables:

- Pre-1975 treaties want to move to full self-government and recognition of their treaty rights. Canada to do a better job
- Modern treaty holders want to redesign their treaties based on changes that have happened since they have signed.
- Current treaty negotiations – are there ways to do a stepping stone approach and not one big agreement that all areas are to fit into.
- Nation rebuilding – how do they see the concept of nation and getting recognition for that. This could replace the band structure in the mean time while negotiation or jurisdiction etc are being negotiated

How do we deal with historical grievances – joint technical team is working on this.

Note:

- Specific claim loans should be forgiven. Who is the joint technical working group team – who sits on this and reps from nations?
- Language and culture should be at the forefront
- Education on indigenous issues to the larger Canadian community.

Provinces Objectives

- Begin and open conversation about what a recognition framework needs to look like inside and outside of treaty.
- Need nations help to shape the recognition framework – requires a lot of discussion, possible change in legislation,
- Want to know how to create more flexible arrangements? – how to do this in all relationships in treaty and outside treaty.
- Need to ensure agreements can be modernized in changing environments
- How to recognize and implement title. Explore title recognized and what it looks like inside treaty and outside the treaty context.
- What steps to get to title recognition
- Collaborative stewardship on the land – how to input nation knowledge of the land.
- Language and improving socioeconomic - protect and develop capacities for language. Provide opportunity for nations to deliver
- How to support nations self-determination and self – governance initiatives?
- Renewed approach to benefits sharing. Provincial policies to look at shared benefits – gaming. Integrating nations interests in economic development and growth.
- How support approaches on overlapping territories. Acknowledge that the Province has contributed to disputes around the overlap.
- Important to discuss shared interests
- Socio economic gap to close - education, justice, child and family

Questions and Answer

Q – rep from Lake Babine – wants clarity on loan forgiveness. Was said that there is loan forgiveness with no strings attached – need this in writing addressed to Lake Babine with the amount that is forgiven. That is no strings attached and do not want to hear it is incrementally etc.

A – *the Fed government will go to each community who has a loan to best decide how to do loan forgiveness.*

Q – how can we build trust with the government – government is negotiating treaty with modern communities who have not been around and have nothing to lose. We are not being consulted. Where does the authority rest for recognition of territory?

A – *the process of consultation we are hoping to have will help us determine how we engage and receive concerns etc on our work with nations and potential concerns in overlap. The question of authority is one that needs to be answered. Who recognizes and by whose authority?*

Q – Shanna Manson – how are we going to address the private land question?

A – *there is no clear solution to that and one we have to look at in collaboration.*

Q – Overlap issue in the Prince George area. BC and Canada created the issue and the nation is told to solve. How is BC and Canada going to solve this? What is a nation to BC and Canada?

A – *only answer right now is the commitment to work together to come up with solutions.*

Q – Ahousaht won fishing case; others are fighting too. Asked the Prime Minister when the issues will be resolved - his answer is soon; would like to see soon. Even though the case was won there are restrictions. The court is to make a ruling and they say soon. When is soon?

A – *Cannot give a date and hope that the cabinet approval required will happen at the next meeting. The work is done and on the agenda.*

Q – in the course of recognition – does that include nation building? What is reconciliation and the perimeters around that? Along with that what about our international trade networks. Designated as a developing nation and can get trade arrangements and have access to international trade relationships.

A – *It's a recognition of what is happened; its nation building; about relationship building, evolving etc.*

Q – is the legislation going to be constitutionally protected? What is the timeline for this work?

A – *timeline for Federal Legislation: in theory to be done by June; in practice might be to quick. Has to be no later than late Fall. Suppose to introduce something in June. Legislation will be constitutionally protected.*

Q – Funding structure – change the fiscal relationship – co-management of the land. Underlying property tax that is collected on our traditional territory – will this be discussed?

A – *To be looked at and discussed to develop what this could look like.*

Day 2 – Setting the stage

All Nation Task Force – key messages shared in opening remarks

- Government meetings with the AFN – the bilateral mechanism they have set up to move on this change. Had 3 to date but they do not seem effective. They are reviewing mandates, policy practices etc.
- The FN organizations are not right holders – they are

Key developments:

- Crown authority over Indians and Land– review of history
- Provincial authority over land– review history
- Reviewed land cases over land – history and current
- Recommendations are to look at the Doctrine of Discovery for key land court cases; the Declaration of Indigenous Rights; the policies around Indigenous involvement on the national level at the U.N.

Presentation: Recognition and Implementation of Rights Framework

Title recognition if the declaration and the land cases were followed through and implemented:

Doctrine of Discovery and Doctrine of Terra nullius- first acted as land was empty

- Crown failed to come up with a defence – all their arguments were thrown out by the Supreme court. Title was not extinguished
 - Courts said FN laws have not been extinguished, inherent, do not depend on any court or legal recognition.
 - FN told the court we have two titles, diff worldviews etc all operating on the same landscape.
 - How do we create space for FN making their own decisions? This is not about making space. Develop mechanisms for two groups making decisions and sharing the benefits etc.
 - Canadian law is only one source of authority – Indigenous law is another sources – it was never extinguished.
- ◆ Section 35
- Self Determination informs the implementation of Section 35
 - Cannot have reconciliation without FN having control of their lands, indigenous laws, and jurisdiction.
 - Colonization has set up a system of economic inequality etc. With all the steps of reconciliation there have been no changes with economic equality and benefit sharing.
- ◆ Colonization – the myth of crown sovernty; their position is you need to prove title; government argues that title is not recognized until the court decides. The courts have thrown out the argument of the government in some big cases. FN should not have to

go through an expensive process to prove title – the crown has not abandoned a status quo ideology about title.

- Aboriginal Title has not been extinguished in Canada – the crown granted land is still being withheld
 - Might choose to agree with government about the crown infringement to get some benefits from the land. The land is still off the table because they are stuck on the extinguishment of title model
- ◆ Status quo – the racism is present today and is part of our psyche. Shaming discourse, Terra nullius; we are not out of the colonial paradigm

Next step to move forward:

- We need capacity building not nation building and restructuring.
- We need trust – government needs to change their consultation mandates. The only way to meet the timeline and to succeed is to build the trust and hold them to task to change their model.
- How are nations going to communicate with the drafters to ensure the nation is on board with the draft?
- What the core commitments from Gov. will be? How will the crown prevent on going infringement? What is the benefit sharing? Dispute resolution process and who will pay? Extinguishment policies? Etc.
- Chose priorities – what process will we follow in answering their questions as well as the process in getting our questions answered.

Q – How do we address the recommendation that rights are to be proved? How do we change this?

A – *Need the recognition that title exists and was never extinguished and is proven.*

Q – Fiscal policy changes being discussed next week – Canada has stated they are not accepted the proposed structures so FN will be sending letters. Concern that we are here doing the same thing we have always done but no potential change. We need real guidance on how to make something happen.

A – *Trust is huge but how to answer your question is one to be answered in this process.*

South Whales Reps – Roy Ah-See (Australia)

Indigenous community in Whales – land rights battle and success

Land Rights legislation – Indigenous communities put claim on lands not currently in use.

Three waves of action:

1. 1977 came together through protest about removal of land; no compensation and creation of reserves. Came together as leaders to plan course of action and what the community expects – compensation
 - a. government implemented legislation
 - b. Compensation given at that time was - 7.5% of the land tax for 15 years. Put into an investment fund \$485 million was saved. \$615 million now in that fund
 - c. Free hold title exists in Australia – can do anything and do anything with the land with no government approval needed.
2. Land Claims process – 43,000 land claims were submitted by the Nation 33,000 are still outstanding; 143,000 hectares of free hold land returned.
3. Economic Independence – determine what land is designated for with no government approval – development, cultural, etc.

Afternoon – Day 2

Break out sessions – Regions

Facilitated group – Shana Manson

Six principles that led the R&R work

1. Indigenous nations are recognized by the crown without requirement of proof
2. Aboriginal title and rights exist in BC and the Crown recognizes this without requirement of proof
3. Crown and Aboriginal Title co-exist in BC and come with obligations and responsibilities
4. Aboriginal Title includes pre-existing interest in land. The land is held collectively and includes jurisdiction and economic responsibilities
5. There are existing treaty rights in BC that must be honourably implemented
6. The relationship between indigenous nations and the crown is a government-to-government relationship with shared responsibility and authority over land and resource decisions.

Four principles developed and Adopted by BC Chief in Assembly

1. Acknowledgement that all our relationships are based on recognition and implementation of the existence of indigenous peoples' inherent title and rights, and pre-confederation, historic and modern treaties, throughout British Columbia.
2. Acknowledgement that Indigenous systems of governance and laws are essential to the regulations of lands and resources throughout British Columbia.

3. Acknowledgement of the mutual responsibility that all of our government systems shall shift to relationships, negotiations and agreements based on recognition.
4. We immediately must move to consent based decision-making and title based fiscal relations, including revenue sharing, in our relationships, negotiations and agreements.

Question for break out groups - What are the key principles that are essential to recognition?

- Revenue sharing; gaming
- Holding people accountable
- Gaming
- Recognition and Reconciliation:
- Articles 26 in the declaration – rights exist even without state recognition. Canada does not legally recognize nations rights and title outside of the legal process. Need legislation to make this happen.
- Article 28 in the declaration – nations that have had their land confiscated without restitution. They have the right for restitution meaning just and fair restitution. Government can return, replace, or compensate. In the current climate we do not see this in our negotiations. Government says its too difficult to compensate so prefer the land and cash formula. We need to enforce a process that compensates and recognizes that loss.
- Sharp focus on how government approaches this work “Indian land Question”
- Re-establish relationship to our territories and governance
- If Canada is going to shift out of Federal policy of “Denial”
- Whole sale shift
- Title jurisdiction – we do not have to negotiate, its there since 1846 when it was common law. The question is how do we have that implemented.
- The crown is not the only decision maker in Canada.
- Consent base – recognizing we have a say over our territories.
- Food security
- Authority over our title lands
- Recognition that land was not sold – the land is being rented and needs to be recognized as that.
- Frame it as Human Rights – might be more accepting to Canadians rather than Aboriginal Rights.
- Legislative framework – they are base, minimum Human Rights. If Government changes there would be an issue when trying to take away Human Rights.

Moving forward we need:

- Land base
- Wealth – economic base
- Access to natural resources
- Structure to take care of our resources
- How do we make the “others” understand our connection to the land, culture, language, and water? This is who we are; it’s all part of us.
- Implementing the court victories – not been done and we continue to circle the same issues.
- We need a brave government to follow through
- Inherent right policy in the way of self government – there is a jurisdiction model; in treaty they are saying there is an agreement of jurisdiction laws to see where issues might fall
- All the jurisdiction laws give priority to provincial government but we need to push for FN having the priority law on our lands.
- Discussions of overlap, resource use and rights, title talks between nations with no government involvement/inclusion.
- Reconciling Sovereignties
- How do we collectively work with the nations across the country?
- Have to go back to using our language and names.

We want one of our own at the table when legislation is being drafted. Need to ensure #2 and #4 of the Four Principles are included at a minimum.

Next Steps:

Collate all the information – notes presentations, back group information, handouts from BC and Canada so each nation can provide feedback to the leadership council.

Assemble technical working groups at the nation level who can refine and develop a formal response to the Recognition and Reconciliation Framework. Send the comments to the leadership council.

All the nations gather together in six or so weeks to meet again to focus on the work.